



13-05 Police Services Act Hearing

Status: Amended

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Rationale

A *Police Services Act (PSA)* hearing may be held in circumstances where a member has breached the Code of Conduct under Part V of the PSA and the conduct is of a serious nature, where the reputation of the Toronto Police Service (Service) may be affected, where dishonesty or abuse of authority is an issue, or where a history of similar misconduct exists and/or the principal of progressive discipline is being applied.

Procedure

Criteria for a *Police Services Act* Hearing

Unless prior authorization is received from the Staff Superintendent – Corporate Risk Management (CRM), matters shall be directed to Professional Standards Support – Prosecution Services when

- it is beyond the scope permitted under the Unit Level Criteria/Conduct Penalties described in [Chapter 13, Appendix A](#)
- a police officer has not accepted the disposition offered by a uniform Senior Officer
- the Chief of Police or a uniform Senior Officer deems that the matter shall be dealt with at a PSA hearing
- the OIPRD directs that a PSA hearing is to be held
- the OCPC directs that a PSA hearing is to be held

All hearings shall be open to the public except in circumstances where the designated Hearing Officer, after having considered the exceptions in S. 9 of the *Statutory Powers Procedure Act*, decides to hold the hearing in the absence of the public.

Off-Duty Conduct

A police officer shall not be found guilty of misconduct if there is no connection between the conduct and either the occupational requirements for a police officer or the reputation of the Service.

Resolution Agreements

The designated prosecutor may engage in a plea negotiation with a police officer, or counsel for a police officer, who has been charged under the PSA to resolve a matter, provided

- any complainant or victim is consulted regarding the proposed resolution
- such resolution agreement will not bring the Service into disrepute
- the plea agreement encompasses particulars contained in the notices of hearing and describes recommendations to sentence

Nothing in this Procedure shall be construed in any way as limiting the discretion of the Hearing Officer to impose any sentence deemed appropriate, despite recommendations made as a result of a plea negotiation.

Production (Disclosure)

Responsibility for disclosure of the investigative brief lies with Professional Standards Support – Prosecution Services (Prosecution Services).

Unit Commanders shall not, under any circumstances, provide disclosure on behalf of Prosecution Services but shall ensure that all known information relative to the prosecution is forwarded to the designated prosecutor immediately.

Hearing Officer

Uniform Senior Officers holding the rank of Inspector or higher, or a Judge or a former Judge assigned permanently or temporarily to the Disciplinary Hearings Office are hereby designated to perform the duties of the Chief for the purpose of conducting a PSA hearing in accordance with the provisions of the PSA. The Hearing Officer will be provided with appropriate training.

Prosecutor at Hearing

The Chief shall designate who shall be the prosecutor at a hearing

- Uniform Senior Officers holding the rank of Inspector or higher from any police service of a rank equal to or higher than that of the police officer who is the subject of the hearing, or
- legal counsel to prosecute complex matters involving serious complaints

Where an OIPRD complaint is involved, a prosecutor shall cause the complainant to be advised of the proceedings and the penalty being sought.

Parties to a Hearing

The parties to a hearing are the prosecutor, the police officer who is the subject of the hearing and, if the complaint was made by a member of the public, the complainant.

Notice to Parties and Right to Counsel

The parties to a hearing shall be given reasonable notice of the hearing and each party may be represented by a person authorized under the *Law Society Act* to represent the party.

Examination of Evidence

Before a hearing, the police officer and the complainant, if any, shall each be given an opportunity to examine any physical or documentary material that may be given as evidence.

Police Officer Not Required to Give Evidence

The police officer who is the subject of a hearing shall not be required to give evidence at the hearing.

Inadmissibility of Statements

No statement made during an attempt at informal resolution of a complaint is admissible in a civil proceeding, including a proceeding under ss. 66(10) or 69(12) of the PSA or a hearing held under this Part, except with the consent of the person who made the statement.

Hearing to Continue

If the police officer who is the subject of a hearing is charged with an offence under a law of Canada or of a province or territory in connection with the conduct that was the subject of the complaint, the hearing shall continue unless the Crown Attorney advises the Chief of Police or the Toronto Police Services Board (Board), as the case may be, that it should be stayed until the conclusion of the proceedings dealing with the offence.

Penalty Remedies

A penalty of not more than 3 days or 24 hours that is imposed under ss. 85(1)(e) of the PSA may be satisfied by working without pay or by applying vacation or overtime credits.

Any penalty imposed under ss. 85(1)(f) of the PSA may only be satisfied by working on a regular scheduled day off or an annual leave day. The application of overtime credits is not permitted.

All penalties shall be concluded within 12 months from the date the penalty was imposed.

Appeals

The PSA permits a police officer and in the event of an OIPRD complaint, the complainant, to appeal the Hearing Officer's decision or penalty imposed. The appeal must be made in writing to the OCPC within 30 days of receipt of the Hearing Officer's decision. The OCPC may hold a hearing upon receiving such notice.

A police officer and in the event of an OIPRD complaint, the complainant, may appeal the OCPC decision to the Divisional Court within 30 days of receiving notice from the OCPC, providing it meets the criteria as described in the PSA.

Application to Expunge a Finding of Guilt under the *Police Services Act*

A police officer may apply to have their PSA conviction expunged by submitting a TPS 912 to their Unit Commander. Police officers shall comply with the process outlined in Chapter 13, Appendix G.

Member

1. When notified to attend a PSA hearing as a prosecution witness shall
 - notify their Unit Commander as soon as possible
 - attend the hearing as directed
2. Upon receiving notification to give evidence for a subject/respondent officer shall
 - submit a TPS 649 to their Unit Commander outlining the anticipated evidence
 - notify the prosecutor assigned to the case

Police Officer

3. When directed to appear at a PSA hearing shall
 - accept service of all documents related to the hearing
 - appear at such hearing and any subsequent hearing dates dressed in compliance with Procedure 15-16
 - store issued and/or authorized firearm at the Toronto Police Operations Centre prior to commencement of each hearing session
 - attend all hearing dates on day shift, unless otherwise directed by the Unit Commander or Hearing Officer
4. When requesting the attendance of witnesses, including character witnesses, at a PSA hearing, shall notify Prosecution Services of the witness details no less than 5 days prior to the hearing date.
5. When initiating an appeal regarding the decision or penalty imposed by the Hearing Officer, shall immediately notify their Unit Commander by TPS 649.
6. When requesting to have their PSA conviction expunged shall
 - ensure they have met the criteria as set out in Chapter 13, Appendix G
 - submit a TPS 912 to their Unit Commander

Unit Commander

7. When referring a matter to Prosecution Services for a PSA hearing shall
 - notify Prosecution Services and PRS – Complaints Administration in writing
 - forward to the designated prosecutor 1 investigative brief and a vetted copy for each subject officer and complainant
 - ensure that the victim or complainant has the opportunity to complete a CA 0142 and that it is included in the investigative brief

- ensure the investigative brief and a completed TPS 950 are forwarded to Prosecution Services within 120 days
8. Upon receipt of a TPS 951 from Prosecution Services shall serve a copy on the involved police officer.
 9. When a date for a PSA hearing has been set shall
 - ensure that the subject/respondent officer is notified, at least 24 hours prior to the hearing, to work day shift on the date of all appearances
 - arrange to have the notified Service witnesses present at the hearing
 10. The Unit Commander shall
 - monitor all corresponding criminal and provincial charges
 - ensure Prosecution Services is notified forthwith of any changes or updates
 11. When requested by Prosecution Services shall obtain and supply any court documents or transcripts.
 12. Upon receipt of copies of the TPS 952 and the Hearing Officer's decision shall
 - serve a copy of the decision and TPS 952 on the involved police officer
 - ensure the completed TPS 952 is forwarded to Prosecution Services
 - ensure a copy of TPS 952 is placed in the police officers unit personnel file
 13. When notified that the Board's approval is required for a delay of service of the TPS 951 shall consult with the Staff Superintendent – CRM.
 - ➔ *The PSA provides that if 6 months have elapsed since the facts on which a complaint is based first came to the attention of the Chief, no Notice of Hearing shall be served unless the Board is of the opinion that it was reasonable, under the circumstances, to delay serving the notice.*
 14. Upon receipt of a TPS 649 from a police officer who is appealing the Hearing Officer's decision or penalty imposed shall forward the TPS 649 to Prosecution Services.
 15. After a PSA hearing finding of misconduct shall ensure
 - that any imposed penalty or other action is carried out in accordance with the section entitled 'Penalty Remedies' outlined in this Procedure
 - appropriate entries are made in the Time Resource Management System (TRMS), if applicable all penalties are concluded within 12 months from the date the penalty was imposed
 16. When notified that a police officer's penalty imposed is a demotion in rank for a period of time shall
 - ensure Payroll Services is notified forthwith of any changes or updates
 - complete the appropriate entry in the Human Resources Management System (HRMS)
 17. After the PSA hearing penalty has been served, shall submit a TPS 649 to the Staff Superintendent – CRM detailing how the penalty was satisfied.

Designated Prosecutor – Professional Standards Support – Prosecution Services

18. When designated as a Prosecutor shall
 - provide advice as requested
 - with the exception of a directed hearing, review investigative briefs to determine prospect of conviction and to handle such matters in compliance with this procedure and the PSA

19. When a matter is proceeding to a hearing shall
- generate a TPS 951
 - forward the original TPS 951 to the subject/respondent officer's Unit Commander for service
 - ensure the complainant is kept apprised of case status on an ongoing basis
 - assume responsibility of the prosecution including disclosure, negotiations and trials
 - for a finding of guilt, ensure service of the TPS 952
 - monitor PSA hearing decisions that are under appeal
 - complete Board Reports as per established practice
20. When a complainant wishes to withdraw an OIPRD complaint shall comply with Procedure 13-06.
21. Upon conclusion of an OIPRD initiated PSA hearing shall forward a copy of the hearing decision to the OIPRD Liaison Officer electronically.

Staff Superintendent – Corporate Risk Management

22. When receiving a request for an extension delay in the service of a TPS 951 shall ensure the appropriate unit is assigned to complete the Board Report.
23. Upon receipt of a TPS 649 detailing how a penalty was satisfied shall ensure the details are forwarded to PRS – Complaints Administration.

Supplementary Information

Governing Authorities

Federal: Constitution Act, Part I, Canadian Charter of Rights and Freedoms; Criminal Code.

Provincial: Law Society Act; Police Services Act – Part V, Complaints and Disciplinary Proceedings; Police Services Act, O. Reg. 268/10 – Part VII, Code of Conduct; Police Services Act, O.Reg. 3/99, Adequacy & Effectiveness of Police Services; Statutory Powers Procedure Act.

Associated Governance

TPSB Policies: TPSB Policy – Complaints.

TPS Procedures: 04-24 Victim Impact Statements; Chapter 13, Appendix A Unit Level Criteria / Conduct Penalties; Chapter 13, Appendix G Expunge Police Services Act Conviction; 13-02 Uniform External Complaint Intake/Management; 13-03 Uniform Internal Complaint Intake/Management; 13-04 Uniform Unit Level Discipline; 13-06 Uniform Complaint Withdrawal; 13-08 Uniform Suspension from Duty; 15-03 Service Firearms; 15-16 Uniform, Equipment and Appearance Standards.

Other: Standards of Conduct.

Forms: TPS 649 Internal Correspondence; TPS 912 Application to Expunge a Police Services Act Conviction; TPS 930 Uniform Disciplinary Report; TPS 950 Information from Personnel File; TPS 951 Notice of Hearing; TPS 952 Hearing Decision – Certificate of Service; CA 0142 Victim Impact Statement.

Definitions

For the purposes of this Procedure, the following definitions will apply:

Investigative Brief means a brief similar in content to a crown brief, in that it should be bound, the pages numbered sequentially, and include all video and audio recordings, or other electronic recordings, along with a transcript of same, and should be in a format as defined by Professional Standards Support – Prosecution Services.

Notice of Hearing a notice of hearing must be served at least seventy-two (72) hours before the police officer's first appearance at a hearing.

A notice of hearing shall include:

- a. a statement of the time, place and purpose of the hearing;
- b. a reference to the statutory authority under which the hearing will be held;
- c. a statement that if the party notified does not attend at the hearing, the tribunal may proceed in the absence of the party and the party will not be entitled to any further notice in the proceeding [*Statutory Powers Procedure Act* sec.6];
- d. statement of particulars.

Office of the Independent Police Review Director (OIPRD) means an independent civilian agency responsible for receiving, managing and overseeing all public complaints about the police in Ontario in accordance with the *Police Services Act*.

Ontario Civilian Police Commission (OCPC) means an independent oversight agency and is the appeal body for decisions made at police disciplinary proceedings.

Production (disclosure) means the responsibility for disclosure, also referred to as production of the brief, which lies with Professional Standards – Prosecution Services. The prosecution is under a duty to disclose all information which may be relevant to the defence, including information regarding the credibility of witnesses. The obligation to disclose shall be determined by the Prosecuting Officer.

We are dedicated to delivering police services, in partnership with our communities, to keep Toronto the best and safest place to be.

Learn more about our [Service Core Values and Competencies](#) [here](#)

