



AC44

## McNEIL DISCLOSURE

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Effective Date: 14 December 2011

Revised Date: 11 December 2013

Last Reviewed Date: 20 June 2017

### POLICY

1. Members of the Delta Police Department (“Department”) are obligated to provide first party disclosure of conduct records to the Crown, balancing the right to a fair trial against the right of an officer to a degree of privacy.

### REASON FOR POLICY

2. To comply with the Supreme Court of Canada judgment in *R. v. McNeil*.
3. To establish guidelines for disclosure of police conduct records for criminal trials and other regulatory offences where police witnesses are involved.

### DEFINITIONS

4. For the purposes of this policy, the following definitions shall apply:

**Disclosure Officer:** role is to review conduct records on a case by case basis primarily related to Report to Crown counsel (“RTCC”) to determine appropriate first party disclosure to Crown counsel. To review conduct records upon request for disclosure in other regulatory trials.

**Expungement:** the date that a conduct record is no longer disclosable.

**First Party Disclosure:** refers to material that is regarded as being in the possession of the Crown and therefore, potentially disclosable.

**McNeil Package:** is a disclosed conduct record of findings of serious police misconduct which pertain to an investigation, or may reasonably impact on a case against an accused.

**Operative Period:** a retention period, for example two, three and five years for members with substantiated *Police Act* or Internal complaints.



An operative period starts upon confirmation of the decision and concludes upon expungement.



**Serious Misconduct:**

- any conviction or finding of guilt for an offence under the *Criminal Code of Canada* or the *Controlled Drugs and Substances Act* for which a pardon has not been granted;
- any outstanding charges under the *Criminal Code of Canada* or the *Controlled Drugs and Substances Act*;
- any conviction or finding of guilt under any other federal or provincial statute;
- any finding of misconduct after a hearing or proceeding under the *Police Act* or *Internal Discipline* where the misconduct is related to the current investigation and has not been expunged;
- any finding of misconduct after a hearing or proceeding under the *Police Act* or *Internal Discipline* which has not been expunged;
- any current charge of misconduct under the *Police Act* or *Internal Discipline* for which a notice of prehearing conference, discipline proceeding, adjudication or public hearing has been issued.

## **PROCEDURES**

### **Member Responsibilities**

5. Members shall have an up to date electronic “Member Conduct Disclosure Form” (“Form A”) for submission with RTCC.
  - a) With respect to *Police Act* matters, members are responsible for indicating that there is a McNeil disclosure on their Form A if:
    - i) the RTCC is submitted during their operative period;
    - ii) the date of RTCC offence occurred during their operative period;
    - iii) the RTCC is compiled during their operative period; and



- iv) when a member is engaged by the court process during their operative period.
6. By completing a Form A, the member will declare whether or not they:
- a) have been convicted or found guilty of an offence under the *Criminal Code of Canada* or under the *Controlled Drug and Substances Act* for which a pardon has not been granted;
  - b) are currently charged with an offence under the *Criminal Code of Canada* or under the *Controlled Drug and Substances Act*, or is unsure of that fact;
  - c) have been convicted or found guilty of an offence, pursuant to any other federal or provincial statute, or is unsure of that fact;
  - d) have been found guilty of misconduct after a prehearing conference, discipline proceeding, adjudication or public hearing under the *Police Act* which has not been expunged; or
  - e) are currently facing a charge of misconduct under the *Police Act*, for which a notice of prehearing conference, disciplinary proceeding, adjudication or public hearing has been issued, or is unsure of that fact.
7. A member will submit a new Form A when their conduct status changes.
8. A member who has a disciplinary record and whose involvement in an investigation substantially changes after the submission of the initial RTCC, for example, from a peripheral role to a substantial one, shall alert the Disclosure Officer to the change. A supplemental RTCC that outlines the change in involvement shall accompany a Form A for the attention of the Disclosure Officer.
9. Seconded members or members who are witnesses for other agencies shall give their names and Personal Identification Number (“PIN”) to that agency typically to the lead investigator. The agency’s designated McNeil coordinator should be directed to contact the Department’s Disclosure officer to process the McNeil application.



10. Outside agency members assisting the Department's investigations and appearing as police witnesses should be directed to provide an RTCC "Will say".

### **Court Liaison Responsibilities**

11. Court Liaison shall review all Form A submitted for each RTCC, and:
  - a) if all of the Department's members involved in an investigation with respect to a forwarded RTCC indicate "No" on the Form A, Court Liaison shall initiate a "Police Witness Disclosure Form ("Form B") to Crown counsel with the RTCC;
  - b) if any Department member involved in an investigation cited in an RTCC indicates "Yes" on a Form A, Court Liaison shall compile the Form B for the attention of the Disclosure Officer at the earliest opportunity.
12. Court Liaison shall forward the completed Form B and any McNeil Packages from the Disclosure Officer to Crown counsel.
13. Once outside agency members have provided an RTCC "Will Say", Court Liaison will advise the Disclosure Officer who will initiate the McNeil disclosure process with the outside member's agency.

### **Disclosure Officer Responsibilities**

14. The responsibilities of the Disclosure Officer shall be managed by the Professional Standards Section Inspector or delegate.
15. On a regular basis, the Disclosure Officer shall examine all Form B in conjunction with the applicable RTCC and related conduct records. As a result, the following notations will be made on the Form B:
  - a) "No Record" if the member has either no record, or the record is minor, for example, most violation tickets, then it shall be deemed "no record";
  - b) "No Relevant Record" if the member has a record, however, the record is not relevant to the proceedings; or



- c) “Record, McNeil Package Attached” if the member has a record of serious misconduct related to the investigation or, where the misconduct, though separate from the investigation, could reasonably impact the case against the accused.
16. The Disclosure Officer shall give notice to the member who is subject of the disclosure of a McNeil Package to the Crown:
- a) notice shall be given to the member as soon as practicable;
  - b) the member will be provided 12 business days to make submissions related to disclosure;
  - c) the Disclosure Officer will include the member’s submission related to the McNeil Package disclosure;
  - d) if a decision is made to accept the member’s submission to withhold a particular record, the Disclosure Officer shall:
    - i) refrain from disclosing the record(s) in question;
    - ii) retain the member’s submissions and the Disclosure Officer’s reasons for accepting the member’s submissions on file, and;
    - iii) advise Crown counsel of the record which was not disclosed. The Disclosure Officer will forward the Form B to Crown counsel.
  - e) McNeil Disclosure Packages will be attached to the Form B in a sealed envelope marked: “Confidential – For Crown counsel Use Only”.
17. The Disclosure Officer shall facilitate all requests from outside agencies for McNeil packages and submit Form B via Court Liaison to Crown counsel.



### **Disclosure Officer McNeil Screen Considerations**

18. The Disclosure Officer shall assess the conduct records on a case by case basis, referred to as a McNeil screen, for seriousness and relevancy, and may disclose to Crown counsel, as appropriate:
- a) any conviction or finding of guilt for an offence under the *Criminal Code of Canada* or the *Controlled Drugs and Substances Act*;
  - b) any outstanding charges under the *Criminal Code of Canada* or the *Controlled Drugs and Substances Act*;
  - c) any conviction or finding of guilt under any other federal or provincial statute;
  - d) any finding of misconduct after a hearing or proceeding under the *Police Act* or Internal Discipline where the misconduct is related to the current investigation;
  - e) any finding of misconduct after a proceeding or hearing under the *Police Act* or Internal Discipline;
  - f) any current charge of misconduct under the *Police Act* for which a notice of prehearing conference, disciplinary proceeding, adjudication, or public hearing has been issued;
  - g) allegations of misconduct that are 'sufficiently serious' that could reasonably impact a criminal trial;
  - h) a record of police misconduct arising from the same incident that is the subject-matter of the charge against the accused, irrespective of whether discipline occurred or not.
19. The Disclosure Officer shall apply a broad definition of "serious misconduct" and "relevancy" in determining whether a record is forwarded to Crown counsel for potential disclosure. This process may include prior discussion with Crown counsel. Deference must be given to the decision of Crown counsel who have the final decision on McNeil disclosure and have ultimate responsibility as disclosure "gatekeeper":



- a) the extent of disclosure in a McNeil package should be a clear and concise report that briefly describes the member's conduct record;
  - b) further directions for disclosure may be made in consultation with counsel and consist of a redacted notice of decision, or other discipline authority finding, or adjudicator decision;
  - c) factors to consider related to potential disclosure of a member's conduct record are primarily rooted in credibility and reliability but may also include; degree of discipline (serious as opposed to minor discipline), not acting in the capacity of a police officer, whether the officer was in a significant or peripheral role and the judgment exercised at the time.
20. The Disclosure Officer shall keep a record of all decisions made to disclose or withhold a particular record.
  21. The Disclosure Officer shall note which records were reviewed at the time that each disclosure was made.
  22. When a member has an on-going complaint investigation at the time of the submission of an RTCC which has not concluded the Disclosure Officer shall assess whether the matter is 'sufficiently serious' to warrant early disclosure or, may be suitable for disclosure or not once the complaint has been decided.
  23. When appropriate, McNeil packages will be produced by the Disclosure Officer for cases involving DPD witness members with outside agency investigations. The McNeil packages will be forwarded directly to Crown counsel with notice to the member.
  24. The Disclosure Officer has an ongoing responsibility to review conduct records and potentially disclose to Crown counsel during the life of a criminal trial from the outset to the conclusion.