

To: All Municipal Police Chief Constables

And to: All Municipal Police Boards

And to: All Professional Standards Officers

From: Police Complaint Commissioner

Date: September 9, 2019

Re: Guideline on Service or Policy Complaints (Division 5 of the *Police Act*)

PURPOSE

The Police Complaint Commissioner has a statutory duty to inform, advise and assist police boards respecting their responsibilities under part 11 of the *Police Act*.

Furthermore, it is the responsibility of the Police Complaint Commissioner to establish guidelines to be followed when receiving a complaint under Division 5, pursuant to section 177(2)(a) of the *Police Act*. This statutory Guideline is intended to provide guidance to police departments and police boards with respect to the processing of Service or Policy complaints pursuant to Division 5 of the *Police Act*.

LEGISLATION

Section 168 - Making a service or policy complaint

- (1) Subject to subsection (3), any person may make a complaint to the Police Complaint Commissioner about
 - (a) the general direction and management or operation of a municipal police department, or
 - (b) the inadequacy or inappropriateness of any of the following in respect of a municipal police department:
 - (i) its staffing or resource allocation;
 - (ii) its training programs or resources;
 - (iii) its standing orders or policies;
 - (iv) its ability to respond to requests for assistance;
 - (v) its internal procedures.

- (2) The complaint may be made by stating or delivering it
 - (a) directly to the Police Complaint Commissioner, or
 - (b) for forwarding under section 169 to the Police Complaint Commissioner, to
 - (i) a member on duty at a station of any municipal police department who is assigned to receive and register complaints under this Division,
 - (ii) an individual designated by the Police Complaint Commissioner under section 51(5)(b), or
 - (iii) the chair of the board of a municipal police department.

Section 169 - If complaint made to member, designated individual or chair under section 168(2)(b)

- (1) When a member, an individual, or a chair referred to in section 168(2)(b) *[making a service or policy complaint]* receives a complaint under that provision, he or she must immediately
 - (a) record the complaint and the date and time of its receipt,
 - (b) provide the person making the complaint with written acknowledgement of its receipt, and
 - (c) forward a copy of the complaint or, if the complaint was not made in writing, a copy of the record of the complaint to
 - (i) a Chief Constable of the municipal police department concerned,
 - (ii) the board of that municipal police department, and
 - (iii) the Police Complaint Commissioner.
- (2) The member, individual or chair receiving the complaint must
 - (a) provide the person making the complaint with any assistance that person requires in making the complaint,
 - (b) provide the person making the complaint with any information or advice that may be required under the guidelines prepared under section 177(2)(a) by the Police Complaint Commissioner, and
 - (c) complete and forward, to the persons referred in subsection (1)(c), the record of the complaint in the form and manner required by the Police Complaint Commissioner.

Section 171 - Investigation of department service and policy complaints

- (1) On receiving a copy of a complaint, or a record of a complaint under this Division, or a complaint or part of a complaint described in section 82(6) *[determination of whether complaint is admissible]*, on receiving a notification under section 83(1)(a)(iii) *[notification following determination of admissibility]*, the board of the municipal police department concerned must promptly do one or more of the following:
 - (a) request a Chief Constable of that municipal police department to investigate and report on the complaint;
 - (b) initiate a study concerning the complaint;
 - (c) initiate an investigation into the complaint;

- (d) dismiss the complaint with reasons;
 - (e) taken any other course of action the board considers necessary to respond adequately to the complaint.
- (2) The Police Complaint Commissioner may recommend that the board initiate an investigation into the complaint if the board does not choose to do so under subsection (1)(c).
- (3) Within 20 business days after doing any of the things described in subsection (1)(a) to (e), the board must notify the person who made the complaint, the director and the Police Complaint Commissioner regarding the course of action being taken.
- (4) The Police Complaint Commissioner may request a status report from the board regarding the progress of an investigation or a study concerning a complaint under this Division, and the Police Complaint Commissioner must forward to the person who made the complaint a copy of any report the Police Complaint Commissioner receives in response to that request.

Section 172 – If investigation or study is initiated under section 171

- (1) At the conclusion of an investigation or a study initiated under section 171(1)(a), (b) or (c) [*investigation of department service or policy complaints*], on dismissing the complaint under section 171(1)(d) or on taking a course of action under section 171(1)(e), the board must send to the person who made the complaint, the director and the Police Complaint Commissioner
- (a) an explanation for the board’s action under section 171(1) in respect or the service or policy that is the subject of the complaint, and
 - (b) if applicable, a detailed summary of the results of any investigation or study initiated under that section.
- (2) If the person who made the complaint is dissatisfied with
- (a) the actions or inactions of the board under section 171(1)(a) to (e),
 - (b) the explanation given under subsection (1)(a) of this section,
 - (c) the results of any investigation or study initiated under section 171, or
 - (d) the summary of the results sent under subsection (1)(b) of this section,
- the person may, within 20 business days of receiving the explanation or summary referred to in subsection (1) of the section, request the Police Complaint Commissioner to review the matter.

Section 173 – Police Complaint Commissioner’s review of board decisions

- (1) Subject to subsection (2) of this section, whether or not the person who made the complaint has requested a review under section 172(2) [*if investigation or study is initiated under section 171*], the Police Complaint Commissioner may do any of the following:

- (a) review the decisions of a board under section 172;
 - (b) recommend to the board further investigation, study, courses of action or changes to service or policy;
 - (c) make recommendations to the director under section 177(4)(e) [*general responsibility and functions of Police Complaint Commissioner*].
- (2) A review conducted under subsection (1) must be completed within 40 business days of receiving the board's explanation referred to in section 172(1).
- (3) The Police Complaint Commissioner must include in the Police Complaint Commissioner's annual report any recommendations made to the boards or the director under subsection (1) and may comment on the responses received, if any.

Section 177 – General responsibility and functions of Police Complaint Commissioner

- (4) The Police Complaint Commissioner may also do any of the following:
- (a) prepare and provide informational reports on any matter related to the functions of the Police Complaint Commissioner;
 - (b) engage in or commission research on any matter relating to the purposes of this Part or Part 9;
 - (c) make recommendations to a board that it examine and reconsider any policies or procedures that may have been a factor in conduct that is the subject of a complaint or an investigation under this Part;
 - (d) make recommendations to the director or the minister that a review, a study or an audit be undertaken to assist police departments or forces, or any designated policing unit or designated law enforcement unit to which this Part is made applicable by regulation of the Lieutenant Governor in Council, in developing training or other programs designed to prevent recurrence of any problems revealed by the complaint process;
 - (e) make recommendations to the director that the director exercise one or more of the director's functions under sections 40 [*functions of director*], 42 [*studies by director*] and 44 [*special investigations*] in relation to a service or policy complaint under Division 5 about a municipal police department or a service or policy complaint about any designated policing unit or designated law enforcement unit to which Division 5 is made applicable by regulation of the Lieutenant Governor in Council;
 - (f) make recommendations to the minister for public inquiry under the *Public Inquiry Act* if there are reasonable grounds to believe that
 - (i) the issues in respect of which the inquiry is recommended are so serious or so widespread that a public inquiry is necessary in the public interest,
 - (ii) an investigation conducted under this Part, even if followed by a public hearing or review on the record, would be too limited in scope, and
 - (iii) powers granted under the *Public Inquiry Act* are needed;

- (g) consult with and advise persons who, in other jurisdictions of Canada or within the Royal Canadian Mounted Police, hold the same or a similar position as the Police Complaint Commissioner.

PROCESS - RECEIVING SERVICE OR POLICY COMPLAINTS

Part 11, Division 5 of the *Police Act* sets out the provisions regarding processing service or policy complaints.

Section 168(1) of the Act defines a service or policy complaint as a complaint about the following:

- The general direction and management or operation of a municipal police department, or
- The inadequacy or inappropriateness of any of the following relating to the municipal police department:
 - Staffing
 - Resource allocation
 - Training programs or resources,
 - Standing orders or policies,
 - Ability to respond to requests for assistance, or
 - Internal procedures.

A service or policy complaint may be filed with the Police Complaint Commissioner, a member of a municipal police department who has been assigned to receive service or policy complaints, a designated individual as defined pursuant to section 168(2)(b) of the *Police Act*, or the chair of a municipal police board.

Complaint received directly to the OPCC

When the Office of the Police Complaint Commissioner (OPCC) receives a service or policy complaint, that complaint *must* be forwarded to the relevant municipal police board for processing pursuant to Part 11, Division 5 of the *Police Act*.

The Police Complaint Commissioner does not have the discretion to determine the admissibility of that complaint or assess its merits. However, in the event that there is a lack of clarity regarding whether the complainant intends to file a service or policy complaint or a complaint about the conduct of a municipal police member, the OPCC will contact the complainant to obtain further clarity regarding that intent and to provide any information or assistance that is necessary.

Complaint received directly to the police board

When a service or policy complaint is made directly to an assigned member, designated individual, or chair pursuant to section 168(2)(b) of the *Police Act*, the assigned member, designated individual, or chair must do the following:

- Record the complaint and the date and time of its receipt,
- Provide the person making the complaint with written acknowledgment of its receipt, and
- Forward a copy of the complaint to a Chief Constable of the municipal police department concerned, the board of that municipal police department, and the Police Complaint Commissioner.

The member, designated individual, or chair must also provide the person making the complaint any assistance that person requires in making the complaint. In the event of any lack of clarity with respect to whether a complaint should be processed as a service or policy complaint pursuant to Division 5 or a registered complaint pursuant to Division 3, the assigned member, designated individual, or chair should provide the complainant with sufficient information and assistance to allow the complainant to make an informed decision about which type of complaint they would like to file.

PROCESS - RESPONDING TO SERVICE OR POLICY COMPLAINTS

Upon receipt of the service or policy complaint, the police board must **promptly** take one of the courses of action set out in section 171 of the *Police Act*. The board must communicate its intended course of action to the person making the complaint, the Director and the Police Complaint Commissioner within **20 business days**. This communication is limited to the board's intent, not the outcome, which is to be communicated at the conclusion of the board's review of the complaint.

It is important that the police board accurately categorize its response to a service or policy complaint. The board must take an action respecting a service or policy complaint that is articulated under section 171(1)(a)-(e) of the *Police Act*.

Request a Chief Constable to investigate and report on the complaint

- The board can refer the complaint to the relevant municipal police department for investigation;
- The scope of the investigation relates to the service or policy issue contained in the complaint and should not be about whether an individual officer committed misconduct.

Initiate a study or investigation concerning the complaint

- The board can seek the services of an independent contractor to complete this study or investigation.

Dismiss the complaint with reasons

- If the board determines no other action is required to be taken to address the complaint, then the board can dismiss the complaint. Reasons for this decision must be provided.
- A complaint should not be categorized as “dismissed with reasons” pursuant to section 171(1)(d) of the Acct if the board has undertaken an action to respond to the complaint.
 - *E.g., if the board refers the complaint back to the municipal police department for review, assessment or investigation so that it may report back to the board, the complaint should be categorized pursuant to section 171(1)(a) – request a Chief Constable of that municipal police department to investigate and report on the complaint.*

Take any other course of action the board considers necessary to respond adequately to the complaint

- The board’s response to a service or policy complaint is not confined to requesting the municipal police department to conduct an investigation or initiating an investigation or study.
- The board may decide on any other course of action that would adequately respond to the complaint.

If the board determines that it will not conduct an investigation pursuant to section 171(c) of the *Police Act*, the Police Complaint Commissioner may recommend that the board conduct an investigation pursuant to that section.

PROCESS - CONCLUDING SERVICE OR POLICY COMPLAINTS

To conclude a service or policy complaint, pursuant to section 172(1) of the *Police Act*, the police board must send to the person who made the complaint, the Director and the Police Complaint Commissioner an explanation for the board’s action under section 171 of the Act and, if applicable, a detailed summary of the results of any investigation or study undertaken.

The board should thoroughly describe the action undertaken, the results and what, if any, changes are being made to staffing, resource allocation, training, policies or procedures as a result. If following an investigation, study or report, the board determines that no changes are necessary, a detailed explanation should be provided advising the reasons of this decision.

To maintain public trust in the administration of the police complaint process, it is critical that responses to service or policy complaints are completed in a timely manner. Pursuant to section 171(4) of the Act, the Police Complaint Commissioner may request status reports from the board and must forward the response to the person who submitted the complaint. Police boards can expect regular requests for updates on the status of service or policy complaints from the OPCC.

Upon receipt of the board’s conclusion, the person who made the complaint has **20 business days** to request that the Police Complaint Commissioner review the matter if dissatisfied with

the board's actions or results. It is, therefore, important that the board confirm receipt of its conclusion with the person who made the complaint.

Irrespective of whether a request for review is received, the Police Complaint Commissioner has **40 business days** to review the board's conclusion and exercise one of the authorities granted by section 173(1) of the *Police Act*. Any recommendations that the Police Complaint Commissioner makes to the board or the director must be published in the OPCC's annual report. The Police Complaint Commissioner may also comment on the responses received from the board.

Despite these procedures, the Police Complaint Commissioner retains the discretion pursuant to section 177(4)(c) of the *Police Act* to make recommendations to police boards to examine any policies or procedures that may have been a factor in the conduct that was a subject of a complaint or investigation under Part 11.

In addition, pursuant to section 177(4)(e) of the *Police Act*, the Police Complaint Commissioner may also make recommendations that the director exercise one or more of the director's functions pursuant to sections 40, 42 or 44 of the *Police Act* in relation to a service or policy complaint.



Clayton Pecknold
Police Complaint Commissioner