
To: Municipal Police Board Chairs
Municipal Police Chief Constables
Discipline Authorities
Adjudicators

And to: Professional Standards Officers

From: Office of the Police Complaint Commissioner

Date: March 16, 2020

Re: **Information Bulletin # 19 - Coronavirus - COVID-19 - Pandemic impact on Police Complaint process**

PURPOSE

This Information Bulletin is intended to provide guidance to police departments and police boards with respect to the impacts to the *Police Act* complaints process as a result of the current COVID-19 pandemic.

Section 177 of the *Police Act* states that the Commissioner is generally responsible for overseeing and monitoring complaints, investigations and the administration of discipline to ensure that the purposes of the *Police Act* are achieved. The Commissioner may also inform, advise and assist all participants in the police complaint process. To that end, the Commissioner may issue and periodically revise Information Bulletins to provide clarifying information with respect to various aspects of the *Police Act*.

BACKGROUND

Government agencies are currently preparing response plans and amending current business practices resulting from the COVID-19 pandemic which, in turn, will affect the services provided to the public. This may include the need for police departments and designated law enforcement agencies to redirect resources, modify response procedures, and re-align priorities in delivering policing services to their communities. This may also include the re-deployment of professional standards or support staff.

REQUIREMENTS OF PART 11

With respect to the police complaint process, the *Police Act* contains non-discretionary timelines, duties and obligations. While some timelines have specific statutory language which allow for discretionary extensions, there is no authority for the Police Complaint Commissioner to generally waive these statutory timelines, duties or obligations, nor are parties excused from them. The overriding principle of the Act is to ensure that the public interest is met through the transparent civilian oversight of police conduct, complaints and investigations and the legislated accountabilities contained in *Part 11* of the Act. **These accountabilities should be seen as immutable and are especially important in times of uncertainty, increased vulnerability of citizens, or during the exercise of extraordinary state powers as in the present case of the national response to the pandemic.**

However, consideration of the public interest also includes the assessment of the current pandemic and its effect on government response including police service delivery and resources. These considerations, while valid, must be balanced against other public interest considerations such as procedural fairness, timeliness of investigations and proceedings; the need for thorough and complete investigations; the preservation of evidence; accountability and transparency to the public, and; to ensure the complaints process upholds the rights of respondents, complainants and affected persons.

EXERCISE OF DISCRETION DURING PANDEMIC AFFECTED TIME PERIOD

Certain sections within *Part 11* provide discretionary authority which is dependent upon the relevant statutory language. These may include, for example, provisions for extensions and/or suspensions of *Police Act* investigations and adjournments of matters in the disciplinary or adjudication phase.

My view is that assessment of the public interest factors *in discretionary decisions* under the Act may include consideration of impacts resulting from this pandemic. They are valid considerations for assessment on a case by case basis and documentation by decision-makers where the specific statutory language provides discretion. **For certainty, declining or failing to do what is a mandated duty under the Act is NOT a proper exercise of discretion.**

To ensure transparency and accountability of the complaints process, decision-makers are advised that all considerations should be clearly articulated and documented as to those public interest factors described above. This includes requests to this office such as discontinuations or extensions of investigations as well as those matters decided independently by investigators or discipline authorities under *Part 11*.

In any requests to this office for discretion relating to the extending of timelines or in the conduct of ongoing investigations and any related discipline proceedings, the specific factors related to the present pandemic response may therefore be reasonably considered. Where those considerations are not sufficiently documented to support the exercise of discretion, the OPCC may request supplemental material or information prior to granting the request.

For further advice on any questions arising from this Bulletin, please direct them to the Deputy Police Complaint Commissioner.



Clayton Pecknold
Police Complaint Commissioner