

	Abbotsford Police Department Policy and Procedure	
	Administration	Conduct
	I.C.025	McNeil Disclosure

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DEFINITIONS

- (1) **Disclosure Officer** – means the Abbotsford Police Department (“AbbyPD”) Strategic Services Branch inspector or their delegate.
- (2) **First Party Disclosure** – means material that is regarded as being in the possession of, or kept by, the Crown and therefore, presumptively disclosed by the Crown; the party seeking the disclosure of the material does not have to approach a third party in order to seek that disclosure.

- (3) **Misconduct** – for the purposes of this document, means any conviction, outstanding charges or finding of guilt for an offence under the Criminal Code of Canada or the Controlled Drugs and Substances Act (for which a pardon has not been granted), selected convictions or findings of guilt under a provincial statute (as determined by the Disclosure Officer), or any imposed discipline or corrective measures entered in an Officer’s Service Record of Discipline (SROD).
- (4) **Officer** – for the purposes of this policy, means any sworn individual whose conduct is governed by the *Police Act*, including municipal constables and special municipal constables. For clarity, this includes but may not be limited to, AbbyPD police officers, operational support officers, reserve constables, court liaison officers, sworn investigative assistants, Digital Forensic Lab personnel and contracted document service/DNA collection personnel, and includes these persons when involved in non-AbbyPD files.
- (5) **Officer Witness Disclosure List** – means AbbyPD’s internal record of Officers who have an active McNeil record.

PURPOSE

- (6) To comply with the Supreme Court of Canada judgment in *R. v. McNeil*¹.
- (7) To establish the requirement for disclosure of Officer conduct records in criminal trials and regulatory offence prosecutions where Officer witnesses are involved.

POLICY

- (8) Each Officer is required to disclose Misconduct to the Abbotsford Police Department (“AbbyPD”) Professional Standards Section (“PSS”) annually, whenever their conduct record changes, and at the request of PSS.
- (9) AbbyPD will ensure the accurate, complete and timely submission of First Party Disclosure of an Officer’s Misconduct, while maintaining the privacy of the Officer to the greatest extent possible.

Paragraphs (8) and (9) constitute Policy approved by the Police Board on January 26, 2022.

¹ R. v. McNeil, 2009 SCC 3 (CanLII), [2009] 1 SCR 66, <<https://canlii.ca/t/2254d>>, retrieved on 2021-09-21

PROCEDURE

FORM 1 SUBMISSION

- (10) Form 1s (an Officer's declaration of reportable conduct) are to be submitted directly to PSS.
 - (a) Officers with access to AbbyPD SharePoint are to complete the SharePoint version of Form 1.
 - (b) Officers without access to AbbyPD SharePoint are to complete Form 1 in the manner designated by PSS.
- (11) Officers who are uncertain whether their conduct should be disclosed must meet with a PSS investigator to determine if disclosure is required.

CRIMINAL PROCEEDINGS

Professional Standards Section Responsibilities

- (12) PSS will review all submitted Form 1s and will retain them in a secure location.
- (13) PSS maintains the Officer Witness Disclosure List which identifies all Officers who have an active McNeil Disclosure record, and makes this list available to AbbyPD Court Liaison Officers (CLOs) and Investigative Assistants (IAs)
- (14) PSS creates one Form 3 (incident summary) for each potentially disclosable event and makes these forms available to AbbyPD CLOs and IAs.

Court Liaison Officer and Investigative Assistant Responsibilities

- (15) For every RTCC prepared, the CLO or IA will refer to the Officer Witness Disclosure List and send to Crown counsel:
 - (a) a completed Form 2 (list of Officer witnesses indicating their McNeil record status); and
 - (b) where an Officer has an active McNeil record, a copy of the Form 3 (summary of McNeil record details) for each of the Officer's reportable events.
- (16) The CLO or IA will notify the Officer in writing if Crown counsel advises that information in the officer's McNeil record will be disclosed.

- (17) Officers who are informed in writing that their record is to be disclosed during a proceeding will have an opportunity to make a submission challenging the relevancy of the disclosure within 10 calendar days of the notice having been sent to them. If the Officer opts to challenge the disclosure, they or their agent will contact Crown Counsel directly for discussion.
- (18) The Form 2 is an AbbyPD document and will only contain the names of AbbyPD Officers. Where an outside agency has participated on the file, the CLO or IA will contact the outside agency and request that it disclose the McNeil status of their assisting Officers directly to Crown.
- (19) If contacted by another agency regarding the McNeil status of an AbbyPD Officer, the CLO or IA will consult the Officer Witness Disclosure List.
- (a) If the AbbyPD Officer does not have a McNeil record, Form 2 will be completed by the CLO or IA (indicating "No Record") and will be forwarded to the external agency.
 - (b) If the AbbyPD Officer has a McNeil record, the CLO or IA will send a completed Form 2 and all related Form 3s to the designated Crown Counsel McNeil recipient in the other jurisdiction.

PROVINCIAL VIOLATION TICKETS

General

- (20) An Officer prosecuting a provincial violation ticket is required to provide disclosure of information about relevant conduct records to the defendant as follows:
- (a) if the Officer has no McNeil record, disclosure does not need to make reference to this category of records, unless specifically asked for by the defendant;
 - (b) if the Officer has a McNeil record, but the Disclosure Officer has assessed it as being not relevant, the member has no obligation to disclose that a record exists, unless requested by the defendant; and
 - (c) if the Officer has a relevant McNeil record, the defendant must proactively be given notice of the record, whether requested or not.
- (21) Disclosure of the record to the defendant or defendant's counsel will be facilitated by a CLO, in the manner set out in Appendix A.

Record relevance

- (22) McNeil record relevance will be determined by the Strategic Services Branch Inspector.
- (23) In assessing what conduct records are to be provided to the defendant/defendant's counsel as First Party Disclosure, the Disclosure Officer must give broad consideration to:
- (a) the seriousness of an Officer's misconduct;
 - (b) the relevancy of the conduct to the prosecution;
 - (c) the perceived impact of the conducts on the Officer's credibility and reliability;
 - (d) the severity of any resultant discipline;
 - (e) whether or not the conduct related to acting in the capacity of a police officer;
 - (f) whether the Officer conduct was in a significant or peripheral role; and
 - (g) the Officer's judgment, as exercised in relation to the conduct.
- (24) Officers who are informed in writing that their record is to be disclosed during a proceeding will have an opportunity to make a submission challenging the relevancy of the disclosure within 10 calendar days of the notice having been sent to them. If the Officer opts to challenge the disclosure, they or their agent will contact the Disclosure Officer directly for discussion.

Disclosure directly to the defendant

- (25) If the defendant contacts PSS to request disclosure, information may be provided by the Disclosure Officer verbally to the defendant. A record of the information provided must be made, and the Officer witness must be informed in writing that disclosure will be provided.

Disclosure to defendant's counsel

- (26) If the defendant's counsel contacts PSS to request disclosure, the Disclosure Officer may direct the CLO to provide a provincial Form 3 and cover letter to counsel. The Officer witness must be informed in writing that disclosure will be provided.

In court disclosure request

- (27) An Officer who is asked in person, immediately before a hearing or in court, for disclosure in accordance with *R. v. McNeil*, must advise the defendant that:
- (a) the AbbyPD ensures that all McNeil disciplinary records disclosure obligations are complied with; and
 - (b) disclosure requests must be made well in advance of the court hearing, and that the defendant will have to ask the presiding Judicial Justice for an adjournment if the adequacy of disclosure is in dispute.

McNeil disclosure challenges in court

- (28) If a defendant challenges an Officer on their McNeil disclosure in the courtroom, or if the Judicial Justice does not dismiss any further disclosure requests by a defendant, the Officer will:
- (a) advise the Judicial Justice that AbbyPD has procedures to ensure that all McNeil disciplinary records disclosure obligations are complied with; and
 - (b) if necessary, ask that the matter be adjourned in order to seek counsel to address the matter.

APPENDIX A FOLLOWS

APPENDIX A – MCNEIL DISCLOSURE PROCESS

