RESOLUTION #2022-1
National Police Discipline Database
Submitted by the Calgary Police Commission

WHEREAS most provincial legislation and the Royal Canadian Mounted Police Act do not allow for police disciplinary processes to continue after a police officer resigns or retires.

WHEREAS public trust in police accountability requires that police officers facing serious discipline not be able to avoid accountability by moving to a different law enforcement agency.

WHEREAS the processes for background checks on perspective employees and the disclosure of employment records for former employees varies between provinces and law enforcement agencies.

THEREFORE BE IT RESOLVED THAT the Canadian Association of Police Governance advocate for Public Safety Canada to work with the provinces to establish a national database that will centrally track serious misconduct by police officers.

The database should list all officers found guilty of – or who resigned while facing allegations of – improper use of force, corruption, abuse of authority, breach of trust, deceit, or any other misconduct that would reasonably undermine the public's trust in a person's ability to work in law enforcement. The database should be open for all police agencies to access both to input relevant information and to search when experienced officers apply to their agency.

BACKGROUND

Provincial legislation and the Royal Canadian Mounted Police Act typically end disciplinary proceedings against police officers if the officer resigns or retires. There are some exceptions, such as British Columbia, where disciplinary hearings continue after an officer leaves and the penalty that would have been issued is entered on their employment record.

High profile cases of officers resigning prior to disciplinary hearings have, at times, raised questions for the public around how strong the checks and balances are to ensure that officers facing serious discipline cannot just move to a new agency and continue their career. While police agencies typically require that experienced officers consent to disciplinary records being disclosed (including pending discipline), the level of disclosure is not standardized.

A national database would ensure that all agencies can access the same level of information when assessing applicants with prior law enforcement experience, including disciplinary processes that were not completed due to resignation.

RESOLUTION #2022-2
Submitted by the Saskatoon Board of Police Commissioners

WHEREAS the Police Boards & Commissions of Canada have an inherent fundamental duty to encourage, both the wider communities and the police services, in our areas, to unite to make our communities safer. And since the Canadian Association of Chiefs of Police (CACP) two years ago, issued a report which emphatically described the necessity to refine our understanding of how to respond to persons experiencing a substance use disorder. CACP reported that a "compelling case for transformative change in Canada has been made by public health officials. It is clear Canadian public health concurs with the CACP's assessment that to reduce the harm to Canadians caused by untreated substance abuse disorder that "transformative change" is needed, and that public health provides an essential service. Both Canadian public health and CACP agree that the involvement of other government departments and civil society in general are very important as Canada moves from the "crisis" (described by CACP - 2 years ago) to reduced harms and then, to minimal harm. As a result, this "crisis" and Canadians' understanding of the damage done thus far makes it necessary for police boards, as well as others who serve the public, to show Canadians that we are thoughtfully and carefully working to solve this problem. That we are doing this on their behalf and that they may be called upon to work with us.

WHEREAS the overdose crisis resulting mostly from opioid-mixture poisoning has been increasing rapidly in the past few years, killing 26,690 Canadians between January 2016 and September 2021, and resulting in the hospitalisation of 29,288 individuals related to opioid use and 12,877 related to stimulant use. These numbers are staggering, and through family members, friends, colleagues, neighbours, and responders, millions of Canadians are impacted by this crisis. In fact, in April 2022 the Saskatoon Police Service did a thorough review of all opioid charges and deaths in Saskatoon and discovered that 80% of persons who died from (mostly contaminated) opioids had not been previously charged with a criminal charge of possession (s.4(1) CDSA). This indicates that many people are using these dangerous mixtures and that they are not coming forward for help with their disorder, even though it is likely that they will eventually encounter toxic doses.

WHEREAS policing and public health can together reduce some of the harm, a whole community and government approach will be required and while policing is the only reasonable way to interfere with criminal profiteering from the sale of poisonous illicit substances, each individual police service is hampered by the trans-national nature of their trade. And since police officers need to transition from a primarily criminal law response to a response consistent with public health responses and will be the face of incomplete health response during this is a

difficult transition we need the senior governments to urgently work to provide meaningful training for our officers. As well we know that stigma remains a significant barrier to accessing treatment.

WHEREAS we know that the continuation of the use of the criminal justice response to people with a substance abuse disorder is inconsistent with Canadians' responsibility to engage in Reconciliation with Indigenous Peoples.

WHEREAS on May 31, 2022 the Government of Canada agreed with a province's request and announced that in British Columbia there will be no criminal charges for the possession of small amounts of drugs that are consistent with personal use, from January 31, 2023 for 3 years. There are other jurisdictions with pending applications. This action is another proof of the growing consensus in Canada.

THEREFORE BE IT RESOLVED THAT the Canadian Association of Police Governance asks the Government of Canada:

- To urgently complete the work that it committed to in 2018, to provide safe alternatives to the present poisonous illegal supply that are affordable to PWUD (People Who Use Drugs);
- To immediately provide training and support for front-line police staff on assisting PWUD and our communities during the transition;
- To work with all orders of government to assist police boards to engage with our communities to engage unique and consistent responses in our communities that engage all of civic society in this transition;
- To work to reduce stigmatisation of PWUD; and
- To move forward on decriminalisation legislation of simple possession of illicit drugs.

RESOLUTION #2022-3
That The Government Of Canada Amend Section 490 Of The Criminal Code To Keep Pace With Current Technology And Case Law
Submitted by the Vancouver Police Board

WHEREAS Section 490 of the *Criminal Code* provides for a comprehensive scheme for the management, return, or disposition of items that have been seized. Where property seized under Section 489.1 has been brought before a justice or a report has been made to a justice, the court has an obligation under Section 490 to "supervise its detention";

WHEREAS Section 490 of the *Criminal Code* was written at a time when real property was the only type of "thing" seized in an investigation and has not evolved with advancements in forensic analytical technology and case law;

WHEREAS Analysis timelines have increased to the point where 90 days is often not enough time for analytical results to be delivered;

WHEREAS Case law is rapidly evolving to address many issues related to Section 490 of the *Criminal Code* including the timelines allotted for further detention beyond 90 days and a significant expansion beyond “real property” with respect to the type of “thing” that requires application for detention. For example data from a smart phone, a finger print seized at a crime scene, or a strand of DNA seized pursuant to an investigation in the absence of a DNA order (cast off and crime scene);

THEREFORE, BE IT RESOLVED: that the Canadian Association of Police Governance recommends that the Government of Canada amend Section 490 of the *Criminal Code* to keep pace with current forensic analytical technology and case law.

Supplementary Information

The burden of proof from an evidentiary standard in the Canadian courts is significantly higher than most other countries in the world today. The expectation for robust forensic analysis of a significant number of exhibits is high. An average homicide file in the early 2000s would have 50 - 100 exhibits, most of which would be real property. A homicide investigation today has a similar number of real property exhibits, for example a murder weapon or a cellular telephone, but the analysis of the electronic devices and biological evidence associated to the suspect and the real property exhibits have increased at least tenfold. This can lead to a case with more than 1,000 exhibits including DNA swabs, electronic evidence, etc. While the current 90 day detention period of real property is often enough to complete basic processing such as fingerprinting, swabbing for DNA and the imaging of hard drives, it is not sufficient to complete the forensic examination of the sub exhibits generated in the processing phase.

Over the past 20 years, the number of exhibits that require technologically driven processes for analysis has increased significantly as has the complexity of this analysis. Analysis of a cellular telephone in 2000 required the examiner to download the contacts, text messages and the call history. Analysis of a typical smart phone in 2022 requires the download and examination of megabytes, often terabytes of information. Encryption is usually present and causes analytical timelines to be much longer than the 90 days that the Criminal Code allows for initial detention.

The nature and complexity of DNA analysis varies. A submission to the lab may include the examination of multiple exhibits and each of those exhibits may yield multiple samples. While the number of exhibits is known when the request is submitted, the number of viable samples

is only determined in evidence recovery. This, among other factors, contributes to the 90 day limit being insufficient.

In *R v. Gill*, 2021 BCSC 152, investigators were criticized for not clearly stating what they were doing with the seized electronic devices. This has resulted in the need for investigators to seek information from specialty units or outside contractors about what analytical processes are underway and the state of progress. . This information must then be articulated in an affidavit.

In *R v. Teixeira*, 2022 BCSC 344, the courts made a determination that data seized from electronic devices was now subject to section 490. This represents a recent example of the expansion of the type of "thing" that is now subject to a detention order. Now, investigators are required to file a detention order (form 5.2) for the device and on examination of the device must file a new order for the data recovered. This creates a significant administrative burden on investigations where a large number of electronic devices contribute to the evidence. Video evidence from hard drives is also subject to this new decision.