

**NATIONAL
POLICE
FEDERATION**



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DE LA POLICE
NATIONALE**

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

“M” Division Subject Member and Witness Member Handbook

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

Pursuant to the *RCMP Act*, OM 54.1 and OM 54.3,
Alberta's *Police Act* and *Police Service Regulation 356/90*, and
the Memorandum of Understanding Between the Government of Yukon, the RCMP
and Alberta/ASIRT, 2012 & 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 “M” Division, it is a serious incident if (MOU, s. 1.1.15):

- the actions of a Member **may have** resulted in **serious injury** to, or the **death** of any person;
or
- it appears that a Member **may have contravened** a provision of the *Criminal Code* or other statute and/or the matter is of a serious or sensitive nature

“Serious injury” means a medically significant injury (MOU, s. 1.1.16)

Initially, a serious injury will be **presumed** when the victim is admitted to hospital, suffering from (MOU, s. 1.1.16):

- 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 of vision or hearing.

II. MEMBERS’ IMMEDIATE RESPONSIBILITIES (OM 54.3, s. 5.2; MOU, s. 7.1)

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
- identify and secure 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.

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. A Preliminary Report 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. For serious incidents in “M” Division, ASIRT May Lead, Oversee, Review, or Oversee & Review

If Yukon and ASIRT decide that an incident is a serious incident, they will consult with RCMP CROPS on the appropriate level of ASIRT involvement (MOU, s. 6):

“**Lead**” means that ASIRT will actively conduct the investigation pursuant to its protocol.

“**Oversee**” means that ASIRT will oversee an investigation conducted by either the RCMP or another police force pursuant to the RCMP’s or the other police force’s protocol.

“**Review**” means that ASIRT will review an investigation conducted by the RCMP or another police force.

“**Oversee and Review**” means that ASIRT will both oversee and review an investigation conducted by the RCMP or another police service.

2. If the RCMP Investigates, the Investigation Will Be Conducted According to 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. INDEPENDENT OBSERVER AND/OR COMMUNITY LIAISON

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. ***The Yukon Assistant Deputy Minister May Appoint a Community Liaison/Observer*** (MOU, s. 10)

The role of a Community Liaison may include acting as a Community Observer to the investigation in support of ASIRT's mandate to conduct an objective, independent investigation.

A Community Liaison/Observer must keep confidential any information received in their capacity, except to the extent that any such information will be disclosed as a matter of law.

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

4. ***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).

5. ***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**” 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.

VII. 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)

VIII. SUBJECT MEMBERS ARE NOT REQUIRED TO PROVIDE THEIR 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*** (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; 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))

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 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)).

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, **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.

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