



Guideline: Resolution of Complaints by Mediation or Other Informal Means

To: All Municipal Police Chief Constables

And to: All Professional Standards Officers

From: Office of the Police Complaint Commissioner

Date: March 29, 2017

**Re: Guideline: Resolution of Complaints by Mediation or Other Informal Means
(Division 4 of the *Police Act*)**

LEGISLATION

Pursuant to section 156 of the *Police Act*, the Police Complaint Commissioner may issue guidelines pertaining to the resolution of complaints by mediation or resolution agreement. These guidelines:

- (a) Must establish the criteria to be applied in determining whether resolution under this Division is suitable, and
- (b) May provide for the following:
 - (i) a determination to be made by the Police Complaint Commissioner about whether a complaint is suitable for resolution by mediation or other informal means;
 - (ii) a roster, or the selection and identification, of those persons who may attempt to mediate or otherwise resolve a complaint;
 - (iii) timelines in respect of which mediation or other informal means of resolution must be conducted or concluded;
 - (iv) forms and procedures that may or must be used or followed before, during or after mediation or other informal means of resolution under this Division;
 - (v) the manner and form of recording a resolution under this Division.

Section 157 of the Act provides that,

If, at any time before or during an investigation into a complaint concerning the conduct of a member or former member, the complaint appears to the Discipline Authority to be such that, under the guidelines, the matter is suitable for resolution by informal means other than mediation, the Discipline Authority may resolve the matter, if the complainant and the member or former member agree in writing to the proposed resolution.

Any proposed resolution requires the consent of the Police Complaint Commissioner,

... the Police Complaint Commissioner may set aside the proposed resolution if the Police Complaint Commissioner considers it inappropriate or inadequate.

Similarly, with respect to the mediation of admissible registered complaints, section 158 states,

If, at any time before an investigating officer's Final Investigation Report respecting an investigation into a complaint concerning the conduct of a member or former member is filed with the Discipline Authority, the complaint appears to the Discipline Authority to be such that, under the guidelines, the matter is suitable for resolution by mediation, the Discipline Authority may request the Police Complaint Commissioner to approve of an attempt at mediation under this Division.

PURPOSE

The purpose of this guideline is to:

- i. Revise and update the guideline issued on January 23, 2013, respecting mediation and Complaint Resolution

Alternative Dispute Resolution is a very important component of the police complaint system. The following guidelines are intended to ensure that complaints which meet the criteria for resolution are assessed at a very early stage. This guideline also establishes a process where some complaints that have been deemed not suitable for resolution at the front end may be considered for resolution upon receipt of information that addresses the concerns as set out in the relevant factors described in this guideline. This process is designed to reduce the expenditure of time and effort on the part of investigators as it relates to the resolution process.

RESOLUTION

Criteria to be applied for matters appropriate for Complaint Resolution:

Generally, Complaint Resolution is targeted toward complaints that:

- are less serious in nature;
- do not involve allegations of serious physical injury;
- contain less complicated issues; and
- involve parties who are able to communicate well.

In determining whether the Police Complaint Commissioner will approve a proposed resolution, the guiding principle will be whether the public interest is best served by such a resolution. The Commissioner must consider all relevant factors related to the allegation(s), including without limitation the following:

- (a) the nature and seriousness of the alleged misconduct; and
- (b) the nature and seriousness of the harm or loss alleged to have been suffered by any person as a result of the misconduct, including without limiting the following considerations:
 - i. whether the alleged misconduct was likely to cause physical, emotional, or psychological harm or financial loss to the complainant;
 - ii. whether the alleged misconduct violated the complainant's dignity or privacy, or rights recognized by law; or
 - iii. whether the alleged misconduct and proposed resolution would likely undermine the public confidence in the police or the police complaint process in British Columbia

Complaints involving the death or the suffering of serious harm of a person or a reportable injury as described in section 89(1) cannot be resolved under Division 4.

Complaint Resolution Process (Updated)

If the OPCC determines that a complaint is admissible under Division 3 of the *Police Act*, the OPCC will also assess whether the complaint, based on the information available at the time, may be suitable for resolution. If the complaint appears to be suitable, the OPCC will add a paragraph to the *Notice of Admissibility*, advising the associated police agency to consider resolving the complaint with resolution.

If the Discipline Authority determines that an attempt at resolution is appropriate and the complaint was not initially flagged as suitable for resolution in the *Notice of Admissibility*, then the assigned Professional Standard's investigator must consult with the assigned OPCC analyst and obtain approval before proceeding with a resolution attempt. In an attempt to address the concerns which deemed the allegations not suitable for resolution at the outset, the analyst may request additional information or require certain preliminary investigative steps to be completed in order to re-assess the suitability of resolution. Approval to proceed with a resolution attempt does not guarantee that a resolution agreement will be confirmed.

If a resolution attempt is approved, the investigator and analyst should discuss and decide who should inform the complainant of the potential for resolution and canvass their interest in engaging in such a process. In addition, the Discipline Authority must notify the complainant that a support person may accompany them if desired. A list of support groups has been established and is attached to this guideline [Appendix 15]. This list is also available on the OPCC website (www.opcc.bc.ca). The investigator is to contact the member(s) and canvass their interest in engaging in resolution to resolve the complaint.

The investigator must speak with both the complainant and member(s) to obtain their perspective on the matter and discuss the concerns contained in the complaint. Once this is done, the investigator must either facilitate a face-to-face meeting with the complainant and respondent member(s) or speak with the parties separately to obtain their input for an appropriate resolution.

Only after an investigator has spoken with both the complainant and member(s) and obtained their input on an appropriate resolution will the investigator draft a resolution agreement. The draft resolution agreement is to be in writing and sent to both parties for their review and feedback. A resolution agreement must be meaningful and articulate the concerns of the complainant and discuss each participant's perspective along with a resolution. A resolution agreement is not final until both parties have signed the agreement. The investigator must explain to both parties of their right to revoke their signature within 10 business days of signing the resolution agreement.

Resolution Agreement

The proposed resolution must be agreed to in writing by both the complainant and the member(s) (or former member), and include the following [Appendix 1]¹:

- a synopsis of the incident;
- a summary of the concerns from the complainant;
- a summary of the perspectives of both the complainant and respondent member(s);
- a summary of the agreed resolution;
- an advisement of the 10-day revocation period; and
- signature of both the complainant and respondent member(s) with dates.

The Discipline Authority must provide the Police Complaint Commissioner with any additional information the Commissioner may require respecting the proposed resolution.

If neither party revokes their consent within 10 business days of the agreement and the Police Complaint Commissioner, within 15 business days of notification of the proposed resolution, does not set aside the resolution, the proposed resolution is final and binding. [Appendix 2]

If the complainant or member (or former member) revokes their consent within the time period allowed, or the Police Complaint Commissioner determines that the proposed resolution is inappropriate or inadequate, an investigation into the matter must proceed pursuant to Division 3 of the *Police Act*. [Appendix 3]

Documentation

Statutory reports such as the *Notice of Complaint*, *Initiation of Investigation* and *Progress Reports* are still required if attempting to resolve a complaint through resolution.

¹ Please contact the assigned analyst for examples of complaint resolution agreements if needed.

Timeline for Completion of a Resolution Agreement (Updated)

In order to ensure the timely resolution of complaints, a resolution must be concluded within **45 calendar days** of the date of the *Notice of Admissibility* in complaints where resolution was initially flagged, or **45 calendar days** from the date the OPCC analyst approves a resolution attempt. The conclusion of resolution means an agreement has been drafted and signed by both parties. If **45 calendar days** have passed and a resolution agreement is imminent (i.e. a resolution agreement has been drafted and only requires signatures from either party,) then the investigator is to obtain approval from the analyst to continue with the resolution process. If a resolution is not imminent, then efforts at a resolution must cease and the complaint must be investigated pursuant to Division 3 of the *Police Act*. This does not preclude a further attempt at resolution; however, that attempt must be approved by an OPCC analyst.

MEDIATION

Mediation is a process for resolving disputes between two or more parties with the assistance of a professional mediator to settle the issues in dispute on their own terms. This may include the parties meeting face-to-face during or after the mediation, but is not necessary. The mediation takes place in a private, non-confrontational setting, where the parties participate in the design of the settlement agreement. The mediator is impartial and trained to help parties settle conflict collaboratively, but has no decision-making power. **The dispute is settled only if all of the parties agree to the settlement.**

Criteria to be Applied for Matters Appropriate for Mediation

Generally, complaints that are suitable for mediation are those that:

- are less serious in nature;
- may contain more complicated issues than those complaints that are suitable for resolution; and
- where the dynamics between the parties require the assistance of a professional mediator to reach a settlement.

Upon receipt of a request from a Discipline Authority to attempt to resolve a complaint by mediation, the Police Complaint Commissioner will review the allegations using the guiding principle of whether the public interest is best served by such a resolution. The Police Complaint Commissioner must consider all the relevant factors of the allegation(s), including without limitation the following:

- a) the nature and seriousness of the alleged misconduct;
- b) the nature and seriousness of the harm or loss alleged to have been suffered by any person as a result of the misconduct, including without limitation the following considerations:
 - i. whether the alleged misconduct was likely to cause physical, emotional, or psychological harm or financial loss to the complainant;
 - ii. whether the alleged misconduct violated the complainant's dignity or privacy, or rights recognized by law; or

- iii. whether the alleged misconduct and proposed resolution would likely undermine the public confidence in the police or the police complaint process in British Columbia.

Complaints concerning a death or the suffering of serious harm or a reportable injury as described in section 89(1) cannot be mediated under Division 4.

Mediation Process

If a Discipline Authority believes a complaint is suitable for resolution through mediation, the Discipline Authority must submit to the Commissioner a written request to attempt mediation. The request should clearly set out the reasons why the complaint is deemed suitable and provide the Commissioner with sufficient information and detail upon which to make a decision.

Where the Commissioner approves an attempt at mediation, a complainant may apply to the Commissioner to be excused from participation in the mediation process. The *Act* requires that a complainant must provide a valid reason for not participating in the mediation process. Where an application for exemption from mediation is successful, the Commissioner will provide reasons for the exemption and direct that the investigation continue into the complaint.

Upon approval, the Commissioner will issue a *Notice of Approval to Attempt Resolution Through Mediation* [Appendix 4] to the complainant, the member (or former member), the assigned investigator and to the Discipline Authority. Within 5 business days of receipt of the *Notice of Approval to Attempt Resolution Through Mediation*, the Chief Constable or Discipline Authority will appoint a mediator from the list of mediators accredited for *Police Act* complaints. The Discipline Authority must issue a notice ordering the member (or former member) to attend a pre-mediation conference at a date, time and place as determined by the mediator. [Appendix 5]

The appointed mediator will contact the assigned Professional Standards investigator to obtain any information or details of the complaint as required.

The complainant and member (or former member) will be directed by the appointed mediator to attend a pre-mediation conference. A pre-mediation conference is an opportunity for the mediator to separately meet with the participants, in person or by telephone in the mediator's discretion, to:

- determine if there is any factor that would render a mediation unfair to either party and assess whether mediation is appropriate in the circumstances;
- discuss with the participant the importance of independent legal advice; and
- consider all the organizational matters relating to the mediation, including the issues, exchange of documents, scheduling and review and sign the *Agreement to Mediate* [Appendix 6]

Upon completion of the mediation, the mediator will submit a report to the Commissioner and to the Discipline Authority, advising of the outcome and any agreement reached by the parties. [Appendix 7]

Agreements that are reached by the parties through mediation are final and binding. If the parties are unable to reach an agreement at mediation, the investigation pursuant to Division 3 must be recommenced. [Appendices 8 and 10-14]

At the conclusion of any attempt to mediate, whether successful or not, the mediator will submit a report to the Commissioner and Discipline Authority for statistical and program evaluation purposes. [Appendix 9]

Timeline for Completion of Mediation

Mediation shall be completed within **40 business days** of the appointment of a mediator, unless an extension is granted by the Police Complaint Commissioner upon application by the mediator.

RESOLUTIONS INVOLVING MULTIPLE MEMBERS OR COMPLAINANTS

In the event there is more than one member participating in a resolution or mediation, the provisions as set out in Division 4 and this guideline apply to participants individually. A successful resolution or mediation is not dependent on the successful resolution of all of the participants.

RESOLUTIONS & MEDIATIONS OF ORDERED INVESTIGATIONS

If the allegations in the ordered investigation meet the above-noted guidelines as matters that would normally be deemed suitable for resolution or mediation, efforts should be made to have a person who is willing to attempt a resolution referred to in section 78(1) of the *Police Act* formally register a complaint form with the Office of the Police Complaint Commissioner. This will allow the individual all the rights pursuant to the *Act* including the ability to enter into a proposed resolution agreement or mediation.

SUPPORT PERSONS

Both the complainant and the member (or former member) may be accompanied at any session of the mediation or resolution by a support person. The support person's participation will be subject to the approval of the mediator and the consent of the other party.

CONFIDENTIALITY

Statements made during the course of a resolution or mediation are confidential and cannot be communicated to any third party or raised in any civil or criminal proceedings, including discipline proceedings. Additionally, the agreement to mediate creates a binding contractual agreement at law preventing disclosure of statements, either oral or written, unless expressly waived in writing by both parties to the mediation.

With the signed consent of the complainant and member, the mediator's report to the Police Complaint Commissioner and Discipline Authority will include an "outcome summary" that will describe the basic elements of the outcome while maintaining the confidentiality of the statements

made by the parties within the mediation process. Parties will be given the opportunity to review and approve the “outcome summary” prior to its publication by signing the Mediator’s Report.

ALTERNATIVE DISPUTE RESOLUTION TRAINING

It is recommended that investigators undertake the Alternative Dispute Resolution training sessions provided by the OPCC. These training sessions are facilitated by an experienced mediator and provide a foundation for resolving complaints under the *Police Act* and an opportunity to practice skills learned.

If you have any questions or concerns, please contact the Deputy Police Complaint Commissioner, Rollie Woods.



Stan T. Lowe
Police Complaint Commissioner

Appendices

- 1 Consent to Resolution Agreement (department suggested wording)
- 2 Confirmation of Resolution Agreement (OPCC template)
- 3 Objection to Resolution Agreement (OPCC template)
- 4 Notice of Approval to Attempt Resolution Through Mediation (OPCC template)
- 5 Order to Attend Mediation (department suggested wording)
- 6 Agreement to Participate in Mediation (mediator suggested wording)
- 7 Mediator’s Report Following Mediated Session (mediator suggested wording)
- 8 Cancellation of Mediation (mediator suggested wording)
- 9 Mediator’s Evaluation Report (mediator suggested wording)
- 10 Cancellation of Mediation & Discontinuance of the Complaint (OPCC template)
- 11 Cancellation of Mediation & Recommencement of Investigation - Complainant No-Show (OPCC template)
- 12 Cancellation of Mediation & Recommencement of Investigation - Member No Show (OPCC template)
- 13 Cancellation of Mediation & Recommencement of Investigation - Not Applicable or Appropriate (OPCC template)
- 14 Cancellation of Mediation & Recommencement of Investigation - Complainant Withdrawal
- 15 List of Support Groups