

**NATIONAL
POLICE
FEDERATION**



**FEDERATION
DE LA POLICE
NATIONALE**

Member Involved Shooting (MIS) / On-Duty Serious Incident Investigations

“C” Division Subject Member and Witness Member Handbook

Investigations Conducted by the Bureau des enquêtes indépendantes (BEI)

Pursuant to the *RCMP Act*, OM 54.1, OM 54.3,
Québec’s *Police Act*, ch. III.1 – *Independent Investigations*, and
Québec’s *Regulation respecting the conduct of the investigations of
the Bureau des enquêtes indépendantes (BEI Regs)*

***Involved Members are strongly encouraged to
contact a National Police Federation Representative
for assistance in obtaining legal counsel and other supports***

This Handbook provides general information only and does not constitute legal advice.

**THE BEI INVESTIGATION PROTOCOL
MAY INFRINGE OR DENY
A SUBJECT MEMBER'S CHARTER RIGHTS**

CAUTION: The lawfulness of the BEI investigative protocol 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 right to silence and right to counsel.

The case was expected to be heard in early 2020. As of June 2020, no decision has been rendered. (*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).

I. IS IT A "SERIOUS INCIDENT"?

In "C" Division, it is a serious incident requiring an independent investigation if (Québec's *Police Act*, s. 289.1):

- a person, other than an on-duty police officer, dies, sustains a serious injury, or is injured by a firearm used by a Member during a police intervention or while the person is in RCMP custody;
- or
- the BEI is notified of an allegation against a Member concerning a criminal offence of a sexual nature committed in the performance of duties.

"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 (Québec's *Police Act*, s. 289.1; *BEI Regs*, s. 1).

II. MEMBERS' IMMEDIATE RESPONSIBILITIES (OM 54.3, s. 5.2)

1. Notify

- **notify the Operational Communications Centre (OCC);**
- **request assistance** as appropriate (eg: ambulance, backup); and
- **notify a supervisor** or ask the OCC to do so.

2. Safeguard the Public and Prevent Offences

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

3. Secure the Scene, Preserve Evidence, and Protect the Integrity of the Investigation

- secure the scene;
- secure the evidence, including any intervention equipment or weapons of opportunity used; and
- secure the availability of potential witnesses.

4. Limit Communications / Segregate Members

Involved Members **must** refrain from discussing the incident with anyone **except** supervisors or duly authorized investigators, and **only if required to do so** under the responsibility to report or lawful compulsion.

Where possible, Subject Members and Witness Members should be separated and removed from the scene.

Subject Members and Witness Members must not communicate with one another in connection with the incident until they have submitted their police notes to, and met with, the BEI investigators (*BEI Regs*, s. 2(2)).

5. Additional Responsibilities Under the BEI Protocol (*BEI Regs*, s. 1):

Subject Members and Witness Members must:

- **withdraw from the scene of the incident as soon as possible;** and
- **remain available for investigation purposes.**

III. RESPONSIBILITY TO REPORT TO ON-SCENE SUPERVISOR

1. At Your First Opportunity, Make Detailed Notes Concerning the Incident

2. No Right to Consult Legal Counsel Before Providing Preliminary Report or Writing Police Notes

3. Provide Preliminary Report to On-Scene Supervisor

A Preliminary Report consists of a Member's direct knowledge and observations, and any other pertinent information related to public safety or security.

A Preliminary Report is limited to the information required to form an immediate police response for the purposes of safeguarding the public, securing evidence, and preventing the continuation of offences. It is a basic verbal or written account of (OM 54.3, s. 2.1.3, 4):

- 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.

4. On-Scene Supervisor or CO Must Send Preliminary Information to the Director of the BEI

The On-Scene Supervisor or CO must provide the Director of the BEI with (*BEI Regs*, s. 2(3) & (4)):

- the name of the person deceased or injured;
- the nature of the person's injuries;
- the names of the persons present at the incident;
- the parameters and limits of the scene;
- the evidence collected; and
- any other information collected.

5. On-Scene Supervisor or CO Must Give BEI Investigators Any Document in Connection with the Incident (BEI Regs, s. 2(4)) (Caution: Charter Concerns).

IV. DESIGNATION AS A SUBJECT MEMBER OR WITNESS MEMBER

1. Each Member Will Be Designated as Either a Subject Member or a Witness Member

“**Subject Member**” is a Member present at a serious incident and whose actions or decisions could have contributed to the death, serious injuries or injuries by a firearm used by a police officer (*BEI Regs*, s. 1).

“**Witness Member**” is a Member in whose presence such an incident took place, without being a Subject Member (*BEI Regs*, s. 1).

2. Right to Notification of Designation Before Being Asked to Provide Notes or Give an Interview

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, **must notify the Member in writing**, and inform the CO (*BEI Regs*, s. 7).

3. Right to Notification of Any 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 BEI investigator **must notify the Member in writing as soon as possible**, and inform the CO (*BEI Regs*, s. 7).

V. WITNESS MEMBERS MUST PROVIDE A DETAILED REPORT TO THE BEI

1. Witness Members Must Complete and Sign a Detailed Account for Submission to the BEI Within 24 Hours of the Incident (*BEI Regs*, s. 1)

Witness Members **must 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.

VI. SUBJECT MEMBERS MUST PROVIDE A DETAILED REPORT TO THE BEI

1. Subject Members Must Complete and Sign a Detailed Account for Submission to the BEI Within 24 Hours of the Incident (*BEI Regs*, s. 1)

Subject Members **must 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.

CAUTION: As this provision raises the issue of denying a Subject Member their *Charter* right to silence, Subject Members are strongly encouraged to seek legal advice and assistance prior to complying with this requirement.

2. Subject Members Have the Same Legal Protections and Charter Rights Afforded to All Persons, and Must be Treated in Accordance with All Applicable Laws (see also OM.54.3, s. 1.4.2, 1.5, 5.1.3, 5.1.11, 5.3.1.11)

Subject Members **must**:

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

VII. RIGHT TO LEGAL COUNSEL

1. Subject Members Have a Right to Legal Counsel

2. Witness Members Are Normally Afforded an Opportunity to Consult Legal Counsel

3. The Same Legal Counsel Cannot Represent Both Witness Members and Subject Members

VIII. BEFORE PROVIDING A WRITTEN STATEMENT OR SUBMITTING TO AN INTERVIEW

1. If Possible, Wait at Least 72 Hours Before Providing a Statement and, During this Time, Record Any New Recollections in a Notebook

Studies on statement recollection indicate that more recollections may come back over the days following a Serious Incident. The NPF recommends that members wait at least 72 hours before making a statement. The NPF also recommends that, in the meantime, Members keep a written record of any new recollections that may come to them.

2. Request Disclosure for the Purpose of Refreshing Your Memory of the Incident and Your Actions

Before providing a written statement or submitting to an interview, a Member should request disclosure of relevant records, and review that disclosure, such as:

- the CAD call record;
- radio transmissions;
- video surveillance footage depicting the Member and their actions; and
- the Occurrence Report

If a Member's request for disclosure is declined, the member should convey that fact at the beginning of their written statement or interview.

IX. WITNESS MEMBER INTERVIEWS

1. Witness Members Must Meet with BEI Investigators Within 24 Hours

Unless the BEI Director grants an extension of time, **BEI investigators must meet with Witness Members within 24 hours** of the investigators' arrival on scene (*BEI Regs*, s. 9).

X. SUBJECT MEMBER INTERVIEWS

1. Subject Members Have the Same Legal Protections and Charter Rights Afforded to All Persons

2. Subject Members Have a Right to Silence

Subject Members should resist the urge to defend their actions, not provide further details, and not provide any voluntary utterance or statement prior to obtaining legal advice.

3. Subject Members Must Meet with BEI Investigators Within 48 Hours

Unless the BEI Director grants an extension of time, **BEI investigators must meet with Subject Members within 48 hours** of the investigators' arrival on scene (*BEI Regs*, s. 9).

CAUTION: As this provision raises the issue of denying a Subject Member their Charter right to silence, Subject Members are strongly encouraged to seek legal advice and assistance prior to complying with this requirement.

XI. SUBJECT MEMBERS MAY APPLY FOR LEGAL ASSISTANCE AT PUBLIC EXPENSE (LAPE)

1. LAPE May be Available to a Subject Member Charged or Likely to Be Charged with an Offence

To assist with the legal costs of a Subject Member's criminal or civil defence, and/or appearance at a proceeding inquiring into the incident, the RCMP **may** pay for some or all of the Subject Member's legal expenses (TB Policy, s. 6.1.6).

2. Qualifying for LAPE: Either Meet the Three Criteria, or Have Exceptional Circumstances

(TB Policy, s. 6.1.5, 6.1.8)

- **a Subject Member must meet three basic criteria:**

- 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

- **there must be exceptional circumstances** such that it would be in the public interest to approve the Subject Member's request.

XII. SEEKING LEGAL, PSYCHOLOGICAL AND OTHER SUPPORTS

1. Members Must Be Provided with a Reasonable Opportunity to Diligently Seek Advice or Counselling (OM 54.3, s. 5.1.6)

Once an Involved Member's initial responsibilities have been discharged, they will have a reasonable opportunity, normally up to 10 days, to seek advice, counselling or other supports, such as:

- medical
- legal
- psychological
- emotional
- spiritual
- Peer-to-Peer Coordinator
- NPF Representative
- Employee Assistance Services (EAS) at 1-800-268-7708