
To: Municipal Police Board Chairs
Municipal Police Chief Constables
Chief Officers
Designated Law Enforcement Agencies
Discipline Authorities
Adjudicators

And to: Professional Standards Officers

From: Office of the Police Complaint Commissioner

Re: **Information Bulletin # 19 - Impact of COVID-19 Pandemic on Police Complaints process (Revised July 28, 2020)**

NOTE: This Bulletin will be revised periodically as circumstances require. However, given the rapidly changing nature of government's response to the pandemic, all parties are encouraged to contact the Deputy Police Complaint Commissioner if questions arise with respect to the police complaints process, including investigations and proceedings so that decisions may be balanced within the present extraordinary context.

On more general matters, it is recognized that each police agency has unique human resource capacity and needs, therefore, Chairs of Police Boards and Chief Constables/Officers are also encouraged to contact the Police Complaint Commissioner directly on questions or issues specific to their agencies.

COVID-19 RELATED MEASURES ACT

On July 8, 2020, the Legislature of British Columbia passed Bill-19 "Covid-19 Related Measures Act" (Royal Assent) and it received Royal Assent that same day and was brought into force by regulation on July 10, 2020. The Act and Regulation is found at:

<https://www.bclaws.ca/civix/document/id/bills/billscurrent/5th41st:gov19-3>
https://www.bclaws.ca/civix/document/id/oic/oic_cur/0391_2020

That Act continues MO98 as an "EPA Instrument" under Schedule 2 giving it legislative effect in accordance with that Act.

DECLARATION OF PROVINCIAL EMERGENCY

On March 18, 2020, the Provincial Government of British Columbia declared a state of emergency under the *Emergency Program Act* in a province-wide response to the COVID-19 pandemic. It followed the declaration of a public health emergency by the Chief Provincial Health Officer on March 17, 2020, under the *Public Health Act*. Further updates to the provincial state of emergency including Ministerial Orders are issued from time to time.

While these declarations or any superseding and applicable declarations or orders by the Government of Canada are in effect, the Office of Police Complaint Commissioner will be providing additional information within Orders for Investigation and Notices of Admissibility informing parties that lawfully authorized delays may occur during the affected period. This Bulletin should be read in conjunction with the *Emergency Program Act* and the *Public Health Act* of BC as well as any applicable orders, or direction under those Acts, or under federal legislation including the *Quarantine Act*. In particular, this includes orders related to occupational health and safety and the need for physical distancing and isolation, in order to protect the health of all participants in the complaints process.

As outlined below, and to support continued transparency and accountability, it is important that discretionary decisions including requests for extensions, suspensions, discontinuations, or decisions related to adjournments, be sufficiently documented outlining the reasons for the request, in the context of the current health emergency, the associated impacts to government bodies, important health and safety considerations and the extraordinary legislative authorities presently in force.

Where *Part 11* does not provide for discretion, the Commissioner will also consider requests to waive, extend or suspend a mandatory time period pursuant to Ministerial Order MO98 (as amended) *Emergency Program Act* (attached). Broader application of Ministerial Order MO98 (as amended) will be considered as circumstances require.

It is also recommended that Retired Judges sitting as Adjudicators during a Review on the Record or a Public Hearing may wish to consider the application of MO98 (as amended) to their proceedings.

PURPOSE

This Information Bulletin is intended to provide guidance to police agencies 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 updating 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.

The overriding principle of *Part 11* 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. Other public interest considerations include the availability and suitability of “virtual” communication; the need for 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 respondent members, complainants and affected persons.

EXERCISE OF DISCRETION DURING PANDEMIC AFFECTED TIME PERIOD

Certain sections within *Part 11* provide discretionary authority 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.

Assessment of the public interest factors in discretionary decisions under the Act may include consideration of operational impacts to police agencies resulting from this pandemic. They are valid considerations for assessment and documentation by decision-makers where the specific

statutory language provides discretion. For certainty, absent lawful excuse, declining or failing to do what is a mandated duty under the Act (e.g. s.89 reporting of death, serious harm and reportable injury) is not considered 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.



Clayton Pecknold
Police Complaint Commissioner