
To: Retired Judges appointed under the *Police Act*
All Municipal Police Chief Constables
Chief Officer, Metro Vancouver Transit Police
Chief Officer – Stl’atl’imx Tribal Police Service
Chief Officer – Combined Forces Special Enforcement Units (CFSEU-BC) /
Organized Crime Agency (OCA-BC)

And to: All Professional Standards Officers

From: Office of the Police Complaint Commissioner (OPCC)

Date: October 6, 2022 (Reissued March 2023)

Re: **CDSA Exemption Impacts for BC Municipal Police Officers**

PURPOSE

The purpose of this Information Bulletin (Bulletin) is to:

- i. Provide information and interim advice regarding the *Controlled Drugs and Substances Act* (CDSA) exemption¹ and its application to Part 11 of the *Police Act*;
- ii. Confirm the mandatory notification requirements of ‘Reportable Injuries’ (RI) pursuant to section 89(1) of the *Police Act*.

BACKGROUND

With an anticipated effective date of January 31, 2023, the federal Minister of Mental Health and Addictions and Associate Minister of Health has granted a provincial request for an exemption under the CDSA for adults (18 years of age and older) in BC to possess up to 2.5 grams of certain illegal drugs for personal use, with no intent to traffic, produce, or export. This exemption will be in place for an initial three-year period. Under this exemption, adults in BC who possess illegal drugs listed in the exemption (located [here](#)), in an amount up to 2.5 grams for personal use, will not be subject to criminal charge.^{2,3}

¹<https://www.canada.ca/en/health-canada/services/health-concerns/controlled-substances-precursor-chemicals/policy-regulations/policy-documents/exemption-personal-possession-small-amounts-certain-illegal-drugs-british-columbia/subsection-56-1-class-exemption-adults-18-years-age-older.html>

²<https://www.canada.ca/en/health-canada/services/health-concerns/controlled-substances-precursor-chemicals/policy-regulations/policy-documents/exemption-personal-possession-small-amounts-certain-illegal-drugs-british-columbia.html>

³ The CDSA exemption also lists exception criteria wherein the exemption will not apply (located [here](#)), including but not limited to those under 18 years old, in locations such as airports, elementary and secondary school premises, and licensed child care facilities.

IMPACT AND GUIDANCE

The CDSA exemption will have an impact on the duties and responsibilities of police officers during investigations under that Act. At this early stage, it is not possible to foresee definitively how matters relating to the exemption will arise under Part 11 of the *Police Act*; however, interim guidance in identifying areas of the *Police Act* that *may* be impacted may assist investigators and decision-makers in applying the exemption to various circumstances.

Generally speaking, members' adherence or lack of adherence to the CDSA exemption, as well as the exceptions of the CDSA exemption, may be factors considered in the assessment of allegations of misconduct under the Act. Police officers will be required to adhere to the CDSA exemption while continuing to provide lawful enforcement of drug laws, when appropriate. In these circumstances police officer's inherent discretion, *good faith* acts, and the reasonable expectations of the public that the policy objectives of the exemption will be met, are important contextual factors for any assessments of conduct under the *Police Act*.

Complaints and Admissibility Assessments

During admissibility assessments of alleged misconduct invoking the CDSA exemption, consideration will be given to a member's adherence to the exemption through either an act or an omission of an act, against standards of reasonableness and *good faith*. Training for police on the CDSA exemption is being provided through the Province of British Columbia incrementally, with some training not taking place until Summer 2023. The presence or absence of this training may also be a factor when assessing conduct relating to the exemption.

Allegations of misconduct – section 77

While it remains unclear how and which allegations of misconduct will be impacted, the OPCC anticipates possible allegations concerning *Abuse of Authority* or *Neglect of Duty* may arise. The reasonableness of the officers' conduct, in light of all the circumstances, including the member's skills, knowledge, training, and experience, are important factors for investigators and decision-makers.

For example:

Abuse of Authority – section 77(3)(a)

A member's failure to reasonably adhere to the CDSA exemptions in the course of their duties, including detaining, arresting, searching, or seizing property (including controlled drugs or substances) may be a factor in the assessment for *Abuse of Authority* under the *Police Act*. This includes assessing any "good and sufficient cause" factors that may be relevant to the conduct.

Neglect of Duty – section 77(3)(m)

A member's reasonable adherence to the CDSA exemption in an act, or an omission of an act, may be a factor in the assessment of *Neglect of Duty* under the *Police Act*. Factors such as *good faith*, and the training, knowledge, skills, and experience of the officer as it relates to the

exemption may also be relevant factors for consideration. This also includes assessing any “good or sufficient cause” factors that may be relevant to the conduct.

In relation to the provision of information and assistance to individuals found in possession of substances listed in the exemption of up to 2.5 grams for personal use, the *CDSA* exemption states that providing information on available local health and social services is required by police in all interactions, but assistance to connect with services may only be provided upon request. This may be considered a factor in assessments of misconduct under the *Police Act*.

Reportable Injury Notifications and Serious Harm Investigations (section 89)

The *CDSA* exemption may impact police department assessments regarding whether an incident requires mandatory reporting to the OPCC pursuant to section 89 of the *Police Act*. Please note that in circumstances when a member has reasonably adhered to the *CDSA* exemption and a person has subsequently suffered a drug overdose, this will likely not qualify as a reportable injury if the scope of the contact was limited solely to the actions or inactions taken under adherence to the *CDSA* exemption. When in doubt, please contact OPCC staff for guidance on matters that must be reported to the OPCC.

In addition, as noted in the [OPCC Guideline #1](#) (Notification of Serious Harm or Death to the OPCC), the OPCC has outlined the criteria required for mandatory reporting to the OPCC as it relates to serious harm or death. The OPCC has outlined the requirement of either a causal link with the officer’s actions or inactions, or a circumstantial link in cases where serious harm results while in the custody or care of police before a matter is considered a mandatory reporting incident to the OPCC.

In the circumstances involving the *CDSA* exemption, the OPCC emphasizes that there must be a **reasonable** factual basis to believe the conduct of the member, or the operations of the department, caused the harm or death. In most cases when police render reasonable medical assistance to a member of the public, if there are no other circumstances (e.g. use of force) that reasonably may be seen to establish a 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. When in doubt, please contact OPCC staff for guidance.

Please note, this Information Bulletin may be revisited periodically as the exemptions under the *CDSA* come in effect.

Office of the Police Complaint Commissioner