

**NATIONAL
POLICE
FEDERATION**



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DE LA POLICE
NATIONALE**

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

“L” Division Subject Member and Witness Member Handbook

**Investigations May Be Conducted by
a Provincial Investigative Body, a Police Service, or the RCMP**

Pursuant to
the *RCMP Act*, the *RCMP Regulations Prescribing Physical Injuries*, and OM 54.1, OM 54.3,
or
a Provincial Investigative Body’s Governing Statute

***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.

**PRINCE EDWARD ISLAND DOES NOT YET HAVE
A PROVINCIAL INVESTIGATIVE BODY OR
AN INVESTIGATIVE PROTOCOL
FOR
MEMBER INVOLVED SHOOTINGS / SERIOUS INCIDENT INVESTIGATIONS**

Prince Edward Island's *Police Act* does not contain any provisions concerning serious incident investigations. Therefore, the Commissioner of the RCMP may request that a serious incident involving RCMP Members in "L" Division be investigated by:

- another provincial investigative body (SiRT, BEI, SIU, etc);
- another police force; or
- as a last resort, the RCMP.

If an incident is being investigated by an investigative body from another Division, please refer to that Division's / investigative body's protocol.

If the incident is being investigated by the RCMP, please refer to the protocol summary below.

I. IS IT A "SERIOUS INCIDENT"?

In "L" Division, it is a serious incident if **the actions of a Member or a person assisting the RCMP** in exercising its powers or performing its duties and functions under the *RCMP Act*, **may have** (*RCMP Act*, s. 45.79(1), 45.88(1); OM 54.1, s. 2.5; OM 54.3, s. 2.1.2):

- **resulted in serious injury** to, or the **death** of, any person;
- or
- **constituted a provincial or federal offence and** it would be **in the public interest to have the incident investigated by a provincial investigative body, or by a police force other than the RCMP.**

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 (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 and any weapons of opportunity used;
- 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.

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 or Investigator*

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. WHO INVESTIGATES AND WHICH INVESTIGATION PROTOCOL IS USED?

1. *In "L" Division, the Protocol Used Depends on Who Conducts the Investigation*

- a **provincial investigative body** (eg: SiRT, BEI, SIU) will use the protocol set out in their legislation and any written agreements with the RCMP;
- **another police** force will use the protocol mandated by their legislation;
- a different Detachment or Division of **the RCMP** will use OM 54.1 and OM 54.3.

2. *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. INDEPENDENT INVESTIGATION OBSERVER

1. ***If the Investigation is Conducted by the RCMP or Another Police Force, the Civilian Review and Complaints Commission for the RCMP (CRCC) May Appoint an Independent Observer*** (*RCMP Act*, s. 45.83; OM 54.1, s. 7.1)

2. ***Members Must Permit the Observer Full Access to the Investigation*** (*RCMP Act*, s. 45.83(2); OM 54.1, s. 3.8, 3.10)

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

CAUTION: A Member's statement made in the presence of an Independent Observer is not protected by subsequent use immunity.

Observers are compellable witnesses in ***every*** criminal, civil, or administrative action, proceeding, or inquiry, in respect of any matter coming to the knowledge of the Observer 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 an Independent Observer***

CAUTION: Disclosing privileged information to an Independent Observer 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 is a Member (OM 54.3, s. 2.1.5):

- whose duties or other actions, in the opinion of the on-scene supervisor or lead investigator, directly or indirectly contributed to a death or serious injury of a person; or
- whose conduct may have constituted an offence.

Witness Member is a Member who (OM 54.3, s. 2.1.6.):

- is *not* a Subject Member;
- is involved, directly or indirectly, in a serious incident under investigation; and
- may have relevant information.

2. Members Will Be Presumed to be Witness Members Unless There is a Reasonable and Articulable Basis to Suspect that They Have Committed an Offence (OM 54.3, s. 5.1.2)

3. Either the On-Scene Supervisor or the Lead Investigator Will Designate the Involved Members as Soon as Practicable (OM 54.3, s. 5.1.5)

4. Involved Members Should Expect to be Promptly Notified of Their Designation, or of Any Change in Their Designation

5. Members Should be Advised of Their Designation Before Being Requested to Provide Their Notes or a Statement

6. Designations Should be Subsequently Confirmed in Writing

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

1. Witness Members Must Provide a Copy of Their Police Notes to the Investigator

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 Detailed 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 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 or a Detailed Report** (OM 54.3, s. 5.1.3.1)

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. 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, and Must be Treated in Accordance with All Applicable Laws

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.

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 and/or emotional
- spiritual
- Peer-to-Peer Coordinator
- NPF Representative
- Employee Assistance Services (EAS) at 1-800-268-7708