

Caution:

This consultation draft is intended to facilitate dialogue concerning its contents. Should the decision be made to proceed with the proposal, the comments received during consultation will be considered during the final preparation of the regulation. The content, structure, form and wording of the consultation draft are subject to change as a result of the consultation process and as a result of review, editing and correction by the Office of Legislative Counsel.

CONSULTATION DRAFT

ONTARIO REGULATION

to be made under the

COMMUNITY SAFETY AND POLICING ACT, 2019

CONFLICTS OF INTEREST

Definitions

1. In this Regulation,

“actual institutional conflict” means a potential institutional conflict for which a determination has been made under subsection 5 (1) that an informed and reasonable person would not believe that a member of the police service who must take action or make a decision in the situation could do so impartially; (“conflit institutionnel réel”)

“conflict of interest” means a personal conflict or an actual institutional conflict; (“conflit d’intérêts”)

“conflict policy”, in respect of a police service, means the policy established in accordance with section 13 that applies to the police service; (“politique en matière de conflits”)

“conflict procedures”, in respect of a police service, means the procedures established under section 12 that apply to the police service; (“procédure en matière de conflits”)

“intimate partner” has the same meaning as in section 2 of the *Criminal Code* (Canada); (“partenaire intime”)

“personal conflict” means a situation in which a member of a police service’s private interests or personal relationships place, or may reasonably be perceived to place, the member in conflict with their professional duties with respect to the provision of policing functions; (“conflict personnel”)

“personal relationship” includes, but is not limited to, a relationship with any of the following persons:

1. A current or former spouse, common-law partner or other intimate partner of the member.
2. The member’s child or stepchild, or any child in the member’s care.
3. A legal dependant of the member.
4. A grandparent, parent or sibling, including grandparent-in-law, parent-in-law or sibling-in-law, of the member; (“rapports personnels”)

“potential institutional conflict” means a situation in which a member of a police service must take action or make a decision in relation to criminal conduct that is alleged or reasonably suspected to have been committed by or against any of the following persons, but does not include criminal conduct that is alleged or reasonably suspected to have been committed against a peace officer acting in the course of their duties:

1. Any other member of the police service, including the chief of police or a deputy chief of police.
2. In the case of a member of a police service maintained by a police service board,
 - i. a member of the police service board, or

- ii. a member of a municipal council or of a band council of a First Nation, as applicable, in the area for which the police service board has policing responsibility.
3. In the case of a member of the Ontario Provincial Police,
- i. a member of an O.P.P. detachment board, a First Nation O.P.P. Board or the Advisory Council, or
 - ii. the Minister or a deputy minister of the Ministry. (“conflit institutionnel potentiel”)

Interpretation

2. (1) Nothing in this Regulation shall be read as requiring a member of a police service to refrain from doing anything that must be done immediately to,

- (a) prevent imminent harm or death to any person;
- (b) obtain or preserve evidence; or
- (c) protect property.

(2) Nothing in this Regulation shall be read as requiring the provision of a policing function by a police service if the chief of police determines that doing so has given or is likely to give rise to a conflict of interest respecting a member of the police service and, as a result, the chief of police of a different police service has assumed responsibility for providing the policing function.

(3) Failure to comply with a requirement of this Regulation does not, in itself, impugn the lawfulness of any step taken in an investigation by a police service into criminal conduct.

(4) For greater certainty, subsection (3) shall not be read as having any effect on whether a failure to comply with this Regulation constitutes misconduct under a prescribed code of conduct.

Requirement to notify

3. A member of a police service shall notify a supervisor, in the form approved by the Minister and in accordance with the conflict procedures, as soon as possible if a conflict of interest or potential institutional conflict respecting the member arises, or the member believes is likely to arise, with respect to a policing function that the member is required to provide.

Personal conflicts

4. (1) If it is determined, in accordance with the conflict procedures, that a personal conflict respecting a member of a police service has arisen or is likely to arise with respect to a policing function that the member is providing, the chief of police,

- (a) shall, in accordance with the conflict procedures and the conflict policy, require a different member of the police service to provide the policing function; or
- (b) shall, if the chief of police is the member of the police service in respect of whom a personal conflict has arisen or is likely to arise, act in accordance with the conflict policy.

(2) Subsection (1) does not apply if the chief of police takes steps to ensure that responsibility for the provision of the policing function is assumed by a different police service.

(3) The chief of police shall record, in the form approved by the Minister, the steps taken by the chief of police with respect to each personal conflict to which this section applies, including, if applicable, the steps described in subsection (2) that were taken by the chief of police.

Identifying institutional conflicts

5. (1) If a chief of police determines that a potential institutional conflict respecting a member of a police service has arisen or is likely to arise, the chief of police shall determine whether an informed and reasonable person would believe that a member of the police service who must take action or make a decision in the situation could do so impartially.

(2) In making a determination under subsection (1), the chief of police shall consider,

- (a) whether any of the members of the police service who are required to act or make a decision are likely to be in a reporting relationship to or know a person who is or would be under investigation in respect of the criminal conduct;

- (b) whether the police service has procedures for consulting with the Crown Attorney regarding the conduct of the investigation of the criminal conduct, and has undertaken to consult with the Crown on the investigation; and
 - (c) any other relevant factor.
- (3) Subsection (1) does not apply if,
- (a) an incident to which the potential institutional conflict relates is reported to the SIU Director under section 16 of the *Special Investigations Unit Act, 2019* or the SIU Director causes the incident to be investigated under section 15 of that Act; or
 - (b) the potential institutional conflict has arisen or is likely to arise in an area for which the police service board or the Commissioner, as the case may be, does not have policing responsibility, and is the subject of an investigation by a different police service.

Reporting institutional conflicts to the Inspector General

6. (1) The chief of police shall provide the following notice of every actual institutional conflict and of every potential institutional conflict to which subsection 5 (1) applies that is determined not to be an actual institutional conflict:

1. Subject to paragraph 2, the chief of police shall provide notice to the Inspector General in the form approved by the Minister, specifying whether the notification is with respect to an actual institutional conflict or a potential institutional conflict.
2. If the chief of police is the member of the police service in respect of whom the actual institutional conflict or potential institutional conflict has arisen or is likely to arise, the chief of police shall notify the police service board or, in the case of the Commissioner, the Minister, in accordance with the conflict policy.

(2) If a police service board or the Minister receives a notification under paragraph 2 of subsection (1), the police service board or Minister shall notify the Inspector General in the form approved by the Minister.

(3) The chief of police shall record the steps the chief takes under this section, in the form approved by the Minister.

Referral of actual institutional conflicts for investigation

7. If the Inspector General receives notice under section 6 of a matter in relation to an actual institutional conflict, the Inspector General shall refer the matter to the chief of police of a different police service for investigation.

Referral of certain potential institutional conflicts for investigation

8. (1) This section applies if the Inspector General receives notice under section 6 of a matter in relation to a potential institutional conflict that involves,

- (a) a chief of police or deputy chief of police;
- (b) any other member of a police service, if the criminal conduct is alleged or reasonably suspected to,
 - (i) be motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, gender identity or expression or any other similar factor,
 - (ii) involve abuse against the member's current or former spouse, common-law partner or other intimate partner of the member,
 - (iii) involve abuse of a vulnerable person, such as a person under 18 years of age or an elderly person,
 - (iv) involve abuse of a position of trust or authority in relation to the victim of the conduct, or
 - (v) be for the benefit of, at the direction of or in association with a criminal organization, as defined in subsection 467.1 (1) of the *Criminal Code* (Canada); or
- (c) a person referred to in subparagraph 2 i or ii or 3 i or ii of the definition of "potential institutional conflict" in section 1.

(2) The Inspector General shall refer a matter to which this section applies, for investigation, to,

- (a) the chief of police of a different police service; or
- (b) the chief of police of the police service in which the potential institutional conflict has arisen or is likely to arise, subject to subsection (3).

(3) Clause (2) (b) applies only if,

- (a) the Inspector General is satisfied that an informed and reasonable person would believe that the police service could investigate the matter impartially; and
- (b) the matter does not involve the chief of police of the police service in which the potential institutional conflict has arisen or is likely to arise.

(4) In making a determination under clause (3) (a), the Inspector General shall consider the factors listed under subsection 5 (2).

(5) The chief of police to which a matter is referred under subsection (2) for investigation shall, in accordance with the conflict procedures and the conflict policy, cause the matter to be investigated by the police service or take steps to ensure that responsibility for the investigation of the matter is assumed by a different police service.

(6) If a matter is referred back under clause (2) (b) to the chief of police of the police service in which the potential institutional conflict has arisen or is likely to arise, the chief of police shall report to the Inspector General, in the form approved by the Minister, as to whether the matter was investigated by the police service and, if so, the steps taken under the conflict procedures and the conflict policy, or whether steps were taken to ensure that responsibility for the matter was assumed by a different police service.

Other potential institutional conflicts

9. (1) If the Inspector General receives notice under section 6 of a matter in relation to a potential institutional conflict to which section 8 does not apply, the chief of police of the police service in which the potential institutional conflict has arisen or is likely to arise shall, in accordance with the conflict procedures and the conflict policy, cause the matter to be

investigated by the police service or take steps to ensure that responsibility for the investigation of the matter is assumed by a different police service.

(2) The chief of police shall report to the Inspector General, in the form approved by the Minister, as to whether the matter was investigated by the police service and, if so, the steps taken under the conflict procedures and the conflict policy, or whether steps were taken to ensure that responsibility for the matter was assumed by a different police service.

Other investigations into criminal conduct

10. (1) This section applies in the case of an investigation by a police service into criminal conduct, if there is no actual institutional conflict or potential institutional conflict.

(2) If the chief of police of the police service reasonably believes that the impartiality of the investigation cannot be ensured, the chief of police shall take steps to ensure that the chief of police of a different police service assumes responsibility for the investigation.

Duty to continue investigation

11. Where an investigation may or must be referred to or continued by the chief of police of a different police service under this Regulation, the chief of police of the police service that would otherwise be responsible for the investigation shall continue to take all steps necessary to ensure that an effective investigation is conducted, until the assumption of responsibility for the investigation by the chief of police of the other police service, if applicable.

Conflict procedures to be established by chief of police

12. (1) Every chief of police shall establish written procedures respecting conflicts of interest in the provision of policing functions by the police service.

(2) The procedures shall,

- (a) provide for steps that must be taken to avoid or address conflicts of interest and potential institutional conflict;
- (b) identify, for the purposes of section 3, a supervisor to whom a member of a police service is required to report a conflict of interest or potential institutional conflict and, if the matter to be reported relates to the member's own supervisor, an alternative supervisor;

- (c) identify, for the purposes of section 4, the members of the police service who are authorized to determine whether a personal conflict has arisen or is likely to arise; and
- (d) ensure the impartiality of investigations by the police service under subsections 8 (5) and 9 (1).

Conflict policies to be established by police service boards, the Minister

13. (1) The avoidance of conflicts of interest in the provision of policing functions is prescribed for the purposes of clauses 38 (1) (g) and 60 (1) (f) of the Act.

(2) A policy established for the purposes of subsection (1) shall include actions to be taken by a chief of police in the circumstances described in clause 4 (1) (b) and paragraph 2 of subsection 6 (1).

Commencement

14. [Commencement]