

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

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

**Investigations Conducted by the  
Special Investigations Unit (SIU)**

Pursuant to the *RCMP Act* and Part VII of Ontario's *Police Services Act*

***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 “O” 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)) :

- **resulted in serious injury** to, or the **death** of, any person;  
**or**
- **constituted an offence** under federal or provincial law, and it is decided that it would be in the public interest to have the SIU or another police force investigate.

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

Until the SIU arrives and takes charge of the scene, Members at the scene must secure the scene in a manner consistent with all CSOs, polices and usual RCMP practice for serious incidents (*SIU Regs*, s. 4; *SIU Act*, s. 20; 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 / Segregate Members

To the extent practicable, the CO must ensure that **all Involved Members are segregated from each other** until after the SIU investigators have completed their interviews (*SIU Regs*, s. 6(1); *SIU Act*, s. 26(1)).

Involved Members **must not communicate, either directly or indirectly**, with any other Involved Member concerning their involvement in the incident until after the SIU investigators have completed their interviews (*SIU Regs*, s. 6(2); *SIU Act*, s. 26(2)).

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

### 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

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. 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 conduct appears, in the opinion of the SIU Director, to have caused the death or serious injury under investigation (*SIU Regs*, s. 1(1)).

“**Witness Member**” means a Member who, in the opinion of the SIU Director, is involved in the incident under investigation but is not a Subject Member (*SIU Regs*, s. 1(1)).

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

**Before an SIU investigator requests** an interview or a Member’s notes on the incident, **the SIU must advise the Member and the CO in writing** of whether the Member is considered to be a Subject Member or a Witness Member (*SIU Regs*, s. 10(1); *SIU Act*, s. 22(1)).

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

###### **Subject Member → Witness Member**

If, at any time after first advising a Member that they are a Subject Member, the SIU Director decides that the Member’s designation has changed to Witness Member, **the SIU Director must provide written notice to the CO and the Member** (*SIU Regs*, s. 10(2); *SIU Act*, s. 22(2)).

###### **Witness Member → Subject Member**

If, at any time after first advising them of their designation, the SIU Director decides that the Member’s designation has changed from Witness Member to Subject Member, **the SIU must** (*SIU Regs*, s. 10(2), (3); *SIU Act*, s. 22(2), 24(2) and 25(7)):

- **provide written notice to the CO and the Member;**
- **give the Member the original and all copies of the record of the interview;** and
- **give the CO the original and all copies of the Member’s notes.**

## V. DUTY TO COMPLY WITH SIU REQUESTS

Members, other than a Subject Member, **must comply** with any reasonable request received from the SIU Director or an SIU investigator in relation to an SIU investigation, immediately or as otherwise required, **unless doing so is unlawful or impracticable** (Ontario's *Police Services Act*, s. 113(9); *SIU Act*, s. 31).

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

### 1. Witness Members Must Complete Notes for Provision to SIU Within 24 Hours of SIU's Request

A Witness Member **must fully complete their notes on the incident, and provide their notes to the CO before the end of the Member's shift**, except where excused by the CO (*SIU Regs*, s. 9(1) and (5); *SIU Act*, s. 21).

Unless the SIU Director allows otherwise, **the CO must provide copies of a Witness Member's notes to the SIU upon request, and no later than 24 hours** after the SIU requested the notes (*SIU Regs*, s. 9(2) and (4); *SIU Act*, s. 23(1)).

### 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)

## VII. SUBJECT MEMBERS ARE **NOT REQUIRED** TO PROVIDE 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 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 Must Fully Complete Their Police Notes Before End of Shift**

In accordance with their duty, and except where excused by the CO, a Subject Member **must fully complete their notes on the incident before the end of their shift** (*SIU Regs*, s. 9(3) and (5); *SIU Act*, s. 21(1)).

## **3. Subject Members' Police Notes Are Not to be Provided to the SIU**

No Member of the RCMP may provide copies of a Subject Member's notes to the SIU (*SIU Regs*, s. 9(3); *SIU Act*, s. 24(1)).

## **VIII. RIGHT TO LEGAL COUNSEL – SUBJECT MEMBERS AND WITNESS MEMBERS** (*SIU Regs*, s. 7; *SIU Act*, s. 27)

### **1. Every Involved Member is Entitled to Consult with Legal Counsel or an NPF Representative or Both.**

### **2. Every Involved Member is Entitled to Have Legal Counsel or an NPF Representative Present During Their Interview**

The only exception to this entitlement is if the SIU Director is of the opinion that waiting for legal counsel or an NPF Representative would cause an unreasonable delay in the investigation.

### **3. The Same Legal Counsel Cannot Represent Both Witness Members and Subject Members**

## **IX. BEFORE PROVIDING A WRITTEN STATEMENT OR SUBMITTING TO AN INTERVIEW**

### **1. If Possible, Wait at Least 72 Hours Before Providing a Statement or Submitting to an Interview 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.

## **X. WITNESS MEMBER INTERVIEWS**

### **1. Witness Members Must Attend Interview as Directed by SIU and Answer Questions**

An SIU request for an interview with a Witness Member must be made in person (*SIU Regs*, s. 8(1) and (2); *SIU Act*, s. 25(1)).

**Immediately** upon receiving an in-person request for an interview by the SIU, **or** if there are appropriate grounds for a delay, **no later than 24 hours after the request, a Witness Member must meet with the SIU and answer all questions** (*SIU Regs*, s. 8(1); *SIU Act*, s. 25(2) and (3)).

The SIU Director may request that an interview take place beyond the 24-hour time requirement (*SIU Regs*, s. 8(5); *SIU Act*, s. 25(3)).

### **2. Witness Member's Right to a Record of Their Interview, and Right to Not Be Videotaped**

Currently, **the SIU must record the interview** but cannot do so by audiotape or videotape without the Witness Member's consent (*SIU Regs*, s. 8(3) and (4)).

When the *SIU Act* comes into force, an SIU investigator may audiotape a Witness Member interview, but cannot videotape the interview without the Witness Member's consent (s. 25(5)).

The **SIU must give the Witness Member a copy of the record** (transcript, audiotape or videotape) as soon as it is available (*SIU Regs*, s. 8(3); *SIU Act*, s. 25(6)).

## **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**

### **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.

## **XII. MEMBERS CANNOT DISCLOSE INFORMATION ABOUT THE INCIDENT OR THE INVESTIGATION**

During the course of an SIU investigation, the RCMP and its Members **must not disclose** to any person any information with respect to the incident or the investigation (*SIU Regs*, s. 12(2); *SIU Act*, s. 28(1)). The RCMP may only disclose the fact that the SIU has been notified of an incident and is conducting the investigation (*SIU Regs*, s. 12(1); *SIU Act*, s. 28(3)).

## **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