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

## **“H” Division Subject Member and Witness Member Handbook**

### **Investigations Conducted by the Nova Scotia Serious Incident Response Team (SiRT)**

Pursuant to the *RCMP Act*, the *Regulations Prescribing Physical Injuries*, OM 54.3, Nova Scotia's *Police Act* and *Serious Incident Response Team Regulations (SiRT Regs)*, and any Memorandum of Understanding between SiRT and the RCMP

***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 “H” Division, a serious incident means (N.S. *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.

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 (*SiRT Regs*; 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

Until the SiRT or other investigating agency arrives and takes charge of the scene, the CO must ensure that Members at the scene secure the scene in a manner consistent with all CSOs, polices and usual RCMP practice for serious incidents (*SiRT Regs*, s. 4; OM 54.3, s. 5.2):

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

### 4. Limit Communications / Mandatory Segregation of Members

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 SiRT investigators have finished interviewing all of the Witness Members (*SiRT Regs*, s. 5(1)).

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)).

## III. RESPONSIBILITY TO REPORT TO ON-SCENE SUPERVISOR

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

Each Member involved in a serious incident **must** complete their police notes about the serious incident in accordance with RCMP procedures (*SiRT Regs*, s. 6(1); OM 54.3, 2. 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.

#### **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 a Member who is the subject of an investigation, or whose actions may have resulted in a serious incident (N.S. *SiRT Regs*, s.2(1))

“**Witness Member**” means a Member who is a witness to or has material information relating to the events of a serious incident (N.S. *SiRT Regs*, s.2(1))

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

**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)).

##### **3. Right to Notification of Any 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 Member, 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.**

## **V. WITNESS MEMBERS MUST PROVIDE THEIR POLICE NOTES AND A DETAILED REPORT**

### **1. Witness Members Must Provide Their Police Notes to SiRT Within 48 Hours of Request (SiRT Regs, s. 6(3) and (4))**

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**.

### **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)**

## **VI. SUBJECT MEMBERS ARE NOT REQUIRED TO PROVIDE THEIR POLICE NOTES OR A DETAILED REPORT**

### **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 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)).

### **2. Subject Members Are Not Required to Provide Their Police Notes to SiRT or the Investigating Agency (SiRT Regs, s. 6(5))**

### **3. No RCMP Member or Other Person May Provide a Subject Member's Notes to SiRT or the Investigating Agency Without the Subject Member's Express Permission (SiRT Regs, s. 6(5))**

## **VII. RIGHT TO LEGAL COUNSEL – SUBJECT MEMBERS AND WITNESS MEMBERS**

### **1. Subject Members' and Witness Members' Rights to Consult Legal Counsel Before Being Interviewed (SiRT Regs, s. 7(4) and (5))**

**Each Member** who is either requested or directed to attend an interview **must be advised of their right to, and must be 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.

### **2. 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 Submit to an Interview at a Specified Time**

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)).

### **2. Interviews Must Be Audio- or Video-Recorded, if Practicable** (*SiRT Regs*, s. 7(6))

## **X. 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, **the Subject Member should be provided 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 Audio- or Video-Recorded, if Practicable** (*SiRT Regs*, s. 7(6))

## **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.

## **XI. 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