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To: All Municipal Police Chief Constables

And to: All Professional Standards Officers

From: Office of the Police Complaint Commissioner

Date: March 16, 2017 – Revised September 24, 2019

**Re: Guideline: Notification of Death and Serious Harm to the OPCC**

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## BACKGROUND

The OPCC is responsible for initiating mandatory external investigations under the *Police Act* in instances when members of the public suffer serious harm or death in the circumstances set out in section 89 of the *Police Act*.

The mandate of the OPCC is separate and distinct from that of the IIO. The IIO is responsible for conducting critical incident investigations where it appears that a person may have died or suffered serious harm as a result of the actions of an officer, whether on or off duty, to determine if the involved officers may have committed an offence. Section 89 of the *Police Act* places a mandatory, non-discretionary responsibility on the Police Complaint Commissioner to direct an investigation into these matters and appoint an external police agency to conduct this investigation.

The purpose of such investigations pursuant to section 89(2) of the *Police Act* are to ensure that in cases where a person dies or suffers serious harm while in the custody or care of member of the municipal police department, or, as a result of the conduct of any member of the police department, or as a result of the operations of the police department, an external examination of the matter is undertaken. The nature of this investigation will be to assess any training, policy or misconduct allegations that may be relevant for consideration.

These investigations are independent of the IIO and may run concurrently with investigations under section 89 of the *Police Act*.

Section 89(5) of the *Police Act* provides the Commissioner with the authority to create a Guideline to assist police agencies in determining whether a matter falls within the definition of serious harm under section 76 of the *Police Act* and requires reporting to the OPCC and a subsequent direction from the Commissioner for a mandatory external investigation.

## PURPOSE

This Guideline confirms the mandatory reporting requirements respective to section 89 of the *Police Act*. The purpose of the Guideline is to:

- i. Provide criteria to be applied by police departments in determining whether an injury constitutes serious harm;

This Guideline is meant to be a standalone document for assisting departments in the determining serious harm incidents that require reporting to the OPCC. Please refer to *Information Bulletin #1* for an explanation of the process once a matter has been determined to meet the definition of serious harm.

## NOTIFICATION OF DEATH OR SERIOUS HARM

### RELEVANT LEGISLATION

*BC Police Act*, RSBC 1996, Chapter 367

#### Section 76

“Serious harm” means injury that,

- (a) May result in death
- (b) May cause serious disfigurement, or
- (c) May cause substantial loss or impairment of mobility of the body as a whole or of the function of any limb or organ;

#### Section 89 states,

- (1) A Chief Constable of a municipal police department must immediately report to the Police Complaint Commissioner, in the form and manner required by the Police Complaint Commissioner, if
  - (a) a person dies or suffers serious harm or a reportable injury
    - (i) while in the custody or care of a member of the municipal police department, or
    - (ii) as a result of the operations of that municipal police department, or
  - (b) a person dies or suffers serious harm or a reportable injury and the death, serious harm or reportable injury could be seen to be the result of
    - (i) the conduct of any member of the municipal police department, or
    - (ii) the operations of that municipal police department.

(2) Despite any other provision of this Part, if a person dies or suffers serious harm in circumstances described in subsection (1) (a) or (b), the Police Complaint Commissioner must direct that an investigation into the matter be conducted by either of the following as investigating officer:

- (a) a constable of an external police force who is appointed for the purpose of this section by a Chief Constable, a chief officer or the commissioner, as the case may be, of the external police force;
- (b) a special provincial constable appointed for the purpose of this section by the minister.

...

(5) The Police Complaint Commissioner may establish guidelines respecting the criteria to be applied by a Chief Constable in determining whether an injury constitutes serious harm for the purposes of subsection (1), which guidelines may provide for a determination to be made by the Police Complaint Commissioner on the matter.

### Criteria for Reporting

The definition of “serious harm” pursuant to the *Police Act* requires careful review as it incorporates the possibility of an actual and a potential determination. In order to provide clarity and direction as to what constitutes “serious harm,” the following should be considered:

“**serious harm**” means injury that

- (a) may result in death,
- (b) may cause serious disfigurement, or
- (c) may cause substantial loss or impairment of mobility of the body as a whole or of the function of any limb or organ;

In particular, “serious harm” includes, but is not limited to these injuries listed below or injuries that also **may** result in on or more of the following:

Nature of  
the injury

- A fracture of the skull, jaw, vertebrae, rib, humerus, radius, ulna, femur, tibia or fibia;
- Burns, cuts or lacerations that require admission to hospital on an in-patient<sup>1</sup> basis;
- The loss of any body part;
- Loss of mobility (paralysis) of any portion of the body;
- The loss of hearing or vision;
- Internal injuries that require admission to hospital on an in-patient basis.

<sup>1</sup> In-patient is defined as a patient who is admitted to hospital or other health care facility for at least an overnight stay.

In addition to the criteria outlined above for “serious harm,” **at least one** of the following conditions must also be met:

1. Causation Requirement:

In order to determine whether an incident is required to be reported to the OPCC pursuant to section 89(1) of the *Police Act*, it must be determined whether the conduct of the member or the operations of the department **could be seen to have caused** the death or serious harm of that person. In other words, there must be a reasonable basis to believe that the conduct of the member, or the operations of the department, caused the serious harm or death.

In circumstances in which causation is not apparent at the outset, police should provide notification to the OPCC so that they may monitor the matter until a determination is made. This precautionary notification would likely occur in instances such as police pursuits or emergency driving.

AND/OR

2. Circumstantial Requirement:

If a person dies or suffers serious harm while in the custody or care of a member of the municipal police department, it must be determined whether the death or serious harm occurred while the person was under arrest or detained, or in a secured place or custodial setting under the supervision of police. A duty of care arises to maintain the well-being of an individual who has been arrested or detained at law, or lodged in a police custodial facility.

Generally, in cases where a police officer simply renders reasonable medical assistance (for example administering Naloxone) to a member of the public and there are no other circumstances (eg. use of force) that reasonably may be seen to establish causal connection between the officer’s actions and the subsequent death or serious injury, and the person was not in the care or custody of the police, police agencies are not required to notify the OPCC (see process below).

## PROCESS

If the police agency determines that an incident meets the criteria for death or serious harm and the incident meets the requirements of the Causation and/or Circumstantial threshold as set out under this Guideline, police agencies are required by legislation to report the matter to the OPCC.

*If there is uncertainty in terms of the nature/seriousness of the injury, or in terms of the causation or circumstantial requirement, police agencies must notify the OPCC for direction and guidance in the matter.*

Section 89 does not differentiate between on-duty and off-duty conduct. Given the gravity of the circumstances which give rise to a mandatory requirement for an investigation, if a person dies or suffers serious harm as a result of the conduct of a member who was not on-duty at the time, it is recommended that police departments notify the Deputy Police Complaint Commissioner so a “monitor” file can be opened to determine whether an investigation under the *Police Act* is necessary.

If it is determined that a person died or suffered serious harm pursuant to section 89(1) of the *Police Act* a mandatory external *Police Act* investigation will be triggered pursuant to section 89(2) of the Act. A reportable injury, as defined in section 76 of the Act, while still being a mandatory reporting situation, will not always result in an automatic mandatory external investigation. The Commissioner does have the option of ordering an external investigation into a “reportable injury” pursuant to section 93 of the Act if the circumstances warrant that process. Please refer to *Information Bulletin #1* for notification requirements of Reportable Injuries.



Clayton Pecknold  
Police Complaint Commissioner