TRANSIT POLICE

McNEIL DISCLOSURE PACKAGES

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POLICY

Members are obligated to provide first party disclosure of conduct records, where the conduct is determined to be relevant and serious, to the Crown in order to comply with the Supreme Court of Canada judgment in *R. v. McNeil*. Members are required to follow this policy chapter concerning the disclosure of police conduct records for criminal trials and other regulatory offences where police witnesses are involved.

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* 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 *Criminal Code* 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: 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 TP Form AZ0640, as amended from time to time).

4. At any time[1] has been found guilty of misconduct after a Prehearing Conference, Discipline Proceeding or Public Hearing under the *Police Act* (or *Royal Canadian Mounted Police Act)*, or is unsure of that fact (including record of misconduct that has been expunged pursuant to the *Police Act* or *Royal Canadian Mounted Police Act*); or

[1] Letter from Deputy Chief Federal Prosecutor D. Rosellina/Public Prosecution Service of Canada on 'Expunged Records Under the Police Act – Impact on Crown McNeil Disclosure', dated May 16, 2025. Letter from Grant Wong/BC Prosecution Service Director of Legal Operations on 'Expunged Disciplinary Records under the *Police Act McNeil* Disclosure to BC Prosecution Service', dated September 9, 2025.

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5. Is currently facing a charge of misconduct under the *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, entitled "Review and Recommendations Concerning Various Aspects of Police Misconduct".

Criminal Code – *Criminal Code* [RSC 1985, c. C-46].

Designated Constables – Transit Police Officers.

Designated Law Enforcement Officers – Known as Community Safety Officers at the Transit Police.

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 (all ranks), the Chief Officer, a Deputy Chief Officer, and Designated Law Enforcement Officer of the Transit Police.

Metro Vancouver Transit Police ("Transit Police") – The operating name of the South Coast British Columbia Transportation Authority Police Service (Designated Policing Unit and Designated Law Enforcement Unit).

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

Police Act – *BC Police Act* [RSBC 1996], c. 367, and the regulations thereto, as amended from time to time

PSU – Professional Standards Unit of the Transit Police.

RTCC – Report to Crown Counsel.

Transit Police Personnel – The Members and Civilian Professionals of the Transit Police.

Authority

1. Transit Police Personnel will comply with disclosure requirements arising from *R. v. McNeil* ("McNeil").

"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. In recognition of a Member's McNeil disclosure obligation, the Member will make full disclosure to Crown Counsel; however, it remains Crown Counsel's responsibility to disclose all relevant information in its possession to the defense of the accused.

5. Each Member is responsible for their McNeil disclosure obligation. Accordingly, all Members are required to complete Transit Police Form AZ0640 and provide it to the

Professional Standards Unit ("PSU") prior to hire, upon request and every time their Conduct Record status changes. (Refer to Appendix "A" for **TP Form AZ0640**.)

6. 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**.]

7. During the Transit Police hiring process for Members, the Transit Police will require candidate disclosure of any conduct that is considered a "Conduct Record" as defined within this policy, prior to a letter of hire being offered.

8. 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 their Conduct Record status.

9. Prior to completion of TP Form AZ0640, the Member may consult with PSU regarding whether or not a particular record will need to be disclosed.

10. PSU will maintain a Transit Police master archive of McNeil Disclosure (including submitted AZ0640 Forms), in a secure manner.

On-going Disclosure Required

11. The Crown's obligation to disclose is ongoing and, in fact, survives the trial (if the accused is convicted or pleads guilty, until the expiration of the appeal period after the trial/or sentencing). Accordingly, a Member who becomes the subject of proceedings captured by TP Form AZ0640, after submission of the initial RTCC, will immediately:

    (1) Notify Court Liaison;
        a. Court Liaison will then check JUSTIN for all active cases involving that Member and send to Crown Counsel an updated TP Form AZ0660, highlighting the change in the Member's reporting status (refer to Appendix "B" for **TP Form AZ0660**); and

    (2) Complete an updated TP Form AZ0640 and submit to PSU.

12. If a Member becomes the subject of a complaint in relation to the same incident that forms the subject-matter of the charge against an accused person, after submission of the RTCC, the Member will immediately inform the PSU. The PSU will then inform Crown Counsel of the concurrent situation, consult on the scope of necessary disclosure arising, and assist as required.

13. When PSU becomes aware of new conduct information regarding a Member that is of a serious nature that might affect historical cases, PSU will review the historical cases involving that Member and notify Crown Counsel.

PROCEDURES

Member Responsibilities

14. All Members are required to complete a TP Form AZ0640 as set out in s. 5 of this policy.

15. 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.

16. A Member may indicate on their TP Form AZ0640 if they have any reason(s) that the conduct record should not be disclosed by Crown Counsel to the defence and whether the Member is requesting an opportunity to make further submission if Crown Counsel intends to disclose that record, prior to such disclosure being made by the Crown. PSU is available to Members for consultation on disclosure issues.

17. Upon notification from Crown Counsel 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 Crown.

18. 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

19. Court Liaison will, with the provisioning assistance of PSU, hold a list (treated as “Protected “B”) 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.

20. Court Liaison will complete and provide Crown Counsel with a Form AZ0660 – Police Witness Disclosure Summary Sheet. TP Form AZ0660 will be submitted with the RTCC) via Crown Counsel’s secure file transfer system.

21. Court Liaison will document on PRIME (release tracking) actions respecting the submission to Crown Counsel of TP Form AZ0660.

Professional Standards Unit Responsibilities

22. The PSU will review all initial and updated TP Form AZ0640s 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 TP Form AZ0640s received, and related information, is tracked and kept in a secure area and manner, only accessible by persons authorized by the Deputy Chief Officer Administrative Services.

25. 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. A PSU Member is authorized to disclose all circumstances of each PSU file necessary for Crown Counsel to have a complete understanding of each file so that they can make an informed decision.

26. The PSU Member responding to a request from Crown Counsel will advise the prosecutor of the contents within the Conduct Record disclosure and any documented objections made by the Member on their TP Form AZ0640.

27. In the event of a record of complaint concerning a Member which relates to the same incident that forms the subject-matter of the charge against the accused, the record must be disclosed by the PSU to Crown Counsel.

    (1) Full disclosure in such circumstances will normally include any associated record, including witness statements. The PSU is to consult with Crown Counsel to determine the scope of disclosure for any particular case.

    (2) Further, when a complaint is received at any stage of a pending prosecution, the PSU must notify Crown Counsel with conduct of the case in question, and provide all information regarding the complaint to Crown Counsel.

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

Seconded Members

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

30. Court Liaison will forward disclosure information directly to Crown Counsel, not to the secondment agency.

31. After Court Liaison has forwarded the documents to the appropriate Crown Counsel office, they will notify the requester from the other agency of the action taken.

32. 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.

33. Crown Counsel will be referred to a police officer's home agency for assistance with assessing the seriousness and relevance of that officer's record.

[Refer also to Transit Police Policy AC110 – Service Record of Discipline]

Key References:
BC Police Act [RSBC 1996], c. 367
Criminal Code [RSC 1985, c. C-46]

Letter from Deputy Chief Federal Prosecutor D. Rosellina/Public Prosecution Service of Canada on Expunged Records Under the Police Act – Impact on Crown McNeil Disclosure, dated May 16, 2025.
Letter from Grant Wong/BC Prosecution Service Director of Legal Operations on 'Expunged Disciplinary Records under the *Police Act McNeil* Disclosure to BC Prosecution Service', dated September 9, 2025.
R. v. McNeil, 2009 SCC 3, [2009] 1 S.C.R. 66
http://owl01/otcs/cs.exe?func=ll&objId=3618827&objAction=download, 2010 ABQB 39
R. v. Stinchcombe, [1995] 1 S.C.R. 754
R. v. Schmidt, 2012 BCPC 0111
Report of the Honourable George Ferguson (Q.C.), Review and Recommendations Concerning Various Aspects of Police Misconduct, Toronto Police Service, January 2003, Ontario
BC Association of Municipal Chiefs of Police Minutes – Regular Meeting, July 12, 2016; model business rule within McNeil Disclosure Procedures.