

**NATIONAL
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**FEDERATION
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NATIONALE**

MEMBERS' RIGHTS AND RESPONSIBILITIES

QUICK REFERENCE HANDBOOK

PART VI: SERIOUS INCIDENT INVESTIGATIONS

(RCMP Act, Parts VII.1 and VII.2)

Chapter 1: Defining Serious Incident, Serious Injury, Subject Member, and Witness Member

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“SERIOUS INCIDENT”

(RCMP Act, s. 45.79(1), 45.88(1); OM 54.1, s. 2.5; OM 54.3, s. 2.1.2)

NOTE: A serious incident investigation can be invoked for a member's off-duty conduct.

A serious incident is an on-duty or off-duty incident in which the actions of a member, a person appointed or employed under Part I of the *RCMP Act*, or a person assisting the Force in exercising its powers or performing its duties and functions under the *RCMP Act*, may have:

- resulted in serious injury to, or the death of, any person;

OR

- constituted an offence under federal, provincial, or territorial law, and one or more of the following persons decides that it would be in the public interest to have the incident investigated by a provincial investigative body, or by a police force other than the RCMP:
 - the Minister of Public Safety,
 - the Commissioner of the RCMP, or
 - the provincial minister responsible for policing in the relevant province.

“SERIOUS INJURY”

THE DEFINITION OF “SERIOUS INJURY” VARIES ACROSS CANADA

Determining whether an injury is severe enough to constitute a “*serious injury*” and trigger a serious incident investigation depends on the definition of “serious injury” that applies in the particular province or territory in which the serious incident occurs.

In June 2019, “*serious injury*” was finally defined for the RCMP by the *Regulations Prescribing Physical Injuries*, made pursuant to the *RCMP Act*. Although based on existing provincial definitions, **the new RCMP definition still differs from those used in each province and territory.**

Therefore, the RCMP has agreed that (Regulatory Impact Analysis Statement; AM XII.2, s. 2.1.21; National Guidebook, p. 37):

- **if a province or territory has a more inclusive definition of “*serious injury*”, the RCMP will abide by that definition and apply it to serious incidents involving RCMP members in that province or territory; and**
- **if there is no provincial or territorial definition of “*serious injury*”, or if the provincial or territorial definition is less inclusive, the new RCMP definition will apply.**

As there is no single definition of “*serious injury*” that applies to RCMP members Canada-wide, the definitions used in each province or territory are set out in Chapter 3.

NOTE: Due to the application of differing definitions of “*serious injury*”, it is possible that an incident that would be subject to a serious incident investigation in one province or territory, may not be subject to a serious incident investigation in another province or territory.

RCMP Definition of “Serious Injury”, if Applicable

To be a “serious injury”, the injury (*Regulations Prescribing Physical Injuries*, SOR/2019-260):

- **cannot be transient or trifling** in nature;
- **must have received medical attention** from a person who is entitled to practice medicine or practice as a nurse under the laws of a province; **and**
- **must be** one of:
 - (a) any physical injury that results in
 - (i) a **substantial loss or impairment of mobility of the body**,
 - (ii) a **loss of function**, in whole or in part, **of any limb, organ or other body member**,
 - (iii) a **loss of vision or hearing** in whole or in part, or
 - (iv) a **substantial disfigurement**;
 - (b) **the fracture of a limb, a rib, a vertebra or the skull**; or
 - (c) **any burns, cuts or lacerations to a major portion of the body**.

A serious injury will initially be presumed when the victim is admitted to hospital, suffering from (OM 54.3, s. 2.1.9):

- a fractured limb, rib, vertebra, or skull;
- a gunshot wound;
- burns to a major portion of the body;
- loss of any portion of the body; or
- loss of vision or hearing.

DETERMINATING SUBJECT MEMBERS AND WITNESS MEMBERS

A subject member is a member (OM 54.3, s. 2.1.5):

- whose duties or other actions, in the opinion of the on-scene supervisor or lead investigator, directly or indirectly contributed to a death or serious injury of a person; or
- whose conduct is the subject of a serious incident investigation (ie may have constituted an offence).

A witness member is a member who (OM 54.3, s. 2.1.6.):

- is *not* a subject member;
- is involved, directly or indirectly, in a serious incident under investigation; and
- may have relevant information.

Members will be presumed to be witness members unless there is a reasonable and articulable basis to suspect that a member has committed an offence (OM 54.3, s. 5.1.2).

Either the **on-scene supervisor** (the ranking or senior RCMP member at the scene of a serious incident who is neither a subject member nor a witness member) **or the lead investigator** is responsible for classifying members as either subject members or witness members (OM 54.3, s. 2.1.10, 5.1.5).

ABBREVIATIONS AND REFERENCES

AM XII.2	Administrative Manual, chapter XII.2 – Public Complaints (available on the RCMP Infoweb)
National Guidebook	National Public Complaints Guidebook, November 5, 2014 (available on the RCMP Infoweb)
OM 54.1	Operations Manual, chapter 54.1 – RCMP External Investigation or Review (Sept. 28, 2017) (available on the RCMP Infoweb)
OM 54.3	Operations Manual, chapter 54.3 – Responsibility to Report (Feb. 16, 2015) (available on the RCMP Infoweb)
<i>RCMP Act</i>	<i>Royal Canadian Mounted Police Act</i> , RSC 1985, c R-10, as amended on November 28, 2014, by the <i>Enhancing Royal Canadian Mounted Police Accountability Act</i> , SC 2013, c 18. (online: https://laws-lois.justice.gc.ca/eng/acts/R-10/index.html)
<i>RCMP Regs</i>	<i>Royal Canadian Mounted Police Regulations</i> , 2014, SOR/2014-281. (online: https://laws-lois.justice.gc.ca/eng/regulations/SOR-2014-281/index.html)

*Regulations
Prescribing Physical
Injuries*

Regulations Prescribing Physical Injuries (SOR/2019-260), registered June 25, 2019. (online: <https://laws-lois.justice.gc.ca/eng/regulations/SOR-2019-260/index.html>)

*Regulatory Impact
Analysis Statement*

Regulatory Impact Analysis Statement, Canada Gazette, Part I, Volume 153, Number 15: Regulations Prescribing Physical Injuries (online: <http://www.gazette.gc.ca/rp-pr/p1/2019/2019-04-13/html/reg1-eng.html>)

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PART VI: SERIOUS INCIDENT INVESTIGATIONS

(RCMP Act, Parts VII.1 and VII.2)

Chapter 2: Who Investigates? Investigative Bodies, Police Services, Independent Observers, and Reviewers

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DETERMINING WHO WILL CONDUCT THE SERIOUS INCIDENT INVESTIGATION

A serious incident must be investigated pursuant to either Part VII.1 or, if the serious incident arises in the course of cross-border law enforcement operations, Part VII.2 of the *RCMP Act*.

The investigation, including both the pre-charge and post-charge phases, **may be conducted by a provincial investigative body, by another police force, or, as a last resort, by the RCMP.**

The process for determining who will conduct the investigation is now set out under the *RCMP Act* and RCMP policy (*RCMP Act*, s. 45.8 to 45.82, 45.98; OM 54.1, s. 3.2, 3.4 to 3.9, 4.1):

1. As soon as feasible, the **Commissioner / delegate notifies the designated authority** for the province in which the serious incident is alleged to have occurred.
2. **The provincial designated authority must first consider appointing the investigative body in that province**, if one exists.
3. If the provincial designated authority does not appoint the provincial investigative body, or if there is no provincial investigative body, the **designated authority for the province may appoint a police force**, other than the RCMP, to investigate.
4. **If the provincial designated authority notifies the RCMP that no investigative body or police force will be appointed** to investigate, or if there is no provincial designated authority, the **RCMP shall, as soon as feasible**, taking into account the available expertise and resources of an investigative body or police force, **request an investigative body or a police force to investigate**.
5. **If the investigative body or police force that receives the RCMP's request notifies the RCMP that it will not investigate, and if the RCMP has made reasonable efforts** to identify an appropriate investigative body or police force **but does not consider any other investigative body or police force to be appropriate** to receive such a request, **the RCMP shall investigate**, and the National Public Complaints Directorate (NPCD) shall so notify the CRCC (AM XII.2, s. 12.7; National Guidebook, p. 37).

PROVINCIAL INDEPENDENT INVESTIGATIVE BODIES

British Columbia	Independent Investigations Office of British Columbia (IIO) IIO has an MOU with the RCMP.
Alberta	Alberta Serious Incident Response Team (ASIRT) ASIRT has an MOU with the RCMP.
Saskatchewan	No investigative body. The RCMP must request Saskatchewan's Deputy Minister of Justice to appoint an observer from another police service or another RCMP detachment. The observer monitors the investigation and reports back to the Deputy Minister of Justice (<i>Police Act, 1990, SS 1990-91, c P-15.01, s. 91.1</i>).
Manitoba	Independent Investigation Unit of Manitoba (IIU) No MOU, but cooperates with the RCMP.
Ontario	Special Investigations Unit (SIU) No MOU.
Québec	Bureau des enquêtes indépendantes (BEI) No MOU.
New Brunswick	No investigative body yet. As of Fall 2019, N.B. government looking into creating one. Currently uses SiRT. May also use the Use of Force Investigation Team created by an MOU between "J" Div and the major municipal police services.
Nova Scotia	Serious Incident Response Team (SiRT) SiRT has an MOU with the RCMP
Prince Edward Island	No investigative body. Currently uses SiRT.
Newfoundland & Labrador	Serious Incident Response Team of Newfoundland & Labrador (NLSIRT, new as of Fall 2019) MOU with RCMP being signed.
Yukon	No investigative body. Has an MOU with Alberta to use ASIRT for investigations of RCMP members.
Northwest Territories	No investigative body.
Nunavut	No investigative body. Has MOUs with RCMP to have either Ottawa Police Service or Calgary Police Service investigate RCMP members.

INDEPENDENT OBSERVER – IF RCMP OR OTHER POLICE FORCE INVESTIGATING

When a serious incident investigation is conducted by the RCMP or another police force, the designated authority for the province or the CRCC may appoint an independent **observer to monitor the investigation via direct observation, and assess and report on the impartiality of that investigation** (*RCMP Act*, s. 45.83; OM 54.1, s. 7.1).

CAUTION: INDEPENDENT OBSERVERS ARE COMPELLABLE WITNESSES

A MEMBER'S STATEMENT MADE IN THE PRESENCE OF AN OBSERVER DOES NOT HAVE SUBSEQUENT USE IMMUNITY

Members must exercise caution and avoid making statements in the presence of an independent observer.

Observers are compellable witnesses in every criminal, civil, or administrative action, proceeding, or inquiry, in respect of any matter coming to the knowledge of the observer as a result of exercising a power or performing a duty or function in a serious incident investigation (*RCMP Act*, s. 45.83(6); OM 54.1, s. 7.2).

Members Must Permit Observer to Assess Impartiality of the Investigation

If an observer is appointed by the provincial designated authority or the CRCC, the RCMP **must** permit the observer to assess the impartiality of the serious incident investigation (*RCMP Act*, s. 45.83(2); OM 54.1, s. 3.8, 3.10; AM XII.2, s. 12.8).

If no observer is appointed to assess the impartiality of a serious incident investigation conducted by the RCMP, the **Commissioner must provide** the Chairperson of **the CRCC with a report** that sets out all measures that have been or will be taken to ensure the impartiality of the investigation (*RCMP Act*, s. 45.83(4); OM 54.1, s. 3.11).

Disclosing Privileged Information to an Observer is an Offence

It is an offence for any person to disclose privileged information to an observer (*RCMP Act*, s. 45.86, 50.3; OM 54.1, s. 7.3).

“**Privileged information**” means information that is subject to **any type of privilege** that exists and may be claimed, **including** (*RCMP Act*, s. 45.4(1)):

- information that is protected by **solicitor-client privilege**;
- information that is subject to **informer privilege**;
- **information related to witness protection methods or protected persons**, the disclosure of which is described in subsection 11(1) of the *WPPA*;
- **special operational information** as defined in subsection 8(1) of the *Security of Information Act (SIA)*;
- **information or intelligence** that is similar in nature to special operational information as defined in subsection 8(1) of the *SIA* and that is **in relation to, or is received from, any police force or Interpol or other similar international police organization**; and
- **medical information** about a member or other person appointed or employed by the RCMP.

Maximum Penalties (*RCMP Act*, s. 50.3):

Indictable: **5 years'** imprisonment.

Summary Conviction: fine of **\$5,000**, or **six months'** imprisonment, or **both**.

INDEPENDENT EXTERNAL REVIEW: IF THE RCMP INVESTIGATES A SERIOUS INCIDENT INVOLVING A MEMBER

If the RCMP is conducting or has completed a serious incident investigation, to assess the adequacy of the investigation, the Commissioner / delegate may request, at any point in the investigation, that an independent external review of the investigation be conducted by an appropriately experienced and resourced police force or investigative agency (OM 54.1, s. 3.12, 6.1).

ABBREVIATIONS AND REFERENCES

AM XII.2	Administrative Manual, chapter XII.2 – Public Complaints (available on the RCMP Infoweb)
ASIRT	Alberta Serious Incident Response Team (website: https://www.solgps.alberta.ca/asirt/Pages/default.aspx)
CRCC	Civilian Review and Complaints Commission for the Royal Canadian Mounted Police (website: https://www.crcc-ccetp.gc.ca/)
IIU	Independent Investigation Unit of Manitoba (website: http://www.iiumanitoba.ca/)
National Guidebook	National Public Complaints Guidebook, November 5, 2014 (available on the RCMP Infoweb)
NLSIRT	Serious Incident Response Team for Newfoundland and Labrador (website: TBD)
NPF	National Police Federation
NPCD	National Public Complaints Directorate
OM 54.1	Operations Manual, chapter 54.1 – RCMP External Investigation or Review (available on the RCMP Infoweb)
Ontario SIU	Ontario Special Investigations Unit (website: https://www.siu.on.ca/en/index.php)
Québec BEI	Bureau des enquêtes indépendantes (website: https://www.bei.gouv.qc.ca/)
<i>RCMP Act</i>	<i>Royal Canadian Mounted Police Act</i> , RSC 1985, c R-10, as amended on November 28, 2014, by the <i>Enhancing Royal Canadian Mounted Police Accountability Act</i> , SC 2013, c 18. (online: https://laws-lois.justice.gc.ca/eng/acts/R-10/index.html)
<i>SIA</i>	<i>Security of Information Act</i> , R.S.C., 1985, c. O-5 (online: https://laws-lois.justice.gc.ca/eng/acts/o-5/)
SiRT	Nova Scotia Serious Incident Response Team (website: https://sirt.novascotia.ca/)
<i>WPPA</i>	<i>Witness Protection Program Act</i> , SC 1996, c 15 (online: https://laws-lois.justice.gc.ca/eng/acts/w-11.2/)

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Chapter 3: RCMP-Led Investigations

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MEMBERS' RIGHTS AND RESPONSIBILITIES VARY BY JURISDICTION

NOTE: Members' rights and responsibilities in a serious incident investigation can vary depending on:

- the province or territory in which the serious incident occurs;
- the investigative body or police force conducting the investigation; and
- whether the subject member was on-duty or off-duty at the time of the incident.

In some jurisdictions, member's rights and responsibilities are imposed by provincial legislation and/or MOUs, and may even displace the rights and responsibilities set out in RCMP policy.

When a provincial independent investigative body conducts an investigation in another province or territory, it normally adheres to its own investigative protocol.

Whether a subject member was on-duty or off-duty at the time of a serious incident will determine the scope of their reporting obligations.

This chapter sets out members' rights and responsibilities if the RCMP is conducting the serious incident investigation.

For more information on investigative protocols used in each province and territory, please see Chapter 4 of this Part of the Handbook.

ON-DUTY SERIOUS INCIDENTS: INVOLVED MEMBERS' IMMEDIATE RESPONSIBILITIES (OM 54.3, s. 5.2)

Responsibility to Notify

- notify the **Operational Communications Centre (OCC)** and make appropriate requests for assistance (eg: ambulance and backup); and
- notify a **supervisor** or ask the OCC to notify a supervisor.

Responsibility to Safeguard the Public and Prevent Offences

- provide first aid to any injured person, as required;
- take appropriate steps to prevent the continuation of any offence;

Responsibility to Secure Evidence and Protect the Integrity of the Investigation

- secure the scene;
- secure the evidence, including any intervention equipment and any weapons of opportunity used;
- secure the availability of potential witnesses;
- at your first opportunity, make detailed notes concerning the incident (see OM 25.2);
- refrain from discussing the incident with anyone, except supervisors or duly authorized investigators and **only if** required to do so under the **duty to report or lawful compulsion**.

Responsibility to Report

When requested, a member must provide a **preliminary report** to a supervisor or investigator at the scene.

ON-DUTY SERIOUS INCIDENTS: INVOLVED MEMBERS' DUTY TO REPORT

The duty to report **requires all members, including subject members, to promptly and diligently prepare and file reports** documenting the circumstances of the member's work (*Code of Conduct*, s. 8.1; OM 54.3, s. 1.5).

The duty to report does not seek to compel a member to provide self-incriminating statements (OM 54.3, s. 1.5).

The duty to report means a member's legal, moral and professional obligation to provide a prompt written or verbal report describing (OM 54.3, s. 2.1.1):

- a serious incident;
- the action the member took during the incident;
- their rationale for these actions; and
- any observations made during the course of their duty.

Members are required to report their actions at all times by documenting events in their notebooks and various police reports (OM 54.3, s. 5.1.2).

OFF-DUTY SERIOUS INCIDENTS: SUBJECT MEMBER'S DUTY TO REPORT

In an off-duty incident, the **duty to report requires a member who is under investigation, arrested, or charged** for a breach of any Canadian federal or provincial law, or any foreign law, **to report this fact to a supervisor as soon as feasible** (*Code of Conduct*, s. 8.2).

Members who are suspected of or charged with a statutory offence have all the rights of any Canadian citizen, including the right to counsel and the right to silence.

An off-duty subject member involved in a serious incident cannot be compelled to provide any further information about the incident to on-scene investigators or to their supervisor.

SUBJECT MEMBERS' CHARTER RIGHTS

RCMP Policy Recognizes Subject Members' Charter Rights

If a member is suspected of committing an offence, that member will have all the legal protections accorded to Canadians, and will be treated in accordance with all applicable laws and policies, including (OM 54.3, s. 1.4.2, 5.1.3):

- being advised of their suspect / subject member status;
- being read the Police Caution; and
- if detained or arrested:
 - being informed promptly of the reasons for the detention or arrest (*Charter*, s. 10(a)); and
 - being informed of the right to retain and instruct counsel without delay, and being given the opportunity to do so (*Charter*, s. 10(b)).

SUBJECT MEMBER'S RIGHTS TO A PROCEDURALLY FAIR AND REASONABLY-CONDUCTED INVESTIGATION

Serious incident investigations of RCMP members are to be fair, effective, thorough, impartial, culturally sensitive, and conducted in a timely and diligent manner that promotes public confidence (OM 54.1, s. 1.2, 3.1; OM 54.3, s. 3.1).

Investigators owe a duty of care in negligence to those they are investigating and must act reasonably in conducting the investigation (*Hill v Hamilton-Wentworth Regional Police Services Board*, 2007 SCC 41).

All investigators will first be screened for any actual or perceived conflict of interest (OM 54.1, s. 5.3, 8.1).

If the RCMP undertakes the investigation, to the greatest extent possible (OM 54.1, s. 8.2):

- the rank of the primary investigator will be at least one rank higher than that of all subject members;
- there will be a team of at least two investigators;
- the lead investigator will have the requisite experience and will have completed appropriate training; and
- the investigators' workload will be reassigned or adjusted so as to give priority to the serious incident investigation.

SUBJECT MEMBER'S RIGHTS AND RESPONSIBILITIES UNDER RCMP POLICY

<p>Right to silence (<i>Charter, s.7</i>)</p>	<p style="text-align: center;">YES, except for what is necessary to comply with the duty to provide a preliminary report.</p>
<p>Duty to Provide a Preliminary Report to the On-Scene Supervisor / Lead Investigator</p> <p>A Preliminary Report is (OM 54.3, s. 2.1.3, 4):</p> <ul style="list-style-type: none"> ▪ <u>limited to the information required to form an immediate police response for the purposes of:</u> <ul style="list-style-type: none"> - safeguarding the public; - securing evidence; and - preventing the continuation of offences. ▪ <u>a basic verbal or written account</u> of the circumstances surrounding a serious incident: <ul style="list-style-type: none"> - status, description, and location of the subject(s) and witness(es) involved; - injuries which require medical attention; - other potential dangers; - scene parameters; - identification and location of evidence to be protected; - nature of the event; - behaviour(s) of the subject(s) involved; - identification of intervention tools used; and - if a firearm was discharged, the direction of fire. ▪ consists of the member's direct knowledge, observations, and any other pertinent information related to public safety or security. 	<p style="text-align: center;">YES</p> <p>May be ordered to provide immediately, or very soon after the incident, <i>if</i> preliminary report is required to safeguard the public, preserve evidence, or prevent continuation of offences (OM 54.3, s. 5.1.6, 5.2.1.10, 5.3.1.7)</p> <p><u>Not required to divulge self-incriminating information.</u></p>
<p>Duty to Provide a Detailed Report</p> <p>A Detailed Report is a <u>comprehensive written police report</u> that describes a member's actions and rationales for those actions while performing their duties in a serious incident.</p>	<p style="text-align: center; color: red;">Note: OM 54.3 contains conflicting policy statements:</p> <p style="text-align: center;">NO (OM 54.3, s. 5.1.3)</p>

	<p>YES</p> <p>Must provide within a reasonable time, not to exceed 10 working days, unless prevented from doing so by their health or status in the investigation. Must request extension of time in writing. (OM 54.3, s. 5.1.7)</p>
Duty to answer any follow-up questions re: Detailed Report	NO
Duty to continue to provide detailed reports as required by the investigative team	NO
Duty to comply with on-scene supervisor's / lead investigator's duty to seize all relevant intervention tools, equipment, and other items required as exhibits	<p>YES</p> <p>(OM 54.3, s. 5.1.10)</p>
Charter Right to be informed promptly of reason for a detention or arrest (<i>Charter</i> , s. 10(a))	YES
<p>Charter Right to Counsel: Right to be informed of the right to retain and instruct counsel without delay, and right to be afforded a reasonable opportunity to do so (<i>Charter</i>, s. 10(b))</p> <p>Notes:</p> <p>The right to consult counsel does not include right to have counsel review/approve a member's notes before the member provides a preliminary or detailed report to the investigator (<i>Wood v. Schaeffer</i>, 2013 SCC 71).</p> <p>The same legal counsel cannot represent both a subject member and a witness member.</p>	<p>YES</p> <p>but may yield to the need to first provide a preliminary report.</p> <p>Must be diligent in seeking legal counsel. After 10 working days, may be ordered to provide a Detailed Report</p>
<p>Reasonable opportunity to diligently seek necessary support / advice / counselling, which should be done <u>within 10 days</u>:</p> <ul style="list-style-type: none"> ▪ medical ▪ psychological ▪ emotional ▪ spiritual ▪ Peer-to-Peer Coordinator ▪ NPF representative ▪ Employee Assistance Services (EAS) at 1-800-268-7708 	<p>YES,</p> <p>after the immediate police responsibilities of safeguarding the public, securing evidence, and preventing the continuation of offences have been discharged (OM 54.3, s. 5.1.6)</p>

ON-DUTY SUBJECT MEMBER MAY APPLY FOR LEGAL ASSISTANCE AT PUBLIC EXPENSE

When a member is involved in a serious on-duty incident, under the Treasury Board's *Policy on Legal Assistance and Indemnification*, legal assistance at public expense (LAPE) may be available to assist with the legal costs of the member's criminal or civil defence, and/or the member's appearance at a proceeding inquiring into the incident.

When a member is defending themselves in a matter arising from their on-duty actions, the RCMP **may** provide assistance to pay for some or all of the member's legal expenses when the member is (TB Policy, s. 6.1.6):

- charged or likely to be charged with an offence;
- sued or threatened with a suit;
- named in a legal action or under threat of being named in a legal action; or
- faced with serious personal liability before any court, tribunal or other judicial body.

To qualify for LAPE to defend themselves, a member involved in a serious on-duty incident must either (TB Policy, s. 6.1.5, 6.1.8):

- **meet three basic criteria**: they acted within the scope of their duties or course of employment, acted in good faith, and did not act against the interests of the Crown; **or**
- **if they do not meet one or more of the above three basic criteria, there are exceptional circumstances** such that the approval authority, after consulting the Advisory Committee on Legal Assistance and indemnification, considers that it would be in the public interest to approve the member's request.

In addition, if a member is requested or compelled to appear in connection with a parliamentary proceeding, a commission of inquiry, an inquest, or other similar proceeding concerning events where the member was acting within the scope of their duties or in the course of their employment, the RCMP **may** grant legal assistance **if it is in the public interest to have the member appear** (TB Policy, s. 6.1.9).

WITNESS MEMBERS' RIGHTS AND RESPONSIBILITIES UNDER RCMP POLICY

<p>Right to silence</p>	<p style="text-align: center;">YES, except for what is required to comply with the duty to report and the <i>Code of Conduct</i>.</p>
<p>Duty to Provide a Preliminary Report to the On-Scene Supervisor / Lead Investigator</p> <p>A Preliminary Report is (OM 54.3, s. 2.1.3, 4):</p> <ul style="list-style-type: none"> ▪ <u>limited to the information required to form an immediate police response for the purposes of:</u> <ul style="list-style-type: none"> - safeguarding the public; - securing evidence; and - preventing the continuation of offences. ▪ <u>a basic verbal or written account</u> of the circumstances surrounding a serious incident: <ul style="list-style-type: none"> - status, description, and location of the subject(s) and witness(es) involved; - injuries which require medical attention; - other potential dangers; - scene parameters; - identification and location of evidence to be protected; - nature of the event; - behaviour(s) of the subject(s) involved; - identification of intervention tools used; and - if a firearm was discharged, the direction of fire. ▪ consists of the member's direct knowledge, observations, and any other pertinent information related to public safety or security. 	<p style="text-align: center;">YES</p> <p style="text-align: center;">Immediately, unless the on-scene supervisor / lead investigator determines there are exceptional circumstances (OM 54.3, s. 5.1.8, 5.2.1.9, 5.3.1.6)</p>
<p>Duty to Provide a Detailed Report</p> <p>A Detailed Report is a <u>comprehensive written police report</u> that describes a member's actions and rationales for those actions while performing their duties in a serious incident.</p>	<p style="text-align: center;">YES</p> <p style="text-align: center;">Must provide at the first reasonable opportunity after the incident and before going off-duty, unless there are exceptional circumstances (OM 54.3, s. 5.1.8)</p>

Duty to answer any follow-up questions re: Detailed Report	YES (OM 54.3, 5.1.8, 5.2.1.9)
Duty to continue to provide detailed reports as required by the investigative team	YES (OM 54.3, s. 5.1.8, 5.2.1.9)
Duty to comply with on-scene supervisor's / lead investigator's duty to seize all relevant intervention tools, equipment, and other items required as exhibits	YES (OM 54.3, s. 5.1.10)
Charter Right to be secure against <u>unreasonable</u> search & seizure (Charter, s. 8)	YES
<p>Charter Right to Counsel: Right to be informed of the right to retain and instruct counsel without delay, and right to be afforded a reasonable opportunity to do so (Charter, s. 10(b))</p> <p>Notes:</p> <p>The right to consult counsel does not include right to have counsel review/approve a member's notes before the member provides their preliminary or detailed report to the investigator (Wood v. Schaeffer, 2013 SCC 71).</p> <p>The same legal counsel cannot represent both a subject member and a witness member.</p>	<p>NO</p> <p>But generally, witness members are provided with an opportunity to consult counsel.</p>
<p>Reasonable opportunity to diligently seek necessary support / advice / counselling, which should be done <u>within 10 days</u>:</p> <ul style="list-style-type: none"> ▪ medical ▪ psychological ▪ emotional ▪ spiritual ▪ Peer-to-Peer Coordinator ▪ NPF representative ▪ Employee Assistance Services (EAS) at 1-800-268-7708 	YES

ABBREVIATIONS AND REFERENCES

AM XII.2	Administrative Manual, chapter XII.2 – Public Complaints (available on the RCMP Infoweb)
<i>Charter</i>	<i>Canadian Charter of Rights and Freedoms</i> , Part I of the <i>Constitution Act, 1982</i> , being Schedule B to the <i>Canada Act 1982</i> (UK), 1982, c 11. (online: https://laws-lois.justice.gc.ca/eng/Const/page-15.html)
LAPE	Legal Assistance at Public Expense
National Guidebook	National Public Complaints Guidebook, November 5, 2014 (available on the RCMP Infoweb)
NPF	National Police Federation
OM 54.1	Operations Manual, chapter 54.1 – RCMP External Investigation or Review (Sept. 28, 2017) (available on the RCMP Infoweb)
OM 54.3	Operations Manual, chapter 54.3 – Responsibility to Report (Feb. 16, 2015) (available on the RCMP Infoweb)
<i>RCMP Act</i>	<i>Royal Canadian Mounted Police Act</i> , RSC 1985, c R-10, as amended on November 28, 2014, by the <i>Enhancing Royal Canadian Mounted Police Accountability Act</i> , SC 2013, c 18. (online: https://laws-lois.justice.gc.ca/eng/acts/R-10/index.html)
<i>RCMP Regs</i>	<i>Royal Canadian Mounted Police Regulations</i> , 2014, SOR/2014-281. (online: https://laws-lois.justice.gc.ca/eng/regulations/SOR-2014-281/index.html)
<i>Regulations Prescribing Physical Injuries</i>	<i>Regulations Prescribing Physical Injuries</i> (SOR/2019-260), registered June 25, 2019. (online: https://laws-lois.justice.gc.ca/eng/regulations/SOR-2019-260/index.html)
<i>Regulatory Impact Analysis Statement</i>	<i>Regulatory Impact Analysis Statement</i> , Canada Gazette, Part I, Volume 153, Number 15: Regulations Prescribing Physical Injuries (online: http://www.gazette.gc.ca/rp-pr/p1/2019/2019-04-13/html/reg1-eng.html)
TB Policy	Treasury Board Policy on Legal Assistance and Indemnification (April 23, 2012) (online: https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=13937)

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Jill Gunn, LL.B., LL.M., Barrister and Solicitor, for compiling this Handbook.

**NATIONAL
POLICE
FEDERATION**



**FEDERATION
DE LA POLICE
NATIONALE**

MEMBERS' RIGHTS AND RESPONSIBILITIES

QUICK REFERENCE HANDBOOK

PART VI: SERIOUS INCIDENT INVESTIGATIONS

(RCMP Act, Parts VII.1 and VII.2)

Chapter 4: Investigative Protocols by Province and Territory

**The mission of the National Police Federation is
to provide strong, professional, fair and progressive representation
to promote and enhance the rights of RCMP members.**

**The National Police Federation
encourages all members to be aware of their
rights and responsibilities.**

***The information in this chapter does not constitute legal advice.
A member may become involved in a serious incident investigation as a
subject member, a witness member, a supervisor, or even as an
investigator. Members involved in a serious incident investigation are
advised to consult a lawyer or an NPF representative.***

While every effort has been made to ensure accuracy, in the event of any discrepancies or errors, the relevant provisions of the *RCMP Act* and applicable federal and provincial statutes govern.

British Columbia

Independent Investigations Office of British Columbia (IIO)

LEGAL FRAMEWORK

- *RCMP Act*, s. 45.79 to 45.82.
- *Police Act*, RSBC 1996, c 367

Under B.C.'s *Police Act*, the RCMP is deemed to be the provincial police force, every RCMP member is deemed to be a provincial constable. Subject to the Agreement between the governments of B.C. and Canada, the provisions of the BC *Police Act* respecting powers and duties of the provincial police force and of provincial constables, including the duty to cooperate with the IIO in serious incident investigations, apply to the RCMP and its members (*Police Act*, s. 14(2), 38.101).

- Memorandum of Understanding (MOU) between the IIO and the RCMP, February 2013.

DEFINITIONS

Serious Incident

Where it appears that, or where there is evidence that, a member, **whether on or off duty**, may have (B.C. *Police Act*, s. 38.09 and 38.10):

- caused the **death** of a person;
- caused a person **serious harm**; or
- contravened a prescribed provision of the *Criminal Code* or a prescribed provision of another federal or provincial enactment.

Serious Harm

“**Serious harm**” means injury that (*Police Act*, s. 38.01 and 76):

- may result in death;
- may cause serious disfigurement; or
- may cause substantial loss or impairment of mobility of the body as a whole or of the function of any limb or organ.

Applies to On-Duty and Off-Duty Members in B.C., Whether from Within or Outside B.C.

(B.C. *Police Act*, s. 38.09(1); MOU, s. 3.2)

“On-duty officer” includes:

- any RCMP member from outside B.C. who is on duty in B.C.; and
- any police officer from outside B.C. who has been designated as a special provincial constable.

“Off-duty officer” includes:

- any RCMP member from outside B.C. who is off-duty in B.C.; and
- any police officer from outside B.C. who has been designated as a special provincial constable and is off-duty in B.C.

DUTY TO NOTIFY CORONER

Duty to Notify Coroner Immediately in Case of Death

The attending police service (and not the IIO) is responsible for notifying the coroner upon locating any deceased persons (MOU, s. 4.4, 13.2).

DUTY TO NOTIFY THE INDEPENDENT INVESTIGATIONS OFFICE OF BRITISH COLUMBIA (IIO)

Circumstances Requiring Notification Are Broader than the IIO's Mandate

Every police service **must** immediately notify the IIO whenever its on-duty officers attend (B.C. *Police Act*, s. 38.09; MOU, s. 3.1):

- any incident where there is a reasonable belief that the **presence, action, or decision of an on-duty officer**:
 - may have been a contributing factor in the death of any person (including in-custody deaths);
 - may have been a contributing factor in a life-threatening injury to any person;
 - may cause disfigurement (permanent change in appearance), if there were no medical intervention; or
 - may cause permanent loss or impairment of any function or mobility of the body, if there were no medical intervention;
- any **discharge of a firearm by an on-duty officer where** there is a reasonable belief that **any person (including an officer) may have been injured**; and
- any incident where there is a reasonable belief that the action of an **off-duty officer**
 - may have been a contributing factor in the death of any person;

- may have been a contributing factor in a life-threatening injury to any person;
- may cause disfigurement (permanent change in appearance), if there were no medical intervention; or
- may cause permanent loss or impairment of any function or mobility of the body, if there were no medical intervention.

DUTIES TO SECURE THE SCENE, LIMIT COMMUNICATIONS, COOPERATE WITH INFORMATION COLLECTION, AND COOPERATE WITH THE IIO

If the RCMP Notified the IIO, RCMP Has a Duty to Secure the Scene and Preserve Evidence

The RCMP must take all lawful measures that appear necessary or expedient for the purposes of obtaining and preserving evidence relating to the incident (*B.C. Police Act*, s. 38.09(2); MOU, s. 7, 8).

Duty of Members Involved in or Present During a Serious Incident Must Limit Communications

To prevent contamination of evidence, before being interviewed by an IIO investigator, **any member involved in or present during an incident** that may fall within the jurisdiction of the IIO **must not communicate their accounts or recollections of the incident, either directly or indirectly, to anyone other than an IIO investigator, except for** communication that is necessary for (MOU, s. 15.1, 15.3):

- public safety;
- obtaining medical care for injured persons;
- securing or identifying evidence;
- furthering concurrent investigations;
- obtaining advice from legal counsel or an NPF representative;
- obtaining health care for an officer; or
- any other purpose that is agreed upon by the IIO investigator and the police service liaison officer.

Involved Members' Duty to Cooperate with Collection of Information for IIO Liaison Officer/ Uninvolved Senior Officer to Compile Scene Reports / Safety Reports for the IIO

After the IIO asserts jurisdiction over a serious incident investigation, to ensure public safety and to secure evidence, all **involved members must**, wherever practicable, **cooperate with the collection of the following information** to enable the **RCMP/IIO liaison officer / senior officer** who was not involved in or present during the incident to compile the information at the earliest opportunity, and convey the information to the IIO (MOU, s. 16):

- injuries to anyone;

- status, location, and identity of subjects (police and civilians);
- unlocated subjects;
- other dangers;
- parameters / boundaries of the scene;
- location of all evidence to be protected or collected, including but not limited to objects, documents, witness statements, and data;
- status, location, and identity of witnesses (police and civilian); and
- name(s) of any person(s) with whom any involved officer has spoken since the incident.

Duty to Cooperate Fully with the IIO

RCMP members must cooperate fully with the Chief Civilian Director (CCD) of the IIO and IIO investigators when they are exercising their powers or performing their statutory duties (B.C. *Police Act*, s. 38.101).

**RIGHT TO NOTIFICATION OF DESIGNATION AS
A SUBJECT MEMBER OR A WITNESS MEMBER**

As soon as practicable, the IIO investigator **must designate all officers** involved in or present during the incident as either subject officers or witness officers, **must notify those officers** of their designation, and **must subsequently confirm those designations in writing** (MOU, s. 14.1).

Member's Right to Immediate Notification of Any Change in Subject/Witness Designation

The IIO must immediately advise a member if the member's designation has changed from witness member to subject member, or from subject member to witness member. The IIO must subsequently provide written notice of the change (MOU, s. 14.4, 18.1, 19.2).

PROVISION OF WITNESS MEMBER'S NOTES, REPORTS OR DATA

Before requesting a witness member's notes, reports or data, the IIO investigator **must** advise the member that they have been designated as a witness member (MOU, s. 17.1).

A witness member must submit copies of their notes, reports, and data to the IIO investigator by the end of the shift during which the on-duty incident occurred, unless the IIO investigator determines that there are exceptional circumstances (MOU, s. 17.2).

PROVISION OF SUBJECT MEMBER'S NOTES, REPORTS OR DATA

Before requesting any information from a subject member, the IIO investigator **must** advise the member that they have been designated as a subject member (MOU, s. 17.1).

No Duty to Provide Notes, Reports or Data that Include a Subject Member's Compelled Statements

A subject member **is not compelled to submit** to IIO investigators, and **IIO investigators must not accept**, a subject member's notes, reports, or data which include **compelled statements by subject members** (MOU, s. 17.4).

Duty to Provide Portions of Notes, Reports or Data that Include Witness Statements Made to the Subject Member

A subject member **must submit** copies of any portions of their notes, reports, and data which indicate or record **statements made to the subject member by any witness**, which must be submitted to the IIO investigator **by the end of the shift** during which the on-duty incident occurred, unless the IIO investigator determines that there are exceptional circumstances (MOU, s. 17.3).

**MEMBERS' STATEMENTS MADE IN AN IIO INVESTIGATION
ARE
INADMISSIBLE IN CIVIL PROCEEDINGS
AGAINST THE MEMBER**

NOTE: A statement provided or an answer given by a member during an IIO investigation, and any evidence of the existence of a statement provided or answer given, is **inadmissible in evidence in a civil proceeding for remedies against the member** in relation to the matter under investigation (B.C. *Police Act*, s. 38.102).

WITNESS MEMBER INTERVIEWS

When requesting an interview, and at the beginning of every interview, the IIO investigator **must advise the member of their designation as a witness member** (MOU, s. 18.1).

Pre-Interview Disclosure of Information

The provision of pre-interview disclosure to a witness member is at the discretion of the IIO (*Independent investigations Office of British Columbia v Vancouver (City) Police Department*, 2018 BCSC 1804, at para 165).

Location of Interview

The location of an interview is **determined by IIO investigators** (MOU, s. 18.4).

Scheduling of Witness Interviews

Unless otherwise determined by the IIO investigator, a **witness member must participate in an interview** (MOU, s. 18.2):

- **before the end of the witness member's shift; or**
- if the IIO investigator agrees, **within 24 hours** of being contacted by the IIO; or
- **at any other time as agreed by the IIO investigator; and**
- **on any additional occasions** as determined by the IIO investigator.

Attendance of Legal Counsel and/or NPF Representative

Attendance of a **witness member's** legal counsel and/or NPF representative at the IIO interview is at the discretion of the IIO (*Independent investigations Office of British Columbia v Vancouver (City) Police Department*, 2018 BCSC 1804, at para 165).

Interview Must be Recorded (MOU s. 18.5)

The IIO investigator may request that the interview be video-recorded.

If the witness member declines to be video-recorded, the interview will be audio-recorded.

If the interview is audio-recorded only:

- the witness member must assist the IIO investigator in video-recording any places or things that are relevant to the investigation; and
- the witness member will not be video-recorded (unless the member consents), except that **any physical demonstration by the member must be video-recorded.**

Duty to Answer Questions

A witness member **must answer** an IIO investigators' questions (MOU, s. 18.3).

SUBJECT MEMBER INTERVIEWS

**Subject members have the same rights and freedoms as every person in Canada,
and the benefit of all applicable law, including but not limited to:**

**THE RIGHT TO SILENCE
and
THE RIGHTS UNDER SECTION 10 OF THE *CHARTER***

(MOU, s. 19.3)

IIO Investigators are required to seek to conduct video-recorded ***voluntary* interviews** with subject members (MOU, s. 19.3), **but cannot compel** a subject member to participate in an interview.

When requesting an interview, and at the beginning of every interview, the IIO **investigator must advise the member of their designation as a subject member** (MOU, s. 18.1).

If a Subject Member Chooses to Participate in an IIO Interview

To make it clear that the subject member is not compelled to say anything to IIO investigators, and that the subject member's voluntary statements and interviews can be used in evidence in any proceeding, **IIO investigators must provide subject members with** (MOU, s. 19.4):

- the **“Official Warning”** at the beginning of every interview; and
- the **“Written Statement Caution”** before accepting any written statement from a subject member.

MANDATORY AND PERMISSIBLE DISCLOSURE OF PERSONAL INFORMATION COLLECTED BY IIO INVESTIGATORS

IIO's Duties to Share Investigative Information with the RCMP

If the Chief Civilian Director (CCD) of the IIO considers that there may have been on-duty or off-duty **misconduct** by an RCMP member, the CCD **must** inform the RCMP and must provide any relevant records (MOU, s. 20.3).

Subject to all applicable laws, at the conclusion of each IIO investigation involving an RCMP member, the IIO **must provide a copy of its investigative file to the RCMP** for the purposes of internal proceedings and any subsequent proceedings (MOU, s. 20.4).

Possibility of IIO Website Publication of Member's Name and Incident Information

The CCD may post the following information on the IIO's website (B.C. *Police Act*, s. 38.121(2)):

- a summary of an incident;
- a description of the resources that the IIO has assigned to an investigation of the incident;
- after concluding an investigation, a statement indicating whether the IIO has reported the matter to Crown counsel; or
- if the matter has not been reported to Crown counsel, a summary of the results of the investigation.

Incident information posted on the IIO website **must not disclose personal information about a member, a victim, a witness or another person** who may have been involved in the matter investigated, **unless** the person to whom the information relates has been notified, if practicable; **and either** (B.C. *Police Act*, s. 38.121(3) to (5)):

- **the person consents** to the disclosure; or
- in the opinion of the CCD, **the public interest in disclosure outweighs the privacy interests of the person.**

Alberta

The Alberta Serious Incident Response Team (ASIRT)

LEGAL FRAMEWORK

- *RCMP Act*, s. 45.79 to 45.82.
- *Police Act*, RSA 2000, c P-17, and associated Regulations:
Under Alberta's *Police Act* and the *Police Service Regulation 356/90*, the provisions concerning serious incident investigations apply to the RCMP and its members (*Police Act*, s. 1(k)(ii), 1(n), 45.(0.1)).
- Memorandum of Understanding between Alberta/ASIRT and the RCMP, dated February 21, 2019 (MOU)

DEFINITIONS

Serious Incident or Complaint

A serious incident or complaint includes (Alta. *Police Act*, s. 46.1(1)):

- an incident involving, or a complaint alleging, **serious injury to or the death of any person** that may have resulted from the actions of a police officer; or
- a complaint alleging that there is **a matter of a serious or sensitive nature related to the actions of a police officer**.

Serious Injury

The Alberta Serious Incident Response Team (ASIRT) Website states:

“**Serious Injury**” shall include injuries likely to interfere with the health or comfort of the person and are more than merely passing or trivial in nature.

A **serious Injury** **shall initially be presumed** when the person is either admitted for a stay in hospital or suffers severe trauma to the body (or both) with the injury including, but not limited to:

- a fracture or combination of fracture and severe trauma to a limb, rib, or vertebrae or to the skull including the probability of a head injury;
- burns or abrasions to a major portion of the body;
- loss of any portion of the body;
- loss of mobility (paralysis) of any portion of the body;

- loss of vision or hearing;
- injury to any internal organ;
- loss of consciousness brought about by a state of extreme mental distress, prolonged agitation and/or combative behaviour which collectively may be classified as symptoms of a state of excited delirium.

Serious Injury shall be presumed in instances where a prolonged delay may be likely before the nature and seriousness of injury can be assessed.

Serious injury will be presumed in ALL instances where:

- sexual assault is alleged; or
- a gunshot wound of any degree of severity is sustained by a person as a result of a firearm fired by a police officer.

Applies to On-Duty and Off-Duty Members

There is no stipulation that a serious incident or complaint must pertain to on-duty actions of a police officer. Therefore, an off-duty incident may be subject to a serious incident investigation.

DUTY TO NOTIFY ALBERTA'S DIRECTOR OF LAW ENFORCEMENT

In the event of a serious incident, as soon as practicable, the RCMP **must** notify Alberta's Director of Law Enforcement (DLE) (*Police Act*, s. 46.1(1)).

The DLE will decide whether to deploy ASIRT or another police service to investigate the incident (*Alta. Police Act*, s. 46.1(2); MOU, s. 2.5; ASIRT website).

Possible Levels of ASIRT Engagement

The level of ASIRT's engagement in a serious incident investigation involving an RCMP member will be one of the following (MOU, s. 3.1 and Appendix A):

- leading the investigation;
- overseeing an investigation conducted by another police service;
- reviewing an investigation conducted by another police service, normally after the investigation has been completed; or
- overseeing and reviewing an investigation conducted by another police service.

DUTIES TO SECURE THE SCENE, SEGREGATE INVOLVED MEMBERS, AND TO ASSIST ASIRT WHERE POSSIBLE

If RCMP Notifies Minister of Serious Incident, RCMP Duty to Secure Scene and Preserve Evidence

Pending ASIRT or another police service taking charge of the investigation, the RCMP **must** ensure that the scene is secured in a manner consistent with the RCMP's policies and usual practices for serious incidents (*Reg.*, s. 10.2; MOU, s. 4.2).

Mandatory Segregation of Police Officers

Where the DLE has requested or directed a serious incident investigation, the RCMP **must, to the extent that is practicable, segregate all involved members** from each other until ASIRT/the investigating police service has finished interviewing all involved members (*Reg.*, s. 10.3(1); MOU, s. 4.3).

Duty of Each Involved Member to Not Communicate Details of the Incident to Any Other Involved Member

A member involved in a serious incident **must not** have any communication about the details of the incident with any other member involved in the incident until after ASIRT/the investigating police service has finished interviewing all involved members (*Reg.*, s. 10.3(2)).

ASIRT Liaison Officers

The Serious Crime Operational Officers in "K" Division/delegates are the designated liaison officers for coordinating the participation of the RCMP and ASIRT in every serious incident investigation (MOU, s. 4.1).

RCMP to Assist ASIRT Investigators

Where possible, the RCMP will assist ASIRT investigators by carrying out assigned tasks as requested by ASIRT, including but not limited to (MOU, s. 4.5):

- obtaining witness identification details;
- ensuring the initial retrieval/seizure and processing of evidence;
- conducting door-to-door/neighbourhood canvassing;
- providing initial forensic identification services assistance, including photography, initial evidence collection and analysis;
- assigning expert traffic investigation/reconstruction assistance, where applicable;
- to the extent possible, providing initial facility/accommodation assistance, including holding cells, interview room(s), and a command post; and
- notifying next of kin.

RIGHT TO NOTICE OF DESIGNATION AS SUBJECT MEMBER OR WITNESS MEMBER

Before a member is asked to provide copies of their notes, or to submit to an interview, **the person in charge of the investigation must first** (*Reg.*, s. 10.6(1)(a)):

- **determine** whether the member is designated as a subject member or a witness member; **and**
- **advise the member in writing of their designation** as a subject member or a witness member.

Member's Right to Notification of Any Change in Subject/Witness Designation

The person in charge of the investigation **must advise the subject member or the witness member in writing** if, at any time after the member was designated, it is determined that the subject member is now a witness member, or that the witness member is now a subject member (*Reg.*, s. 10.6(2)).

Re-Designated Subject Member's Right to Return of Interview Record and Police Notes

If, after being interviewed and providing copies of their police notes, a witness member is re-designated as a subject member, **the person in charge of the investigation must** (*Reg.*, s. 10.3(3)):

- give the subject member the original and all copies of the record of their interview; and
- give the RCMP the original and all copies of the subject member's police notes.

WITNESS MEMBER'S NOTES MUST BE PROVIDED

A witness member **must** (*Reg.*, s. 10.4(2) to (4)):

- **complete their police notes in full** in accordance with RCMP procedures; **and**
- **when requested** by ASIRT/the investigating police service, **provide their notes** to the RCMP for forwarding to ASIRT/the investigating police service **within 24 hours of the request**, or within any extended time period granted.

SUBJECT MEMBER'S NOTES MUST NOT BE PROVIDED WITHOUT THEIR CONSENT

A subject member **must** complete their police notes in full (*Reg.*, s. 10.5).

A subject member is **not required to provide their police notes** to ASIRT/the investigating police service (*Reg.*, s. 10(6)).

No other person may provide a subject member's notes to ASIRT/the investigating police service without the subject member's express permission (*Reg.*, s. 10(6)).

WITNESS MEMBER INTERVIEWS

Scheduling of Witness Interviews

The person in charge of the investigation/delegate may direct a witness member to attend at an interview and answer questions, and the **witness member must attend** (*Reg.*, s. 10.5(1) to (3)):

- **immediately;**
- **no later than 24 hours after the request**, if there are appropriate grounds for a delay; **or**
- **at a later time** that the person in charge of the investigation/delegate requests.

Interview to be Recorded

Where practicable, witness member interviews must be audio or video-recorded (*Reg.*, s. 10.5(4)).

The witness member must be provided with a copy of any recording made of the interview (*Reg.*, s. 10.5(5)).

SUBJECT MEMBER INTERVIEWS

**Subject members have the same rights and freedoms as every person in Canada,
and the benefit of all applicable law, including but not limited to:**

**THE RIGHT TO SILENCE
and
THE RIGHTS UNDER SECTION 10 OF THE *CHARTER***

ASIRT AND RCMP INVESTIGATIVE INFORMATION: SHARING, PROTECTING, AND RELEASING TO THE MEDIA

ASIRT and RCMP to Share Investigative Information

Subject to ongoing investigative considerations and the requirement to act lawfully, the RCMP will promptly disclose to ASIRT investigative file materials as necessary for ASIRT to conduct its investigation (MOU, s. 4.8), and ASIRT will promptly disclose to the RCMP investigative file materials related to collateral investigations (MOU, s. 5.4).

Protection of Information

ASIRT and the RCMP must share, store, use, and disclose information in accordance with the Canadian *Privacy Act* (MOU, s. 8, 9).

RCMP Must Not Release of Serious Incident Information Without ASIRT's Permission

In ASIRT-led investigations, **the RCMP must not release to the media any information regarding the matter without first consulting with and obtaining the express permission of the ASIRT Executive Director** (MOU, s. 7.5).

Any information the RCMP does release must be limited to the facts that (MOU, s. 7.7):

- an incident occurred;
- the DLE was notified;
- the DLE has assigned ASIRT to an investigation;
- the nature of the initially responded to, or the manner in which an allegation came to light;
- whether there are any continuing public safety concerns;
- the health and/or welfare of any involved member(s);
- the duty status of an involved member;
- the impact of an incident on the police service; and
- that ASIRT will now be the sole point of contact for media inquiries and for the dissemination of information relating to the ASIRT investigation.

Saskatchewan

LEGAL FRAMEWORK

- *RCMP Act*, s. 45.79 to 45.82.
- *The Police Act, 1990*, c P-15.01
- *The Police Regulations*, c P-15.01 Reg 7.

DEFINITIONS

Serious Incident

An incident in which **a person has suffered a serious injury or has died** (*The Police Act*, s. 91.1(1)):

- **while in the custody** of an RCMP detachment; **or**
- **as a result of the actions of a member** of an RCMP detachment.

Serious Injury

As there is no provincial definition, the RCMP definition applies (*Regulations Prescribing Physical Injuries*, SOR/2019-260):

To be a “serious injury”, the injury:

- **cannot be transient or trifling** in nature;
- **must have received medical attention** from a person who is entitled to practice medicine or practice as a nurse under the laws of a province; **and**
- **must be** one of:
 - (a) any physical injury that results in
 - (i) a **substantial loss or impairment of mobility of the body**,
 - (ii) a **loss of function**, in whole or in part, **of any limb, organ or other body member**,
 - (iii) a **loss of vision or hearing** in whole or in part, or
 - (iv) a **substantial disfigurement**;
 - (b) **the fracture of a limb, a rib, a vertebra or the skull**; or
 - (c) **any burns, cuts or lacerations to a major portion of the body**.

A serious injury will initially be presumed when the victim is admitted to hospital, suffering from (OM 54.3, s. 2.1.9):

- a fractured limb, rib, vertebra, or skull;
- a gunshot wound;
- burns to a major portion of the body;
- loss of any portion of the body; or
- loss of vision or hearing.

**DUTY TO REQUEST THAT THE DEPUTY MINISTER OF JUSTICE
APPOINT AN INVESTIGATION OBSERVER
(*The Police Act*, s. 91.1(1))**

In the event of a serious incident, the RCMP detachment **must, as soon as reasonably possible, request Saskatchewan's Deputy Minister of Justice to appoint an investigation observer**, who is a serving or retired member from another police service or another RCMP detachment (*The Police Act*, s. 91.1(2)).

If an investigation observer is appointed, **the observer must be granted full access** to the serious incident investigation being conducted (*The Police Act*, s. 91.1(3)(a)).

The observer must provide a confidential report to Saskatchewan's Deputy Minister of Justice respecting the results of the serious incident investigation. **The observer's confidential report is not subject to ATIP requests** (*The Police Act*, s. 91.1(3)(b) and (4)).

Manitoba

Independent Investigation Unit of Manitoba (IIU)

LEGAL FRAMEWORK

- *RCMP Act*, s. 45.79 to 45.82.
- *Police Services Act*, CCSM c P94.5.
- *Independent Investigations Regulation*, 99/2015
- *Civilian Monitor Regulation*, 100/2015
- *Police Services Agreement(s)*

DEFINITIONS

Serious Incident

A serious incident is **an incident** where it appears that, **whether** an RCMP member or other police officer was **on-duty or off-duty at the time of the incident** (*Police Services Act*, s. 65(1) and (2); *Independent Investigations Regulation*, s. 1(2)):

- the **death** of a person may have resulted from the actions of that RCMP member or other police officer;
- a **serious injury** to a person may have resulted from the actions of that RCMP member or other police officer;
- that RCMP member or other police officer **may have contravened one of the following provisions of the Criminal Code**:
 - s. 131 (perjury);
 - s. 136 (giving contradictory evidence);
 - s. 137 (fabricating evidence);
 - s. 139 (obstructing justice); or
- that RCMP member or other police officer may have contravened **a prescribed provision of a federal or provincial enactment**.

Serious Injury

Serious injury means (*Independent Investigations Regulation*, s. 1(1)):

- a fracture of the skull, jaw, vertebrae, rib, humerus, radius, ulna, femur, tibia, or fibula;
- burns, cuts or lacerations that require admission to a hospital on an in-patient basis;
- the loss of any part of the body;

- the loss of vision or hearing;
- internal injuries that require admission to a hospital on an in-patient basis; or
- any injury caused by the discharge of a firearm.

MANITOBA MINISTER OF JUSTICE MAY ASSIGN RCMP MEMBERS TO CONDUCT A SERIOUS INCIDENT INVESTIGATION

Despite any other provisions in the *Police Services Act* or the *Independent Investigations Regulation*, if the Manitoba Minister of Justice considers it to be in the interests of the administration of justice, the Minister may assign RCMP members to conduct a serious incident investigation that would normally be conducted by the IIU or another police service (*Police Services Act*, s. 20).

DUTY TO NOTIFY THE INDEPENDENT INVESTIGATIVE UNIT (IIU) OF A SERIOUS INCIDENT

Member's Duty to Notify CO

If an RCMP member is at the scene of what appears to be a serious incident, the **member must immediately notify the CO** (*Police Services Act*, s. 65(1)).

CO's Duty to Notify the IIU ASAP, and Provide Written Notification Report within 24 Hours

The CO **must** notify the IIU **as soon as practicable** when:

- the RCMP is conducting an investigation into the on-duty or off-duty actions of a police officer and a member **notifies the CO that there is evidence of a serious incident** (*Police Services Act*, s. 66(1) and (3));
- the RCMP is conducting a *Code of Conduct* investigation into a member and there is evidence that the member may have contravened any provision of the *Criminal Code* or of any other federal or provincial enactment (*Police Services Act*, s. 73(1)(b));
- **the RCMP receives a formal complaint** that a serious incident resulted from the actions of an on-duty or off-duty member (*Police Services Act*, s. 66(2));
- **the RCMP receives a formal complaint** that a member has engaged in conduct that constitutes **a contravention of the Criminal Code other than** perjury, giving contradictory evidence, fabricating evidence, or obstructing justice (*Police Services Act*, s. 73(1)(a)); or
- **the RCMP receives a formal complaint** that a member has engaged in conduct that constitutes a contravention of any provision of a federal or provincial statute (*Police Services Act*, s. 73(1)(b)).

Within 24 hours after providing notice of a serious incident, investigation, or formal complaint, the **CO must provide the IIU Director with a fully completed notification report** (*Independent Investigations Reg.*, s. 7).

ON-SCENE MEMBERS' DUTY TO SECURE THE SCENE

Until the IIU arrives at the scene and assumes conduct of the investigation, and unless the IIU directs otherwise, members at the scene must take any steps that they would normally take in such an incident, (*Police Services Act*, s. 65(3) and (4)).

Segregation of All Involved Members Until Interviews Completed

To the extent possible, the CO must ensure that **all members who were involved in or present at a serious incident are segregated from each other** until the IIU investigators have completed their interviews of those members (*Independent Investigations Reg.*, s. 9(1)).

Members' Duty to Not Communicate with Other Involved Members

A member who was involved in or present at a serious incident **must not communicate, either directly or indirectly, about the incident** with any other member who was also involved in or present at the incident until the IIU investigators have completed their interviews (*Independent Investigations Reg.*, s. 9(2)).

SENIOR MEMBER'S DUTY TO PROVIDE PUBLIC SAFETY REPORT TO IIU

As soon as practicable after the IIU has been notified of a serious incident, a senior RCMP member not involved in the incident **must compile** from all members and other police officers present at the scene, **and provide to the arriving IIU investigator** (*Independent Investigations Reg.*, s. 8):

- injuries to any person;
- the status, location and identity of all involved persons;
- the status, location and identity of all witnesses;
- the names of any persons with whom members at the scene had spoken since the incident;
- unlocated involved persons;
- any dangers;
- the boundaries of the incident scene; and
- the location of all evidence to be protected or collected, such as objects, documents, and witness statements.

RIGHT TO NOTIFICATION OF DESIGNATION AS A SUBJECT MEMBER OR A WITNESS MEMBER

Before an IIU investigator requests a member's notes or an interview, the IIU Director **must** advise the member and the CO in writing of the member's designation as a subject or a witness (*Independent Investigations Reg.*, s. 14(1)).

RIGHT TO NOTIFICATION OF CHANGE IN DESIGNATION

The IIU Director **must** provide written notice to the CO and the member if the IIU Director determines that the member's designation has changed from witness member to subject member, or from subject member to witness member (*Independent Investigations Reg.*, s. 14(2)).

SUBJECT MEMBER'S POLICE NOTES

Subject Member's Duty to Complete Notes

In accordance with their duty, a subject member must fully complete their notes on the serious incident being investigated by the IIU (*Independent Investigations Reg.*, s. 11(1)).

No Obligation to Provide Notes to the IIU

A subject member has no duty to provide their notes to the IIU Director or an IIU investigator, but may do so voluntarily (*Independent Investigations Reg.*, s. 11(3)).

Other RCMP Members Cannot Provide a Subject Member's Notes to the IIU

All other members of the RCMP are prohibited from providing a subject member's notes to the IIU Director or an IIU investigator (*Independent Investigations Reg.*, s. 11(2)).

PROVISION OF WITNESS MEMBERS' POLICE NOTES

Duty to Provide Notes Within 24 Hours

Within 24 hours of a request from an IIU investigator, and in accordance with their duty, a witness member **must fully complete, and provide the CO with, their notes** on the serious incident being investigated by the IIU (*Independent Investigations Reg.*, s. 10(1)).

The CO **must provide copies** of a witness member's notes within 24 hours after the IIU investigator made a written request for the notes (*Independent Investigations Reg.*, s. 10(2)).

IIU Director May Extend 24-Hour Time Limit

The IIU Director may extend the 24-hour time period for the provision of witness member notes, and if so, must provide the CO with notice in writing, and record the reasons for granting the extension (*Independent Investigations Reg.*, s. 10(3) and (4)).

NO SUBJECT MEMBER INTERVIEWS

There is no provision authorizing an IIU investigator to interview a subject member, and no provision obliging a subject member to provide any statement or answer any questions.

WITNESS MEMBER INTERVIEWS

An IIU investigator may make a written request to the CO for an interview with a witness member (*Independent Investigations Reg.*, s. 12(1)).

Duty to Submit to Interview at Time and Place Specified by the IIU Investigator

The interview **must take place where and when the IIU investigator specifies, normally within 24 hours** of the investigator's request (*Independent Investigations Reg.*, s. 12(2) and (5)).

The IIU Director **may**, by written notice to the CO, **extend the 24-hour time limit** within which a witness member interview must occur. If so, the IIU Director must record the reasons for granting the extension of time (*Independent Investigations Reg.*, s. 12(3) and (4)).

Right to Have Interview Recorded

All member interviews must be videotaped or audiotaped (*Independent Investigations Reg.*, s. 13).

If Member Re-Designated from Witness to Subject After Providing Information to IIU

If, after a witness member has provided their notes and/or participated in an interview, the IIU Director determines that the witness member is now a subject member, **the IIU Director must give the CO** (*Independent Investigations Reg.*, s. 14(3)):

- the original record of **the member's witness interview** and all copies of the interview; **and**
- **the member's notes** and all copies of the member's notes.

**RISK OF THE COMMANDING OFFICER OBTAINING A COMPELLED STATEMENT
THAT WAS MADE BEFORE THE WITNESS MEMBER
WAS RE-DESIGNATED AS A SUBJECT MEMBER
(Independent Investigations Regulation, s. 14(3))**

CAUTION: If a witness member provides a compelled statement in an interview, and is later re-designated as a subject member, that member's compelled witness statement will be given to the CO.

Therefore, if a witness member has reason to believe that they could be re-designated as a subject member, the witness member may wish to consult with legal counsel before providing any compelled statements to an IIU investigator.

CIVILIAN MONITORS

The IIU Director **must** ask the Chair of the Manitoba Police Commission to assign a civilian to monitor a serious incident investigation, and the Chair must assign a monitor, **if** (*Police Services Act*, s. 70(1) and (2)):

- an RCMP member or other police officer **may have caused the death** of a person; or
- the IIU Director considers it to be **in the public interest** to involve a civilian monitor.

The civilian monitor **must** (*Police Services Act*, s. 71, 72):

- monitor the progress of the IIU's investigation; and
- report to the Chair of the Commission on the investigation monitored.

Duty to Permit Civilian Monitoring at IIU Director's Request

At the request of the IIU Director, the CO of Manitoba must allow a civilian monitor or the IIU to monitor the progress of (*Police Services Act*, s. 74):

- an RCMP investigation into a public complaint that a Manitoba RCMP member contravened a provision of the *Criminal Code* other than section 131, 136, 137, or 139; or
- a *Code of Conduct* investigation into a Manitoba RCMP member where there is evidence that the member may have contravened a provision of the *Criminal Code*, other than section 131, 136, 137, or 139, or a provision of any other federal or provincial enactment.

Limits on Civilian Monitor's Activities

A civilian monitor is only permitted to communicate with the IIU Director or an IIU investigative team member specified by the Director (*Civilian Monitor Regulation*, s. 5).

A civilian monitor (*Civilian Monitor Regulation*, s. 5, 9(2) to 10(2)):

- **must not participate directly or indirectly in an IIU investigation;**
- **must not communicate or attempt to communicate with a subject member or witness member;**
- **must not be given access to anything that might reveal the identity of a confidential informant or that might negatively affect the utility of an ongoing confidential investigative technique** being employed by investigators; and
- **must not be given access to any physical evidence** obtained by investigators.

THE IIU AND PUBLIC COMPLAINTS OR CODE OF CONDUCT INVESTIGATIONS

Duty to Share Public Complaint or Code of Conduct Investigation Information with the IIU

At the request of the IIU Director, the CO must provide the Director with information about the status of a public complaint investigation or a *Code of Conduct* investigation into the actions of a Manitoba member (*Police Services Act*, s. 73(2)).

Upon completion of a public complaint investigation or a Code of Conduct investigation into the actions of a Manitoba member, the CO must provide the results of the investigation to the IIU Director (*Police Services Act*, s. 73(3)).

IIU May Assume Conduct of an RCMP Public Complaint or Code of Conduct Investigation

If the IIU Director considers it to be in the public interest, **the IIU may, with notice to the CO, assume conduct** of an RCMP public complaint or *Code of Conduct* investigation. If so, upon notification, the CO must turn over the conduct of the investigation to the IIU (*Police Services Act*, s. 75).

Ontario

Special Investigations Unit (SIU)

NOTE: The SIU advises that, as of November 2019, it has never investigated an RCMP member.

However, the 2014 *RCMP Act* amendments now make it possible that, in the event of a serious incident involving an on-duty or off-duty RCMP member, the SIU could conduct the investigation.

LEGAL FRAMEWORK

- *RCMP Act*, s. 45.79 to 45.82.
- Part VII of the Ontario *Police Services Act*, RSO 1990, c P.15
(Note: On a day to be named by proclamation of the Lieutenant Governor, Part VII of the *Police Services Act* will be repealed.)
- *Conduct and Duties of Police Officers Respecting Investigations by the Special Investigations Unit*, O Reg 267/10
(Note: On a day to be named by proclamation of the Lieutenant Governor, this Regulation will be revoked.)
- *Special Investigations Unit Act, 2019*, Schedule 5 to the *Comprehensive Police Services Act, 2019* (Bill 68, assented to March 26, 2019) (*SIU Act, 2019*)
(**Note:** Not yet in force.)

DEFINITIONS

Serious Incident

A serious incident is an **on-duty or off-duty incident in which the actions of a member, a person appointed or employed** under Part I of the *RCMP Act*, or a **person assisting the Force** in exercising its powers or performing its duties and functions under the *RCMP Act*, **may have** (*RCMP Act*, s. 45.79(1)):

- **resulted in serious injury** to, or the **death** of, any person;

OR

- **constituted an offence** under federal, provincial, or territorial law, **and** one or more of the following persons **decides** that it would be **in the public interest to have the incident investigated by a provincial investigative body or by a police force other than the RCMP:**

- the Minister of Public Safety,

- the Commissioner of the RCMP, or
- the provincial minister responsible for policing in the relevant province.

Serious Injury – Current Ontario Definition

The SIU has been applying the following definition (siu.on.ca):

"Serious injuries" shall include those that are likely to interfere with the health or comfort of the victim and are more than merely transient or trifling in nature and will include serious injury resulting from sexual assault.

"Serious Injury" shall initially be presumed when the victim:

- is admitted to hospital;
- suffers a fracture to a limb, rib or vertebrae or to the skull;
- suffers burns to a major portion of the body;
- loses any portion of the body;
- suffers loss of vision or hearing; or
- alleges sexual assault.

Where a prolonged delay is likely before the seriousness of the injury can be assessed, the SIU should be notified so that it can monitor the situation and decide on the extent of its involvement.

Serious Injury – Definition Under the SIU Act, 2019 (not yet in force)

"Serious injury" means (*SIU Act*, s. 1(1) and (2)):

- an injury as a result of which the person is admitted to hospital;
- a fracture to the skull, or to a limb, rib or vertebra;
- burns to a significant proportion of the body;
- loss of any portion of the body;
- an injury resulting in a loss of vision or hearing; or
- any other injury likely to interfere with the person's health or comfort that is not transient or trifling.

ON-SCENE MEMBERS' DUTY TO SECURE THE SCENE

Duty to Secure the Scene Pending SIU Arrival

Until the SIU arrives and takes charge of the scene, members at the scene must secure the scene in a manner consistent with all CSOs, polices and usual RCMP practice for serious incidents (*SIU Regs*, s. 4; *SIU Act*, s. 20).

Segregation of All Involved Members Until Interviews Completed

To the extent practicable, the CO must ensure that **all members who were involved in the serious incident are segregated from each other** until after the SIU investigators have completed their interviews (*SIU Regs*, s. 6(1); *SIU Act*, s. 26(1)).

Members' Duty to Not Communicate with Other Involved Members

A member who was involved in a serious incident **must not communicate, either directly or indirectly**, with any other member who was also involved in the incident concerning their involvement in the incident until after the SIU investigators have completed their interviews (*SIU Regs*, s. 6(2); *SIU Act*, s. 26(2)).

RIGHT TO NOTIFICATION OF DESIGNATION AS A SUBJECT MEMBER OR A WITNESS MEMBER

Before an SIU investigator requests an interview or requests a member's notes on the incident, the SIU **must** advise the member and the CO in writing of whether the member is considered to be a subject member or a witness member (*SIU Regs*, s. 10(1); *SIU Act*, s. 22(1)).

RIGHT TO NOTIFICATION OF CHANGE IN DESIGNATION

The SIU Director **must** provide written notice to the CO and the member if, at any time after first advising them of their designation, the SIU Director decides that the member's designation has changed from witness member to subject member, or from subject member to witness member (*SIU Regs*, s. 10(2); *SIU Act*, s. 22(2)).

RIGHT TO COUNSEL

Right to Consult Counsel or NPF Representative

Every member is entitled to consult with legal counsel or an NPF representative and to have legal counsel or an NPF representative present during his or her interview with the SIU unless the SIU Director is of the opinion that waiting for legal counsel or an NPF representative would cause an unreasonable delay in the investigation (*SIU Regs*, s. 7(1) and (2); *SIU Act*, s. 27).

Witness Members Cannot Be Represented by the Same Legal Counsel as Subject Members (*SIU Regs*, s. 7(3); *SIU Act*, s. 27(3)).

DUTY TO COMPLY WITH SIU

Members, other than a subject member, must comply with any reasonable director request received from the SIU Director or an SIU investigator in relation to an SIU investigation, immediately or as otherwise required, **unless doing so is unlawful or impracticable** (*Police Services Act*, s. 113(9); *SIU Act*, s. 31).

PROVISION OF WITNESS MEMBER'S POLICE NOTES

Duty to Provide Notes Upon SIU's Request, and No Later Than Within 24 Hours After Request

Within 24 hours of a request from the SIU, and in accordance with their duty, a witness member **must fully complete their notes on the incident, and provide their notes to the CO before the end of the member's shift**, except where excused by the CO (*SIU Regs*, s. 9(1) and (5); *SIU Act*, s. 21).

Unless the SIU Director allows otherwise, **the CO must provide copies of a witness member's notes to the SIU upon request, and no later than within 24 hours** after the SIU requested the notes (*SIU Regs*, s. 9(2) and (4); *SIU Act*, s. 23(1)).

SUBJECT MEMBER'S POLICE NOTES

Duty to Complete Notes in Full

In accordance with their duty, a subject member **must fully complete their notes on the incident before the end of their shift**, except where excused by the CO (*SIU Regs*, s. 9(3) and (5); *SIU Act*, s. 21(1)).

Notes Cannot Be Provided to the SIU

No member of the RCMP may provide copies of a subject member's notes to the SIU (*SIU Regs*, s. 9(3); *SIU Act*, s. 24(1)).

NO SUBJECT MEMBER INTERVIEWS

There is no provision authorizing an SIU investigator to interview a subject member, and no provision obliging a subject member to provide any statement or answer any questions.

WITNESS MEMBER INTERVIEWS

An SIU request for an interview with a witness member must be made in person (*SIU Regs*, s. 8(1) and (2); *SIU Act*, s. 25(1)).

Duty to Submit to an Interview Upon SIU's Request

Immediately upon receiving an in-person request for an interview by the SIU, **or** if there are appropriate grounds for a delay, **no later than 24 hours after the request, a witness member must meet with the SIU and answer all questions** (*SIU Regs*, s. 8(1); *SIU Act*, s. 25(2) and (3)).

The SIU Director may request that an interview take place beyond the 24-hour time requirement (*SIU Regs*, s. 8(5); *SIU Act*, s. 25(3)).

Right to a Record of the Interview

Under the *SIU Regs*, **the SIU must record the interview**, but cannot record the interview by audiotape or videotape unless the witness member consents (*SIU Regs*, s. 8(3) and (4)). Whereas under the *SIU Act*, only an SIU investigator may audiotape a witness member interview, and a witness member interview cannot be videotaped unless the witness member consents (*SIU Act*, s. 25(5)).

The **SIU must give the witness member a copy of the record** (transcript, audiotape or videotape) as soon as it is available (*SIU Regs*, s. 8(3); *SIU Act*, s. 25(6)).

If Witness Member Is Re-Designated as a Subject Member After Providing Information to the SIU

If, after a witness member has provided their notes and/or participated in an interview, the SIU Director decides that the witness member is now a subject member, **the SIU must** (*SIU Regs*, s. 10(3); *SIU Act*, s. 24(2) and 25(7)):

- **give the member the original and all copies of the record of the interview; and**
- **give the CO the original and all copies of the member's notes.**

LIMITS ON DISCLOSURE OF INFORMATION DURING THE INVESTIGATION

During the course of an SIU investigation, **the RCMP and RCMP members must not disclose** to any person any **information with respect to the incident or the investigation** (*SIU Regs*, s. 12(2); *SIU Act*, s. 28(1)). However, the **RCMP may disclose the fact that the SIU has been notified of an incident and is conducting the investigation** (*SIU Regs*, s. 12(1); *SIU Act*, s. 28(3)).

The SIU must not, during the course of an SIU investigation, make any public statement about the investigation unless:

- the statement is aimed at preserving the integrity of the investigation (*SIU Regs*, s. 13); or

- the statement is aimed at preserving public confidence and the benefit of preserving public confidence clearly outweighs any detriment to the integrity of the investigation (*SIU Act*, s. 29).

**MEMBERS' RIGHTS TO PRIVACY IN
POST-INVESTIGATION PUBLIC NOTICES BY THE SIU
(*SIU Act*, s. 33 and 34)**

If Charges Laid Against a Subject Member

The SIU Director must, as soon as practicable, give public notice of only:

- the **subject member's name** (unless publication could reveal the identity of a person who reported that they were sexually assaulted);
- the **charges laid** and on what date; and
- information respecting the subject member's **first scheduled court appearance**.

If Charges are Not Laid

The SIU Director **must publish on the SIU's website a report** including:

- the reasons why the investigation was thought to be authorized or required;
- a detailed narrative of the events leading to the investigation;
- a summary of the investigative process;
- a summary of the relevant evidence considered;
- any relevant video, audio or photographic evidence, de-identified to the extent possible; and
- the reasons for not laying a charge against the subject member.

However, the SIU Director **must not include in the website report**:

- the **name of, and any information identifying a subject member or a witness member**;
- information that may result in the identity of a sexual assault complainant being revealed; and
- information that, in the SIU Director's opinion, could lead to a risk of serious harm to a person.

Québec

Bureau des enquêtes indépendantes (BEI)

NOTE: The 2014 *RCMP Act* amendments now make it possible that, in the event of a serious incident involving an on-duty or off-duty RCMP member, the BEI could conduct the investigation.

LEGAL FRAMEWORK

- *RCMP Act*, s. 45.79 to 45.82
- *Police Act*, CQLR c P-13.1, Chapter III.1 – Independent Investigations
- *Regulation respecting the conduct of the investigations of the Bureau des enquêtes indépendantes*, CQLR c P-13.1, r 1.1 (*BEI Regs*)

DEFINITIONS

Serious Incident

A serious incident is an **on-duty or off-duty** incident in which **the actions of a member, a person appointed or employed** under Part I of the *RCMP Act*, or a **person assisting the Force** in exercising its powers or performing its duties and functions under the *RCMP Act*, **may have** (*RCMP Act*, s. 45.79(1)):

- **resulted in serious injury** to, or the **death** of, any person;
- OR
- **constituted an offence** under federal, provincial, or territorial law, **and** one or more of the following persons **decides** that it would be **in the public interest to have the incident investigated by a provincial investigative body or by a police force other than the RCMP:**
 - the Minister of Public Safety,
 - the Commissioner of the RCMP, or
 - the provincial minister responsible for policing in the relevant province.

Serious Injury

Serious injury means any physical injury to a person, other than an on-duty police officer, that could lead to death or that results in serious physical consequences (*Police Act*, s. 289.1; *BEI Regs*, s. 1).

**SUBJECT MEMBERS' CHARTER RIGHTS
AND THE BEI INVESTIGATION PROTOCOL**

CAUTION: The lawfulness of the BEI investigative protocol set out below is questionable.

Police associations in Québec are challenging the constitutionality of the BEI protocol in the Québec Superior Court. They argue, in part, that the *BEI Regs* violate a subject member's *Charter* right to silence and right to counsel. The case is expected to be heard in early 2020.

(Fédération des policiers et policières municipaux du Québec et Fraternité des policiers et policières de Montréal et. al. c. la Procureure générale du Québec et le Bureau des enquêtes indépendantes, No. 500-17-108241-194).

SUBJECT MEMBERS' AND WITNESS MEMBERS' DUTIES

Subject members and witness members **must** (*BEI Regs*, s. 1):

- **withdraw from the scene** of the incident as soon as possible;
- **refrain from communicating with another subject member or witness member;**
- **draw up independently, without consultations or influence, an accurate, detailed and comprehensive account of the facts that took place during the incident, sign the account, and submit it to BEI investigators within 24 hours of the incident**, unless the BEI Director grants an extension of time;
- **meet with BEI investigators;** and
- **remain available for investigation purposes.**

**RIGHT TO NOTIFICATION OF DESIGNATION AS
A SUBJECT MEMBER OR A WITNESS MEMBER**

Before the BEI investigator meets with a subject member or witness member, the investigator **must** determine the member's status as a subject member or witness member, and, as soon as possible, notify the member in writing, and inform the CO (*BEI Regs*, s. 7).

RIGHT TO NOTIFICATION OF CHANGE IN DESIGNATION

In the course of the investigation, **if there is any change in a subject member's or witness member's designation, the BDI investigator must notify the member in writing as soon as possible, and inform the CO** (*BEI Regs*, s. 7).

MANDATORY INTERVIEWS WITHIN 24 OR 48 HOURS

Unless the BEI Director grants an extension of time, the **BEI investigators must meet with** (*BEI Regs*, s. 9):

- **witness members within 24 hours** of the investigators' arrival on scene; and
- **subject members within 48 hours** of the investigators' arrival on scene.

New Brunswick

LEGAL FRAMEWORK

- *RCMP Act*, s. 45.79 to 45.82
- *Regulations Prescribing Physical Injuries*, SOR/2019-260
- *Police Act*, SNB 1977, c P-9.2

DEFINITIONS

As the legislation in New Brunswick is silent on serious incident investigations, the RCMP definitions apply:

Serious Incident

A serious incident is an **on-duty or off-duty incident in which the actions of a member, a person appointed or employed under Part I of the *RCMP Act*, or a person assisting the Force in exercising its powers or performing its duties and functions under the *RCMP Act*, may have (*RCMP Act*, s. 45.79(1)):**

- **resulted in serious injury to, or the death of, any person;**

OR

- **constituted an offence under federal, provincial, or territorial law, *and* one or more of the following persons decides that it would be **in the public interest to have the incident investigated by a provincial investigative body or by a police force other than the RCMP:**
 - the Minister of Public Safety,
 - the Commissioner of the RCMP, or
 - the provincial minister responsible for policing in the relevant province.**

Serious Injury

- **not transient or trifling** in nature;
- **must have received medical attention from a person who is entitled to practice medicine or practice as a nurse under the laws of a province; and**

▪ **must be one of:**

(a) any physical injury that results in

(i) a **substantial loss or impairment of mobility of the body,**

(ii) a **loss of function,** in whole or in part, **of any limb, organ or other body member,**

(iii) a **loss of vision or hearing** in whole or in part, or

(iv) a **substantial disfigurement;**

(b) **the fracture of a limb, a rib, a vertebra or the skull;** or

(c) **any burns, cuts or lacerations to a major portion of the body.**

Nova Scotia

Serious Incident Response Team (SiRT)

LEGAL FRAMEWORK

- *RCMP Act*, s. 45.79 to 45.82
- *Regulations Prescribing Physical Injuries*, SOR/2019-260
- *Police Act*, 2004, c 31, s. 1
- *Serious Incident Response Team Regulations*, NS Reg 89/2012 (*SiRT Regs*)
- MOU Between SiRT and the RCMP

DEFINITIONS

Serious Incident

“**Serious incident**” means (*Police Act*, s. 2(l)):

- a death;
- a serious injury;
- a sexual assault; or
- any matter that is determined under the *Police Act* to be in the public interest to be investigated.

Serious Injury

A “**serious injury**” includes (Serious Incident Response Team (SiRT) Website):

- fractures to limbs, ribs, head or spine;
- burns, cuts, or lacerations which are serious or affect a major portion of the body;
- loss of any portion of the body;
- serious internal injuries;
- any injury caused by gunshot;
- admission to hospital as a result of the injury (not including outpatient care followed by release).

ON-SCENE MEMBERS' DUTY TO SECURE THE SCENE

Duty to Secure the Scene Pending Arrival of SiRT or Other Investigating Agency

Until the SiRT or other investigating agency arrives and takes charge of the scene, the CO must ensure that members at the scene must secure the scene in a manner consistent with all CSOs, polices and usual RCMP practice for serious incidents (*SiRT Regs*, s. 4).

Segregation of All Involved Members Until Interviews Completed

To the extent practicable, the CO must ensure that **all members who were involved in the serious incident are segregated from each other** until after the investigators have finished interviewing all of the witness members (*SiRT Regs*, s. 5(1)).

Segregated Member's Duty to Not Communicate with Other Involved Members

Unless otherwise directed by the person in charge of the investigation, a member who has been segregated **must not communicate about the details of the serious incident** with any other member who was involved in the incident until after SiRT or the investigating agency has finished interviewing all of the witness members (*SiRT Regs*, s. 5(2)).

RIGHT TO NOTIFICATION OF DESIGNATION AS A SUBJECT MEMBER OR A WITNESS MEMBER

Before requesting a member's notes or requesting or directing a member to attend at an interview, the person in charge of the investigation **must advise the member and the CO in writing** of the member's status as a subject member or a witness member (*SiRT Regs*, s. 6(2), 7(1)).

DUTY TO COMPLETE POLICE NOTES

Each member involved in a serious incident **must** complete their police officer notes about the serious incident in accordance with RCMP procedures (*Police Act*, s. 6(1)).

PROVISION OF WITNESS MEMBER'S POLICE NOTES

Duty to Provide Police Notes Within 48 Hours or Less

A witness member **must provide their police notes** to the person in charge of the investigation, with a copy to the CO, **no later than 48 hours** after the person in charge makes the request. If allowing up to 48 hours would cause an unreasonable delay that may jeopardize the investigation, the person in charge may require that the notes be provided sooner (*SiRT Regs*, s. 6(3) and (4)).

SUBJECT MEMBER'S POLICE NOTES

A **subject member** is not required to provide their police notes to SiRT or the investigating agency (SiRT Regs, s. 6(5)).

No other RCMP member or other person may provide a subject member's notes to SiRT or the investigating agency **without the express permission of the subject member** (SiRT Regs, s. 6(5)).

RIGHT TO COUNSEL IF BEING INTERVIEWED

Each member requested or directed to attend an interview **must be advised of their right to, and given a reasonable opportunity to consult with legal counsel before the interview. However, for witness members**, if the person in charge of the investigation is of the opinion that waiting for an opportunity to consult with legal counsel would cause an unreasonable delay that may jeopardize the investigation, the interview may proceed (SiRT Regs, s 7(4) and (5)).

INTERVIEWS TO BE RECORDED

If practicable, an interview with a member must be recorded by audio or video recording (SiRT Regs, s. 7(6)).

WITNESS MEMBER INTERVIEWS

Duty to Submit to an Interview at a Specified Time and Place

The person in charge of the investigation may direct a witness member to attend at an interview and answer questions. The interview will take place **at least 48 hours after the serious incident occurred, or**, if waiting 48 hours would cause an unreasonable delay that may jeopardize the investigation, the person in charge of the investigation may specify **an earlier time** (SiRT Regs, s. 7(2) and (3)).

RIGHT TO NOTIFICATION OF CHANGE IN DESIGNATION

Subject Member → Witness Member

If, after designating a member as a subject member, the person in charge of the investigation decides that the member's status has changed to witness member, the person in charge of the investigation **must notify the member and the CO in writing** (SiRT Regs, s. 8(1)).

Witness Member → Subject Member

If, after conducting an interview with or after obtaining police notes from a member who had been designated as a witness officer, the person in charge of the investigation decides that the member is now considered to be a subject member, the person in charge of the investigation **must** (*SiRT Regs*, s. 8(2)):

- **advise the member and the CO in writing** of the change in status;
- **give the member the original and all copies of the record of any interview; and**
- **give the CO the original and all copies of the member's police notes about the serious incident.**

RELEASE OF INVESTIGATIVE INFORMATION

Investigative File Released to RCMP

Upon conclusion of an investigation, the SiRT Director must make the investigative file available to the RCMP disciplinary authority (*Police Act*, s. 26L).

Investigation Summary Released to Provincial Minister of Justice

As soon as reasonably practical, and no later than three months after receiving the investigation report, the SiRT Director **must** release a summary of the investigation to the Minister of Justice (*Police Act*, s. 26M(1)).

Investigation Summary Made Available to the Public

The SiRT Director or the Minister **must** then make the same summary of the investigation available to the public (*Police Act*, s. 26M(3); *SiRT Regs*, s. 9(6)).

The summary **must include** (*SiRT Regs*, s. 9(2)):

- a summary of the facts;
- the time frame of the investigation;
- a statement of the number of civilian and police officer witnesses interviewed;
- a statement of the relevant legal issues; and
- the decision as to whether a charge will be laid.

The summary **may include** (*SiRT Regs*, s. 9(3) and (4)):

- the names of the subject members and witness members; and
- if no charge will be laid, the reasons for that decision.

Prince Edward Island

LEGAL FRAMEWORK

- *RCMP Act*, s. 45.79 to 45.82
- *Regulations Prescribing Physical Injuries*, SOR/2019-260
- *Police Act*, c P-11.1

DEFINITIONS

As the legislation in Prince Edward Island is silent on serious incident investigations, the RCMP definitions apply:

Serious Incident

A serious incident is an **on-duty or off-duty incident in which the actions of a member, a person appointed or employed** under Part I of the *RCMP Act*, or a **person assisting the Force** in exercising its powers or performing its duties and functions under the *RCMP Act*, **may have** (*RCMP Act*, s. 45.79(1)):

- **resulted in serious injury** to, or the **death** of, any person;

OR

- **constituted an offence** under federal, provincial, or territorial law, **and** one or more of the following persons **decides** that it would be **in the public interest to have the incident investigated by a provincial investigative body or by a police force other than the RCMP:**
 - the Minister of Public Safety,
 - the Commissioner of the RCMP, or
 - the provincial minister responsible for policing in the relevant province.

Serious Injury

- **not transient or trifling** in nature;
- **must have received medical attention** from a person who is entitled to practice medicine or practice as a nurse under the laws of a province; **and**

▪ **must be one of:**

(a) any physical injury that results in

(i) a **substantial loss or impairment of mobility of the body,**

(ii) a **loss of function,** in whole or in part, **of any limb, organ or other body member,**

(iii) a **loss of vision or hearing** in whole or in part, or

(iv) a **substantial disfigurement;**

(b) **the fracture of a limb, a rib, a vertebra or the skull;** or

(c) **any burns, cuts or lacerations to a major portion of the body.**

Newfoundland and Labrador

Newfoundland and Labrador Serious Incident Response Team (NLSIRT)

LEGAL FRAMEWORK

- *RCMP Act*, s. 45.79 to 45.82
- *Regulations Prescribing Physical Injuries*, SOR/2019-260
- *Royal Newfoundland Constabulary Act, 1992*, SNL 1992, c R-17
- Bill 24: *Serious Incident Response Team Act*, SNL2017, c s-13.003 (*NLSIRT Act*) (not yet in Force as of 12Dec2019)
- MOU Between NLSIRT and the RCMP (based on SiRT MOU)

DEFINITIONS

Serious Incident

“**Serious incident**” means (*NLSIRT Act*, s. 2(f)):

- a death;
- a serious injury;
- a sexual offence;
- domestic violence; or
- any matter of significant public interest that may have arisen from the actions of a police officer in the province.

Serious Injury

The *NLSIRT Act* does not contain a definition of serious injury. While a definition could be set out in future regulations, until such time, the RCMP definition of serious injury applies:

- **not transient or trifling** in nature;
- **must have received medical attention** from a person who is entitled to practice medicine or practice as a nurse under the laws of a province; **and**
- **must be** one of:
 - (a) any physical injury that results in
 - (i) a **substantial loss or impairment of mobility of the body**,
 - (ii) a **loss of function**, in whole or in part, **of any limb, organ or other body member**,
 - (iii) a **loss of vision or hearing** in whole or in part, or
 - (iv) a **substantial disfigurement**;
 - (b) **the fracture of a limb, a rib, a vertebra or the skull**; or
 - (c) **any burns, cuts or lacerations to a major portion of the body**.

A serious injury will initially be presumed when the victim is admitted to hospital, suffering from (OM 54.3, s. 2.1.9):

- a fractured limb, rib, vertebra, or skull;
- a gunshot wound;
- burns to a major portion of the body;
- loss of any portion of the body; or
- loss of vision or hearing.

Yukon

LEGAL FRAMEWORK

- *RCMP Act*, s. 45.79 to 45.82
- *Regulations Prescribing Physical Injuries*, SOR/2019-260
- MOU Between YUKON and Alberta's Serious Incident Response Team (ASIRT)

DEFINITIONS

As Yukon does not have definitions for “serious incident” or “serious injury”, the RCMP definitions apply.

Serious Incident

A serious incident is an **on-duty or off-duty incident in which the actions of a member, a person appointed or employed** under Part I of the *RCMP Act*, or a **person assisting the Force** in exercising its powers or performing its duties and functions under the *RCMP Act*, **may have** (*RCMP Act*, s. 45.79(1), 45.88(1); OM 54.1, s. 2.5; OM 54.3, s. 2.1.2):

- **resulted in serious injury** to, **or** the **death** of, any person;

OR

- **constituted an offence** under federal, provincial, or territorial law, **and** one or more of the following persons **decides** that it would be **in the public interest to have the incident investigated by a provincial investigative body or by a police force other than the RCMP:**
 - the Minister of Public Safety,
 - the Commissioner of the RCMP, or
 - the provincial minister responsible for policing in the relevant province.

Serious Injury

To be a “serious injury”, the injury (*Regulations Prescribing Physical Injuries*, SOR/2019-260):

- **cannot be transient or trifling** in nature;
- **must have received medical attention** from a person who is entitled to practice medicine or practice as a nurse under the laws of a province; **and**

- **must be** one of:
 - (a) any physical injury that results in
 - (i) a **substantial loss or impairment of mobility of the body**,
 - (ii) a **loss of function**, in whole or in part, **of any limb, organ or other body member**,
 - (iii) a **loss of vision or hearing** in whole or in part, or
 - (iv) a **substantial disfigurement**;
 - (b) **the fracture of a limb, a rib, a vertebra or the skull**; or
 - (c) **any burns, cuts or lacerations to a major portion of the body**.

A serious injury will initially be presumed when the victim is admitted to hospital, suffering from (OM 54.3, s. 2.1.9):

- a fractured limb, rib, vertebra, or skull;
- a gunshot wound;
- burns to a major portion of the body;
- loss of any portion of the body; or
- loss of vision or hearing.

INVESTIGATION PROTOCOL
Refer to ASIRT Protocol

Northwest Territories

LEGAL FRAMEWORK

- *RCMP Act*, s. 45.79 to 45.82
- *Regulations Prescribing Physical Injuries*, SOR/2019-260

DEFINITIONS

Serious Incident

A serious incident is an **on-duty or off-duty incident in which the actions of a member, a person appointed or employed under Part I of the *RCMP Act*, or a person assisting the Force in exercising its powers or performing its duties and functions under the *RCMP Act*, may have (*RCMP Act*, s. 45.79(1), 45.88(1); OM 54.1, s. 2.5; OM 54.3, s. 2.1.2):**

- **resulted in serious injury** to, **or** the **death** of, any person;

OR

- **constituted an offence** under federal, provincial, or territorial law, **and** one or more of the following persons **decides** that it would be **in the public interest to have the incident investigated by a provincial investigative body or by a police force other than the RCMP:**
 - the Minister of Public Safety,
 - the Commissioner of the RCMP, or
 - the provincial minister responsible for policing in the relevant province.

Serious Injury

To be a “serious injury”, the injury (*Regulations Prescribing Physical Injuries*, SOR/2019-260):

- **cannot be transient or trifling** in nature;
- **must have received medical attention** from a person who is entitled to practice medicine or practice as a nurse under the laws of a province; **and**
- **must be** one of:
 - (a) any physical injury that results in
 - (i) a **substantial loss or impairment of mobility of the body**,

- (ii) a **loss of function**, in whole or in part, **of any limb, organ or other body member**,
 - (iii) a **loss of vision or hearing** in whole or in part, or
 - (iv) a **substantial disfigurement**;
- (b) **the fracture of a limb, a rib, a vertebra or the skull**; or
- (c) **any burns, cuts or lacerations to a major portion of the body**.

A serious injury will initially be presumed when the victim is admitted to hospital, suffering from (OM 54.3, s. 2.1.9):

- a fractured limb, rib, vertebra, or skull;
- a gunshot wound;
- burns to a major portion of the body;
- loss of any portion of the body; or
- loss of vision or hearing.

INVESTIGATIVE PROTOCOL

Refer to Protocol of the Investigative Body Conducting the Investigation

Nunavut

LEGAL FRAMEWORK

- *RCMP Act*, s. 45.79 to 45.82
- *Regulations Prescribing Physical Injuries*, SOR/2019-260
- MOU between Nunavut, RCMP and Ottawa Police Service, 2015 (no set expiry date) (OPS MOU)
[NOTE: The purpose of this MOU is to establish a protocol in which the OPS will investigate a serious incident involving RCMP members (s. 3.2)].
- MOU between Nunavut, RCMP and Calgary Police Service, 2018 (expires 01Mar22)
[NOTE: This MOU specifically states that it does not supersede any existing legislation, regulation, policy or other legal document by which any of the participants are bound (s. 101.2).]

DEFINITIONS

Serious Incident

A serious incident is an on-duty or off-duty incident in which the actions of a member, a person appointed or employed under Part I of the *RCMP Act*, or a person assisting the Force in exercising its powers or performing its duties and functions under the *RCMP Act*, may have (*RCMP Act*, s. 45.79(1), 45.88(1); OM 54.1, s. 2.5; OM 54.3, s. 2.1.2):

- resulted in serious injury to, or the death of, any person;
- OR
- constituted an offence under federal, provincial, or territorial law, and one or more of the following persons decides that it would be in the public interest to have the incident investigated by a provincial investigative body or by a police force other than the RCMP:
 - the Minister of Public Safety,
 - the Commissioner of the RCMP, or
 - the provincial minister responsible for policing in the relevant province.

Serious Injury

A serious injury is one that (OPS MOU, s. 2):

- **is likely to interfere with the health or comfort of the victim;**
- **is more than merely transient or trifling** in nature; and

- includes a serious injury resulting from sexual assault.

A serious injury must initially be *presumed* when (OPS MOU, s. 2):

- the victim is **admitted to hospital**;
- suffers a **fracture to a limb, rib, vertebra, or the skull**;
- suffers **burns to a major portion of the body**;
- **loses any portion of the body**;
- suffers **loss of vision or hearing**; or
- **alleges sexual assault**.

ON-SCENE MEMBERS' DUTY TO SECURE THE SCENE

Duty to Secure the Scene Pending Arrival of OPS or Other Investigating Agency

The RCMP will be responsible for assigning personnel to ensure that the scene is controlled and secured (OPS MOU, s. 4.2).

Segregation of All Members Until Further Instructions from OPS

To the extent operationally possible, the RCMP must ensure that **all members who were involved in the serious incident are segregated from each other** while awaiting instruction from the OPS investigation team (OPS MOU, s. 5.3).

Ongoing Duty to Preserve Evidence and Identify Witnesses

Until the investigation is formally assumed by the OPS, members have an ongoing duty to (OPS MOU, s. 5.3, 5.4):

- preserve evidence;
- identify witnesses;
- not touch or remove any weapons or firearms unless, in the opinion of the RCMP, there are exigent circumstances; and
- if extenuating circumstances warrant touching or removing firearms and/or weapons, the RCMP must photograph/videotape and document the entire process of their involvement with the weapons or firearms.

DUTY TO PROVIDE INFORMATION TO OPS WHEN REQUESTING AN INVESTIGATION

When requesting the OPS to investigate, the RCMP must include (OPS MOU, s. 4.3):

- the known background;
- the nature of the incident;
- the nature of any injuries or deaths;
- the time the incident is believed to have occurred;
- the location of the incident;
- names and contact information of the RCMP members involved;
- names of witnesses, if available;
- names of victims, if available;
- the name of the RCMP member designated as the contact for the incident;
- any injuries or health issues of RCMP members arising from the incident; and
- any other information which may be immediately needed by the OPS.

RESPONSIBILITIES FOR INITIAL NOTIFICATIONS

The RCMP **must** advise the **Government of Nunavut's contact person** that a serious incident has occurred and that the OPS will be investigating (OPS MOU, s. 4.9).

The RCMP **may** (OPS MOU, s. 4.7, 4.8):

- contact families, victims, or next of kin, but may only advise them of the incident and that the OPS will investigate;
- apply victim support resources; and
- advise the media of the fact that a serious incident has occurred, and of the OPS involvement.

DUTY TO PROVIDE PRELIMINARY NOTES AND REPORTS

All subject members and witness members may be required to provide a preliminary report immediately or very soon after the serious incident, in compliance with OM54.3.5 (OPS MOU, s. 5.7).

RIGHT TO COUNSEL AND OTHER SUPPORT

After the immediate police responsibilities of safeguarding the public, obtaining preliminary notes and/or reports, securing evidence, and preventing the continuation of offences, **have been discharged**, **all subject members and witness members will have a reasonable opportunity to seek** (OPS MOU, s. 5.7):

- legal counsel; and
- medical, psychological, emotional and/or spiritual support and advice.

MEMBER INTERVIEWS WITH OPS

The RCMP will make available to the OPS all subject members and witness members for the purpose of initiating a statement or a report of the incident prior to those members being relieved of duty (OPS MOU, s. 5.5).

MEDIA RELEASES

In an OPS-led investigation, RCMP members (OPS MOU, s. 9):

- **must not release** information to the media **before consulting with the OPS** Liaison Officer;
- **must** adhere to the RCMP's media liaison protocols
- **must** limit media releases to the facts that:
 - an incident occurred; and
 - the OPS is investigating.

ABBREVIATIONS AND REFERENCES

Alberta <i>Police Act</i>	<i>Police Act</i> , RSA 2000, c P-17 (online: http://www.qp.alberta.ca/documents/Acts/P17.pdf) <i>Police Service Regulation 356/90</i> (online: https://www.canlii.org/en/ab/laws/regu/alta-reg-356-1990/latest/alta-reg-356-1990.html)
AM XII.2	Administrative Manual, chapter XII.2 – Public Complaints
ASIRT	Alberta Serious Incident Response Team (website: https://www.solgps.alberta.ca/asirt/Pages/default.aspx)

British Columbia <i>Police Act</i>	<i>Police Act</i> , RSBC 1996, c 367 (online: http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96367_01)
<i>Charter</i>	<i>Canadian Charter of Rights and Freedoms</i> , Part I of the <i>Constitution Act, 1982</i> , being Schedule B to the <i>Canada Act 1982 (UK), 1982</i> , c 11. (online: https://laws-lois.justice.gc.ca/eng/Const/page-15.html)
<i>Code of Conduct</i>	<i>Code of Conduct of the Royal Canadian Mounted Police</i> , Schedule to the <i>Royal Canadian Mounted Police Regulations, 2014</i> . (online: https://laws-lois.justice.gc.ca/eng/regulations/SOR-2014-281/page-6.html#h-30)
LAPE	Legal Assistance at Public Expense
Manitoba <i>Independent Investigations Regs.</i>	<i>Independent Investigations Regulations, 99/2015</i> . (online: http://web2.gov.mb.ca/laws/reg/current/_pdf-reg.php?reg=99/2015)
National Guidebook	National Public Complaints Guidebook, November 5, 2014
NPCD	National Public Complaints Directorate
Newfoundland and Labrador <i>Royal Newfoundland Constabulary Act</i>	<i>Royal Newfoundland Constabulary Act, 1992</i> , SNL1992, c R-17. (online: https://www.assembly.nl.ca/Legislation/sr/statutes/r17.htm)
Newfoundland and Labrador - Bill 24	<i>Bill 24 Serious Incident Response Team Act</i> (online: https://www.assembly.nl.ca/business/bills/bill1724.htm)
Nova Scotia <i>Police Act</i>	<i>Police Act, 2004</i> , c 31, s. 1 (online: https://nslegislature.ca/sites/default/files/legc/statutes/police.pdf) <i>Serious Incident Response Team Regulations, NS Reg 89/2012 (SiRT Regs)</i> (online: https://www.canlii.org/en/ns/laws/regu/ns-reg-89-2012/latest/ns-reg-89-2012.html)
Nova Scotia SiRT	Nova Scotia Serious Incident Response Team (website: https://sirt.novascotia.ca/)
NPF	National Police Federation
OM 25.2	Operations Manual, chapter 25.2 – Investigator’s Notes
OM 54.1	Operations Manual, chapter 54.1 – RCMP External Investigation or Review (Sept. 28, 2017) (available on the RCMP Infoweb)
OM 54.3	Operations Manual, chapter 54.3 – Responsibility to Report (Feb. 16, 2015) (available on the RCMP Infoweb)
Ontario <i>Police Services Act</i>	<i>Police Services Act, RSO 1990</i> , c P.15. (online: https://www.ontario.ca/laws/statute/90p15)
Ontario SIU	Ontario Special Investigations Unit (website: https://www.siu.on.ca/en/index.php)

OPS	Ottawa Police Service
Québec <i>Police Act</i>	<i>Police Act</i> , RSQ, c P-13. (online: https://www.canlii.org/en/qc/laws/stat/rsq-c-p-13/latest/rsq-c-p-13.html)
Québec Investigation Regulation	<i>Regulation respecting the conduct of the investigations of the Bureau des enquêtes indépendantes</i> (online: https://www.canlii.org/en/qc/laws/regu/cqlr-c-p-13.1-r-1.1/latest/cqlr-c-p-13.1-r-1.1.html)
<i>RCMP Act</i>	<i>Royal Canadian Mounted Police Act</i> , RSC 1985, c R-10, as amended on November 28, 2014, by the <i>Enhancing Royal Canadian Mounted Police Accountability Act</i> , SC 2013, c 18. (online: https://laws-lois.justice.gc.ca/eng/acts/R-10/index.html)
<i>RCMP Regs</i>	<i>Royal Canadian Mounted Police Regulations</i> , 2014, SOR/2014-281. (online: https://laws-lois.justice.gc.ca/eng/regulations/SOR-2014-281/index.html)
<i>Regulations Prescribing Physical Injuries</i>	<i>Regulations Prescribing Physical Injuries</i> (SOR/2019-260), registered June 25, 2019. (online: https://laws-lois.justice.gc.ca/eng/regulations/SOR-2019-260/index.html)
<i>Regulatory Impact Analysis Statement</i>	<i>Regulatory Impact Analysis Statement</i> , Canada Gazette, Part I, Volume 153, Number 15: Regulations Prescribing Physical Injuries (online: http://www.gazette.gc.ca/rp-pr/p1/2019/2019-04-13/html/reg1-eng.html)
Saskatchewan <i>The Police Act</i>	<i>The Police Act</i> , 1990, c P-15.01 (online: https://www.canlii.org/en/sk/laws/stat/ss-1990-91-c-p-15.01/latest/ss-1990-91-c-p-15.01.html) <i>The Police Regulations</i> , c P-15.01 Reg 7. (online: https://www.canlii.org/en/sk/laws/regu/rrs-c-p-15.01-reg-7/latest/rrs-c-p-15.01-reg-7.html)
SIA	<i>Security of Information Act</i> , R.S.C., 1985, c. O-5 (online: https://laws-lois.justice.gc.ca/eng/acts/o-5/)
TB Policy	Treasury Board Policy on Legal Assistance and Indemnification (April 23, 2012) (online: https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=13937)

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