

**NATIONAL
POLICE
FEDERATION**



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DE LA POLICE
NATIONALE**

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

“D” Division Subject Member and Witness Member Handbook

**Investigations May Be Conducted by
the Independent Investigative Unit (IIU), or the RCMP**

*Pursuant to the RCMP Act, the RCMP Regulations Prescribing Physical Injuries
Manitoba’s Police Services Act, Independent Investigations Regulations, and
Civilian Monitor Regulation*

***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.

I. IS IT A “SERIOUS INCIDENT”?

In “D” Division, it is a serious incident if (Manitoba’s *Police Services Act*, s. 65(1) and (2); and *Independent Investigations Regulation*, s. 1(2)):

- the **death** of a person may have resulted from the actions of a Member;
- a **serious injury** to a person may have resulted from the actions of a Member;
- a Member **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
- a Member may have contravened **a prescribed provision of a federal or provincial enactment**.

A “serious injury” is an injury that (RCMP *Regulations Prescribing Physical Injuries*):

- **is not transient or trifling** in nature;
- **has 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**; or
 - (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**.

Initially, an injury will be **presumed to be serious** if 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.

II. MEMBERS' IMMEDIATE RESPONSIBILITIES

(Manitoba's *Police Services Act*, s. 65(1), (3) and (4), 66(1) and (3); OM 54.3, s. 5.2)

1. Notify

- notify the **Commanding Officer**, who must notify the IIU as soon as practicable;
- 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 and any weapons of opportunity used;
- secure the availability of potential witnesses; and

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.

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

Any 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)).

III. RESPONSIBILITY TO REPORT TO ON-SCENE SUPERVISOR / INVESTIGATOR

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

(OM 54.3, s. 5.1.2, 5.2.1.6; OM 25.2)

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. It 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 Must Compile Preliminary Report Information from All Members Present at the Scene, and Provide It to the Arriving IIU Investigator*

(*Independent Investigations Reg.*, s. 8):

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

IV. WHO INVESTIGATES AND WHICH INVESTIGATION PROTOCOL IS USED?

1. In “D” Division, the IIU Will Likely Investigate, but Manitoba Minister of Justice May Assign Investigation to a Police Service or to RCMP Members (Manitoba’s *Police Services Act*, s. 20)

2. The Protocol Used Depends on Who Conducts the Investigation

- The IIU will use the protocol set out in Manitoba’s *Police Services Act* and regulations
- A different Detachment or Division of the RCMP will use OM 54.1 and OM 54.3.

3. If the RCMP Investigates, Members Should Expect that Investigators Will Be Free from Conflict of Interest, Trained, Experienced, and Available to Prioritize the Investigation

Serious incident investigations of 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 will be screened for any actual or perceived conflict of interest (OM 54.1, s. 5.3, 8.1).

Subject Members can expect that, to the greatest extent possible (OM 54.1, s. 8.2):

- there will be a team of at least two RCMP investigators;
- the RCMP lead investigator’s rank will be at least one rank higher than that of all Subject Members;
- the RCMP lead investigator will have the requisite experience and training; and
- the RCMP investigators will be able to give priority to the serious incident investigation.

V. CIVILIAN MONITORS

1. In “D” Div, if a Member May Have Caused the Death of a Person, or if the IIU Director Considers it to be in the Public Interest, a Civilian Monitor Will be Assigned

The civilian monitor must monitor the progress of the IIU’s investigation and report to the Chair of the Manitoba Police Commission (Manitoba *Police Services Act*, s. 71, 72)

2. Limits on a Civilian Monitor’s Activities: No Communication with Involved Members

A Civilian Monitor may only communicate with the IIU Director or an IIU investigative team member (*Civilian Monitor Regulation*, s. 5).

A Civilian Monitor must not (*Civilian Monitor Regulation*, s. 5, 9(2) to 10(2)):

- participate directly or indirectly in an IIU investigation;
- communicate or attempt to communicate with a Subject Member or Witness Member;
- 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; or
- be given access to any physical evidence.

3. *Members Should Avoid Making Statements in the Presence of an Independent Observer*

CAUTION: A Member's statement made in the presence of a Civilian Monitor is not protected by subsequent use immunity.

Civilian Monitors are compellable witnesses in every criminal, civil, or administrative action, proceeding, or inquiry, in respect of any matter coming to the knowledge of the Monitor 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).

4. *Members Must Not Disclose Privileged Information to a Civilian Monitor*

CAUTION: Disclosing privileged information to a Civilian Monitor is an offence under the *RCMP Act*. Maximum penalties are (*RCMP Act*, s. 45.86, 50.3; OM 54.1, s. 7.3):

- **indictable:** 5 years' imprisonment
- **summary conviction:** fine of \$5,000, or six months' imprisonment, or both

"**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 protected by **solicitor-client privilege**;
- information subject to **informer privilege**;
- **information related to witness protection methods or protected persons**, the disclosure of which is described in s. 11(1) of the *Witness Protection Program Act*;
- **special operational information** as defined in s. 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.

VI. DESIGNATION AS A SUBJECT MEMBER OR WITNESS MEMBER

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

Subject Member means a Member who, in the IIU Director's opinion, may have (Manitoba's *Independent Investigation Regs.*, s. 1(1)):

- caused a **death or a serious injury** to a person; or
- **committed a designated offence**; or
- engaged in **other conduct that is the subject of an investigation by the IIU**.

Witness Member means a Member who, in the IIU Director's opinion (Manitoba's *Independent Investigation Regs.*, s. 1(1)):

- **witnessed, was present at, or was involved in** a serious incident; or
- **witnessed, or has material information respecting, any other conduct or alleged conduct** of another Member that is the subject of an investigation by the IIU.

2. Right to Notification of Designation Before an IIU Investigator Requests the Member's Notes or an Interview

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)).

3. Right to Notification of Any Change in Designation

Subject Member → Witness Member

If the IIU Director determines that a Subject Member's designation has changed to Witness Member, the **IIU Director must provide written notice to the CO and the Member** (*Independent Investigations Reg.*, s. 14(2)).

Witness Member → Subject Member

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 to 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.

VII. WITNESS MEMBERS MUST PROVIDE THEIR POLICE NOTES AND A DETAILED REPORT

1. Witness Members Must Provide Copy of Police Notes to IIU Investigator, Normally Within 24 Hours (*Independent Investigations Reg.*, s. 10(1) to (4))

Once an IIU investigator makes a written request, a Witness Member **must fully complete their notes and provide them to the CO**, so that the CO can provide copies of the Witness Member's notes **to the IIU investigator within 24 hours** of the written request.

The IIU Director may extend the 24-hour deadline for a Witness Member's notes and if so, must provide the CO with written reasons for granting the extension.

2. Witness Members Must Provide a Detailed Report at the First Reasonable Opportunity, Normally Before Going Off-Duty (OM 54.3, s. 5.1.8.2, 5.2.1.9)

A Detailed Report is a comprehensive written police report that describes a Member's actions and rationales for those actions while performing their duties in a serious incident. This Report must be provided before going off-duty, unless there are exceptional circumstances.

3. **Witness Members May be Required to Answer Questions About the Report and/or Continue to Provide Detailed Reports as Requested by the Investigative Team** (OM 54.3, s. 5.1.8.3, 5.1.8.4)

VIII. SUBJECT MEMBERS ARE NOT REQUIRED TO PROVIDE THEIR POLICE NOTES OR A DETAILED REPORT

1. **Subject Members Must Fully Complete Their Notes in Accordance with Their Duty** (*Independent Investigations Regs*, s. 11(1))
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 advised of their status as a Subject Member;
- 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)).

3. **Subject Members Are Not Required to Provide Their Police Notes or a Detailed Report** (OM 54.3, s. 5.1.3.1; *Independent Investigations Reg.*, s. 11(3))

A Subject Member has **no duty or obligation to provide their notes** to an IIU investigator or the IIU Director. While Subject Members may voluntarily provide their notes, the NPF recommends that Subject Members not do so, especially not before consulting with legal counsel.

4. **No Other RCMP Member May Provide a Subject Member's Notes to an IIU Investigator or the IIU Director** (*Independent Investigations Reg.*, s. 11(2))

IX. 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**

X. 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.

XI. WITNESS MEMBER INTERVIEWS

1. *Witness Members Must Submit to Interview at the Time and Place Specified by IIU Investigator (Independent Investigations Reg., s. 12)*

An IIU investigator may make a written request to the CO for an interview with a Witness Member.

The interview **must take place where and when the IIU investigator specifies, normally within 24 hours** of the investigator's request.

The IIU Director may extend the 24-hour time limit for a Witness Member interview, and if so, must provide the CO with written reasons for granting the extension.

2. *Interviews Must Be Videotaped or Audiotaped (Independent Investigations Reg., s. 13)*

XII. SUBJECT MEMBERS CANNOT BE COMPELLED TO PROVIDE A STATEMENT OR SUBMIT TO AN INTERVIEW

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. If a Subject Member Chooses to Participate in an Interview, They Should Expect to be Warned and Cautioned

To make it clear that the Subject Member is not compelled to say anything to investigators, and that the Subject Member's voluntary statements and interviews can be used in evidence in any proceeding, **investigators should provide the Subject Member with:**

- the “**Official Warning**” at the beginning of the interview; and
- the “**Written Statement Caution**” before accepting any written statement from the Subject Member.

4. Interviews Must Be Videotaped or Audiotaped (Independent Investigations Reg., s. 13)

XIII. 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.

XIV. 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