

Report to / Rapport au:

**OTTAWA POLICE SERVICES BOARD
LA COMMISSION DE SERVICES POLICIERS D'OTTAWA**

22 March 2021 / 22 mars 2021

Submitted by / Soumis par:

Chief of Police, Ottawa Police Service / Chef de police, Service de police d'Ottawa

Contact Person / Personne ressource:

**Inspector Hugh O'Toole, Professional Standards Branch/ Inspecteur Hugh
O'Toole, Section des norms professionnelles
*OTooleH@ottawapolice.ca***

SUBJECT: UPDATE ON POLICIES RELATED TO SUSPENSIONS

**OBJET: MISE À JOUR SUR LES POLITIQUES CONCERNANT LES
SUSPENSIONS**

REPORT RECOMMENDATIONS

That the Ottawa Police Services Board receive this report for information.

RECOMMANDATIONS DU RAPPORT

**Que la Commission de services policiers d'Ottawa prenne connaissance du
présent rapport à titre d'information.**

BACKGROUND

As a police service, the Ottawa Police Service (OPS) is fully committed to transparency on matters that impact the community. We recognize the critical role of transparency in fostering public trust and confidence in the OPS.

Complaints about member misconduct are taken very seriously; our procedures are increasingly sound and in accord with those of other leading police services. The OPS' suspension policies, procedures and practices require a rigorous process of continual improvement to achieve optimal management of OPS conduct-related matters.

The purpose of this report is to provide the Ottawa Police Services Board (Board) with:

1. An overview of the two OPS policies related to the suspension of members;

2. The process used to determine if and how the OPS notifies OPS members and the media;
3. A formal explanation for a recent change made to an operational practice relating to the OPS' responsibilities under the Occupational Health and Safety Act (OHSA), and

The improvements made to the OPS' practices to manage the conduct of members including the nine-criteria process used to determine an Administrative suspension.

DISCUSSION

There are two forms of suspension in the Police Services Act (PSA):

1. An "Administrative" suspension authorizes the Chief to suspend with pay where a member is suspected or charged with an offence under a law of Canada, the province or territory, or is suspected of misconduct as defined in the PSA. An Administrative suspension without pay may be imposed only where an officer is convicted AND sentenced to a term of imprisonment, even if under appeal.
2. "Disciplinary" suspensions are unpaid, and available as a penalty only after a formal discipline hearing which are by statute, public hearings. The sentencing results of all such formal discipline hearings are a matter of public record – this includes any imposed Disciplinary suspensions.

For the purposes of this report, we will focus on Administrative suspensions.

Administrative suspensions are an aspect of the Chief's authority to control and administer the police service, and to remove members from duty for reasons related to the protection of the public and the police service. It is a risk mitigation tool, allowing time for investigation while mitigating any risks associated to keeping an officer on duty.

There are two policies that guide Administrative suspensions; Policy 2.04 "Media Relations" and Policy 3.12 "Suspensions". Both policies were last updated in 2017.

Under the "Media Relations" policy, where a member is given an Administrative suspension and charged with an offence the OPS will always issue a media release to confirm their duty status. There are some occasions where an administratively suspended member is not named in a media release to protect the identity of a victim. In such cases, the OPS will still issue a media release.

Unless there is a compelling public interest to do so, the OPS does not release the identity of members who are under an Administrative suspension if they are still under investigation (by the OPS and/or by another agency such as the SIU) where there have been no charges laid at the time of the suspension. In these cases, the same

procedural fairness is afforded to the OPS member as is given to any member of the community who are under investigation by the police but not yet charged with any offence(s).

There is no policy requiring the OPS to notify other OPS members when a member is placed under an Administrative suspension.

In the recent past, it was the OPS' operational practice to issue a General Order for every Administrative suspension. This General Order would contain the name(s) of the suspended member(s) and it would be sent electronically to every other OPS member on the day that the suspension was confirmed. A subsequent General Order containing the name(s) of the suspended member(s) would be issued on the day that the Administrative suspension was concluded.

This operational practice was primarily done to meet the OPS' obligations under the Occupational Health and Safety Act (OHSA) to provide information necessary for the protection of members in the workplace. The General Order was also used to initiate internal business processes relating to a suspended member (i.e. securing the member's equipment, firearm, badge, facility access card, etc.).

In February 2021, the OPS reconsidered the operational practice of issuing the General Order as it was not accomplishing the primary OHSA-related purpose for which it was originally intended. A more appropriate operational practice was designed and implemented. The operational practice requires that the OPS conduct a proper risk assessment for each Administrative suspension case.

This new risk-assessment practice significantly improves the effectiveness of the Administrative suspension policy because it specifically assesses risk issues related to the safety, health and wellness of all the members directly involved in the Administrative suspension. It also more appropriately and effectively meets the OPS' general requirements under the OHSA because it enables the OPS to assess the unique risks in each case, to develop customized risk mitigation plans, and to share only the most appropriate information internally on an incident-by-incident basis. It better-enables the OPS to consider proportionality, procedural fairness and privacy rights. In fact, the OHSA requires that employers and supervisors do not disclose more information than is reasonably necessary for the protection of a worker.

Upon his arrival in October 2019, Chief Peter Sloly has undertaken a major review and update of the OPS' core conduct related policies, procedures and practice. This effort has resulted in a much more rigorous and continually improving system to manage OPS conduct matters, including Administrative suspensions.

As it relates to Administrative suspensions, the OPS needed to improve its ability to balance member safety and public trust with legislative requirements and the common-law duty of procedural fairness.

The OPS has moved to ensure that Administrative suspensions are reserved for the most serious cases which are now determined on an incident-by-incident basis by consistently applying the following set of nine criteria:

1. The seriousness of the conduct issue;
2. The reliability of evidence or information known;
3. The prior disciplinary record of the member;
4. Whether adequate conditions can be put in place to mitigate any risks;
5. The risk to the public and the police if the member is not suspended;
6. The public interest and trust and confidence in the OPS;
7. Does this conduct issue align/conflict with Board, OPS, and the Community Safety and Well-Being (CSWB) plan priorities;
8. The potential for reprisals, and
9. Whether suspension is necessary for the integrity of the investigation.

The assessment for the need for an Administrative suspension is now required to be made using a formal Case Conference process which is attended by the Superintendent/ Director who directly oversees the affected member(s), along with senior representatives from Labour Relations, Legal Services, the Chief's Executive Officer, Health Safety & Wellness and the Inspector of Professional Standards. The recommendation of the Case Conference goes to the Chief for final review and approval.

To provide additional consistency, oversight and transparency to the management of conduct issues, the OPS established the Conduct Risk Management Committee (CRMC) in April 2020. The CRMC is a committee with the Chief and Command Team that meets weekly and is supported by senior leaders and subject matter experts from the following units: Labour Relations, Legal Services, Professional Standards, Human Resources, Respect Ethics and Values.

The CRMC better enables the OPS to more effectively and ethically assess, address and resolve complex high-risk conduct issues. It is guided by the principles of totality, proportionality and consistency. It has formal terms of reference along with formal decision-making tools. The CRMC also conducts operational reviews of completed

cases and conduct trend analyses and quarterly suspension reviews (or on an as-needed basis when there is a material change in the circumstances of the suspension).

CONSULTATION

OPS policies, procedures and practices regarding suspensions are consistent with other major municipal police services in Ontario, along with those of the Ontario Provincial Police (OPP) and the Royal Canadian Mounted Police (RCMP). One major police service in Ontario recently inquired about our nine criteria “Administrative” suspension process with a view to enhancing their ability to better and more transparently manage conduct.

Regardless of the aforementioned significant improvements, the OPS recognizes that there is increasingly a strong public interest in our conduct-related policies, procedures and practices. OPS members, community members and the Board want to see the OPS operate at the maximum level of transparency in all such matters. In retrospect, the recent change in operational practice relating to the OHSA could have been more effectively communicated, both internally and externally. Steps have been taken over the past week to remedy the situation (including the submission of this formal Board report).

CONCLUSION

The OPS is fully committed to transparency on matters that impact the community, and we recognize the critical role of transparency in fostering public trust and confidence. The OPS takes complaints about member misconduct very seriously, and we now have a much more rigorous process to manage conduct matters, including Administrative suspensions.

Our policies, procedures and practices regarding suspensions, and the release of suspension information to the public, are sound and in accord with other leading police services. Regardless, they require continuous review to improve public trust and member confidence in the OPS.