

**NATIONAL
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NATIONALE**

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

“E” Division Subject Member and Witness Member Handbook

**Investigations Conducted by the
Independent Investigations Office of British Columbia (IIO)**

Pursuant to B.C.'s *Police Act*, and the
Memorandum of Understanding between the IIO and the RCMP, February 2013 (MOU)

***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 “E” Division, it is a serious incident if it appears that, or there is evidence that, a Member may have:

- caused the **death** of a person;
- caused a person **an injury that may**:
 - **result in death**;
 - **cause serious disfigurement**;
 - **cause substantial loss or impairment of mobility of the body as a whole or of the function of any limb or organ**; or
- **contravened** a prescribed provision of the *Criminal Code* or another federal or provincial Act.

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

Before the IIO arrives and takes over the scene, Members must take all lawful measures that appear necessary or expedient for the purposes of (*B.C. Police Act*, s. 38.09(2); MOU, s. 7, 8, 9):

- securing the scene;
- obtaining and preserving evidence relating to the incident; and
- canvassing and securing the availability of potential witnesses.

4. Limit Communications

To prevent contamination of evidence, before being interviewed by an IIO investigator, **Involved Members 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 a Member; or
- any other purpose that is agreed upon by the IIO investigator and the RCMP Liaison Officer.

III. RESPONSIBILITY TO REPORT TO ON-SCENE SUPERVISOR / IIO LIAISON OFFICER

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. *Preliminary Report to On-Scene Supervisor or RCMP's IIO Liaison Officer*

All Involved Members must, wherever practicable, **cooperate with the collection of information to provide a basic verbal or written account** of the information required to form an immediate police response for the purposes of safeguarding the public, securing evidence, and preventing the continuation of offences. This will **enable the IIO Liaison Officer / On-Scene Supervisor to convey the information to the IIO**, including (MOU, s. 16):

- status, location and identity of subjects (police and civilian);
- unlocated subjects;
- status, location and identity of witnesses (police and civilian);
- name(s) of any person(s) with whom any Involved Member has spoken since the incident;
- other dangers;
- injuries requiring medical attention;
- scene location parameters / boundaries;
- identification and location of all evidence to be protected or collected, including but not limited to objects, documents, witness statements, and data;
- nature of the event;
- behaviour(s) of the subject(s) involved;
- identification or intervention tools used; and
- if a firearm was discharged, the direction of fire.

IV. 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 (MOU, s. 14.2):

- an on-duty Member whose presence, action, or decision is reasonably believed
 - i. to have been a contributing factor in the death of any person;
 - ii. to have been a contributing factor in a life-threatening injury to any person;
 - iii. to have caused disfigurement, if there were no medical intervention; or
 - iv. to have caused permanent loss or impairment of any function or mobility of the body, if there were no medical intervention; or
- an on-duty Member who has discharged a firearm, where there is a reasonable belief that any person (including an officer) may have been injured by that discharge.

Witness Member means (MOU, s. 14.3):

- a Member who is not a Subject Member, but who was involved in or present during the incident being investigated.

2. Right to Notification of Designation Before Being Asked to Provide Notes, Reports or Data to the IIO

Before requesting any information from a Subject Member or Witness Member, the IIO investigator **must** advise the Member of their designation (MOU, s. 17.1). The IIO investigator **must** (MOU, s. 14.1, 14.4, 18.1, 19.2):

- designate all Involved Members as soon as practicable,
- notify those Members of their designation;
- subsequently confirm those designations in writing;
- immediately advise a Member if the Member's designation has changed from Witness to Subject, or from Subject to Witness; and
- subsequently provide written notice of any change in designation.

3. Members Must Cooperate Fully with the IIO (B.C. Police Act, s. 38.101)

This statutory obligation is subject to, and limited by, a Member's *Charter* rights, including a Subject Member's right to silence.

V. WITNESS MEMBERS MUST PROVIDE A DETAILED REPORT, AND PROVIDE THEIR POLICE NOTES, REPORTS AND DATA TO THE IIO

1. 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.

2. Witness Members Must Provide Copies of Their Police Notes, Reports, and Data to the IIO Investigator (AM 54.3; MOU, s. 17.2).

This information must be **provided by the end of the shift**, unless the IIO investigator determines that there are exceptional circumstances for not doing so.

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)

VI. SUBJECT MEMBERS MUST PROVIDE CERTAIN PORTIONS OF THEIR POLICE NOTES, REPORTS OR DATA

1. ***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;
- 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)); and

2. ***Subject Members Must Provide Portions of Their Notes, Reports or Data which Indicate or Record Witness Statements Made to the Subject Member*** (MOU, s. 17.3)

This information must be submitted **by the end of the shift** unless the IIO investigator determines there are exceptional circumstances for not doing so.

3. ***Subject Members Do Not Provide Notes, Reports or Data which Include a Subject Member's Compelled Statements***

The IIO cannot compel a Subject Member to provide any information which includes compelled statements made by Subject Members (MOU, s. 17.4).

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.

3. *An Involved Member's Statement Made in an IIO Investigation is Inadmissible in Civil Proceedings Against the Member*

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 an 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).

IX. WITNESS MEMBER INTERVIEWS

1. *Right to Be Advised of Your Designation as a Witness Member*

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).

2. *Pre-Interview Disclosure of Information to a Witness is at the IIO's Discretion*

The IIO has complete discretion in deciding whether to provide pre-interview disclosure to a Witness Member (*Independent investigations Office of British Columbia v Vancouver (City) Police Department*, 2018 BCSC 1804, at para 165).

3. *Location of Interview is Determined by the IIO Investigator* (MOU, s. 18.4)

4. *Scheduling of Interview is Determined by the IIO Investigator* (MOU, s. 18.2)

Unless otherwise determined by the IIO investigator, a Witness Member **must participate in an interview:**

- **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.

5. *Attendance of Legal Counsel and/or NPF Representative is at IIO's Discretion*

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).

6. 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.**

7. A Witness Member Must Answer an IIO Investigator's Questions (MOU, s. 18.3)

X. SUBJECT MEMBER INTERVIEWS

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

2. Right to Be Advised of Your Designation as a Subject Member

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. 19.1).

3. IIO Investigators Are Required to Seek to Conduct Video-Recorded Voluntary Interviews with Subject Members (MOU, s. 19.3)

However, IIO investigators **cannot compel** a Subject Member to participate in an interview.

4. 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.

5. If a Subject Member Participates in an IIO Interview, They Must Be Warned and Cautioned

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 the Subject Member.

6. Interview Scheduling if an IIO Subject Member is Also a Witness in a Concurrent Investigation

If a Subject Member in an IIO investigation is also a Witness Member in a concurrent investigation, and if they choose to provide a statement in the IIO investigation, in general, their interview as a Subject Member in the IIO investigation will proceed before their interview as a Witness Member in the concurrent investigation (MOU, s. 12.2).

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