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

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

### **Investigations Conducted by the Alberta Serious Incident Response Team (ASIRT)**

Pursuant to Alberta's *Police Act* and *Police Service Regulation 356/90*, and the Memorandum of Understanding between Alberta/ASIRT and the RCMP, February 2019 (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 “K” Division, it is a serious incident if (Alta. Police Act, s. 46.1(1)):

- the actions of a Member may have resulted in:
  - the **death** of any person; or
  - a **serious injury** to any person.

“Serious injury” includes an injury likely to interfere with the health or comfort of the person that is more than merely passing or trivial in nature.

Initially, a serious injury will be presumed when:

- the injured person is either admitted for a stay in hospital; or
- the injured person suffers severe trauma to the body, 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;
- a prolonged delay may be likely before the nature and seriousness of injury can be assessed;
- sexual assault is alleged; or
- a gunshot wound of any degree of severity is sustained as a result of a Member firing a firearm.

## 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 ASIRT arrives and takes over the scene, Members must ensure that the scene is secured in a manner consistent with the RCMP's policies and usual practices for serious incidents (Alta. *Police Service Reg.*, s. s. 10.2; MOU, s. 4.2; 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**

Involved Members **must not** have any communication about the details of the incident with any other Involved Member until after ASIRT has finished interviewing all Involved Members (Alta. *Police Service Reg.*, s. 10.3(2)).

## **III. RESPONSIBILITY TO REPORT TO ON-SCENE SUPERVISOR OR RCMP's ASIRT 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. Provide Preliminary Report to On-Scene Supervisor or RCMP's ASIRT Liaison Officer**

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 whose actions may have resulted in a serious incident (Alta. *Police Service Reg.*, s.10.4(1)(a))

“**Witness Member**” means a Member who is a witness to or has material information relating to the serious incident (Alta. *Police Service Reg.*, s.10.4(1)(b))

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

Before asking a Member to provide copies of their notes, or to submit to an interview, the ASIRT investigator **must** (Alta. *Police Service Reg.*, s. 10.6(1)(a)):

- **determine** whether a Member is a Subject Member or a Witness Member; **and**
- **advise the Member in writing** of their designation.

### 3. Right to Notification of Any Change in Designation

#### Subject Member → Witness Member

If, after designating a Member as a Subject Member, it is determined that the Subject Member is now a Witness Member, **ASIRT must advise the Member in writing** (Alta. *Police Service Reg.*, s. 10.6(2)).

#### Witness Member → Subject Member

If, after a Witness Member is interviewed and provides copies of their police notes, the Witness Member is re-designated as a Subject Member, **ASIRT must** (Alta. *Police Service Reg.*, s. 10.3(3)):

- **advise the Member in writing;**
- return the original and all copies of the record of their interview to the Member; and
- provide the RCMP with the original and all copies of the Member’s police notes.

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

### 1. Witness Members Must Complete Their Notes in Full and Provide Them Upon ASIRT’s Request (Alta. *Police Service Reg.*, s. 10.4(2) to (4))

When requested by ASIRT, a Witness Member must provide their notes to the RCMP to enable forwarding to ASIRT **no later than 24 hours after ASIRT’s request.**

### 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 POLICE NOTES OR A DETAILED REPORT**

1. ***Subject Members Must Complete Their Notes in Full*** (Alta. Police Service Reg., s. 10.5)
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***

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)).

3. ***Subject Members Are Not Required to Provide Their Police Notes to ASIRT***  
(Alta. Police Service Reg., s. 10(6))
4. ***No Other Person May Provide a Subject Member's Notes to ASIRT Without the Subject Member's Express Permission*** (Alta. Police Service Reg., s. 10(6))

## **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 Attend Interview as Directed by ASIRT and Answer Questions**

ASIRT may direct a Witness Member to attend an interview **immediately; within 24 hours after the request**, if there are appropriate grounds for a delay; **or at a later time** (Alta. *Police Service Reg.*, s. 10.5(1) to (3)).

### **2. Witness Member's Right to a Copy of Their Interview Recording**

Where practicable, Witness Member interviews must be audio or video-recorded, and the Witness Member must be provided with a copy of any recording made (Alta. *Police Service Reg.*, s. 10.5(4) and (5)).

## **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.

## **IX. 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.

## **X. 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