POLICY

Definitions

Chief Officer – The Transit Police Chief Officer or delegate.

Conduct Record – A record of conduct disclosure (based on the “Ferguson Five”*) identifying when a Member:

1. Has been convicted or found guilty under the Criminal Code of Canada (CCC) or the Controlled Drugs and Substances Act (CDSA) [for which a pardon has not been granted], or is unsure of that fact;

2. Is currently charged with an offence under the CCC or the CDSA, or is unsure of that fact;

3. Within the past 5 years, has been convicted or found guilty of an offence, pursuant to any other federal or provincial statute, or is unsure of that fact;

   Note: Being found guilty of police misconduct under the RCMP Act or another provincial police act to be reported in this section. Members will not be required to disclose to Crown convictions under the Motor Vehicle Act, unless it is relevant to the charge at hand or (e.g., going to court where Crown is prosecuting a Hit & Run where the Member has a conviction of Hit & Run that is less than 5 years, or if convicted of any of the Motor Vehicle Act sections listed on Form AZ640, as amended from time to time.

4. Within the past 5 years, has been found guilty of misconduct after a Prehearing Conference, Discipline Proceeding or Public Hearing under the BC Police Act, or is unsure of that fact (which has not been Police Act expunged)

   or

5. Is currently facing a charge of misconduct under the BC Police Act, for which a Notice of Prehearing Conference, Discipline Proceeding or Public Hearing has been issued, or is unsure of that fact.

[*Note: The “Ferguson Five” refers to a series of conviction categories that should trigger disclosure of information pertaining to a police officer. These derive from the 2003 review and recommendations concerning several aspects of police misconduct prepared by The Honourable George Ferguson, commissioned by the Toronto Police Service.]

Designated Constables – The Transit Police police officers appointed by the Police Board.
**McNeil Disclosure Package** – Records relating to serious misconduct by police officers, where the misconduct is related to the investigation, or where the misconduct could reasonably impact on the case against the accused.

**Member** – Designated Constable, the Chief Officer or a Deputy Chief Officer of the Transit Police.

**NCO** – A Non-Commissioned Officer, which is a term being used in this policy to collectively identify Sergeants and Staff Sergeants.

**Police Act** – The BC Police Act, RSBC 1996, c. 367, and the regulations thereto, including the Transit Police Operations Regulation, all as amended from time to time

**PSU** – The Professional Standards Unit of the Transit Police.

**Transit Police** – The South Coast British Columbia Transportation Authority Police Service.

**Authority**


**“First Party” Disclosure**

2. The 2009 Supreme Court of Canada judgment in McNeil fundamentally changed disclosure requirements demanded of police officers involved in an investigation. Police are now obligated to disclose, as part of the first party disclosure package to Crown Counsel, records relating to serious misconduct by police officers involved in an investigation, where the misconduct is related to the investigation, or where the misconduct, though separate from the investigation, could nonetheless be relevant to the accused’s case.

The Crown’s obligation to disclose all relevant information in its possession to an accused is well established at common law and is now constitutionally entrenched in the right to full answer and defence under s. 7 of the Canadian Charter of Rights and Freedoms. The necessary corollary to the Crown’s disclosure duty under Stinchcombe is the obligation of police to disclose to Crown all material pertaining to its investigation of the accused. For the purposes of fulfilling this corollary obligation, the investigating police force, although distinct and independent from Crown at law, is not a third party. Rather, it acts on the same first party footing as the Crown. “First Party” disclosure refers to material that is regarded as being in the possession of, or kept by, the Crown. (The party seeking disclosure of this material does not have to approach a third party in order to seek that disclosure.)

Bear in mind that the Crown obligation to disclose continues to be guided by the principles enunciated in the Stinchcombe case; Crown must disclose all relevant material in the possession of Crown, whether the information is favourable or not to the accused, as soon as it becomes available. In terms of defining "relevant", the Supreme Court of Canada has said that "relevant" includes any information in
respect of which there is a reasonable possibility that it may assist the accused in the exercise of the right to make full answer and defense.

“Third Party” Record Production

3. The production of disciplinary records and criminal investigation files in the possession of the police that do not fall within the scope of the first party disclosure package referred to in s. 2 of this policy continues to be governed by the O’Connor regime for the production of third party records.

“Third Party” records refer to records that are regarded as being in the possession of, or kept by a third party. Accordingly, the party seeking their disclosure is obligated to approach the record holder to seek production and/or make application to the Court; they cannot argue that the records are to be automatically disclosed, on the basis that the records are already in the possession of the Crown.

In terms of procedure, the party seeking disclosure of third party records must establish the relevance of the records, and the Court then decides if disclosure of the record is appropriate, taking into account the competing interests at stake, including the privacy interests of the party whose records are sought.

General

4. Every Member is responsible for their own McNeil disclosure obligation to Crown Counsel through Court Liaison. This is required every time a Report to Crown Counsel (RTCC) is submitted where that Member is a witness or potential witness. Members with a Conduct Record are required to provide Court Liaison with a completed Form AZ640 each time a RTCC is submitted. Form AZ660 will be prepared by Court Liaison, based on the Member’s status from the current master McNeil list, and will identify all Members associated with the file and whether a Conduct Record exists or not.

5. Transit Police will provide training to the Members and appropriate civilian personnel, on McNeil disclosure requirements and procedures. [Refer to Appendix C for McNeil disclosure flow chart.]

6. During the Transit Police hiring process for police officers, the Transit Police will require candidate disclosure of any conduct that is considered a “Conduct Record” as defined within this policy. Candidate disclosure must occur prior to a letter of hire being offered. While in the selection process and at any time prior to employment commencement, the candidate is obliged to inform the Transit Police upon change of his/her Conduct Record status.

7. All Members will be required to complete a confidential Transit Police Member Conduct Disclosure Form (Form AZ640) and submit it to the PSU to maintain a Transit Police master archive of McNeil Disclosure. Completion of a Form AZ640 will be done immediately upon hiring of a Member and at any time the information on this form is required to be updated. (See Appendix A for Form AZ640.) The completed Form AZ640 is to be placed in TP Envelope – McNeil01 and envelope instructions followed.
8. Prior to completion of Form AZ640, the Member may consult with PSU regarding whether or not a particular record will need to be disclosed.

On-going Disclosure Required

9. The Crown’s obligation to disclose is on-going and, in fact, survives the trial. The Member is responsible for ensuring that Crown Counsel is provided with up-to-date information regarding the Member’s conduct record from the time of the submission of the RTCC prior to trial, and, if the accused is convicted or pleads guilty, until the expiration of the appeal period after the trial and/or sentencing.

10. A Member who becomes the subject of proceedings captured by Form AZ640, after submission of the initial RTCC, will immediately complete and submit an updated Form AZ640 to Court Liaison for forwarding to Crown Counsel. The Member will provide to PSU a copy of any updated Form AZ640 that they submit to Crown Counsel, as well as when the Chief Officer or their designate directs Members to file an updated Form AZ640.

11. A Member who does not comply with McNeil disclosure requirements may be subject to discipline under the Police Act.

PROCEDURES

Member Responsibilities

11. All Members are required to complete a Form AZ640 upon hire and submit an updated form every time the Member’s McNeil status changes, as guided by Form AZ640.

12. Members that do not have a Conduct Record are not required to provide any McNeil documentation directly to Court Liaison provided that PSU has a current Form AZ640 on file.

13. Members that have a Conduct Record will provide Court Liaison with a copy of their current Form AZ640 in TP Envelope - McNeil03, upon submission of the RTCC.

14. When non-Transit Police members are identified in the RTCC, the non-Transit Police members are responsible for their own McNeil disclosure to Crown Counsel.

Court Liaison Responsibilities

15. Court Liaison will, with the provisioning assistance of PSU, hold a confidential list of Members that have a Conduct Record. This list (in paper or electronic format) will be kept in a secure location and with strictly controlled access from unauthorized persons, using security protocols consistent with departmental policy and generally accepted and prescribed security standards.

16. Transit Police access authorization to the Conduct Record list will be as prescribed in writing from the Deputy Chief Officer Support Services and a directory of that list will be maintained by the Deputy Chief Officer Support Services.
17. Court Liaison will complete and provide Crown Counsel with a Form AZ660 – Police Witness Disclosure Summary Sheet (see Appendix B) and a copy of submitted AZ640 forms with every RTCC that is submitted to Crown Counsel provided that the provisioning of required form(s), collectively known as the “McNeil Disclosure Package”, does not cause delivery delay of the RTCC.


19. Court Liaison will not delay forwarding any RTCC to Crown Counsel for the sole reason that the McNeil disclosure package is incomplete. Instead, Court Liaison will forward the RTCC without delay to Crown Counsel and notify PSU and the Member’s Supervisor of any Member with a Conduct Record that has not submitted their Form AZ640.

20. Court Liaison will document on PRIME actions respecting the submission to Crown Counsel of Forms AZ660 and AZ640/McNeil Disclosure Package.

Professional Standards Unit Responsibilities

21. The PSU Inspector will be responsible for PSU management of the McNeil Conduct Record process and discipline records disclosure, and will determine specific PSU staff assignments in relation to those McNeil responsibilities.

22. The PSU will review all initial and updated Form AZ640s received from Members, and keep the Chief Officer or their designate advised of possible training needs or any potential concerns for the Transit Police.

23. The PSU will ensure that Court Liaison is promptly provided with an updated list of all Members with a Conduct Record whenever that list requires changes, in a format authorized by the Chief Officer.

24. The PSU will ensure that all Form AZ640s received and related information is tracked and kept in a secure area and manner, only accessible by persons authorized by the Deputy Chief Officer Support Services.

25. The PSU may be directed by the Chief Officer or their designate to assess Members’ records for seriousness and relevance to a specific investigation.

26. The PSU will respond to requests from Crown Counsel for consultation in assessing “serious misconduct” or “relevance” of a Member’s conduct records for McNeil disclosure.

27. The PSU will be available as a resource to Members on requirements respecting McNeil disclosure.
Crown Counsel

28. Crown Counsel will be provided the Members’ McNeil Disclosure Packages through Court Liaison. Crown Counsel determines which parts of the record, if any, will be disclosed to the defense, in compliance with the Crown’s disclosure obligations (as articulated in Stinchcombe and confirmed in McNeil).

29. A Member having conduct disclosure obligations will liaise with the Crown Counsel assigned to the case to establish an understanding as to what is likely to occur should the conduct matter be raised in Court.

30. A Member may indicate on their Form AZ640 if they have any reason(s) that the conduct record should not be disclosed by Crown to the defence, as well as whether the Member is requesting an opportunity to make further submission if Crown intends to disclose that record, and prior to such disclosure being made by the Crown. PSU is available to Members for consultation on disclosure issues.

31. Upon notification from Crown of intended disclosure of a conduct record, the Member will inform PSU by E-mail. This will enable PSU to consider whether it may be in the interest of Transit Police to make submission to Crown on the matter as well as assist the Transit Police in the early identification of any emerging issues arising from the McNeil disclosure to and Crown.

Secended Members

32. Police agency requests for disclosure by the Transit Police seconded Members to that agency will be forwarded to Transit Police Court Liaison for coordination with the Member.

33. The Transit Police seconded Member’s submission with respect to disclosure will be provided to Court Liaison, not to the seconded agency.

34. The Transit Police seconded Member will be responsible to complete, where appropriate, Form AZ640, and submit it to Court Liaison, following the Member procedures set forth in ss. 11-14. Court Liaison will then forward the documents to the appropriate Crown Counsel and notify the requester from the other agency of the action taken.

35. Records for police officers seconded to the Transit Police will be assessed by the Disclosure Officer (or equivalent) at the police officer’s home agency. These records will be requested by Court Liaison from the police officer’s home agency to be forwarded to the appropriate Crown Counsel, or submitted via Transit Police Court Liaison where mutually agreed upon.

36. Court Liaison will provide all relevant details of the RTCC to assist the home agency with evaluation of that police officer’s conduct records for seriousness and relevance. The police officer’s submissions regarding the disclosure of these records will be assessed by the home agency.

[See also: Policy AC110 – Service Record of Discipline]
**Key References**

BC Police Act [RSBC 1996, Chapter 367]

Criminal Code of Canada [RSC 1985, c. C-46]


*R. v. Steele,* 2010 ABQB 39


*R. v. Schmidt,* 2012 BCPC 0111

1. Upon the directive of the Chief Officer, each Member must complete and sign a Form AZ640 and submit to the Professional Standards Unit [use TP Envelope – McNeil01].

2. Each Member identified as a police witness to an investigation and who has indicated a “conduct record” on Form AZ650, must complete and sign a separate Form AZ640 and submit it to Court Liaison (use TP Envelope – McNeil03/McNeil Disclosure Package), along with the Report to Crown Counsel and the Member’s completed Form AZ650 (inside TP Envelope – McNeil02).

3. Members must complete and submit updated Form AZ640s to Crown Counsel and Professional Standards Unit as specified in Policy Chapter AC200- McNeil Disclosure Packages.

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<thead>
<tr>
<th>Member’s Name:</th>
<th>Badge #:</th>
<th>E-Mail:</th>
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**PART A:** The Member is required to check the appropriate box for each question (#1-#5) below.

<table>
<thead>
<tr>
<th>No Record</th>
<th>Conduct Record</th>
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<tr>
<td>No</td>
<td>Yes</td>
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1. □ □ □ □ I have been convicted or found guilty of an offence under the Criminal Code of Canada or the Controlled Drug and Substances Act [for which a pardon has not been granted].

2. □ □ □ □ I am currently charged under the Criminal Code of Canada or the Controlled Drug and Substance Act.

3. □ □ □ □ Within the past 5 years, I have been convicted or found guilty of an offence under a federal or provincial statute.*

4. □ □ □ □ Within the past 5 years, I have been found guilty of misconduct after a Prehearing Conference, Disciplinary Proceeding or Public Hearing under the BC Police Act. [which has not been Police Act expunged]

5. □ □ □ □ I am currently facing a charge of misconduct under the BC Police Act for which a Notice of Prehearing Conference, Disciplinary Proceeding or Public Hearing has been issued.

**PART B:** The Member will complete Part B when the Member is required to submit Form AZ640 for attachment to Report to Crown Counsel.

**PRIME General Occurrence #:**

Accused Surname:

Accused In-Custody: □ YES □ NO

*Note: For Motor Vehicle Act offences, Members are required to disclose a conviction if it is relevant to the charge at hand, or if convicted of any of the following Motor Vehicle Act sections: 58, 68, 69, 70, 73, 74, 84, 90, 91, 93, 95, 98, 100, 102, 122(4), 144, 148, 215, 224, 226, and 234.
PART C: When the Member has indicated “Yes” or “Unsure” to any of the questions #1 to #5 in PART A, the Member will complete the following chart outlining any charges or findings of guilt.

<table>
<thead>
<tr>
<th>Date of Finding, Charge or Notification</th>
<th>Nature of Offence/Allegation or Details of the Alleged Misconduct</th>
<th>Penalty/Sanction</th>
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(Where additional space is required, continue on a blank sheet of paper and attach to this form.)

I am aware that I have a continuing obligation to provide up-to-date information should circumstances change, by completing and signing an additional Form AZ640 and submitting it to Professional Standards Unit and, where applicable, to Crown Counsel (via Court Liaison) if I am a police witness to an investigation.

Signature of Member

Name of Member & Badge #

Date (yy/mm/dd)

CROWN COUNSEL – Please contact Transit Police – Professional Standards Unit should you have any questions regarding the Member’s disclosure or this form.

PART D: OFFICER REQUEST TO CROWN

NOTE: THIS PART TO BE REMOVED PRIOR TO DISCLOSURE BY CROWN

Police Officer Privacy Interest(s) – Officer’s reason(s) that all or some of this Conduct Report should not be disclosed.

I ask that I be notified by the Crown and given the opportunity to make further submissions if Crown intends to disclose the record of question: ☐ YES ☐ NO

(Where additional space is required, continue on a blank sheet of paper and attach to this form.)

South Coast British Columbia Transportation Authority Police Service Policies and Procedures Manual

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### POLICE WITNESS MCNEIL DISCLOSURE FORM
Confidential Information – For Crown Counsel Use

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<tr>
<th>PRIME General Occurrence #:</th>
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<tr>
<td>Accused Surname:</td>
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#### OFFICER WITNESS LIST

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<th>Member's Surname</th>
<th>Badge #</th>
<th>No Record</th>
<th>Conduct Record</th>
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<td>McNeil Package / Form AZ640 Attached</td>
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1. Court Liaison completion of this form is based on Transit Police master list of Members with a Conduct Record.

2. Court Liaison to include a copy of the Form AZ640 where a Member has a Conduct Record.

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**Signature of Court Liaison Officer**

**Date (yyyy/mm/dd)**

**Name of Court Liaison Officer & Badge #**

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Appendix C

TRANSIT POLICE – MCNEIL DISCLOSURE FLOW CHART

A1
McNeil Records – Member Baseline
1. All Members to complete AZ640 on hire and when McNeil status changes.
2. Use McNeil01 envelope and forward to PSU.

A2
Maintain McNeil Service Record List
1. PSU maintains and provides Court Liaison with list of Members with a Conduct Record (“List”).
2. Court Liaison holds LIST securely and compares LIST with every RTCC submitted.

B1
McNeil Disclosure – With RTCC
1. Write and submit RTCC.
2. All Members with a Conduct Record submit AZ640 inside McNeil03 envelope to Court Liaison for each case with RTCC, as soon as practicable.

AB1
Prepare Crown Counsel McNeil Information Package
1. Court Liaison use LIST and AZ640’s provided by Members to reconcile witness list for Crown Counsel.
2. Court Liaison report discrepancies to PSU and Member’s Supervisor.

AB2
Submit McNeil Information to Crown Counsel
1. Discrepancies have been resolved to satisfaction of PSU.
2. Court Liaison forward completed AZ660 and all sealed McNeil03 envelopes to Crown Counsel.

C
Member Conduct Change & McNeil Disclosure
1. If Conduct Record changes, Member will complete new AZ640 and submit to PSU (same as A1)
2. PSU will update the LIST and provide to Court Liaison.
3. For active file, Member informs Crown Counsel when Conduct Record changes.