
To: All Municipal Police Chief Constables

And to: All Professional Standards Officers

From: Stan T. Lowe, Police Complaint Commissioner

Date: October 15, 2014

Re: **Impaired driving, discreditable conduct & disciplinary/corrective measures**

PURPOSE

On August 12, 2010, the Office of the Police Complaint Commissioner (OPCC) issued Information Bulletin #6 informing police agencies of the expectations and position of the OPCC in relation to cases when a police officer, while off-duty, is the recipient of a 24-hour driving prohibition pursuant to section 215 of the *Motor Vehicle Act*. It has been our position that these incidents should be the subject of a *Police Act* investigation.

Significant legislative changes have been introduced in this province for combatting impaired driving. In light of these changes, I have prepared this bulletin to provide further assistance to discipline authorities as it relates to our gatekeeping function under the *Police Act* when approving disciplinary or corrective measures after a finding of misconduct. Our purpose in providing this assistance is to promote a consistent and fair approach in the determination of appropriate disciplinary or corrective measures for misconduct involving impaired driving.

BACKGROUND

The public is increasingly concerned and intolerant of those who operate a motor vehicle while impaired by alcohol or drugs. The negative impacts of impaired driving in our society have been in the forefront of public concern for a number of years in British Columbia. Sanctions for impaired driving have significantly increased over the years to reflect the seriousness of this type of behaviour. In an effort to combat alcohol related fatalities, British Columbia enacted new legislation for dealing with drinking and driving. The Immediate Roadside Prohibition legislation introduced driving suspensions ranging from 3-days to 90-days, vehicle impoundment, substantial monetary penalties, and referrals to remedial programs.

Reiterating a comment contained in a Final Investigation Report authored by a Professional Standards Investigator,

Every year governments spend millions of dollars in enforcement programs and advertising in an effort to reduce the number of alcohol related crashes that result in death and injury. Perhaps the largest stakeholders in these initiatives are local and provincial police agencies. Police agencies are constantly taking the lead in promoting road safety and encouraging citizens to refrain from drinking and driving. Recommendations such as using the services of a designated driver, taking a taxi, or utilizing public transit are common.

A prominent function of most uniformed police officers is to detect and apprehend people who endanger society by driving while intoxicated. Given the high profile involvement of police in drinking and driving mitigation I believe there is an expectation by the public that police officers set an example and refrain from drinking and driving themselves. Had the case at hand come to the attention of the public I believe that the reputation of the Police Department would have likely been discredited....

Given the negative impact of drinking and driving on our society and the ongoing high profile efforts to deal with the problem I believe that the “reasonable expectations of the community” are that police officers should not consume alcohol and drive a motor vehicle at a level that results in the suspension of their driving privileges.

Both retired judges acting as Adjudicators and Discipline Authorities on these matters have also recognized the seriousness of impaired driving. Honourable Ian Pitfield adopted the reasoning articulated above in his decision of a member who was given a 24-hour roadside suspension. This sentiment has also been supported in many Discipline Authority decisions. According to one such Discipline Authority:

This is a serious offence. [The Constable] knew his job was to be ever vigilant at removing that risk to the public. Instead, he put the public at risk with his own poor judgment that night. . . . Drinking and driving is serious misconduct. Members need to conduct themselves in their off-duty time in a way that never endangers the public. Police officers are held to a higher standard than members of the public when it comes to conduct like this.

RECOMMENDED CONSIDERATIONS

Section 126(2) of the *Police Act* outlines aggravating and mitigating factors that must be taken into consideration in determining just and appropriate disciplinary or corrective measures in relation to the misconduct of a member. It should be noted that the factors referred to in the Act are not exhaustive. In order to assess the level of seriousness of impaired driving the following factors should be taken into consideration when a member is the subject of a “discreditable conduct” investigation pursuant to the *Police Act*:

- Whether the Approved Screening Device (ASD) registered a “FAIL” or registered a “WARN”:

- A higher degree of intoxication and/or impairment should reflect a higher level of discipline
- Whether the member was charged with impaired driving and/or having a blood alcohol level over 80 mg of alcohol and/or refusal to comply with a demand pursuant to the Criminal Code:
 - Consideration should be given to whether a criminal charge was sought. Consideration should also be given to the blood alcohol level if one was obtained.
- The driving behaviour of the member:
 - Demonstrated impaired ability to operate a motor vehicle should reflect a higher level of discipline (e.g., detection through a roadblock versus a traffic stop)
- The acceptance of responsibility:
 - Member demonstrates a level of remorse for his/her actions

As a result of the seriousness of impaired driving, the public's increasing intolerance of impaired driving, and the legislative changes intended to combat impaired driving; we provide this information to assist pre-hearing conference and discipline authorities in understanding our perspective in the performance of our gatekeeping function as it relates corrective measures or discipline in this area.



Stan T. Lowe,
Police Complaint Commissioner