

Guidelines and Directives 007

**CSPA Notifications from Chiefs of
Police and the OPP Commissioner**

Effective Date: April 1, 2024

Preamble

Pursuant to Law Enforcement Complaints Agency (LECA) *Rules of Procedure*, the Complaints Director may issue guidelines at any time as the Complaints Director deems necessary to carry out his/her/their functions under the Act, or in regard to LECA's practices and procedures. Where any guideline conflicts with the Rules or the Act/Regulation, the Rules and the Act/Regulation shall apply.

Purpose of Guideline

- The *Community Safety and Policing Act (CSPA)* 2019, S.O. 2019, c. 1, Sched. 1 and the O. Reg. 406/23: DISCIPLINE (Regulation) creates a framework whereby the Ministry of the Solicitor General, police services boards, Special Investigations Unit (SIU), the Inspector General of Policing (IG), Chiefs of Police (Chiefs) and the Ontario Provincial Police Commissioner (Commissioner) are obligated to notify the Complaints Director of potential misconduct.
- Subsections 197 (1) of CSPA and the Regulation requires the Chiefs and the Commissioner to notify the Director if they become aware that a sworn member of their service (other than a deputy) may have engaged in misconduct that involves, impacts, or relates to a member or members of the public.
- The purpose of this Guideline is to provide the Chiefs and Commissioner with guidance with respect to issuing a notification to the Director pursuant to the CSPA.
- This Guideline sets out when and how Chiefs and the Commissioner should notify the Director, and what details they should provide to assist the Director in determining what is in the public interest, including an investigation by LECA, a Notice of Inquiry and Examination to Chiefs and the Commissioner under LECA Rules of Procedure, a systemic review, or a notification under the CSPA.

Content of Notification and e-Notification:

1. Pursuant to Rule 14.1 of LECA Rules of Procedure, all notifications of potential misconduct should be provided to the Complaints Director through e-Notification available online. Subject to paragraphs 13 and 14 (below), the Chiefs and Commissioner or their designate should notify the Complaints Director within seven (7) business days of the date that they become aware of misconduct.

2. To assist the Complaints Director in determining whether it is in the public interest to initiate an investigation or take any other action, the Chiefs and the Commissioner should advise the Complaints Director of the following in the e-Notification:
 - a. If the matter involves sensitive information.
 - b. Matter involves a court finding.
 - c. If the matter is time sensitive.
 - d. If the matter involves youth records.
 - e. If the matter involves a Confidential Informant.
 - f. If the matter involves a whistleblower.
 - g. Matter has already been dealt with internally.
 - h. Discipline has been imposed related to the incident.
 - i. Service has any existing directives or protocols that address and respond to the nature of the potential misconduct.
 - j. Police service has already developed a plan of action for dealing with the potential misconduct.
 - k. Previous findings of misconduct which show a pattern of similar potential misconduct.
 - l. Matter engages questions about the integrity of the police service as a whole; or a detachment/region/unit as a whole.
 - m. The Chief or Commissioner has any conflicts of interest or other challenges in reviewing and/or investigating the matter.
 - n. The Chief or Commissioner foresee any impediments to the Complaints Director investigating the matter.
 - o. There is any gap in policy or training relevant to the potential misconduct
 - p. If the matter has been the subject of a local response between the officer and a member of the public.
 - q. Any other public interest consideration.

3. In accordance with Rule 14.2 of LECA Rules of Procedure, the Chiefs and the Commissioner should respond to any additional inquiries or provide any additional information required by the Complaints Director, within the prescribed timeframe, to

determine whether it is in the public interest to initiate an investigation or take any other action with respect to the notification.

Types of conduct that may be reported:

4. Notifications should be provided to the Complaints Director in accordance with subsections 197 (1) and the Regulation.
5. As not all violations of the *Canadian Charter of Rights and Freedom* and *Human Rights Code* may automatically be considered misconduct within the meaning of the Police Code of Conduct, the Chiefs and the Commissioner must exercise their discretion in determining whether a ruling pertaining to a *Charter* violation or violation of the *Human Rights Code* reveals that an officer may have engaged in conduct that constitute misconduct and the conduct was directed at or otherwise directly affected a member of the public therefore trigger a notification to the Complaints Director.
6. Whereas members of the police service are barred from filing a complaint against members of the same service, Chiefs and the Commissioner need *not* notify the Complaints Director of potential misconduct impacting or involving members of the same service unless it directly involves a member of the public.
7. Administrative failures or performance issues that may not rise to the level of misconduct or do not directly involve a member of the public are not required to be reported to the Complaints Director.
8. As the SIU is required to notify the Complaints Director of potential misconduct under the *Special Investigations Unit Act 2019*, S.O. 2019, c. 1, Sched. 5, and to avoid duplication and inconsistencies, the Chiefs of Police and the Commissioner of the OPP are not required to notify LECA of potential misconduct stemming from an SIU investigation, unless the Chief has become aware of new potential misconduct.
9. Complaints made by members of the public will be given priority over incoming notifications. Where the subject matter of a notification is already the subject of an ongoing public complaint or investigation, the Complaints Director will consider the public complainant's rights under the complaints process such that, the notification will not supersede or negate the complaint.
10. The Chiefs and the Commissioner are not required to notify the Complaints Director of potential misconduct where they are aware that there is an active public complaint

investigation, or a public complaint has been made to the Complaints Director about the same incident and alleging the very same misconduct.

11. The Chiefs and the Commissioner are not required to notify the Complaints Director of potential misconduct if they are aware that the SIU or the IG has notified the Complaints Director of the same incident and the very same misconduct.
12. If the incident which forms the basis of the notification was the subject of a resolution between the officer(s) and the member of the public, in accordance with Rule 7 of LECA Rules of Procedure, the Chiefs and the Commissioner should notify the Complaints Director of the alleged misconduct and include a copy of the Local Response Summary Form to the e-Notification.
13. The Chiefs and the Commissioner are not required to notify the Complaints Director of potential misconduct that happened prior to April 1, 2024.

Timing of Notification:

14. The Chiefs and the Commissioner, or their designate, should notify the Complaints Director of misconduct within seven (7) business days from when they become aware of conduct that may constitute misconduct. The notification can be further delayed in the following circumstances at the discretion of the Chief or the Commissioner, where that:
 - a. It may interfere with an ongoing criminal investigation or proceeding;
 - b. It may interfere with or there is a need for an immediate or ongoing law enforcement response; or
 - c. There is an imminent risk to the safety of the public or a member of the police service.
15. Whereas criminal proceedings and investigations have primacy over other proceedings; and considering the risk that a misconduct investigation may interfere and/or be delayed by a criminal proceeding/investigation, the Chiefs and the Commissioner are required to:
 - a. Take reasonable steps to determine if the matter is the subject of any parallel criminal proceedings or investigations:

- b. Delay providing notification to the Complaints Director until the completion of the related criminal proceedings or investigations.

Preserving Evidence

16. Upon becoming aware that an officer may have engaged in conduct that may constitute misconduct, the Chiefs and the Commissioner should ensure that all the relevant evidence to the misconduct are preserved. For the purpose of this paragraph, the Chiefs and the Commissioner are not required to engage in any investigative step to gather evidence. The efforts should be limited to preserving the evidence already available to the Chiefs and the Commissioner at the time of becoming aware of the misconduct.

No Investigation until Complaints Director makes a determination

17. In accordance with section 208 of the CSPA, upon notifying the Complaints Director of potential misconduct in accordance with the Regulation, the Chiefs of Police and the Commissioner of the OPP shall not (1) conduct an investigation into the matter; (2) impose a disciplinary measure; or (3) make an application for a hearing, until they receive a notification from the Complaints Director that:

- a. the Complaints Director will not cause an investigation of the matter to be conducted; or
- b. The Complaints Director will investigate the matter and
 - i. that the investigation will be discontinued; or
 - ii. that the Complaints Director does not have reasonable grounds to believe that the conduct of the police officer or special constable who was the subject of the investigation constitutes misconduct.

18. Paragraph 17 does not preclude the Chiefs of Police and the Commissioner of the OPP from conducting any criminal investigation or law enforcement action that may be necessary for public safety.