
To: All Municipal Police Chief Constables

And to: All Professional Standards Officers

And to: All Retired Judges Appointed under the *Police Act*

From: Office of the Police Complaint Commissioner

Date: August 9, 2017

Re: **Describing allegations of misconduct in Orders for Investigation and Notices of Admissibility**

BACKGROUND

The Commissioner has undertaken a review of the OPCC's practice of advising departments and members of the Commissioner's decision to order an investigation or decision of admissibility relating to registered complaints.

The OPCC's practice was to provide a narrative of the information provided to this Office and then list and specifically describe the conduct corresponding to each allegation of misconduct requiring investigation. Based on a review of recent Discipline Authority Decisions and adjudicative reviews, it has become clear that the allegation(s) as particularized by this Office in these notices have been interpreted as a definitive and complete description of that conduct under investigation.

This approach is problematic as the Notice is based on information received prior to any investigation under the *Police Act*. The descriptions of allegations in these Notices, particularly *Orders for Investigation* seem to have bound Discipline Authorities in their decision as to whether the allegation is to be substantiated or not, and has limited their ability to consider other allegations of misconduct if the evidence supports such a consideration.

PURPOSE

The purpose of this bulletin is to provide clarity to police departments, Discipline Authorities and retired judges appointed under the *Police Act*, of our respective roles under the Act as it pertains to listing and describing of allegations of misconduct to be considered.

LEGISLATION

Orders for Investigation

Pursuant to section 93(1)(a) of the Act, the Commissioner has an independent power to order an investigation into the conduct of a member (or former member), regardless of whether a complaint has been made, if that conduct would, if substantiated, constitute misconduct. The Commissioner may direct the investigation into the matter be conducted by the following pursuant to section 93(1)(b):

- A constable of the municipal police department who has no connection with the matter and whose rank is equivalent to or higher than the rank of the member (former member) whose conduct is the subject of investigation;
- A constable of an external police force who is appointed for the purposes of this section by a Chief Constable, a chief officer or the Commissioner as the case may be of the external police force; or
- A special provincial constable appointed for the purpose of this section by the minister

Admissibility of Registered Complaints

Pursuant to section 82(1), upon receiving a registered complaint, the Police Complaint Commissioner must determine whether the complaint is admissible or inadmissible under Division 3.

If the Police Complaint Commissioner determines that a registered complaint is admissible, the Commissioner is required, pursuant to section 83(2) of the Act, to give written notification of that determination to the complainant, the Chief Constable of the municipal police department, or the chair of the police board if the complaint concerns the conduct of a Chief or former Chief Constable.

It is the responsibility of the Chief Constable, pursuant to section 83(3) of the Act, to notify the member or former member that a complaint has been made and specify the nature of the complaint and the name of the complainant. If a complaint is not resolved informally, then the Chief Constable of that municipal police department must promptly initiate an investigation into the matter (or notify the PCC of the reasons for any delay) pursuant to section 90 of the Act, appoint a constable of the municipal police department as an investigation officer in the investigation, and notify the PCC of that appointment.

Investigating Officer

Pursuant to section 108, if during the course of the investigation, information comes to the attention of an investigating officer concerning the conduct of a member (or former member), and that conduct is not the subject of the officer's investigation, and the conduct would

constitute misconduct, if the information were substantiated, the investigating officer must immediately report that information to the Chief Constable of that police department and to the OPCC.

Discipline Authority decisions

Within 10 business days after receiving an investigating officer's Final Investigation Report in respect of the conduct of a member (or former member), pursuant to section 112(1) of the Act, the Discipline Authority must review the report and the evidence and records referenced in it.

Pursuant to section 112(1)(c), the Discipline Authority must notify the complainant, if any, the member (or former member), the Police Complaint Commissioner and the investigating officer of the next applicable steps to be taken in accordance with section 112. Pursuant to section 112(2), this notification must be in writing and include:

- a) a description of the complaint, if any, and any conduct of concern;
- ...
- c) a list or description of each allegation of misconduct considered by the Discipline Authority;

If the Discipline Authority considers that the conduct of the member appears to constitute misconduct, the Discipline Authority must determine,

- d) (i) whether or not, in relation to each allegation of misconduct considered by the Discipline Authority, the evidence reference in the report appears to substantiate the allegation and require the taking of disciplinary or corrective measures.

If a retired judge is appointed pursuant to section 117(1) of the Act, within 10 business days notify the complainant, if any, the Discipline Authority must the notify the complainant, if any, the member (or former member), the Police Complaint Commissioner and the investigating officer of the next applicable steps to be taken in accordance with section 117. This notification must be in writing and include:

- a) a description of the complaint, if any, and any conduct of concern,
- ...
- c) a list or description of each allegation of misconduct considered by the retired judge,

If the retired judge considers that the conduct of the member appears to constitute misconduct, the Discipline Authority must determine,

- d) (i) whether or not, in relation to each allegation of misconduct considered by the Discipline Authority, the evidence reference in the report appears to substantiate the allegation and require the taking of disciplinary or corrective measures.

If a matter proceeds to a discipline proceeding under the Act, within 10 business days after hearing evidence and submissions at a discipline proceeding concerning the conduct of a member (or former member), pursuant to section 125(1)(a) of the Act, the Discipline Authority must make a finding in relation to each allegation of misconduct against the member (or former member) as to whether the misconduct has been proven.

UPDATED PROCESS

Upon review of the relevant sections of the *Police Act*, the Commissioner has determined that the OPCC will be modifying the manner in which *Orders for Investigation* and *Notices of Admissibility* are completed.

The Act does not require or mandate the Commissioner to list and/or describe the allegations of misconduct requiring investigation.

For admissible complaints, it is the responsibility of the Chief Constable of the relevant municipal police department to notify the member or former member involved of the nature of the complaint in accordance with section 83(3) of the *Police Act*.

In cases where the Police Complaint Commissioner exercises his discretion to order an investigation pursuant to section 93 of the Act, the Commissioner's responsibility is to order an investigation into the conduct of the member (or former member) and direct that the investigation into the matter be conducted the police department, an external police department or the RCMP.

The purpose of these notices is to advise departments and members of the Police Complaint Commissioner's decision to initiate an investigation into the conduct of a member or former member pursuant to section 93 of the *Police Act* or to advise departments that a complaint has been determined to be admissible.

It is then the responsibility of the assigned Professional Standards Investigator to investigate any potential misconduct or attempted misconduct, arising from the matter as defined in section 77 of the Act.

Following an investigation, it is the responsibility of the Chief Constable or his/her delegate as Discipline Authority to list or describe each of the allegations of misconduct considered in their decision pursuant to section 112(c) of the Act. It is also the responsibility of the retired judge appointed under section 117(1) to list or describe each allegation of misconduct considered by the retired judge pursuant to section 117(8)(c) of the Act. In our view, these decision makers are not confined to the allegations as articulated in the OPCC notices (e.g., *Orders for Investigation* and *Notices of Admissibility*) if there is sufficiently clear, convincing and cogent evidence to support a finding of a different allegation of misconduct.

The OPCC will continue its practice of summarizing the information provided to this Office and we will provide departments guidance in terms of how the conduct could potentially be defined (i.e., type of misconduct) in these notices; however, as mentioned before, it is the responsibility of the Discipline Authority to list and/or describe the allegations considered in their decision. We have adjusted our language in our notices to reflect this practice.

The Police Complaint Commissioner's powers in relation to ensuring a matter is thoroughly investigated are rooted in section 97 and section 98 of the Act. During the investigative stage, the Police Complaint Commissioner will continue to exercise his discretion to provide advice and direct specific investigative steps.

In addition, the Police Complaint Commissioner can also appoint a retired judge under section 117 of the Act for allegations that are not substantiated if he considers there is a reasonable basis to believe that the decision of the Discipline Authority is incorrect. Following a discipline proceeding, the Commissioner can call a Public Hearing or Review on the Record if he considers there is a reasonable basis to believe that the DA's findings under section 125 are incorrect, that the Discipline Authority incorrectly applied section 126 in proposing disciplinary/corrective measures under section 128, or otherwise considers that a Public Hearing or Review on the Record is necessary in the public interest.



Stan T. Lowe
Police Complaint Commissioner

cc: Tom Stamatakis - President, BC Police Association (BCPA)