

**Guidelines and Directives 002 –
Guideline for Reviewing Complaints**

Effective Date: April 1, 2024

Purpose

The purpose of this guideline is to set out the factors which bear on the Complaints Director's decision to retain, rather than refer, a matter for investigation.

Pursuant to Rule 2.3 of LECA's *Rules of Procedure* (the 'Rules'), made pursuant to section 134 of the *Community Safety and Policing Act, 2019*, (the 'Act'), the Complaints Director may issue guidelines or practice directives at any time as the Complaints Director deems necessary to carry out their functions under the Act, or regarding LECA's practices and procedures. Where any guideline conflicts with the Rules, the Rules shall prevail.

1. Guideline for Retaining/Referring Complaints

There are two routes pursuant to which the Complaints Director may retain a matter for investigation under the Act:

- (1) The Complaints Director may retain the investigation of a complaint pursuant to ss. 159(1)(c) and (2) of the Act; or
- (2) The Complaints Director may initiate a retained investigation in the absence of a complaint pursuant to s. 161 of the Act. Such an investigation may stem from a notification from the Special Investigations Unit ('SIU'), the Inspector General ('IG'), or the Chief or Commissioner; or, in the absence of such a notification, by any other means by which the Complaints Director becomes aware of potential misconduct.

Public Interest Factors:

The Complaints Director's decision whether to retain a matter with or without a complaint is driven by a consideration of whether it is in the public interest to do so. Rule 15 lists factors which bear on the Complaints Director's assessment of the public interest in each case. These factors include:

- (i) the nature of the allegations;
- (ii) whether the matter raises issues of systemic importance; deals with issues that are sensitive in nature; or involves vulnerable individuals or communities;

- (iii) the capacity of the police service to conduct a full investigation, having regard to the size of the service, resources available, competing demands, and anticipated complexity or length of the investigation;
- (iv) any particular challenges presented by the investigation which may require the exercise of the investigative powers as set out in s. 137 to 140 of the Act;
- (v) any potential conflict of interest or risk of perception of conflict of interest if the complaint is investigated by the originating police service;
- (vi) whether the matter involves more than one police service or cross-jurisdictional issues;
- (vii) whether the matter is the subject of a SIU investigation or related criminal proceeding;
- (x) the geographic location of the underlying misconduct, having regard to the availability of investigators and accessibility of witnesses;
- (xi) whether the *Interprovincial Policing Act, 2009*, applies to the respondent police officer(s)
- (xii) whether a decision not to retain an investigation would negatively impact public confidence in policing; and
- (xiii) the public interest in ensuring that investigations are thorough, independent and accountable.

Factors which may cause the Complaints Director to assess the public interest as militating in favour of a referral of a matter to a police service include:

- (i) The matter potentially involves a confidential informant or a participant in a witness protection program;
- (ii) The matter involves a 'youth' as defined in the *Youth Criminal Justice Act*.

Complaint After Self-Initiated Investigation Underway

Pursuant to Rule 15.2, if the Complaints Director receives a complaint after having commenced an investigation under s. 161 of the Act, the Complaints Director may, if it is in the public interest, terminate the self-initiated investigation and cause the complaint to be investigated as a public complaint investigation. Rule 15.4 lists the factors relevant to this decision, which include:

- (i) The public interest in cloaking the complainant with the rights vested in a public complainant under the Act (e.g. party status);
- (ii) The stage of the investigation at the time that the complainant comes forward;
- (iii) The centrality of the complainant's role in the matter under investigation;
- (iv) The roles of any other members of the public involved in the matter under investigation and any related privacy considerations.

If the Complaints Director opts to terminate the self-initiated investigation and cause the complaint to be investigated as a public complaint investigation, the Complaints Director may refer the matter to a police service for investigation or continue to investigate the matter himself. In the case of the former, Rule 15.3 applies. The same public interest factors listed above apply to the exercise of the Complaints Director's discretion in this regard.

3. References

LECA Rules of Procedure

Part X of the Community Safety and Policing Act 2019, S.O. 2019, c. 1, Sched. 1