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*Leading and
Partnering
in our Community
to Serve and Protect*

Memorandum

Date: 15 November 2010
To: Chief Frank Beazley
From: Deputy Christopher J. McNeil
Re: Subsection 26(L) of Bill No. 72 - An Act to Amend Chapter 31 of the Acts of 2004, the Police Act

On October 28, 2010, Bill No. 72 was introduced for First Reading. As you are aware, this Bill amends the *Police Act* to establish a Serious Incident Response Team (SIRT) for the purpose of independently investigating matters involving the actions of police officers where death or serious injury results or where sexual assault or public interest concerns are alleged.

Although there have been concerns raised regarding costs, the Police community has been in general support of this legislation. In fact, it has been noted that it was police leaders who called for this legislation to ensure continued public confidence in such investigations. In the discussions leading up to the drafting of legislation, police raised concerns regarding the need to disclose the completed investigative report of any incident to the Chief of the Agency involved.

The primary concern related to the Chief's responsibility to conduct a separate Code of Conduct investigation into the same incident. The traditional practice has been to use evidence collected in the criminal investigation in the Code of Conduct investigation. The most obvious example would be the statements of witnesses. Without access to the SIRT investigation, a complete second investigation would have to be conducted. A second investigation would be fraught with difficulties. It could only occur after the criminal investigation was completed, which could take several months or years. Re-interviewing witnesses closely connected to the incident months or years later would prolong the emotional turmoil caused by such incidents. The evidence collected would have to be disclosed to the Crown if criminal proceedings had been initiated, even if the proceedings have been completed. If new evidence is uncovered which contradicts the evidence collected by the SIRT, could this require the Director to re-visit his decision or change any advice provided by Public Prosecution Service to the SIRT? The result would undermine the public confidence intended to be strengthened by this legislation.

To address this concern the following provision was included in the legislation:

“26L Upon the conclusion of an investigation by the Serious Incident Response Team under clause 26I(3)(a), where the Director believes that a disciplinary default or breach of the Code of Conduct set out in the Police Regulations may have occurred, the Director may disclose the investigative file of the Team to the disciplinary authority for the agency in which the police officer under investigation is employed.”

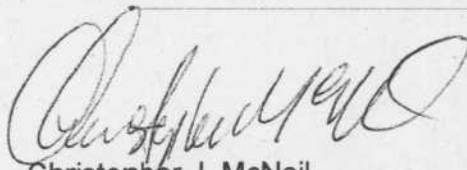
Unfortunately, subsection 26(L) falls short and does not adequately address the concerns raised by the policing community. It provides the Director with discretion to disclose the SIRT investigative report where she believes a violation of the Code of Conduct has occurred. This provision is too limiting and fails to understand the *Police Act* disciplinary process. In most cases allegations would have been laid and suspended during the SIRT investigation. The provision also usurps authority of Chiefs to determine if disciplinary proceedings are appropriate in the circumstances. Regardless of the Director's decision pursuant to 26(L), Chiefs will be required to review the circumstances and determine if disciplinary allegations are appropriate.

It also important to acknowledge that incidents of this nature often result in a review of administrative procedures to determine if any procedure or policy may have contributed to the incident. The SIRT investigative report would be critical to any administrative review.

In light of these concerns I would propose that subsection 26L be worded as follows:

“26L Upon the conclusion of an investigation by the Serious Incident Response Team under clause 26I(3)(a) the Director shall disclose the investigative file of the Team to the disciplinary authority for the agency in which the police officer under investigation is employed.”

The SIRT will only be successful if there is cooperation and mutual respect for the roles of the SIRT and police in the circumstances. SIRT will play an important role in maintaining public confidence in policing, but the primary role for restoring public trust and confidence in the aftermath of such an event remains with Chiefs of Police. They cannot do this in the dark.



Christopher J. McNeil
Deputy Chief of Operations