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Commission for  
Public Complaints Against the  
Royal Canadian Mounted Police

Commission des  
plaintes du public contre la  
Gendarmerie royale du Canada

COMMISSION FOR PUBLIC COMPLAINTS  
AGAINST THE RCMP

# Police Investigating Police

FINAL PUBLIC REPORT

A Chair-initiated complaint and public interest investigation into public concerns about the impartiality of RCMP members conducting criminal investigations into other RCMP members in cases involving serious injury or death.

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August 11, 2009

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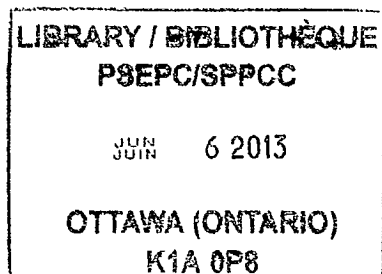
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# COMMISSION FOR PUBLIC COMPLAINTS AGAINST THE RCMP

## CHAIR'S FINAL REPORT AFTER COMMISSIONER'S NOTICE RCMP Act

*Subsection 45.46(3)*



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File No.: PC-2007-2673



# CHAIR'S FINAL REPORT AFTER COMMISSIONER'S NOTICE

## The Complaint

The Chair of the Commission for Public Complaints Against the RCMP (CPC) launched a Chair initiated complaint and public interest investigation on November 28, 2007, to assess the conduct of those unidentified RCMP members who have undertaken criminal investigations into the activities of other RCMP members in cases involving serious injury or death, which took place anywhere in Canada between April 1, 2002 and March 31, 2007.

Specifically, the CPC sought to assess:

<b>Standards Against Which Conduct is to be Assessed</b>	
1.	Whether the RCMP members involved in these investigations conducted the investigations free of actual or perceived conflict of interest, whether they responded appropriately and proportionately to the gravity of the incident, whether they responded in a timely fashion and whether their conduct adhered to the standards set out in section 37 of the <i>RCMP Act</i> .
	More specifically:
	<b>(a) Line management</b>
	<ul style="list-style-type: none"><li>• Whether any actual or perceived conflict of interest.</li><li>• Appropriateness of management structure and reporting relationships.</li></ul>
	<b>(b) Appropriate level of response</b>
	<ul style="list-style-type: none"><li>• Whether RCMP investigative team response to the incident was appropriate and proportionate to the gravity of the incident.</li><li>• Whether qualified investigators have been assigned.</li></ul>
	<b>(c) Timeliness of the response</b>
	<ul style="list-style-type: none"><li>• Whether members of the RCMP investigative team responded in a timely fashion to the incident.</li></ul>
	<b>(d) Conduct</b>
	<ul style="list-style-type: none"><li>• Whether the conduct of members of the RCMP investigative team during the course of the investigation was consistent with section 37 of the <i>RCMP Act</i>.</li></ul>
2.	Whether these same RCMP members complied with all appropriate policies, procedures, guidelines and statutory requirements for such investigations.

## The Commission's Public Interest Investigation and Interim Report

With the objective of identifying the most appropriate model for the RCMP's handling of criminal investigations into its own members (involving serious injury, sexual assault or death), the CPC:

- Undertook a **detailed analysis of current media, political, and academic** debate on the issue to determine a baseline for discussion;
- **Sought public submissions** on the issue to help inform the debate;
- **Assessed the adequacy of current RCMP policy** guiding member action when investigating another member;
- **Reviewed a sample of 28 RCMP investigations** where member actions were alleged to have resulted in serious injury, sexual assault or death between 2002 and 2007 (the appropriateness of each case was assessed against specific criteria which included: line management; level of response; timeliness; conduct; and compliance with policy); and
- **Researched alternate investigative models** and conducted interviews with domestic and international bodies.

### Case File Review:

The CPC assessed 28 randomly-selected cases in order to determine how appropriately each RCMP member investigation was handled against five key criteria: (1) conduct, (2) policy

compliance, (3) timeliness, (4) line management and (5) level of response.

To secure a random sample for review, cases were first categorized by RCMP region/division and by offence category (assault, sexual assault and death). From this list, a random selection was made to ensure that every RCMP Region and every offence category was represented.

With the sample selected, the CPC then began the work of assessing each case against the RCMP-CPC jointly developed criteria for the E (British Columbia) Division Observer program, set out in the Chair-initiated complaint which includes: (1) conduct, (2) policy compliance, (3) timeliness, (4) line management and (5) level of response.

In order to make a determination about whether or not the RCMP handling of each investigation was appropriate, the CPC included a more detailed definition of what could be considered "appropriate" under each of the pre-established Observer criteria. It is important to note that the development of these detailed baseline definitions was necessary given that nothing currently exists in policy or in legislation to guide the appropriate handling of a member investigation. There is no gold standard. So we created one.

The detailed baseline definition for each criterion was developed based on:

- An assessment (including interviews) with domestic and international criminal investigative bodies and best practices identified therein.

- Key concerns identified in the public submissions to the CPC which expressed what key stakeholders (members of the public, international and domestic policing and oversight bodies, NGOs, etc.) identified as acceptable and unacceptable (e.g. need for transparency, timeliness, impartiality).
- Results of the CPC's preliminary scoping of RCMP member investigations and recommendations regarding common Canadian police practices.

In order to maximize transparency in our review and ensure rigor in the process for both the public and the RCMP, the CPC identified whether the handling of each of the 28 cases was deemed to be overall:

- **Appropriate:** Met or exceeded all criteria identified. No issues were found with the handling of the investigation.
- **Inappropriate:** Did not meet key criteria. Issues were found that the CPC identified as significant enough to potentially undermine the integrity of the investigation.
- **Partially Inappropriate:** Met some criteria but not all. This category was introduced to credit the RCMP in cases where some criteria were met but where room for improvement remained.

On May 15, 2009, the CPC concluded generally in its Interim Report (**Schedule 1**) that:

To answer the question: "*Can the current process of the RCMP investigating itself*

*legitimately engender confidence in the transparency and integrity of the criminal investigation and its outcome?"* – the informed CPC answer is that it cannot. To address this, the CPC has recommended legislative, policy, procedural and structural proposals for change.

While the specific findings and recommendations relating to this issue are set forth below, the following are highlights of the Report:

- While the RCMP contention that member investigations be handled like any other investigation may be an honourable one (meaning without bias), the *very nature* of an investigation by one police officer into another is fundamentally different from the police investigating a member of the public for the exact same crime. Police are held to higher account by the very nature of the work they do. It is therefore the CPC's contention that criminal investigations into RCMP members should not be treated procedurally the same as any other criminal investigation.
- Results of the CPC's policy analysis revealed inconsistencies in policy content and application across RCMP divisions. While the RCMP has developed a number of policies relating to how criminal investigations should be undertaken generally, very few policies address the issue of RCMP member-committed offences specifically. This is a serious concern.



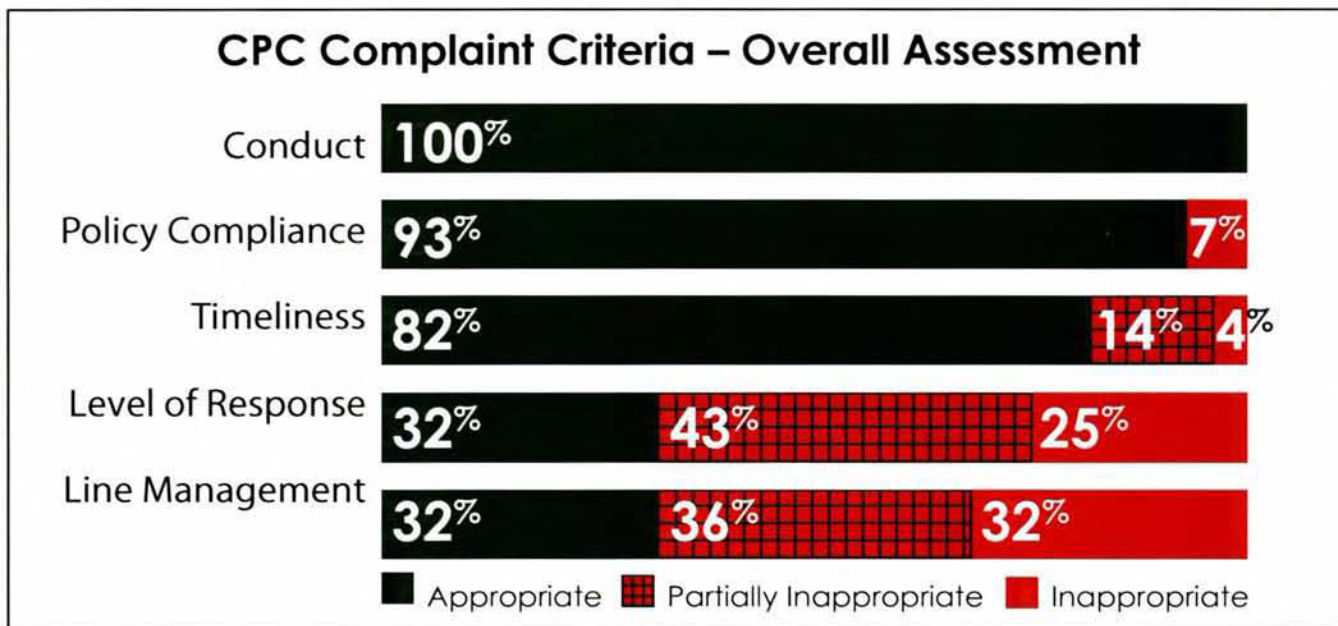
- At present, the handling of member investigations varies by Division, with discretion resting at the Division level with no national, mandatory requirements for the handling of member criminal investigations.
- Overall, the lack of national and divisional data collection – or monitoring capacity – for member investigations (combined with varied divisional RCMP record-keeping and retrieval methods on this issue) demonstrates a lack of centralized coordination and attention being placed on member investigations.
- This is why the CPC therefore recommends the creation of the position of National RCMP Member Investigation Registrar to coordinate the development of national policy and the handling of member investigations at the Division level.
- It is the CPC's contention that there are certain instances where the RCMP should *not* investigate itself. As the seriousness of the offence alleged against a member rises, the discretion for the RCMP to respond as it deems appropriate must be removed and mandatory requirements should be inserted in its place.
- The CPC recommends the following mandatory requirements be introduced:
  - All member investigations involving death should be referred to an external police service or a provincial criminal investigative body (where in place). There should be no RCMP involvement in the process and the CPC Observer

should be embedded to ensure transparency from a civilian perspective.

- In all member investigations involving serious injury and sexual assault, it is recommended that the CPC and the RCMP National Registrar<sup>1</sup> jointly determine an appropriate response from the following options:
  - Refer the investigation to an external police service or provincial investigative body (where in place); or
  - Deploy an RCMP HQ Mobile Critical Incident member investigation team; and
  - Ensure the CPC observer is embedded in the investigation.

<sup>1</sup> The RCMP National Registrar is a position the CPC recommends be created to manage, track, train, promote and advise on all issues related to member investigations.

## Overall key findings from the case file review:



- Overall, RCMP member **conduct** was deemed highly appropriate in 100% of the cases reviewed. The CPC found that the RCMP investigators charged with the task of investigating another member acted professionally and free from bias.
- The CPC also concluded that RCMP member **policy compliance** was appropriate in 93% of the cases. Only two minor policy violations were found. It is important to note that this criterion sought only to determine how well members followed policy in place at the time of each investigation, and did not seek to assess the adequacy of these policies (this issue was assessed separately, as outlined previously).
- The **timeliness** of member investigations was also deemed overall appropriate 82% of the time. Of the 28 cases reviewed, 60% were completed in six months or less. However, 19% of these cases took over one year to complete, thereby potentially excluding members from internal disciplinary processes, if required. Specific concerns were also raised around the handling of historical cases which took considerably longer to investigate (one historical case still remained ongoing after 28 months at the time of publication).
- The two criteria the CPC found of greatest concern were the RCMP's handling of the investigations in relation to **line management** (which looked at any actual/perceived conflict of interest; appropriate management structure and reporting relationships) and **level of response** (which looked at how appropriate and proportionate the RCMP response was to the gravity of the incident).
- Given the fact that these two criteria specifically relate to the process of how member investigations are handled, this analysis further helps to illustrate the fact that CPC concerns relate largely to the current RCMP

process (which is flawed) and not individual RCMP member action.

- Of particular concern to the CPC is the RCMP's **line management**, which was deemed to be appropriate in only 32% of the cases. Sixty-eight percent of the cases reviewed were deemed to be handled either partially or entirely inappropriately.

- Of particular concern was the fact that 25% of primary investigators identified themselves as personally knowing the subject member. Another critical concern is the fact that in 60% of the cases reviewed, a single investigator was assigned to investigate another member, thereby placing the integrity of the investigation at risk for potential conflict of interest or perception of bias.

- Further, in 32% of the cases, the primary investigator assigned was of the same or lower rank as the subject member, thereby creating the potential for intimidation. Recommendations to address these concerns are outlined in greater detail below.

- Of equal concern to the CPC is the 68% of cases deemed to be partially or entirely inappropriate for **level of response**.

- Of particular concern was the fact that interviews with subject members and witness officers were conducted by a

lone investigator in 17 of the 28 cases, again creating the potential for intimidation or a conflict of interest.

- Other concerns included the referral of cases to the proper sections. The CPC noted inconsistent assignment of files across divisions and an absence of formal criteria to identify which investigative unit should be assigned which cases.
- The CPC also found a significant disparity in the qualifications of the investigators (including primary investigators) assigned to member investigations.

## The RCMP Commissioner's Notice

Pursuant to subsection 45.46(2) of the *RCMP Act*, the RCMP Commissioner is required to provide written notification of any further action that has been or will be taken in light of the findings and recommendations contained in the Interim Report.

On July 31, 2009, the CPC received the RCMP Commissioner's Notice (**Schedule 2**). The RCMP Commissioner provided commentary touching upon some of the CPC's findings and recommendations.

These comments focused on concerns related to the language in the report which the RCMP believes to be "unduly negative" and questions are raised about the reasonableness of making judgments about past investigations based on newly proposed criteria. The Commissioner further states his personal

preference would be for the "RCMP never to investigate our members and for such investigations to be carried out by another agency" but states that the model proposed by the CPC to address this may be "impractical in some instances".

In response to the Commissioner's comment regarding the reasonableness of the CPC's assessment of the 28 cases against criteria that was not in place at the time of the investigation, it is important to go back to the premise of the review which sought to address ongoing public outcry in relation to the practice of the RCMP investigating itself. In the public interest, the CPC set out to assess the handling of RCMP member investigations and make specific recommendations in that regard. Of central concern to the CPC was a systematic failure by the RCMP to have any national standards, policies or procedures for the handling of its own member investigations.

Despite the fact that s. 37 of the *RCMP Act* calls for members to "avoid any actual, apparent or potential conflict of interests" and the Commissioner's Standing Order states: "[a] member shall not investigate a complaint where that member may be in a conflict of interest situation" – nowhere is there any definition of what could be considered a real or perceived conflict of interest.

The absence of any national guidelines speaks to the RCMP's failure to proactively look at the common practices of other agencies or government departments in order to develop a standard. To address this public concern, the CPC developed criteria that were advanced in the course of the PIP evaluation that is reflective of best practices followed by other police forces and criminal investigative bodies in Canada and abroad.

Overall, the CPC was pleased that the Commissioner's Notice also confirms that "the report will no doubt prove useful in guiding and evaluating future investigations and in our ongoing policy development." The RCMP further agrees that "criminal investigations of RCMP members may necessitate different treatment from a procedural point of view."

## The Commission's Findings and Recommendations:

For ease of reference, the overall findings and recommendations are listed below in the format in which they appear in the body of the report (numbered and boxed). Overall, the CPC made 20 findings and 14 recommendations, all of which were used to develop the recommended CPC model for how the RCMP should handle its member investigations involving serious injury, sexual assault or death in future.

### CPC Final Report Findings:

#### **Finding No. 1**

What is at issue today is no longer whether civilian review is desirable, but rather, how civilian involvement in investigations can be most effective.

#### **Finding No. 2**

The very nature of conducting criminal investigations requires that police, to some extent, must be part of the solution.

#### **Finding No. 3**

RCMP policies, while voluminous, are inconsistent and do not adequately address the handling of member investigations.

#### **Finding No. 4**

The lack of national and divisional data collection - or monitoring capacity - for member investigations (combined with varied divisional RCMP record-keeping and retrieval methods on this issue) demonstrates a lack of attention being placed on member investigations.

#### **Finding No. 5**

Overall, personal knowledge of subject member for primary investigators occurred 25% of the time and 4% of primary investigators were from the same detachment as the subject member.

### **Finding No. 6**

There was a slightly higher likelihood of primary investigators personally knowing the subject member (14%) in remote and northern postings than in other more centralized locations (12%). However, there does remain a large number of primary investigators (12%) from more centralized divisions where external assistance is more readily accessible.

### **Finding No. 7**

Overall, in the opinion of the CPC investigators, the use of expert witnesses in the cases was appropriate.

### **Finding No. 8**

Overall, the number of team members assigned to the 28 investigations was inadequate.

### **Finding No. 9**

Overall, the CPC found the structure and reporting relationships of the 28 cases reviewed to be partially or entirely inappropriate (68%).

### **Finding No. 10**

Of the 28 files that the CPC investigators reviewed, it was found that in 17 of these files, the subject member and witnesses were investigated by a lone RCMP investigator.

### **Finding No. 11**

Overall, the section or unit tasked with member investigations (including their mandates) lack uniformity across the country.

### **Finding No. 12**

In the 28 case files reviewed, the qualifications of the investigators varied greatly. Some had all the major crime and related courses, while others had as few as two years experience in the General Investigation Section.

### **Finding No. 13**

Overall, it was found that the investigations conducted by the Major Crime Unit were focused and completed in a timely fashion, as they had the ability, resources and the time to conduct the investigation. This was not found to be the case when the investigation was assigned to a Detachment Commander or General Duty or GIS member whose heavy workload was not adjusted accordingly.

### **Finding No. 14**

Of the 28 cases reviewed, six of which involved death, an administrative review was only undertaken in four cases: two of which were member-involved shootings (Manitoba (D) & Nunavut (V) Divisions); and two of which were in-custody deaths (Saskatchewan (F) and Alberta (K) Divisions).

### **Finding No. 15**

The CPC found that, overall, the level of response was handled partially or entirely inappropriately (68%). Key concerns related to interviews being undertaken by lone investigators as well as inconsistent referral of cases to the appropriate investigative unit.

### **Finding No. 16**

Of the eight charges laid, three (37.5%) resulted in successful convictions, while five (62.5%) resulted in no convictions.

### **Finding No. 17**

In cases where an immediate response was required, such as member-involved shootings and in-custody deaths, the CPC investigators found that all necessary personnel were dispatched to the incident as soon as possible and practicable.

### **Finding No. 18**

The CPC found that most investigations were completed in a timely manner. The files that took significantly longer to complete were not due to a lack of interest but rather to the heavy workload of the investigator in addition to general hindrances encountered (court dates, difficulty locating witnesses or complainants, employee absence, etc.).

### **Finding No. 19**

Overall, the CPC found that the RCMP investigators were free of bias and were professional and conscientious in their approach to their assignments. It was also found that most subject members and witness members cooperated with the CPC investigators and conducted themselves in a professional manner.

### **Finding No. 20**

After an in-depth review of the randomly selected cases, it was found that in most cases, the appropriate policies were complied with. In the few cases where it was found that some aspects of the related policies were not adhered to, they were minor in nature and did not appear to have any effect on the outcome of the investigation.

## **CPC Final Report Recommendations:**

### **Recommendation No. 1**

Overall, it is the CPC's contention that criminal investigations into members should not be treated the same as any other criminal investigation.

### **Recommendation No. 2**

The CPC recommends that the rank of the primary investigator must be at least one rank higher than that of the subject member.

### **Recommendation No. 3**

In order to reduce the length of time to conduct statutory investigations against RCMP members, it is recommended that member investigations be assigned to a team of (minimum) two members in a specialized investigative unit.

### **Recommendation No. 4**

The RCMP should assign competent senior investigators with a proven track record in court who have completed the appropriate courses (e.g. sexual assault, major crime, interviewing and interrogation techniques and statement analysis); who can effectively interview witnesses with strong analytical skills.



### **Recommendation No. 5**

Workload of members assigned to member investigations should be reassigned or adjusted to prioritize member investigations accordingly.

### **Recommendation No. 6**

Special attention should be paid to enforce the RCMP requirement to consult with the Crown prior to laying any charges against members, given the particular need for independence and impartiality in member investigations. The RCMP should also undertake a review regarding recommendations made to the Crown in cases involving RCMP members.

### **Recommendation No. 7**

Given the sensitivity and transparency required for member investigations, it is recommended that administrative reviews be undertaken in all cases of serious injury, sexual assault or death.

### **Recommendation No. 8**

The RCMP should consider applying the use of the "probe"<sup>2</sup> to lower-end investigations in all divisions.

### **Recommendation No. 9**

The RCMP could consider recommending that the Officer in Charge of the Criminal Operations Section be the appropriate recipient of the probe report in order to determine whether or not a lower-end investigation should proceed to a statutory investigation.

### **Recommendation No. 10**

Historical cases require expertise not typical of most investigators. It is therefore recommended that these types of cases be handled by a specialized unit at the national or regional level.

<sup>2</sup> A probe is a divisional best practice identified which is ordered when a complaint has a criminal element but may lack sufficient information to determine how to proceed. The "probe" consists of interviews with the complainant, victim and any other third-party witnesses; a review of operational files related to the complaint; and a review of members' notes and reports. This information is used to draft a report to help determine how a lower-end statutory investigation should proceed.

### **Recommendation No. 11**

Policy guiding criminal investigations of RCMP members should be standardized nation wide. This would allow for the statutory investigations into RCMP members to be conducted uniformly across the country.

### **Recommendation No. 12**

Create the position of National RCMP Member Investigation Registrar responsible to provide the CPC Chair with regular monthly reports for all member investigations undertaken for indictable offences, hybrid offences and summary convictions.

### **Recommendation No. 13**

The RCMP should formalize a memorandum of understanding for every division across the country to ensure consistency in the referral of member investigations to an external police service.

### **Recommendation No. 14**

The RCMP should create an Integrated Manual to specifically address procedures for investigations undertaken by the RCMP into one of its members.

## The CPC proposed model for RCMP handling of member investigations:

Based on the CPC findings and recommendations listed above; academic, political and media research; public submissions; as well as interviews with domestic and international bodies, the CPC proposes the following model for implementation.

### Recommended legislative changes:

To effectively enhance review capacity, legislative changes should be considered to provide the new RCMP Review Body the authority to:

- **Refer an RCMP member investigation** to another police force or to another criminal investigative body in Canada.
- Grant the RCMP Review Body the authority to **monitor any criminal investigation** relating to a member of the RCMP, where it deems it appropriate to do so. This would therefore extend the RCMP Review Body's ability to deploy the observer to an RCMP member investigation being undertaken by an external police service and/or provincial criminal investigative body. While permission from the investigating body would be required to embed the observer, the authority would at least provide the RCMP Review Body with the power where granted permission to observe.
- **Undertake joint investigations with like-mandated bodies.** The amendment could allow the new RCMP Review Body to "conduct a joint investigation, review, inquiry, audit or hearing with another body

in Canada that has powers, duties and functions that are similar to the RCMP Review Body's, including provincial criminal investigative bodies." This would allow the new RCMP Review Body to undertake investigations with new criminal investigative bodies (like the Alberta Serious Incident Response Team) as they emerge across the country.

### Other recommended legislative changes should include:

- The RCMP Commissioner revise the current version of his Standing Orders to direct handling of member investigations, as per the recommendations herein (specify that member investigations are not to be handled like any other criminal investigation and a better definition of the term "conflict of interest" should be included).

*It is important to note that the RCMP recommendations specifically related to structure, procedure and policy (outlined below) do not rely on any legislative enhancements and can be implemented immediately.*

### Recommended structural changes for the RCMP:

- Create the position of National RCMP Member Investigation Registrar to manage, track, train, promote and advise on all issues related to member investigations. The National Registrar would be responsible to:
  - Create an RCMP National Registry for all police investigating police data

(especially for serious injury, sexual assault, and death cases) with timely sharing of data with the CPC.

- Create and manage an RCMP Police Investigating Police Advisory Group to help determine actions to be taken in sensitive cases.
- Monitor effective compliance with policy and enforce compliance where necessary (e.g. consultation with Crown re: laying of charges mandatory).
- Create and oversee a specialized unit with expertise on the handling of RCMP historical cases to be consulted — or deployed — where necessary.
- Create a mobile critical incident member investigation team (with a CPC civilian observer embedded) that can be deployed where both the RCMP National Registrar and the CPC Chair jointly determined it necessary to do so (a pool of qualified senior investigators placed on standby that can be deployed quickly).

# Recommended RCMP policy and procedural changes

As mentioned previously, there are certain instances where the RCMP should *not* investigate itself. Below is a chart that delineates that as the seriousness of the member-involved offence increases, a corresponding degree of independence and impartiality in that member investigation is required. The chart below highlights the CPC's contention that as the seriousness of the offence alleged against a member rises, the discretion for the RCMP to respond as it deems appropriate must be removed and **mandatory** requirements inserted in its place.

## Recommended RCMP Response to Member Investigations

Type of offence defined	Member offence (by level of seriousness)	Current RCMP handling	Recommended RCMP handling of member investigation
<b>MANDATORY RCMP ACTION WITH CPC ROLE</b>			
<b>Indictable offences</b> An offence which, in Canada, is more serious than those which can proceed by summary conviction. In many regards, this is the Canadian equivalent to the USA felony. Murder and treason are examples of crimes committed in Canada which would be indictable offences. These crimes are usually tried by federally-appointed judges and carry heavy sentences.	<b>Death</b> Criminal Negligence causing Death (s. 220 CCC)	<b>Discretionary at RCMP Division level</b>	<b>RCMP Mandatory Action:</b> <ul style="list-style-type: none"> <li>CPC to refer all death cases to external police service or provincial criminal investigative body (no RCMP member involvement)</li> <li>Divisional MOUs activated</li> <li>CPC Observer embedded</li> </ul>
	<b>Serious Injury &amp; Sexual Assault</b> Assault with Weapon or Assault Causing Bodily Harm (s. 267 CCC)  Sexual Assault (s. 272 CCC)	<b>Discretionary at RCMP Division level</b>	<b>RCMP Mandatory Action:</b> CPC and National Registrar to determine appropriate response from options below for serious injury/sexual assault cases: <ul style="list-style-type: none"> <li>Referral to external police service or to provincial investigative body through MOL</li> <li>Deployment of RCMP HQ mobile critical incident member investigation team</li> <li>CPC Observer embedded</li> </ul>
<b>DISCRETION RETAINED BY THE RCMP</b>			
<b>Hybrid Offences</b> Dual Procedure Offences which Crown can elect to proceed with an indictable offence or a summary conviction.	<b>Assault</b> (s. 265 CCC)	<b>Discretionary at RCMP Division level</b>	<b>RCMP HQ National Registrar retains discretion to determine appropriate response.</b>
<b>Summary Conviction</b> In Canada, a less serious offence than indictable offences for which both the procedure and punishment tends to be less onerous.	<b>Example:</b> Theft under \$5,000	<b>Discretionary at RCMP Division level</b>	<b>RCMP HQ National Registrar retains discretion to determine appropriate response.</b> <ul style="list-style-type: none"> <li>Recommended CPC standard policies and procedures are followed (outlined next).</li> </ul>

**M A N D A T O R Y**

**D I S C R E T I O N A R Y**

## Recommended policy changes

The CPC's policy analysis revealed that RCMP policies, while voluminous, are inconsistent and do not adequately address the handling of member investigations. Criminal investigations into members should not be treated the same as any other criminal investigation. To address the current void in effective and consistent policies and procedures related to the handling of member investigations, the CPC recommends the following key changes:

- Criminal investigations of RCMP members into allegations of serious injury, sexual assault or death in hardship or remote postings must be consistent with all other member investigation protocols, no exception.
  - An administrative review is mandatory for all member investigations.
  - The RCMP establish formalized MOUs for every RCMP division to ensure the mandatory referral of member investigations to an external police service is consistent and documented. At present, only New Brunswick (J) Division, Nova Scotia (H) Division and Newfoundland (B) Division have formalized MOUs in place. These existing MOUs should be revised as per the CPC's recommendations to reflect new processes.

Where it is deemed appropriate for the RCMP to handle its own member investigation or where an RCMP member forms part of the investigative team (led by an external police force), the following policy recommendations would apply.

- Create an RCMP integrated manual to specifically address procedures

for investigations undertaken by the RCMP into one of its own members. This integrated manual should have links to any additional relevant policies for ease of reference. Key features to be included in the integrated manual:

- CPC recommended investigative team structure:
  - Qualified primary investigator at least one rank higher than that of subject member;
  - A minimum of two members required for every member investigations (including for subject and witness officer interviews);
  - Minimum mandatory qualifications of investigative team;
  - Workload of members assigned to member investigations reassigned or adjusted to prioritize member investigation accordingly;
  - Timely completion of investigation preferably six months and not recommended to exceed one year;
  - Assign liaison position to member of investigative team to ensure timely and effective communication with public, family and subject member;
  - Self-identification of knowledge of subject member mandatory;
  - Use of the probe<sup>3</sup> in lower-end investigations.

3 A probe is a divisional best practice identified which is ordered when a complaint has a criminal element but may lack sufficient information to determine how to proceed. The "probe" consists of interviews with the complainant, victim and any other third-party witnesses; a review of operational files related to the complaint; and a review of members' notes and reports. This information is used to draft a report to help determine how a lower-end statutory investigation should proceed.

Pursuant to subsection 45.46(3) of the RCMP Act, I respectfully submit my Final Report and, accordingly, the Commission's mandate in this matter is ended.

*Paul E. Kennedy*

Paul E. Kennedy  
Chair

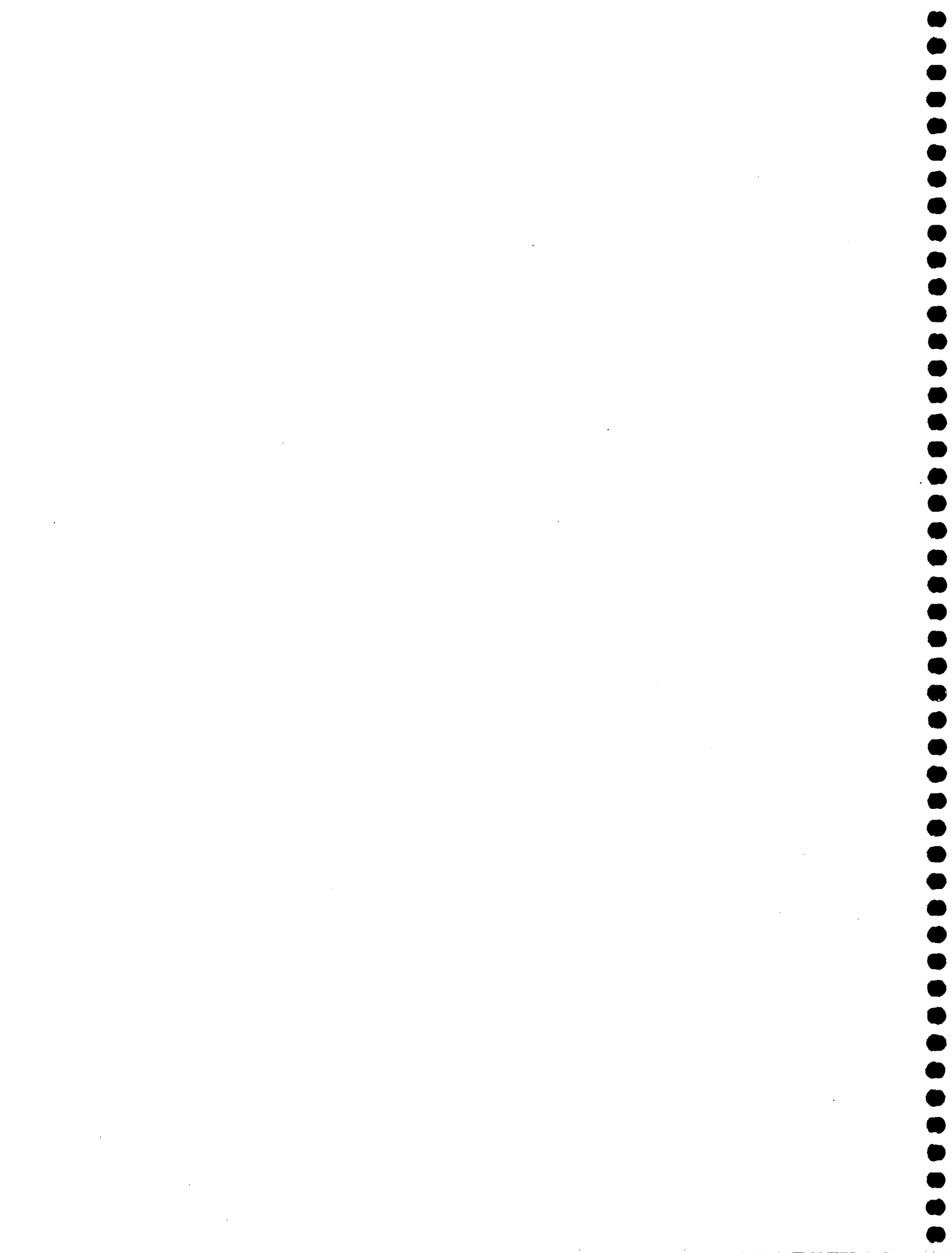
Commission for Public Complaints  
Against the RCMP  
Bag Service 1722, Station B  
Ottawa, ON K1P 0B3



# INTERIM REPORT

*Schedule 1*





## EXECUTIVE SUMMARY

The RCMP currently investigates its own members for statutory offences. At issue is whether or not an organization whose members' actions have resulted in serious injury or death should be the very same organization then charged with the responsibility to investigate the incident (with the prospect of laying criminal charges).

Investigations of RCMP members resulting from a number of high profile cases including that of Ian Bush, who was shot and killed by an RCMP member in 2005, to the 2007 death of Robert Dziekanski at the Vancouver International Airport (following the RCMP use of the conducted energy weapon), have brought the issue of police investigating police to front of mind domestically and internationally.

These cases raise a fundamental question. Can the current process of the RCMP investigating itself legitimately engender confidence in the transparency, impartiality and integrity of the criminal investigation and its outcome?

The Chair of the Commission for Public Complaints Against the RCMP (CPC) set out to answer this and other questions by launching a public interest investigation on November 28, 2007, to assess the adequacy of how the RCMP investigates its own members, specifically in cases where member action resulted in serious injury or death.<sup>1</sup>

## What is currently guiding RCMP member investigations?

An important part of the CPC assessment involved determining exactly how the RCMP is currently managing its own member investigations. To develop this baseline knowledge, the CPC looked at all legislation, policies and procedures currently guiding member investigations at the national and divisional (provincial)<sup>2</sup> level.

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**CAN THE CURRENT PROCESS OF THE RCMP INVESTIGATING ITSELF LEGITIMATELY ENGENDER CONFIDENCE IN THE TRANSPARENCY, IMPARTIALITY AND INTEGRITY OF THE CRIMINAL INVESTIGATION AND ITS OUTCOME?**

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No specific requirements exist under the *Criminal Code* regarding how an investigation into police officers should be handled. And while specific reference to how police should investigate police is also absent from the *Royal Canadian Mounted Police Act (RCMP Act)*, there are a number of features of the *RCMP Act* that warrant special attention.

The first is section 37 of the *RCMP Act* which outlines eight guidelines for the appropriate behaviour expected of RCMP members at all times. This section legislates the imperative need for members, as representatives of the RCMP, to act respectfully, dutifully and free from conflict of interest, specifically requiring members to “avoid any

<sup>1</sup> In this report, the CPC refers to the issue of police investigating police as the “PIP”.

<sup>2</sup> The RCMP identifies each province and territory as a separate RCMP division, identified by a letter. See the map in the “CPC Data at a Glance” section to view.

actual, apparent or potential conflict of interests" (s. 37(d)). A second legislative feature is the Commissioner's Standing Orders (Public Complaints) (s. 9), which states: "A member shall not investigate a complaint where that member may be in a conflict of interest situation." Of particular concern is the fact that the term "conflict of interest" is not defined further in either the *RCMP Act* or the Commissioner's Standing Orders. Public and stakeholder criticism remains largely focused on the very issue that the nature of police investigating police creates a significant conflict of interest, or at the least the perception of one (particularly in cases of serious injury or death).

Of additional concern is subsection 1.2.b of the Commissioner's Standing Orders, which states: "If, as a result of an investigation, a member is believed to have committed a statutory offence: 1. it is within RCMP primary jurisdiction, take the same action as you would for any other person." This passage is also found in the RCMP's *National Investigation Guidelines* (F.1.a) and repeated further in some divisional policies.

While the intention of the RCMP requesting that member investigations<sup>3</sup> be handled like any other investigation may be an honourable one (meaning without bias), the very nature of an investigation by one police officer into another is fundamentally different from the police investigating a member of the public for the exact same crime. Police are held to higher account by the very nature of the work they do. Like other

<sup>3</sup> For the purpose of brevity, the CPC uses the term "member investigation" to refer to any investigation undertaken by an RCMP member into another RCMP member.

professions that directly impact the safety and welfare of those they serve, there is a public expectation requiring that a higher standard of behaviour be upheld. By exposing the police thinking that investigations into its own members should be handled like any other investigation, we begin to identify the root philosophy guiding individual member behaviour.

It is therefore the CPC's contention that criminal investigations into RCMP members should **not** be treated the same as any other criminal investigation.

Given the absence of direction prescribed in legislation regarding how members should investigate other members, the adequacy of RCMP policy to ensure impartiality, transparency and rigour in the process becomes all the more paramount. Results of the CPC's policy analysis revealed inconsistencies in content and application across RCMP divisions. While the RCMP has developed a number of policies relating to how criminal investigations should be undertaken generally, very few policies address the issue of RCMP member-committed offences specifically. This is a serious concern.

The sheer volume and variety of RCMP policies with implications for the issue of police investigating police is overwhelmingly large (e.g. hundreds of pages of policy relevant to the PIP were reviewed for this report alone). This policy "overload" poses a great threat to the RCMP's operational effectiveness. The very nature of front-line policing requires that direction be provided in a

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format that is clear, concise and easy to access. As previously stated in other CPC reports, law drives policy, which drives training, which directly influences member behaviour.

Inconsistencies across divisions demonstrate the absence of clear guidance on the issue. In some policies at both the national and divisional level, involvement of an independent investigator or an external police force is mandatory; in others, it is left to the discretion of the officer in charge. Only three RCMP divisions currently have memoranda of agreement in place with the involvement of external police forces for the purpose of member investigations in specific cases. Similarly, only three divisional policies dictate the appointment of an independent investigator in cases of member-committed offences. Some divisional policies do not address the issue of officer-committed violations and the pursuant investigations at all. The scope of policy varies as well—while most national policies are limited to cases of serious injury or death, many divisional policies encompass all statutory violations.

While a new proposed RCMP national policy, *External Investigations or Review*, takes active steps towards providing consolidated guidance in relation to member investigations, the content remains vague and far too much discretion remains with the divisions (divisional Commanding Officers, Officers in Charge or Criminal Operations Officers) to determine an appropriate response.

## CPC assessment of the handling of RCMP member investigations

With this baseline understanding of the current handling and procedures guiding member investigations, the CPC then requested that the RCMP divisions identify all files related to criminal investigations of RCMP members by other RCMP members between April 1, 2002 and March 31, 2007 involving assault causing bodily harm; sexual assault; and death, including death caused by operating a personal motor vehicle (PMV).

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**RCMP NATIONAL  
AND DIVISIONAL  
HEADQUARTERS  
DO NOT HAVE ANY  
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OR MONITORING  
CAPACITY FOR MEMBER  
INVESTIGATIONS.**

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The retrieval of member investigation cases from the RCMP revealed critical issues in the RCMP's administrative handling and management of these types of investigations. RCMP national and divisional headquarters do not have any centralized tracking or monitoring capacity for member investigations. As such, most divisions generated relevant files for the CPC public interest investigation by searching through divisional records housed at their respective headquarters using key word searches. Some divisions were better able to narrow the scope of their search to fit the parameters of the review through effective record-keeping processes making for easier retrieval, while other divisions did not have the same capacity.

Overall, the lack of national and divisional data collection—or monitoring capacity—for member investigations (combined with varied divisional RCMP record-keeping and retrieval methods on this issue) demonstrates a lack of attention being placed on member investigations.

Bearing these challenges in mind, the CPC reviewed all RCMP files received in order to determine which ones were relevant to the parameters of the public interest investigation. Approximately 150 of the 600 RCMP cases provided were deemed relevant to the parameters of the public interest investigation. Recognizing that it would be prohibitive to review *all* relevant cases, they were further reduced to a sample size of 28 cases representative of each of the three categories (14 assault causing bodily harm cases; eight sexual assault cases; and six death cases).

It is important to note that, as per the map outlined in the *CPC Data at a Glance* section, the RCMP's Central Region was not represented in the random sample because no cases were identified by Quebec (C) Division; Ontario (O) Division; and HQ (A) Division that fit the parameters of the Chair-initiated complaint. Furthermore, no files were identified by Nova Scotia (H) Division, and Prince Edward Island (L) Division. And while a small number of files were initially identified by the RCMP for New Brunswick (J) Division and Yukon Territory (M) Division, these files did not meet the CPC criteria and were therefore

excluded. Of concern to the CPC is the absence of any cases identified by the bulk of the Maritime Provinces given the RCMP's contract policing role there.

With all relevant material identified, the CPC Review Team investigators analyzed all files and written material provided by the RCMP to assess the appropriate handling of each case against the established CPC criteria and terms of reference (specifically: line management, level of response, timeliness, member conduct, and compliance with policy). After completing a comprehensive file review of the 28 cases, the CPC Review Team investigators then recommended that full-field reviews be undertaken for a select number of cases. Overall,

eight cases were selected for full-field review. Field interviews were conducted in various divisions and detachments. In total, 31 members were interviewed regarding the files selected for in-depth review. Thirteen civilians were asked to be interviewed for the purposes of this report but refused or did not respond to our request for an interview. One comment from a family member associated

to one file stated: "It won't do any good. [The RCMP members involved] have all been promoted and transferred out."

**“ OVERALL, THE LACK OF NATIONAL AND DIVISIONAL DATA COLLECTION — OR MONITORING CAPACITY — FOR MEMBER INVESTIGATIONS (COMBINED WITH VARIED DIVISIONAL RCMP RECORD-KEEPING AND RETRIEVAL METHODS ON THIS ISSUE) DEMONSTRATES A LACK OF ATTENTION BEING PLACED ON MEMBER INVESTIGATIONS. ”**

## CPC assessment of RCMP handling of member investigations

The criteria used to assess each of the 28 cases and the resultant findings are outlined in detail in chapter 5 of this report. Below are some highlights of the CPC findings.

As per the complaint parameters, the CPC investigators assessed 28 cases in order to determine how appropriately each RCMP member investigation was handled against five key criteria: conduct, policy compliance, timeliness, line management and level of response.

Overall, **RCMP member conduct was deemed highly appropriate in 100% of the cases reviewed.** The CPC found that the RCMP investigators charged with the task of investigating another member acted professionally and free from bias.

The CPC investigators also concluded that **RCMP member policy compliance was appropriate in 93% of the cases. Only two minor policy violations were found.** It is important to note that this criterion sought only to determine how well members followed policy in place at the time of each investigation, and did not seek to assess the adequacy of these policies (this issue was assessed separately, as outlined previously).

**The timeliness of member investigations was also deemed overall appropriate 82% of the time.** Of the 28 cases reviewed, 60% were completed in six months or less. However, 19% of these cases took over one year to complete, thereby potentially excluding members from internal disciplinary processes, if required. Specific concerns were also raised around the handling of historical

cases which took considerably longer to investigate (one historical case still remained ongoing after 28 months at the time of publication).

The two criteria the CPC investigators found of greatest concern were the RCMP's handling of the investigations in relation to **line management (which looked at any actual/perceived conflict of interest; appropriate management structure and reporting relationships)** and **level of response (which looked at how appropriate and proportionate the RCMP response was to the gravity of the incident)**. Given the fact that these two criteria specifically relate to the process of *how* member investigations are handled, this analysis further helps to illustrate the fact that **CPC concerns relate largely to the current RCMP process (which is flawed) and not individual RCMP member action.**

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THE CPC INVESTIGATORS ASSESSED 28 CASES IN ORDER TO DETERMINE HOW APPROPRIATELY EACH RCMP MEMBER INVESTIGATION WAS HANDLED AGAINST FIVE KEY CRITERIA: CONDUCT, POLICY COMPLIANCE, TIMELINESS, LINE MANAGEMENT AND LEVEL OF RESPONSE.

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**Of particular concern to the CPC is the RCMP's line management, which was deemed to be appropriate in only 32% of the cases. Sixty-eight percent of the cases reviewed were deemed to be handled either partially or entirely inappropriately.**

Of particular concern was the fact that **25% of primary investigators identified themselves as personally knowing the subject member.** Another critical concern is the fact that **in 60% of the cases reviewed, a single investigator was assigned** to investigate another member, thereby placing the integrity of the investigation at risk for potential conflict of interest or perception of bias.

Further, **in 32% of the cases, the primary investigator assigned was of the same or lower rank as the subject member,** thereby creating the potential for intimidation. Recommendations to address these concerns are outlined in greater detail in chapter 7, *CPC Recommended Model for RCMP Member Investigations.*

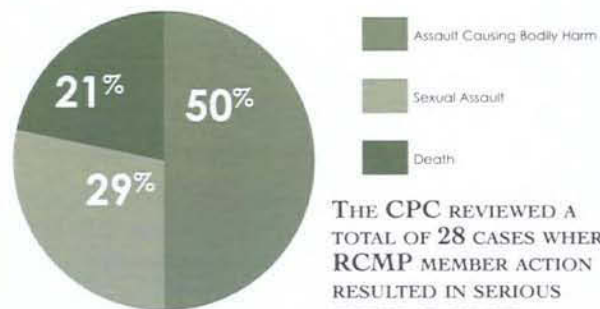
Of equal concern to the CPC is the 68% of cases deemed to be partially or entirely inappropriate for level of response. Of particular concern was the fact that **interviews with subject members and witness officers were conducted by a lone investigator in 17 of the 28 cases,** again creating the potential for intimidation or a conflict of interest.

It is important to note that while no specific conflicts of interest were noted in these particular cases, the practice of single-member interviews was deemed to be inappropriate.

Other concerns included the referral of cases to the proper sections. CPC investigators noted **inconsistent assignment of files across divisions** and an absence of formal criteria to identify which investigative unit should be assigned which cases.

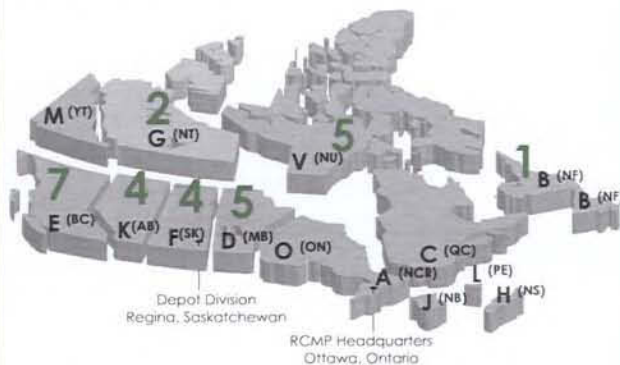
## CPC Data at a Glance...

TOTAL NUMBER OF CASES REVIEWED

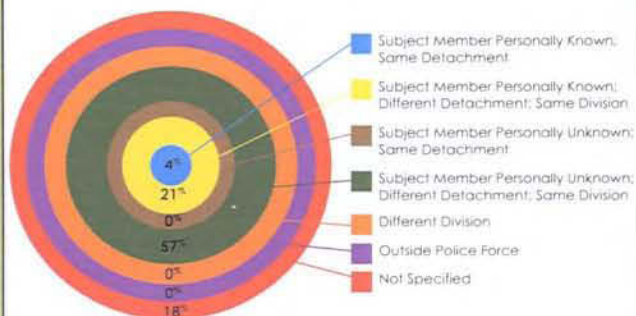


THE CPC REVIEWED A TOTAL OF 28 CASES WHERE RCMP MEMBER ACTION RESULTED IN SERIOUS INJURY OR DEATH.

TOTAL NUMBER OF CASES REVIEWED BY DIVISION

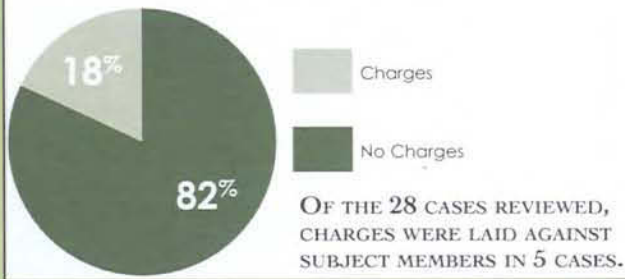


INDEPENDENCE OF INVESTIGATIVE TEAM - PRIMARY INVESTIGATORS



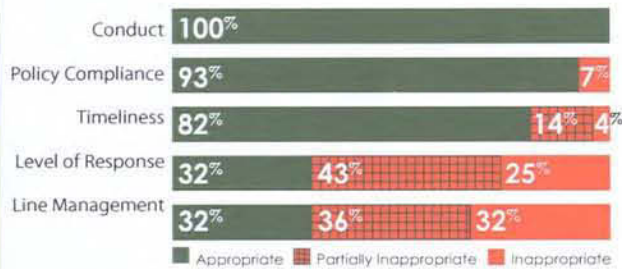
- 25% OF PRIMARY INVESTIGATORS IDENTIFIED THEMSELVES AS PERSONALLY KNOWING THE SUBJECT MEMBER.
- NONE OF THE PRIMARY INVESTIGATORS WERE FROM AN OUTSIDE DIVISION.

**CASES WHERE CHARGES WERE LAID**

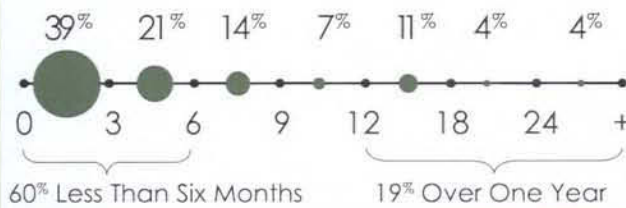


**HOW DID THE CPC ASSESS THE RCMP HANDLING OF MEMBER INVESTIGATIONS?**

**CPC ASSESSMENT CRITERIA BY LEVEL OF APPROPRIATENESS**



**HOW LONG DID RCMP INVESTIGATIONS TAKE? NUMBER OF MONTHS**



**NUMBER OF INVESTIGATORS**



**WAS THE NUMBER OF INVESTIGATORS ADEQUATE?**



CPC investigators also found a significant **disparity in the qualifications of the investigators** (including primary investigators) assigned to member investigations.

In addition, the complete **absence of reassignment of duties or adjustment of workload** for members assigned to investigators undertaking member investigations was also noted as a serious concern impacting the integrity and timeliness of member investigations undertaken. The call for an administrative review of member investigations was also found to be inconsistently applied across the country (an administrative review was only called for in four of the 28 cases).

Recommendations to address these concerns are outlined in greater detail in chapter 7, *CPC Recommended Model for RCMP Member Investigations*.

**What we can learn from other models**

Overall, an analysis of 14 different domestic and international police review agencies<sup>4</sup> was undertaken in an effort to determine how other jurisdictions handle allegations of police misconduct. Three types of models were identified based on the level of civilian involvement in the investigation: (1) Dependent Model, (2) Interdependent Model and (3) Independent Model.

The **dependent model** essentially represents more traditional “police investigation of police.” There is no civilian involvement in the criminal investigation and, therefore, there is a total dependence on the police for the

<sup>4</sup> While definitions can differ, for the purpose of this report, “police review” is used interchangeably with “police oversight.”



handling of criminal investigations. There are two subcategories to this model: (1.1) police investigating police and (1.2) police investigating another police force.

In the police investigating police subcategory, the police service is fully responsible for the criminal investigation and administration of public complaints alleging criminal offences. The review body in question does not conduct criminal investigations, but it may recognize complaints regarding service, internal discipline or public trust.

The second sub-category involves "police investigating *another* police force" in specific cases so that the police service does not investigate its own members in instances of serious injury or death. In three selected Canadian provinces, formal memoranda of agreement exist between the local police and the RCMP that allow an outside police force to handle the investigations of the RCMP member(s).

The **interdependent model** introduces civilian involvement into the criminal investigation to varying degrees. There are also two sub-types to this model: (2.1) civilian observation and (2.2) hybrid investigation.

In the first sub-type of the interdependent model, a civilian observer is assigned to the police investigation to ensure that the latter is conducted with impartiality. The hybrid investigation comprises mostly of a civilian review body whose involvement in the investigation goes beyond the role of mere overseer. In this model, the police force may be engaged in some form of collaboration with the review body, although the latter may have the ability to conduct the investigation entirely on its own.

Examples of the interdependent model, which introduces civilian involvement into the police criminal investigation, are found in British Columbia, Saskatchewan, Alberta, Yukon, New Zealand, United Kingdom and South Australia.

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FOR CANADA, THERE IS NO SINGLE [INTERNATIONAL] MODEL THAT CAN BE APPLIED IN ITS CURRENT FORM AND EXPECTED TO FUNCTION EFFECTIVELY WITHOUT TAKING INTO ACCOUNT THE PARTICULAR CHARACTERISTICS OF OUR COUNTRY AND THE SIZE AND SCOPE (MUNICIPAL, PROVINCIAL, FEDERAL, TERRITORIAL AND FIRST NATIONS) OF THE POLICING ACTIVITIES UNDERTAKEN BY THE RCMP.

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The **independent model** is embodied by a totally independent criminal investigation with no police involvement. The review body composed of civilians undertakes independent criminal investigation and may have the authority to make binding findings and lay charges. Ontario's Special Investigations Unit, the Independent Police Review Authority in Chicago and the Police Ombudsman for Northern Ireland are representative of this model. The key advantage of an independent review body is that it offers an appearance of total independence and objectivity.

For Canada, there is no single model that can be applied in its current form and expected to function effectively without taking into account the particular characteristics of our country and the

size and scope (municipal, provincial, federal, territorial and First Nations) of the policing activities undertaken by the RCMP. The size of the territory and sheer vastness of the country, coupled with budget realities, must be considered. Valuable lessons were learned from our domestic and foreign counterparts in the development of the CPC's approach for the RCMP in the Canadian context, outlined next.

### CPC's recommended model for handling of RCMP member investigations

The CPC's recommended option underlines the importance of police in the process (as part of the solution), while also recognizing that an enhanced degree of civilian engagement in the criminal investigation process is fundamental to ensure its impartiality and integrity. To that end, the CPC recommends shifting from the current "dependent model" towards the "interdependent model."

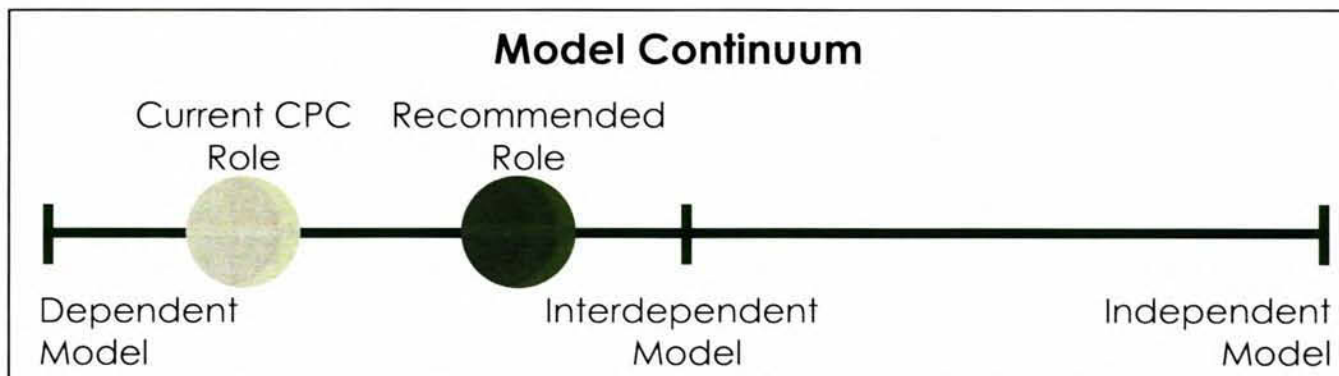
The recommended "interdependent model" rests between the basic dependent model and the full-featured interdependent model:

Overall, the CPC believes that a criminal investigation resulting from member conduct is unlike *any other* criminal investigation and accordingly must be handled procedurally very differently. Therefore, to help transition the RCMP from its current "dependent (police investigating police) model" to the "interdependent model" (involving an enhanced CPC role in the context of RCMP member investigations), a number of legislative, structural, and policy changes are recommended.

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**THE CPC'S RECOMMENDED OPTION UNDERLINES THE IMPORTANCE OF POLICE IN THE PROCESS (AS PART OF THE SOLUTION), WHILE ALSO RECOGNIZING THAT AN ENHANCED DEGREE OF CIVILIAN ENGAGEMENT IN THE CRIMINAL INVESTIGATION PROCESS IS FUNDAMENTAL TO ENSURE ITS IMPARTIALITY.**

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## Recommended legislative changes

To effectively enhance review capacity, legislative changes should be considered to provide the new RCMP Review Body the authority to:

- **Refer an RCMP member investigation** to another police force or to another criminal investigative body in Canada.
- Grant the RCMP Review Body the authority to **monitor any criminal investigation** relating to a member of the RCMP, where it deems it appropriate to do so. This would therefore extend the RCMP Review Body's ability to deploy the observer to an RCMP member investigation being undertaken by an external police service and/or provincial criminal investigative body. While permission from the investigating body would be required to embed the observer, the authority would at least provide the RCMP Review Body with the power where granted permission to observe.
- **Undertake joint investigations** with like-mandated bodies. The amendment could allow the new RCMP Review Body to "conduct a joint investigation, review, inquiry, audit or hearing with another body in Canada that has powers, duties and functions that are similar to the RCMP Review Body's, including provincial criminal investigative bodies." This would allow the new RCMP Review Body to undertake investigations with new criminal investigative bodies (like the Alberta Serious Incident Response Team) as they emerge across the country.

Other recommended legislative changes should include:

- The RCMP Commissioner revise the current version of his Standing Orders to direct handling of member investigations, as per the recommendations herein (specify that member investigations are not to be handled like any other criminal investigation and a better definition of the term "conflict of interest" should be included).

## Recommended structural changes for the RCMP

- Create the position of National RCMP Member Investigation Registrar to manage, track, train, promote and advise on all issues related to member investigations. The National Registrar would be responsible to:
  - Create an RCMP National Registry for all police investigating police data (especially for serious injury, sexual assault, and death cases) with timely sharing of data with the CPC.
  - Create and manage an RCMP Police Investigating Police Advisory Group to help determine actions to be taken in sensitive cases.
  - Monitor effective compliance with policy and enforce compliance where necessary (e.g. consultation with Crown re: laying of charges mandatory).
  - Create and oversee a specialized unit with expertise on the handling of RCMP historical cases to be consulted—or deployed—where necessary.
  - Create a mobile critical incident member investigation team (with a CPC civilian observer embedded) that can be deployed where both the RCMP National Registrar and the CPC Chair jointly determined it necessary to do so (a pool of qualified senior investigators placed on standby that can be deployed quickly).

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**CREATE THE POSITION OF NATIONAL RCMP MEMBER INVESTIGATION REGISTRAR TO MANAGE, TRACK, TRAIN, PROMOTE AND ADVISE ON ALL ISSUES RELATED TO MEMBER INVESTIGATIONS.**

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# Recommended RCMP policy and procedural changes

There are certain instances where the RCMP should *not* investigate itself. Below is a chart that delineates that as the seriousness of the member-involved offence increases, a corresponding degree of independence and impartiality in that member investigation is required. The chart below highlights the CPC's contention that as the seriousness of the offence alleged against a member rises, the discretion for the RCMP to respond as it deems appropriate must be removed and **mandatory** requirements inserted in its place.

<b>Recommended RCMP Response to Member Investigations</b>			
Type of offence defined	Member offence (by level of seriousness)	Current RCMP handling	Recommended RCMP handling of member investigation
<b>MANDATORY RCMP ACTION WITH CPC ROLE</b>			
<b>Indictable offences<sup>5</sup></b> An offence which, in Canada, is more serious than those which can proceed by summary conviction. In many regards, this is the Canadian equivalent to the USA felony. Murder and treason are examples of crimes committed in Canada which would be indictable offences. These crimes are usually tried by federally-appointed judges and carry heavy sentences.	<b>Death</b> Criminal Negligence causing Death (s. 220 CCC)	<b>Discretionary at RCMP Division level</b>	<b>RCMP Mandatory Action:</b> <ul style="list-style-type: none"> <li>CPC to refer all death cases to external police service or provincial criminal investigative body (no RCMP member involvement)</li> <li>Divisional MOUs activated</li> <li>CPC Observer embedded</li> </ul>
	<b>Serious Injury &amp; Sexual Assault</b> Assault with Weapon or Assault Causing Bodily Harm (s. 267 CCC)  Sexual Assault (s. 272 CCC)	<b>Discretionary at RCMP Division level</b>	<b>RCMP Mandatory Action:</b> CPC and National Registrar to determine appropriate response from options below for serious injury/sexual assault cases: <ul style="list-style-type: none"> <li>Referral to external police service or to provincial investigative body through MOU<sup>6</sup></li> <li>Deployment of RCMP HQ mobile critical incident member investigation team</li> <li>CPC Observer embedded</li> </ul>
<b>DISCRETION RETAINED BY THE RCMP</b>			
<b>Hybrid Offences</b> Dual Procedure Offences which Crown can elect to proceed with an indictable offence or a summary conviction.	<b>Assault</b> (s. 265 CCC)	<b>Discretionary at RCMP Division level</b>	<b>RCMP HQ National Registrar retains discretion to determine appropriate response.</b>
<b>Summary Conviction</b> In Canada, a less serious offence than indictable offences for which both the procedure and punishment tends to be less onerous.	<b>Example:</b> Theft under \$5,000	<b>Discretionary at RCMP Division level</b>	<b>RCMP HQ National Registrar retains discretion to determine appropriate response.</b> <ul style="list-style-type: none"> <li>Recommended CPC standard policies and procedures are followed (outlined next).</li> </ul>

**MANDATORY**

**DISCRETIONARY**

“ THERE ARE CERTAIN INSTANCES WHERE THE RCMP SHOULD NOT INVESTIGATE ITSELF. [THIS] CHART [...] DELINEATES THAT AS THE SERIOUSNESS OF THE MEMBER-INVOLVED OFFENCE INCREASES, A CORRESPONDING DEGREE OF INDEPENDENCE AND IMPARTIALITY IN THAT MEMBER INVESTIGATION IS REQUIRED. ”

<sup>5</sup> See Appendix 10 for the *Criminal Code* Offence Grid which specifies whether an offence is indictable, summary or hybrid.  
<sup>6</sup> The RCMP National Registrar is to oversee the creation and signing of all new memoranda of understanding in all divisions to explicitly define the circumstances under which an external police force or criminal investigative body must undertake an investigation, when RCMP members can form part of the investigative team, and when the CPC Observer should be embedded (as per above recommendations).

## Recommended policy changes for the RCMP

The CPC's policy analysis revealed that RCMP policies, while voluminous, are inconsistent and do not adequately address the handling of member investigations. Criminal investigations into members should not be treated the same as any other criminal investigation. To address the current void in effective and consistent policies and procedures related to the handling of member investigations, the CPC recommends the following key changes:

- Criminal investigations of RCMP members into allegations of serious injury, sexual assault or death in hardship or remote postings must be consistent with all other member investigation protocols, no exception.
- An administrative review is mandatory for all member investigations.
- **The RCMP establish formalized MOUs for every RCMP division to ensure the mandatory referral of member investigations to an external police service is consistent and documented.** At present, only New Brunswick (J) Division, Nova Scotia (H) Division and Newfoundland (B) Division have formalized MOUs in place. These existing MOUs should be revised as per the CPC's recommendations to reflect new processes.

Where it is deemed appropriate for the RCMP to handle its own member investigation or where an RCMP member forms part of the investigative team (led by an external police force), the following policy recommendations would apply.

- **Create an RCMP integrated manual** to specifically address procedures for investigations undertaken by the RCMP into one of its own members. This integrated manual should have links to any additional relevant policies for ease of reference. Key features to be included in the integrated manual:

CPC recommended investigative team structure:

- Qualified primary investigator at least one rank higher than that of subject member;
  - A minimum of two members required for every member investigations (including for subject and witness officer interviews);
  - Minimum mandatory qualifications of investigative team;
  - Workload of members assigned to member investigations reassigned or adjusted to prioritize member investigation accordingly;
  - Timely completion of investigation preferably six months and not recommended to exceed one year;
  - Assign liaison position to member of investigative team to ensure timely and effective communication with public, family and subject member;
  - Self-identification of knowledge of subject member mandatory;
  - Use of the probe<sup>7</sup> in lower-end investigations.

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**CRIMINAL INVESTIGATIONS INTO MEMBERS SHOULD NOT BE TREATED THE SAME AS ANY OTHER CRIMINAL INVESTIGATION.**

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<sup>7</sup> A probe is a divisional best practice identified which is ordered when a complaint has a criminal element but may lack sufficient information to determine how to proceed. The "probe" consists of interviews with the complainant, victim and any other third-party witnesses; a review of operational files related to the complaint; and a review of members' notes and reports. This information is used to draft a report to help determine how a lower-end statutory investigation should proceed.

## CPC overall conclusion

To answer the question raised at the outset, *“Can the current process of the RCMP investigating itself legitimately engender confidence in the transparency and integrity of the criminal investigation and its outcome?”* The informed CPC answer is that it cannot. To address this, the CPC has recommended legislative, policy, procedural and structural proposals for changes, including an enhanced civilian presence during the investigative process to protect against any real or perceived conflicts of interest involving RCMP member investigations. It is important to note that the RCMP recommendations specifically related to structure, procedure and policy do not rely on any legislative enhancements and can be implemented immediately.

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TO ANSWER THE QUESTION RAISED AT THE OUTSET, “CAN THE CURRENT PROCESS OF THE RCMP INVESTIGATING ITSELF LEGITIMATELY ENGENDER CONFIDENCE IN THE TRANSPARENCY AND INTEGRITY OF THE CRIMINAL INVESTIGATION AND ITS OUTCOME?” THE INFORMED CPC ANSWER IS THAT IT CANNOT. TO ADDRESS THIS, THE CPC HAS RECOMMENDED LEGISLATIVE, POLICY, PROCEDURAL AND STRUCTURAL PROPOSALS FOR CHANGES, INCLUDING AN ENHANCED CIVILIAN PRESENCE DURING THE INVESTIGATIVE PROCESS TO PROTECT AGAINST ANY REAL OR PERCEIVED CONFLICTS OF INTEREST INVOLVING RCMP MEMBER INVESTIGATIONS.

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# Complete list of findings and recommendations

## CPC Key findings

### **Finding No. 1**

What is at issue today is no longer whether civilian review is desirable, but rather, how civilian involvement in investigations can be most effective.

### **Finding No. 2**

The very nature of conducting criminal investigations requires that police, to some extent, must be part of the solution.

### **Finding No. 3**

RCMP policies, while voluminous, are inconsistent and do not adequately address the handling of member investigations.

### **Finding No. 4**

The lack of national and divisional data collection - or monitoring capacity - for member investigations (combined with varied divisional RCMP record-keeping and retrieval methods on this issue) demonstrates a lack of attention being placed on member investigations.

### **Finding No. 5**

Overall, personal knowledge of subject member for primary investigators occurred 25% of the time and 4% of primary investigators were from the same detachment as the subject member.

### **Finding No. 6**

There was a slightly higher likelihood of primary investigators personally knowing the subject member (14%) in remote and northern postings than in other more centralized locations (12%). However, there does remain a large number of primary investigators (12%) from more centralized divisions where external assistance is more readily accessible.

### **Finding No. 7**

Overall, in the opinion of the CPC investigators, the use of expert witnesses in the cases was appropriate.



### **Finding No. 8**

Overall, the number of team members assigned to the 28 investigations was inadequate.

### **Finding No. 9**

Overall, the CPC found the structure and reporting relationships of the 28 cases reviewed to be partially or entirely inappropriate (68%).

### **Finding No. 10**

Of the 28 files that the CPC investigators reviewed, it was found that in 17 of these files, the subject member and witnesses were investigated by a lone RCMP investigator.

### **Finding No. 11**

Overall, the section or unit tasked with member investigations (including their mandates) lack uniformity across the country.

### **Finding No. 12**

In the 28 case files reviewed, the qualifications of the investigators varied greatly. Some had all the major crime and related courses, while others had as few as two years experience in the General Investigation Section.

### **Finding No. 13**

Overall, it was found that the investigations conducted by the Major Crime Unit were focused and completed in a timely fashion, as they had the ability, resources and the time to conduct the investigation. This was not found to be the case when the investigation was assigned to a Detachment Commander or General Duty or GIS member whose heavy workload was not adjusted accordingly.

### **Finding No. 14**

Of the 28 cases reviewed, six of which involved death, an administrative review was only undertaken in four cases: two of which were member-involved shootings (Manitoba (D) & Nunavut (V) Divisions); and two of which were in-custody deaths (Saskatchewan (F) and Alberta (K) Divisions).

### **Finding No. 15**

The CPC found that, overall, the level of response was handled partially or entirely inappropriately (68%). Key concerns related to interviews being undertaken by lone investigators as well as inconsistent referral of cases to the appropriate investigative unit.

### **Finding No. 16**

Of the eight charges laid, three (37.5%) resulted in successful convictions, while five (62.5%) resulted in no convictions.

### **Finding No. 17**

In cases where an immediate response was required, such as member-involved shootings and in-custody deaths, the CPC investigators found that all necessary personnel were dispatched to the incident as soon as possible and practicable.

### **Finding No. 18**

The CPC found that most investigations were completed in a timely manner. The files that took significantly longer to complete were not due to a lack of interest but rather to the heavy workload of the investigator in addition to general hindrances encountered (court dates, difficulty locating witnesses or complainants, employee absence, etc.).

### **Finding No. 19**

Overall, the CPC found that the RCMP investigators were free of bias and were professional and conscientious in their approach to their assignments. It was also found that most subject members and witness members cooperated with the CPC investigators and conducted themselves in a professional manner.

### **Finding No. 20**

After an in-depth review of the randomly selected cases, it was found that in most cases, the appropriate policies were complied with. In the few cases where it was found that some aspects of the related policies were not adhered to, they were minor in nature and did not appear to have any effect on the outcome of the investigation.

## CPC Recommendations

### Recommendation No. 1

Overall, it is the CPC's contention that criminal investigations into members should not be treated the same as any other criminal investigation.

### Recommendation No. 2

The CPC recommends that the rank of the primary investigator must be at least one rank higher than that of the subject member.

### Recommendation No. 3

In order to reduce the length of time to conduct statutory investigations against RCMP members, it is recommended that member investigations be assigned to a team of (minimum) two members in a specialized investigative unit.

### Recommendation No. 4

The RCMP should assign competent senior investigators with a proven track record in court who have completed the appropriate courses (e.g. sexual assault, major crime, interviewing and interrogation techniques and statement analysis); who can effectively interview witnesses with strong analytical skills.

### Recommendation No. 5

Workload of members assigned to member investigations should be reassigned or adjusted to prioritize member investigations accordingly.

### Recommendation No. 6

Special attention should be paid to enforce the RCMP requirement to consult with the Crown prior to laying any charges against members, given the particular need for independence and impartiality in member investigations. The RCMP should also undertake a review regarding recommendations made to the Crown in cases involving RCMP members.

### Recommendation No. 7

Given the sensitivity and transparency required for member investigations, it is recommended that administrative reviews be undertaken in all cases of serious injury, sexual assault or death.

### **Recommendation No. 8**

The RCMP should consider applying the use of the "probe"<sup>8</sup> to lower-end investigations in all divisions.

### **Recommendation No. 9**

The RCMP could consider recommending that the Officer in Charge of the Criminal Operations Section be the appropriate recipient of the probe report in order to determine whether or not a lower-end investigation should proceed to a statutory investigation.

### **Recommendation No. 10**

Historical cases require expertise not typical of most investigators. It is therefore recommended that these types of cases be handled by a specialized unit at the national or regional level.

### **Recommendation No. 11**

Policy guiding criminal investigations of RCMP members should be standardized nation wide. This would allow for the statutory investigations into RCMP members to be conducted uniformly across the country.

### **Recommendation No. 12**

Create the position of National RCMP Member Investigation Registrar responsible to provide the CPC Chair with regular monthly reports for all member investigations undertaken for indictable offences, hybrid offences and summary convictions.

### **Recommendation No. 13**

The RCMP should formalize a memorandum of understanding for every division across the country to ensure consistency in the referral of member investigations to an external police service.

### **Recommendation No. 14**

The RCMP should create an Integrated Manual to specifically address procedures for investigations undertaken by the RCMP into one of its members.

<sup>8</sup> A probe is a divisional best practice identified which is ordered when a complaint has a criminal element but may lack sufficient information to determine how to proceed. The "probe" consists of interviews with the complainant, victim and any other third-party witnesses; a review of operational files related to the complaint; and a review of members' notes and reports. This information is used to draft a report to help determine how a lower-end statutory investigation should proceed.

## Chapter 1

### 1. BACKGROUND

Over the past number of years, the Commission for Public Complaints Against the RCMP (CPC) has identified concerns with respect to a number of high profile cases which raise serious questions about whether the RCMP can legitimately and impartially conduct criminal investigations into its own members, particularly in cases where police actions have resulted in serious injury or death.

The 2004 case of Kevin St. Arnaud, who was shot and killed by an RCMP member in British Columbia, was followed by another shooting death in October 2005, this time of Ian Bush, by another RCMP member in British Columbia. These tragic cases resulted in the CPC initiating separate reviews to assess the integrity of the investigations undertaken in each case. Shortly thereafter in 2007, the CPC released its report on the RCMP handling of investigations into alleged sexual abuse at the Kingsclear Youth Training Centre in New Brunswick. The report concluded that the inadequacies in the RCMP investigations were serious enough to create the perception of a cover-up. And most recently, in October 2007, the death of Robert Dziekanski at the Vancouver International Airport (following the RCMP use of the conducted energy weapon) served to bring the issue of police investigating police to the forefront once more. In addition to the British Columbia Government calling the Braidwood Public Inquiry into the matter, the CPC launched its own investigation into the death of Mr. Dziekanski.

The common question that emerges as a result of these four salient cases is whether or not the organization whose members' actions resulted in serious injury or death should be the same organization then charged with the responsibility to investigate the incident with the prospect of laying criminal charges. Fundamental to this is the question of whether this process can engender public confidence in the transparency, impartiality and integrity of the criminal investigation and its outcome.

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**THE COMMON QUESTION THAT EMERGES AS A RESULT OF THESE FOUR SALIENT CASES IS WHETHER OR NOT THE ORGANIZATION WHOSE MEMBERS' ACTIONS RESULTED IN SERIOUS INJURY OR DEATH SHOULD BE THE SAME ORGANIZATION THEN CHARGED WITH THE RESPONSIBILITY TO INVESTIGATE THE INCIDENT WITH THE PROSPECT OF LAYING CRIMINAL CHARGES.**

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In an effort to address these issues in greater detail and assess how *other* RCMP member investigations involving serious injury or death have been handled, the Chair initiated a public interest investigation in November 2007. The purpose of this public interest investigation is to assess the conduct of

those unidentified RCMP members who have undertaken criminal investigations into the activities of other RCMP members, in cases that involved serious injury or death, that took place anywhere in Canada between April 1, 2002 and March 31, 2007.<sup>9</sup>

This report represents the comprehensive analysis by the CPC Review Team who conducted independent research on the issue, which included an in-depth assessment of the RCMP's handling of several cases. As a member of the public pointed out, the CPC analysis of this issue has the "potential to make marked improvements to how we investigate police in Canada." To this end, the CPC:

- Undertook a detailed analysis of current media, political, and academic debate on the issue to determine a baseline for discussion;
- Sought public submissions on the issue to help inform the debate;
- Assessed the adequacy of current RCMP policy guiding member action when investigating another member;
- Reviewed a sample of 28 RCMP investigations where member actions were alleged to have resulted in serious injury, sexual assault or death cases between 2002 and 2007 (the appropriateness of each case was assessed against specific criteria which include: line management; level of response; timeliness; conduct; and compliance with policy); and
- Researched alternate investigative models and conducted interviews with domestic and international bodies.

<sup>9</sup> See Appendix 1 for full details of the Chair-initiated complaint.

All of the above was undertaken in an effort to help identify the most appropriate model to ensure the integrity of criminal investigations into RCMP members involved in serious injury, sexual assault and death cases in the future. The results of this investigation are presented within the following interim report.

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**THE PURPOSE OF THIS PUBLIC INTEREST INVESTIGATION IS TO ASSESS THE CONDUCT OF THOSE UNIDENTIFIED RCMP MEMBERS WHO HAVE UNDERTAKEN CRIMINAL INVESTIGATIONS INTO THE ACTIVITIES OF OTHER RCMP MEMBERS, IN CASES THAT INVOLVED SERIOUS INJURY OR DEATH, THAT TOOK PLACE ANYWHERE IN CANADA BETWEEN APRIL 1, 2002 AND MARCH 31, 2007.**

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## Chapter 2

### 2. CURRENT LANDSCAPE

The purpose of this chapter is to outline key issues related to the practice of police investigating police emerging from four perspectives: (a) media, (b) political, (c) academic, and (d) key concerns through public submissions to the CPC. By gauging the level of interest and the salient concerns expressed in these four areas, a clear baseline is established helping to inform the CPC's decision-making going forward. Understanding where we are at present is critical in helping to determine where to go next.

#### 2(a) Media coverage

An in-depth study over the past seven years of (a) media and (b) parliamentary discourse on the issue of police investigating police reveals that:

- High profile cases (Dziekanski, Bush, Kingsclear, St. Arnaud<sup>10</sup>) provide the impetus for discussion in both media and parliamentary settings;
- While the issue of police investigating police is never the primary focus, it is a secondary focus underlying the main issue in most instances; and
- Journalists and parliamentarians alike generally agree that the problem is the system, not the individual police officers.

The issue of police investigating police did not appear prominently in the mainstream news coverage until 2007. More than any other incident, the Dziekanski case spiked media interest in Canada and abroad, and the story continues to perpetuate media attention. Questions around the impartiality of RCMP investigations into their own are raised with coverage focused on the perceived bias during the investigation, particularly after it was reported that the RCMP Commissioner showed support for the RCMP officers under investigation. Some noted that the public is cynical of the Dziekanski investigation and feels that it is not being provided with enough meaningful information in a timely manner. Moreover, Mr. Dziekanski's mother's lawyer, Walter Kosteckyj, has already expressed criticism vis-à-vis the public inquiry for its failure to officially examine the issue of police investigating police.

Media opinion pieces stress the need for civilian review agencies to serve the public and the police.<sup>11</sup> They also view the existing police oversight processes as slow and lacking in impartiality and transparency. Alternate models of police oversight (outlined in detail in chapter 5) do not escape criticism. Despite its seeming independence from the police force, Ontario's Special Investigations Unit (SIU)<sup>12</sup> is still subject to scrutiny and criticism. With regards to the Alberta Serious Incident Response

<sup>11</sup> Journalists who delivered opinion pieces on these issues include Kerry Diotte of the *Edmonton Sun*, Gary Mason of the *Globe and Mail*, Daniel Lett of the *Winnipeg Free Press* and Henry Aubin of the *Montreal Gazette*.

<sup>12</sup> SIU is an independent police oversight agency that has the power to investigate and charge officers with a criminal offence.

<sup>10</sup> Each case summarized in Appendix 2.

Team (ASIRT),<sup>13</sup> claims are made that the new unit does not go far enough because it should include members of the public on the review panel. Insofar as the CPC's Independent Observer Project,<sup>14</sup> the media have also reported public cynicism, including feedback of the recent participants who attested to limited involvement in the review process and drafting of recommendations. One such investigation involved an RCMP officer who pepper-sprayed a group of Aboriginals, including a seven-month-old baby, celebrating a soccer game victory on a Sechelt, B.C. reserve in July 2007.

While improving police training/procedures and developing independent oversight bodies were identified as positive changes that could be made to the current system, there is little or no mention of the special skills or experience police officers naturally have that are ideal for these types of investigations. What the media is sympathetic to, it seems, is the unfair role police officers have to play when investigating their own.

Though there are exceptions,<sup>15</sup> journalists generally agree that the problem is the system, not the police. Indeed, they remark on how independent oversight will help RCMP members as well, whose credibility is brought into question when they investigate themselves.

## 2(b) Political landscape

While the media has reported quite extensively on the issue, Canada's politicians have demonstrated less

focus on the subject. With the House of Commons sitting only 136 days a year and the Senate even less, many topical issues are left on the sidelines, either because the chambers are not sitting or because a significant political issue overtakes all other issues, as exemplified by the in-custody death of Ian Bush in Houston, British Columbia. Potentially an issue of interest on a number of levels to opposition political parties, it was never raised in Parliament, likely because it coincided with the release of the report of the Commission of Inquiry into the sponsorship issue (Gomery).

From time to time, Members of Parliament (MPs) call into question the notion of the police investigating themselves but the topic is not raised outside the scope of the daily Question Period (i.e. Committee work). Generally, politicians tend to focus on investigations that would hold the government culpable. This is true in the Dziekanski case, as it was with the Chuck Cadman affair and the RCMP Pension issue. In the Dziekanski case, NDP MP Penny Priddy from Surrey North stated that the RCMP is in a conflict of interest position when investigating its own, and its involvement in such investigations should be removed.<sup>16</sup>

Interventions around the adequacy of police oversight are less partisan and speak to the legislative measures that are before the House and any shortcomings of a particular bill. Here too, however, MPs take the opportunity to express their dissatisfaction. In an October 2004 debate on Bill C-6, *An Act to establish the Department of Public Safety and Emergency Preparedness*, Conservative MP Dave Chatters voiced his scepticism towards the effectiveness of the CPC and the RCMP complaint process.

13 ASIRT is an integrated investigative unit deployed in cases involving serious injury or death as well as other matters of a sensitive nature.

14 The CPC Independent Observer is a program that consists of the deployment of an independent observer as part of an RCMP investigation in order to monitor its impartiality.

15 See Chair-initiated complaint into the shooting death of Kevin St. Arnaud, Appendix 2

16 Statement made on November 15, 2007.



## Provincial Legislatures and Committees

Interest within provincial legislatures on the subject of police and issues surrounding police complaints was especially high in British Columbia, Saskatchewan and Manitoba. In these three provinces, over the course of the past number of years, specific incidents have led to an increased public interest in the issue of police conduct. Some highlights of issues of relevance are outlined below.

### British Columbia

In British Columbia, there have been a number of studies into the police complaints process. On August 9, 2002, the Special Committee to Review the Police Complaint Process released its Second Report.<sup>17</sup> Members of the committee heard two general themes throughout the testimony: one, the police had to buy into the complaints and oversight system for it to work effectively; second, there was concern from some witnesses that the complaint process was "a bit like asking the fox to guard the henhouse."

In August 2005, the B.C. Government appointed B.C. Appeal Court Judge Josiah Wood to review the police complaints system in the province. Justice Wood presented the *Report on the Review of the Police Complaint Process in British Columbia* in February 2007.<sup>18</sup> One of Judge Wood's key findings suggested that the oversight powers of B.C.'s Police Complaints Commissioner (PCC) need to be "significantly enhanced if the current model of civilian oversight is to be effective." Judge Wood further suggested that more active involvement

by the PCC in police investigations is a necessity.

The report contained 91 recommendations to improve the system. Among them, Judge Wood emphasized that the PCC be notified of any in-custody and police related death and that all in-custody and police related deaths be investigated by an external police agency. In February 2008, the B.C. government announced changes to the province's *Police Act* to implement the report's recommendations.

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**INTEREST WITHIN PROVINCIAL LEGISLATURES ON THE SUBJECT OF POLICE AND ISSUES SURROUNDING POLICE COMPLAINTS WAS ESPECIALLY HIGH IN BRITISH COLUMBIA, SASKATCHEWAN AND MANITOBA. IN THESE THREE PROVINCES, OVER THE COURSE OF THE PAST NUMBER OF YEARS, SPECIFIC INCIDENTS HAVE LED TO AN INCREASED PUBLIC INTEREST IN THE ISSUE OF POLICE CONDUCT.**

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On March 4, 2009 the B.C. government introduced amendments to the *Police Act: Bill 6 – 2009 Police (Misconduct, Complaints, Investigations, Discipline and Proceedings) Amendment Act, 2009* and *Bill 7 – 2009 Police (Police Complaint Commissioner) Amendment Act, 2009*. B.C. Solicitor General John van Dongen stated that the proposed legislative changes address "virtually all" of Judge Wood's recommendations. NDP public safety critic Mike Farnworth emphasized that the changes are insufficient because the RCMP, which constitutes the majority

<sup>17</sup> *Special Committee to Review the Police Complaint Process (2<sup>nd</sup> Report)*.

<sup>18</sup> *Report on the Review of the Police Complaint Process in British Columbia, February 2007*.

of patrol outside greater Vancouver and southern Vancouver Island, remains excluded from the Act's jurisdiction.

## Saskatchewan

In Saskatchewan, of significant relevance was the case of Neil Stonechild, who, in 1990, was found dead in a field outside of Saskatoon after being last seen in police custody. On February 20, 2003, the Government of Saskatchewan appointed Mr. Justice D.H. Wright to conduct an inquiry into the circumstances surrounding the death of Mr. Stonechild and the pursuant police investigation.

The *Commission of Inquiry Into Matters Relating to the Death of Neil Stonechild* was released on October 26, 2004. The inquiry found that the police investigation was "superficial at best" and concluded prematurely, laden with "glaring deficiencies" which "go beyond incompetence or neglect." Justice Wright noted that local police officers have an "overly defensive attitude" when it comes to complaints against their own and lamented the wide gulf between the Aboriginal and non-Aboriginal population in the province, including a long-standing distrust of non-Aboriginal institutions (such as the police). Wright recommended, among others, a review and improvement of the procedures that deal with complaints from the public about police misconduct.

Judge Wright's recommendations led to several amendments to Saskatchewan's *Police Act*.<sup>19</sup> As a result of consultations between local police services and First Nations groups, the Public Complaints Commission was created as a new police oversight body on April 1, 2006. To ensure that the new oversight body

<sup>19</sup> Amendments are outlined in greater detail in chapter 3, *Current Handling (Provincial Legislation)*.

was representative of Saskatchewan's diverse population, a provision was added dictating that one of the members of the board be of Métis origin, one a person of the First Nations ancestry, and one must be a lawyer. In addition, an amendment to the Act required that in a case of serious injury or death to a person in police custody or as a result of police actions, an independent observer from another police force or RCMP detachment be appointed. On April 3, 2006, Saskatchewan Justice Minister Frank Quennell emphasized that the new amendments are crucial to the integrity of the province's justice system.

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*THE COMMISSION OF INQUIRY INTO MATTERS RELATING TO THE DEATH OF NEIL STONECHILD* WAS RELEASED ON **OCTOBER 26, 2004**. THE INQUIRY FOUND THAT THE POLICE INVESTIGATION WAS “SUPERFICIAL AT BEST” AND CONCLUDED PREMATURELY, LADEN WITH “GLARING DEFICIENCIES” WHICH “GO BEYOND INCOMPETENCE OR NEGLECT.”

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## Manitoba

Interest within the Manitoban legislature was focussed on issues such as street crime and police staffing levels. Not unlike the House of Commons, legislative committees have shown little interest in the issue of police investigating police. Circumstances surrounding a death of a civilian at the hands of a police officer brought the issue onto the forefront. On February 25, 2005, an off-duty East

St. Paul Police officer, Derek Harvey-Zenk, hit and killed Crystal Taman in an automobile accident. Constable Harvey-Zenk had fallen asleep following a night of drinking with his colleagues. The crash was initially investigated by the East St. Paul Police—the officer's own police unit—and the Winnipeg Police Service Professional Standards Unit. The officer was sentenced to two years of house arrest. Public outcry followed the officer's sentence.

The issue was raised in the Manitoba legislature. On October 30, 2007, the Leader of the Opposition, Hugh McFadyen, observed on how such tragedies shake the public confidence in Manitoba's justice system. In response, Premier Gary Doer stated that a review of the independent prosecutor's office and decisions made in the Taman case would be investigated by a former Queen's Bench judge, former Justice Ruth Krindle. Notwithstanding these reviews, on December 5, 2007, an inquiry, headed by retired Ontario Superior Court Judge, the Honourable Roger Salhany, was called to review the handling of the case by the Manitoba police officers.<sup>20</sup>

Judge Salhany's report entitled *Taman Inquiry into the Investigation and Prosecution of Derek Harvey-Zenk* was released October 6, 2008, and emphasized the poor quality of the investigation by the East St. Paul police. According to Judge Salhany, the investigation was: conducted in bad faith; "riddled by incompetence;" a cover-up; an example of "abysmal" note taking; and overall, a "misleading" investigation of Ms. Taman's death. In particular, Judge Salhany paid special attention to two police officers that handled the investigation who

gave "untrustworthy and inconsistent" testimony.

Salhany pointed out the partial nature of (criminal) investigations conducted by police officers into the conduct of their own and recommended, among others, the creation of a separate provincial oversight body, independent of the police service, to conduct criminal investigations into the conduct of Manitoba police officers. Manitoba's government pledged to abide by all 14 of the report's recommendations. The creation of new oversight body is scheduled for 2009, at which time the Doer government intends to introduce changes to the provincial *Police Act*.<sup>21</sup>

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**SALHANY POINTED OUT THE PARTIAL NATURE OF (CRIMINAL) INVESTIGATIONS CONDUCTED BY POLICE OFFICERS INTO THE CONDUCT OF THEIR OWN AND RECOMMENDED, AMONG OTHERS, THE CREATION OF A SEPARATE PROVINCIAL OVERSIGHT BODY, INDEPENDENT OF THE POLICE SERVICE, TO CONDUCT CRIMINAL INVESTIGATIONS INTO THE CONDUCT OF MANITOBA POLICE OFFICERS.**

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20 In the wake of the Taman Inquiry, Manitoba's Justice Minister, Dave Chomiak, decided to disband the East St. Paul Police Department in favour of a new RCMP detachment.

21 A new Police Services Act was anticipated to be introduced in 2009 but had not been at the time of the drafting of this report.

## Additional relevant reports

Four additional high profile reports are of relevance to the PIP issue. Justice O'Connor's *A New Review Mechanism for the RCMP's National Security Activities*, David Brown's *Rebuilding the Trust – Task Force on Governance and Culture Change in the RCMP*, Ontario Ombudsman's *Oversight Unseen: Investigation into the Special Investigations Unit's Operational Effectiveness*, as well as Judge William Davies' *Alone and Cold: Inquiry into the Death of Frank Paul* were actively considered by the CPC in the development of its own recommended model for the RCMP.<sup>22</sup>

## 2(c) Academic landscape

A commissioned study by the CPC reviewed the evolution of the different academic trends in police investigation and governance in the 20<sup>th</sup> century with a focus on North America and the Commonwealth. Overall, 26 directly relevant academic and policy documents were identified and assessed for the purposes of this analysis.

In the context of Commonwealth and selected Western countries, until the late 1970s, there was such a complete lack of civilian involvement in police governance that the system was entirely governed by police investigating and disciplining themselves. Civilian review, developed in the 1970s, relied upon the adequacy and sufficiency of the original police investigation and the civilian

review board would have little, or no, independent capacity or authority to authenticate or validate the quality, scope, or sufficiency of the completed investigation.

Civilian review of public complaint investigations was followed by demands for more aggressive and effective independent review. Political governance of the police has shifted away from the traditional models of reactive accountability. The new political accountability is part of the general trend toward a new public sector management standard that emphasizes closely managed self-regulation and governance, re-inforced by external oversight. This new accountability is moving towards compliance through tighter regulation, audit, surveillance and inspection.

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**THE PROBLEMATIC NATURE OF PIP AND THE DEVELOPMENT OF EXTERNAL CIVILIAN REVIEW SUGGEST THAT THE POLICE HAVE NOT BEEN ABLE TO DEMONSTRATE EITHER THE WILLINGNESS OR THE ABILITY TO GOVERN THE BEHAVIOUR OF THEIR MEMBERS AT LEAST IN WAYS THAT CREATE PUBLIC AND POLITICAL CONFIDENCE.**

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### **Finding** No. 1

What is at issue today is no longer whether civilian review is desirable, but rather, how civilian involvement in investigations can be most effective.

<sup>22</sup> Highlights of each report can be found in Appendix 3.

The problematic nature of PIP and the development of external civilian review suggest that the police have not been able to demonstrate either the willingness or the ability to govern the behaviour of their members at least in ways that create public and political confidence. The distance from, and respect for, the police has changed and more independent and informed media reporting translates into a far more aggressive, questioning and critical press coverage that resulted in a demystification of policing. Combined with an increasing surveillance of police activities through public technologies such as video cameras and video-phones, the monitoring of the police by the public makes it harder for them to protect themselves from public criticism, review or opinion. This new scrutiny dramatically amplifies high profile incidents and elements of police deviance, feeding arguments for more civilian review and regulation.

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**A KEY FINDING OF THE LITERATURE REVIEW IS THE LACK OF DIRECT RESEARCH ON THE ACTUAL OPERATIONS AND ACTIVITIES OF THE VARIOUS PIP MODELS. THERE IS VERY LITTLE EMPIRICALLY-BASED KNOWLEDGE ON PIP AND MOST RESEARCH TO DATE IS CONDUCTED AT A GENERAL, DESCRIPTIVE LEVEL.**

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From an evolutionary perspective, the current trend towards civilian-based investigative models evolved as a result of growing public and political frustration. At its most radical is a model with complete independent civilian

control over the intake, investigation and response to public complaints of police misconduct.

Most academics agree, however, that removing police involvement from self-regulation is not the solution—internal self-governance paired with a degree of external accountability measures appear to be what most predict for the future. The trend towards more direct and expansive civilian involvement will continue unabated. It is believed that accountability will lie in more elaborate and effective modes of internal management and self-governance, rather than in more powerful forms of external governance and control. In short, police will remain part of the solution.

## Research is sparse

A key finding of the literature review is the lack of direct research on the actual operations and activities of the various PIP models. There is very little empirically-based knowledge on PIP and most research to date is conducted at a general, descriptive level.

Specifically,

- There are almost no case studies of actual investigations of the various kinds of models or processes that would allow an analysis leading to the establishment of good practice;
- There is no research to clarify the necessary investigative skills required for civilian investigations;
- There is little detailed research analyzing the precise role of police culture in the investigations of complaints against the police;

- There has been little attempt to examine new models of police management and technologies employed to manage and document police activity and behaviour;
- Little research examines the role of police associations and collective bargaining agreements in inhibiting or assisting PIP or alternative investigations; and
- There is little knowledge about how various elements or aspects of PIP or its alternatives can contribute to, or undermine, the public legitimacy of the civilian oversight process.

This absence of direct research on the issue of police investigating police is an important finding because it demonstrates the need for further research and analysis in this regard. This report hopes to help bridge the current research gap on this issue by assessing academic, policy, alternate models and the real handling of police investigations.

## General themes emerging in the literature

While overall research in this area is sparse, a number of general themes relevant to the issue of police investigating police are worth highlighting. The first theme questions whether the police can in fact conduct fair and impartial investigations of themselves. Some criticism focuses on the fact that police organizations are insular and protective by nature (with a distinctive and powerful organizational culture) which protects police from external criticism and review by defending and rationalizing police misconduct. Although it is acknowledged

that the police may in fact conduct fair and impartial investigations, the public perception or suspicion that they cannot often prevails—the perception of a lack of impartiality or accountability can outweigh the reality in most instances.

The second theme relates to the ability of civilians to conduct effective investigations. While it is generally accepted that civilian investigations may *appear* more impartial given their very distance from the police culture (and work environment), the argument is made that civilians may lack a sufficient understanding of police work to conduct a full and thorough criminal investigation. The lack of legitimacy afforded to civilian investigators due to reduced levels of cooperation and limited access to necessary information by police can therefore hinder a civilian investigator's ability to undertake effective investigations.

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**THE SECOND THEME RELATES TO THE ABILITY OF CIVILIANS TO CONDUCT EFFECTIVE INVESTIGATIONS.**

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Another trend focuses on the role police and the police culture can play in their own reform. The very nature of the police occupation involves protective and insular behaviours which may be

beneficial for police work and can duly hinder an openness to serious reform and progressive development. There is a growing consensus, however, that a more open and accountable process is inevitable, and police officers are aware of the need for change. The solution, therefore, lies in an external review process that understands and addresses legitimate police concerns. There is a need to find ways to involve police in the process of review, investigation and reform. Essentially, to ensure a good working relationship with the police, they must meaningfully participate in the process of self-governance, thereby allowing them to become part of the solution.

And finally, at issue is whether the use of active or retired police officers compromises the independence and integrity of the investigation. It is argued that deploying active (seconded) police officers can ensure the investigative skill set and experience are present, but also places the investigation at risk for being impartial and constrained by shared occupational values and perspective that may affect the findings. Retired police officers may also possess the necessary expertise and since they do not have the same level of identification with the pressures of operational police culture, they may have developed more professional and independent views regarding the police function (especially in the case of senior level investigators in command positions).

In conclusion, the review of the literature revealed a consensus that traditional models of PIP are no longer defensible, either as an effective model for addressing public complaints or a method that satisfies public demands for accountability. Opinions differ,

however, as to which civilian alternative for oversight is the most adequate. Civilian review models with limited review mandates are not the solution because of the realistic need for police cooperation and involvement. PIP review models should not be seen as undermining police responsibility and ability to govern their own behaviour. Many advocate, therefore, a promotion of hybrid police/civilian investigative and review models that recognize a legitimate but limited role for the police in the process, combined with a vigorous civilian oversight and investigation. It appears that the future role of the police in the investigative and review processes lies in encouraging more effective internal self-governance and accountability while developing more powerful but collaborative civilian oversight and investigative models.

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**AND FINALLY, AT ISSUE IS WHETHER THE USE OF ACTIVE OR RETIRED POLICE OFFICERS COMPROMISES THE INDEPENDENCE AND INTEGRITY OF THE INVESTIGATION.**

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### **Finding No. 2**

The very nature of conducting criminal investigations requires that police, to some extent, must be part of the solution.

## 2 (d) Key concerns identified through public submissions<sup>23</sup>

The CPC called for public submissions on the matter of police investigating police to help better inform the debate. Nineteen public submissions were made by a diverse range of stakeholders, such as the domestic and international oversight bodies; members of the public; provincial government representatives (including a provincial coroner); non-governmental organizations (NGOs); as well as police commissions and associations.

The most prevalent concern in the submissions was the **timeliness of member investigations**. One submission concluded that "one of the techniques used by the RCMP to just make everything go away is to put enough time between the event and the conclusion of the investigation [...]."<sup>24</sup> The provincial chief medical examiner stated that the lengthiness of a police investigation ultimately delays the inquest process. RCMP members subject to a complaint revealed that an investigation did not begin until six months after the complaint was filed, and took more than two years to complete.<sup>25</sup> This prompted a judge in this particular case to rule that "having considered the indifference, incompetence and untimeliness of the RCMP investigating this matter, I find that the police investigation of the Applicants amounted to a complete dereliction of duty and was an 'abuse of process.'"<sup>26</sup> Subject members complained of the emotional toll that the long, drawn-out investigation took on them.

23 For all submissions, consult Appendix 4.

24 Member of the public, *Submission 1*, "Comments on Chair-Initiated Complaint regarding the death of an individual at a B.C. RCMP Detachment, 2005," p. 9.

25 October 24, 2006 Decision of Newfoundland and Labrador Supreme Court [Trial Division].

26 October 24, 2006 Decision of Newfoundland and Labrador Supreme Court [Trial Division], p. 13.

The need for transparency in investigations was another concern repeatedly raised. Many submissions implied the lack of transparency in RCMP investigations (especially investigations into the action of its own members) leads the public to believe that it is not privy to what is really happening, but rather is fed an official, extremely vetted and biased version of the investigation. A provincial Department of Justice submission highlighted the public's "expectation of accountability and transparency."<sup>27</sup>

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NINETEEN PUBLIC SUBMISSIONS WERE MADE BY A DIVERSE RANGE OF STAKEHOLDERS, SUCH AS THE DOMESTIC AND INTERNATIONAL OVERSIGHT BODIES; MEMBERS OF THE PUBLIC; PROVINCIAL GOVERNMENT REPRESENTATIVES (INCLUDING A PROVINCIAL CORONER); NON-GOVERNMENTAL ORGANIZATIONS (NGOs); AS WELL AS POLICE COMMISSIONS AND ASSOCIATIONS.

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An NGO submission emphasized that from the public standpoint, police investigations of their own are vulnerable to the suspicion of "cover-up" and because the investigators involved are perceived as biased with underlying departmental and personal interests, such investigations will never appear fair. This comes to the detriment of both the public and the police because the latter may be unfairly subjected to criticism due to the lack of transparency

27 Nova Scotia Department of Justice Public Safety Division, "Re: Commission for Public Complaints against the RCMP," March 31, 2008, p. 1.



in the system.<sup>28</sup> Public perception of a biased investigation overrides the reality, previously noted by the first general theme identified by the academic review.

Many submissions expressed **concern about the potential conflict of interest** when police forces investigate their own members. A member of the public noted that "[a] conflict of interest is perceived to exist where there is a clear temptation to bias in the exercise of duties which should be impartially carried out for the public good. [...] The system of police investigating themselves seems a glaring anomaly." This perceived conflict of interest became closely interlinked with the Canadian public's mistrust of the RCMP, cynicism that has been fed time and again by a seemingly endless string of incidents in which the RCMP has appeared to choose insular, short-term self-interest over telling the truth.<sup>29</sup> Finally, another public submission noted that police officers cannot adequately investigate their fellow members because they are not at "arms length" from the individual being investigated.<sup>30</sup>

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AN NGO SUBMISSION EMPHASIZED THAT FROM THE PUBLIC STANDPOINT, POLICE INVESTIGATIONS OF THEIR OWN ARE VULNERABLE TO THE SUSPICION OF “COVER-UP” AND BECAUSE THE INVESTIGATORS INVOLVED ARE PERCEIVED AS BIASED WITH UNDERLYING DEPARTMENTAL AND PERSONAL INTERESTS, SUCH INVESTIGATIONS WILL NEVER APPEAR FAIR.

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28 Canadian Civil Liberties Association, "Re: Criminal Investigations of RCMP Officers," March 31, 2008, p. 3.

29 Member of the public, "Public Submission to the Commission for Public Complaints Against the RCMP Regarding the Public Interest Investigation on 'Police Investigating Police,'" p. 1.

30 Member of the public "Re: Police Investigating Police Complaint," March 17, 2008, p. 1.



## Chapter 3

### 3. CURRENT HANDLING OF RCMP MEMBER INVESTIGATIONS – A REVIEW OF LEGISLATION AND POLICY

At present, anyone (including a non-citizen) who has a concern about the conduct of an RCMP member can make a complaint to the CPC, the RCMP or the provincial government body concerned. Once a complaint has been received by the CPC, it is documented and forwarded to the RCMP for the initial investigation. The statute under which the CPC operates generally requires that the RCMP conduct the first investigation into complaints, after which the CPC is involved in its capacity as a review body. The CPC becomes involved in a review capacity only when requested to do so by a complainant who is dissatisfied with the RCMP's handling of its investigation into the complaint. However, at the discretion of the Chair, the CPC may also conduct its own investigation in the public interest or conduct a public interest hearing.

It is important to note that all matters relating to the administration of justice (which include criminal investigations) remain within the strict purview of the provinces as guaranteed under s. 92(14) of the *Constitution Act*. This means that the CPC's mandate is solely limited to the conduct of RCMP members generally, and does not include the authority to conduct criminal investigations on its own.

To adequately assess how the RCMP under-takes an investigation into another RCMP member, it is necessary to first determine what legislation and policy is currently in place to guide RCMP action in this regard. This section will review

relevant (1) legislation, (2) proposed model for new RCMP Review Body, and (3) policies that direct RCMP response as it relates to RCMP member conduct causing serious injury or death.

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**THE CPC'S MANDATE IS SOLELY LIMITED TO THE CONDUCT OF RCMP MEMBERS GENERALLY, AND DOES NOT INCLUDE THE AUTHORITY TO CONDUCT CRIMINAL INVESTIGATIONS ON ITS OWN.**

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#### (1) Legislation

There are no specific requirements under the *Criminal Code* regarding how an investigation into fellow police officers should be handled. And while *specific* reference to how police should investigate police is also absent from the *Royal Canadian Mounted Police Act (RCMP Act)*, there are two features of this Act that warrant special attention given the impact on member behaviour and the handling of PIP cases.

##### 1 (a) RCMP Act – s. 37 Conduct

Section 37 of the *RCMP Act* outlines eight guidelines for appropriate behaviour expected of RCMP members at all times. This section legislates the imperative need for members, as representatives of the RCMP, to act respectfully, dutifully and free from conflict of interest:

37. It is incumbent on every member
- (a) to respect the rights of all persons;
  - (b) to maintain the integrity of the law, law enforcement and the administration of justice;
  - (c) to perform the member's duties promptly, impartially and diligently, in accordance with the law and without abusing the member's authority;
  - (d) to avoid any actual, apparent or potential conflict of interests;
  - (e) to ensure that any improper or unlawful conduct of any members is not concealed or permitted to continue;
  - (f) to be incorruptible, never accepting or seeking special privilege in the performance of the member's duties or otherwise placing the member under any obligation that may prejudice the proper performance of the member's duties;
  - (g) to act at all times in a courteous, respectful and honourable manner; and
  - (h) to maintain the honour of the Force and its principles and purposes.

### **1(b) Commissioner's Standing Orders**

The *RCMP Act* defines the "Commissioner's Standing Orders", in subsection 2(2) as:

*The rules made by the Commissioner under any provision of this Act empowering the Commissioner to make rules shall be known as Commissioner's standing orders.*

And while there are a broad number of Commissioner's Standing Orders outlined in the RCMP's Administrative Manual, three specific Standing Orders (Public Complaints) are applicable to the PIP context:

- Section 9: A member shall not investigate a complaint where that member may be in a conflict of interest situation
  - It is important to note that the term "conflict of interest" is not defined further in the Orders.
- Subsection 1.2.b: If, as a result of an investigation, a member is believed to have committed a statutory offence: 1. it is within RCMP primary jurisdiction, take the same action as you would for any other person.
  - The Commissioner's Standing Orders 1.2.b 1. reference: "take the same action as you would for any other person" is consistent with the RCMP's current national *Investigation Guidelines* (outlined further later in this chapter).
- Subsection 1.3.a: When you [Immediate Officer/Officer in Charge] are informed of a serious complaint against a member, including bribery, corruption or similar offence, inform the Criminal Operations Officers (CROPS), and follow division directives.
  - While most divisions do have some form of directive to Commanders and/or investigators to refer, report, or consult with Criminal Operations Officers (CROPS) under specific circumstances, the terminology directing the process varies by division and

is often vague in nature (e.g. some divisions require directing the matter to Criminal Operations Officers (CROPS) "by the most appropriate means," others state by "direct means" and timing ranges by from "immediately" to "as soon as practical").

### 1 (c) *Provincial Police Acts*<sup>31</sup>

Only three provincial *Police Acts* specifically address the role of an independent oversight body in the handling of police investigations: (1) Alberta, (2) Saskatchewan and (3) Ontario. It is important to note that while chapter 5 of this report provides greater detail on the mandate, features and functioning of these domestic oversight bodies in Canada, this section will remain strictly focused on defining the legislative basis for each.

In the case of **Alberta**, section 46.1 of the *Police Act* established the province's integrated unit to investigate allegations of serious criminal conduct and incidents of serious injury or death resulting from the actions of a police officer.

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ONLY THREE PROVINCIAL  
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(1) ALBERTA,  
(2) SASKATCHEWAN AND  
(3) ONTARIO.

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- Paragraph 46.1(2)d of the Act establishes an "integrated investigative unit to conduct an

investigation into the incident or complaint, which may include taking over an ongoing investigation at any stage" which the Minister of Justice and Attorney General may direct to do so in case of incidents involving serious injury or death (or a complaint thereof) of a person that may have resulted from the actions of a police officer, or "any matter of a serious or sensitive nature" regarding the actions of a police officer.

- Subsection 46.2(1) states that the Minister "may [...] authorize it to act as another police service for the purposes of conducting an investigation under section 46.1."
- According to subsection 46.2(3), the head of this unit "is deemed to be a chief of police."
- The Alberta Serious Incident Response Team (ASIRT) was the model proposed for such a unit. ASIRT is comprised of civilian, RCMP and municipal police personnel who are directed by the province's Director of Law Enforcement to conduct investigations in cases of serious injury or death.

In **Saskatchewan**, the 2005 amendments introduced to the *Police Act, 1990* establish the Public Complaints Commission (PCC).

- Section 45(1) of the Act specifies that in cases of a complaint regarding the actions of a police officer, the PCC, in consultation with the chief of police, "shall cause an investigation into the complaint to be conducted [...] as soon as practicable."

<sup>31</sup> See Appendix 5 for full provincial analysis.

- It applies to all public complaints, including to potential offences "pursuant to an Act or an Act of the Parliament of Canada" (section 45(2)).
- Section 45(3) outlines the possible course of action for the PCC in the case of a complaint. The PCC may choose to investigate the complaint itself (3a), refer it back to the police service subject of the complaint (3b), appoint an observer who shall monitor the police investigation (3c), or refer it to another police force (3d).
- According to section 45(6) the PCC has the authority to assume responsibility of the police investigation at any point it feels necessary, at which time the police service in question must stop its own investigation and provide all required assistance to the PCC.
- Subsection 91.1(1) dictates that in cases of serious injury or death, the RCMP providing policing services within a municipality must request that the Deputy Minister of Justice appoint an observer "from another police service or detachment of the RCMP" to oversee the investigation. This observer shall be given "full access" to the investigation and report on all aspects of the investigation.
- In the case of investigations without prior complaint, police investigate the incident on their own (with the exception of investigations that "directly relate" to a member of the public, in which case the police chief must advise the PCC as soon as practicable. At that point, the PCC takes charge over the matter).

In **Ontario**, the *Police Services Act* (section 113) and the Regulation 673/98, *Conduct and Duties of Police Officers Respecting Investigations by the Special Investigations Unit*, outline the procedures to follow in cases of criminal offences committed by the province's police officers. Section 113 of the Act dictates that an independent unit *shall* investigate the circumstances of serious injuries, deaths and allegations of sexual assault that may have resulted from the actions of police officers.

- Section 113(5) of the Act states that the director of the Special Investigations Unit (SIU) "may, on his or her own initiative, and shall, at the request of the Solicitor General or Attorney General," conduct investigations in cases of serious injuries and deaths that may have occurred as a result of criminal offences committed by police officers. Police officers have a duty to cooperate "fully" with the unit (section 113(9)).
- Section 3 of the Regulation stipulates that the chief of police must immediately advise the SIU should an incident that falls within the unit's mandate occur.
- SIU is the lead investigator which has priority "over any police force" during the course of the investigation (section 5 of the Regulation).
- According to section 11(1) of the Regulation, the chief of police may also conduct an investigation into an incident that the SIU is involved in with the condition that the SIU keep its "lead role" in the investigation.

## **(2) Proposed draft model legislation**

As Canada's federal police force, the RCMP operates under contract with the provinces to provide provincial and municipal policing services. This process naturally gives rise to issues between the role of the federal body charged with review of RCMP conduct and the role of the government responsible for the administration of justice in each province.

To help address this issue and build an effective federal review regime for the RCMP, the CPC has drafted and publicly released proposed model legislation.<sup>32</sup> A number of specific proposed powers are of particular relevance to the PIP issue and would include the new RCMP Review Body's ability to: (i) undertake joint investigations, (ii) monitor RCMP investigations, and (iii) refer criminal investigations into RCMP member conduct to another police force.

### **(i) Undertake joint investigations:**

At present, the CPC does not have the legislated authority to undertake joint investigations,<sup>33</sup> which can result in duplication of effort when a number of bodies simultaneously undertake separate investigations into the same conduct. The proposed legislation would allow the new RCMP Review Body to undertake joint investigations, reviews, inquiries, audits or hearings with another body with comparable powers.

### **(ii) Ability to monitor RCMP investigations:**

At present, RCMP consent is required for the CPC to observe investigations into member conduct. In the absence of a mandated authority to monitor RCMP investigations, the RCMP is left to investigate itself without any external monitoring capacity. The proposed legislation would allow for the monitoring of any investigation with respect to the conduct of a law enforcement officer that the new RCMP Review Body deems necessary.

### **(iii) Refer criminal investigations into RCMP member conduct to another police force:**

Currently, the CPC is not mandated, under any circumstances, to refer an investigation into RCMP member conduct to another police force. The proposed model legislation would provide the new RCMP Review Body with the ability to refer an investigation to an outside police force. This would help to enhance public confidence in the process and the transparency of investigation as well as minimize the conflict of interest associated with the RCMP investigating itself.

## **(3) RCMP Policy**

One of the main purposes of this investigation is to determine if current RCMP policy directing RCMP investigations into its members is adequate. Below is one of the criteria established in the November 26, 2007 CPC complaint to assess the RCMP handling of investigations into members involving serious injury or death.

<sup>32</sup> See Appendix 6 for proposed draft legislation.

<sup>33</sup> Joint investigations being investigations performed in conjunction with a similar provincial police oversight or review body.

CPC Assessment Criteria: Determine whether existing RCMP policies, procedures and guidelines are adequate to ensure that fair, effective, thorough and impartial investigations are carried out by RCMP members when investigating fellow RCMP members.

In order to make an assessment regarding the adequacy of RCMP policy, the CPC Review Team examined all national and divisional RCMP policies directly impacting how the RCMP investigates its own members. A request for every RCMP policy drafted between 2001 and 2008 that related to the handling of the PIP was provided by the RCMP for the CPC Review Team's assessment. A full list of policies reviewed for the purposes of this report can be found at Appendix 7.

## National Policies

In addition to the proposed *External Investigations or Review* policy that is currently being finalized by the RCMP, the following national policies were examined: *Sexual Offences, Arrest, Emergency Vehicle Operations, Prisoners and Mentally Disturbed Persons, In-Custody Death, Human Deaths, Major Case Management, Guarding Prisoners*, and the national *Investigation Guidelines* policy. A few of the above mentioned policies refer to the possibility of independent investigation into an incident involving RCMP members, specifically *Prisoners and Mentally*

*Disturbed Persons, In-Custody Death, Major Case Management and External Investigations or Review.*

The *Investigation Guidelines* policy at the national level emphasizes that if it is within RCMP primary jurisdiction, actions taken must be the same as they would be "for any other person" (F.1.a), whereas if outside RCMP primary jurisdiction, the matter shall be referred to the relevant police department with the primary jurisdiction (F.1.b).

Key features, best practices and omissions in RCMP policies were analyzed and then compared across divisions to determine consistency of application. The key findings of this review are outlined below.

## Independence of Investigator

The appointment of an "independent" investigator to ensure the impartiality of an investigation is found in several national RCMP policies. The national *Prisoners and Mentally Disturbed Persons, In-Custody Death, Major Case Management and External Investigations or Review* policies all require an independent investigator to be assigned in specific cases. The definition of what constitutes an independent investigator, however, varies by policy and division.

In some divisional policies (B, G and J<sup>34</sup> Divisions) the investigator is specifically defined as "independent" only when the member assigned is "from another

34 Newfoundland and Labrador, Northwest Territories and New Brunswick respectively. J Division (New Brunswick) follows a Memorandum of Agreement between the RCMP and New Brunswick police services pursuant to which a Use of Force Investigation Team (UFIT) is called in the case of a "critical incident." Article 4 of the agreement mandates that the officer in charge and the primary investigator be members of an independent agency not involved in the critical incident.



district/area or another police force." Another divisional policy (E<sup>35</sup> Division) allows for the discretionary appointment of an "autonomous" investigator in incidents involving police pursuits and/or police vehicle collisions that result in serious personal injury or death.

## Referral to Another Police Force

Some policies further recommend that member investigations should be referred to another police force entirely to better ensure impartiality. The RCMP's proposed national *External Investigations* policy and the New Brunswick (J Division) policy are the only two policies that recommend this as an option. It is important to point out, however, that there is no mandatory requirement for any RCMP member investigation to be automatically referred to another police force—this decision remains entirely discretionary at the operational level.

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IT IS IMPORTANT TO POINT OUT, HOWEVER, THAT THERE IS NO MANDATORY REQUIREMENT FOR ANY RCMP MEMBER INVESTIGATION TO BE AUTOMATICALLY REFERRED TO ANOTHER POLICE FORCE—THIS DECISION REMAINS ENTIRELY DISCRETIONARY AT THE OPERATIONAL LEVEL.

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## Administrative Review

There is also no national policy that makes an administrative review mandatory for member investigations.

An administrative review is defined in divisional policy as: "an independent review of all aspects of an incident undertaken with the express intent of identifying potential deficiencies in policy, training, equipment and/or officer survival techniques." The information gathered through an administrative review can assist the RCMP divisional Commanding Officer to more effectively guide an investigation and discharge accountability to the appropriate federal and/or provincial authorities.

The call for an administrative review is referenced in only two RCMP policies:

- (1) the national *Reporting Discharges of Firearms* policy orders the assignment of an "independent officer" to conduct the administrative review where appropriate. In cases of serious injury or death resulting from the actions of an RCMP's Emergency Response Team, the "Incident Commander from outside the Division" must be appointed in order to conduct the review.

(2) At the divisional level, in Manitoba, an administrative review may be ordered at the discretion of the Administrative Services Manager for high profile investigations (defined as those investigations which may result in serious injury or death of a person, or lead to criticism of the RCMP). An independent officer "unassociated with the occurrence" and from a jurisdiction other than the one where the incident took place conducts the review. The recommendations that result from the review must then be directed to "the appropriate police centres for implementation."

Overall, the requirement for an administrative review can only be found in the context of a single national policy and one divisional policy. This results in the inconsistent application of administrative reviews across the country.

### **Scope of Policy – "Serious" offences only or "all" violations**

In reviewing national RCMP policy, specifically *Prisoners and Mentally Disturbed Persons, In-Custody Death, Human Deaths, Major Case Management and External Investigations or Review* (as well as British Columbia's E Division policy), an issue emerged around the RCMP's definition of what constitutes a "serious" offence that warrants an independent review.

National policy is focused on cases of serious injury or death to a person, at which point the assignment of an independent investigator becomes a possible option. In the E Division *Investigation Guidelines* policy, the District Officer is invited to

appoint an independent investigator in cases of "serious personal injury and/or death" resulting from police pursuits or police vehicle collisions.

In some divisional policy (B, D, G and J Divisions<sup>36</sup>) the definition of a serious offence is broadened to any "violation or alleged violation of the *Criminal Code*, or any other federal or provincial statutory offence" committed by a member. This thereby eliminates the need for the detachment or division to make a determination of what it considers a "serious" offence when calling an independent review.

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**OVERALL, THE REQUIREMENT FOR AN ADMINISTRATIVE REVIEW CAN ONLY BE FOUND IN THE CONTEXT OF A SINGLE NATIONAL POLICY AND ONE DIVISIONAL POLICY. THIS RESULTS IN THE INCONSISTENT APPLICATION OF ADMINISTRATIVE REVIEWS ACROSS THE COUNTRY.**

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36 Manitoba's policy refers to violations "relating to the *Criminal Code* or *Federal Statute Offences*." It must be noted that the policy of F (Saskatchewan) and K (Alberta) Divisions also point to "any criminal offence," but in their case, the divisions conduct their own investigation.

## Policy – Mandatory Actions versus Discretionary Provisions

Below is a summary of the mandatory versus discretionary actions that are prescribed in the national and divisional policies.

ACTION	MANDATORY	DISCRETIONARY
Appointment of independent investigator (from another district/or another police force)	B, G, J Divisions, National <i>In-Custody Death, National Prisoners and Mentally Disturbed Persons</i>	National <i>External Investigations or Review</i> , E Division (in case of police pursuits and vehicle collisions resulting in serious injury/death)
Referral of investigation to another police force	J Division policy: <i>Offences by Members</i>	National <i>External Investigations or Review</i>
Administrative review	National policy <i>Reporting Discharges of Firearms</i>	D Division <i>Investigative Guidelines</i>
Policy refers to "any" violation or alleged violation of the CC or any other federal or provincial statutory offence	B, D, F, G, J, K <sup>37</sup> divisional <i>Investigative Guidelines</i>	

### National versus Divisional Policy

Each division with a formal "investigations" policy has its own version with differing guidelines as to how member-committed offences should be handled. Only six (of the 14) divisions addressed the issue of member investigations specifically. The table below illustrates some key differences between the newly developed, though not yet implemented, national policy on *External Investigations or Review* and policies at the divisional level.

<sup>37</sup> Newfoundland and Labrador, Saskatchewan, Northwest Territories, New Brunswick, and Alberta.

NATIONAL POLICY	DIVISIONAL POLICIES
<ul style="list-style-type: none"> <li>• Ordering an independent external investigation optional against the following public interest factors:               <ul style="list-style-type: none"> <li>- seriousness of allegations</li> <li>- nature of allegations</li> <li>- impact of alleged offence on:                   <ol style="list-style-type: none"> <li>1) the victim</li> <li>2) the community</li> <li>3) the public confidence</li> </ol> </li> <li>- availability/expertise/experience of outside police agency to take on the investigation</li> </ul> </li> <li>• Ordering independent investigation in cases of in-custody death, member involved shooting, or any other matter deemed to be in the public interest</li> </ul>	<ul style="list-style-type: none"> <li>• Ordering external investigator mandatory pursuant to MOU (J)</li> <li>• If aware of a statutory violation committed by another member, reporting it to the supervisor is mandatory (B, D, G, J)</li> <li>• Resolving personal conflict issues mandatory for investigators (F)</li> <li>• Immediate criminal investigation mandatory upon awareness of incident (F)</li> <li>• Statutory investigation mandatory (K)</li> <li>• Any violation or alleged violation of the <i>Criminal Code</i>, or any other federal or provincial statutory offence committed by an officer of the RCMP (B, D, G, J)</li> </ul>

Given the absence of direction prescribed in legislation regarding how members should investigate other members, the adequacy of policy to ensure impartiality, transparency and rigour in this process becomes all the more paramount.

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**GIVEN THE ABSENCE OF DIRECTION PRESCRIBED IN LEGISLATION REGARDING HOW MEMBERS SHOULD INVESTIGATE OTHER MEMBERS, THE ADEQUACY OF POLICY TO ENSURE IMPARTIALITY, TRANSPARENCY AND RIGOUR IN THIS PROCESS BECOMES ALL THE MORE PARAMOUNT.**

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Currently, inconsistency is found in policy content and application across divisions. While the RCMP has

developed a number of policies relating to how criminal investigations should be undertaken generally, very few policies address the issue of RCMP member-committed offences specifically. This is a serious concern.

The sheer volume and variety of RCMP policies with implications for the issue of police investigating police is overwhelmingly large (e.g. hundreds of pages of policy relevant to the PIP were reviewed for this report alone). This policy “overload” poses a great threat to the RCMP’s operational effectiveness. The very nature of front-line policing requires that direction be provided in a format that is clear, concise and easy to access.

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**CURRENTLY, INCONSISTENCY IS FOUND IN POLICY CONTENT AND APPLICATION ACROSS DIVISIONS.**

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While the new proposed national policy *External Investigations or Review* takes active steps towards providing consolidated guidance as it relates to the PIP, the content remains vague and far too much discretion remains with the divisions (divisional Commanding Officers, Officers in Charge or Criminal Operations Officers) to determine an appropriate response.

One key feature of the national *Investigation Guidelines* (and repeated in divisional policy) which bears closer examination is the following passage regarding how an investigation into another member must be handled:

"take the same action as you would for any other person" (F.1.a).

While the intention of the RCMP may be an honourable one, **given the repeated contention in policy that the handling of an investigation into another member should be managed exactly like any other investigation (meaning without bias), the very nature of an investigation by one police officer into another is fundamentally different than police investigating a member of the public for the exact same crime.** Police are held to higher account by the very nature of the work they do. Like other professions that directly impact the safety and welfare of those they serve, there is a public expectation requiring that a higher standard of behaviour be upheld.

In the words of Albert Einstein, "no problem can be solved from the same consciousness that created it." By exposing the police thinking that investigations into its own members should be handled like any other investigation, we begin to identify the root philosophy guiding individual member behaviour. In most cases (while there are always

exceptions) problems associated with police investigating themselves are rooted in the very process by which they must operate and not in individual behaviour. Recommendations to address this and other policy concerns are outlined in chapter 8.

### Finding No. 3

RCMP policies, while voluminous, are inconsistent and do not adequately address the handling of member investigations.

### Recommendation No. 1

Overall, it is the CPC's contention that criminal investigations into members should not be treated the same as any other criminal investigation.

“

IN THE WORDS OF ALBERT EINSTEIN, “NO PROBLEM CAN BE SOLVED FROM THE SAME CONSCIOUSNESS THAT CREATED IT.” BY EXPOSING THE POLICE THINKING THAT INVESTIGATIONS INTO ITS OWN MEMBERS SHOULD BE HANDLED LIKE ANY OTHER INVESTIGATION, WE BEGIN TO IDENTIFY THE ROOT PHILOSOPHY GUIDING INDIVIDUAL MEMBER BEHAVIOUR.

”



## Chapter 4

### 4. CASE FILE REVIEW – RCMP INVESTIGATIONS ASSESSED

Before addressing the findings of the RCMP case file review, it is first important to set out the methodology employed to develop the pool of cases from which the CPC's assessment was drawn. This administrative process reveals critical issues in the RCMP's administrative handling and management of its own member investigations. The methodology and key administrative findings are outlined below.

“

**RCMP DIVISIONAL CONTACTS WERE ASKED TO IDENTIFY ALL FILES IN THEIR RESPECTIVE DIVISIONS RELATED TO CRIMINAL INVESTIGATIONS OF RCMP MEMBERS BY OTHER RCMP MEMBERS BETWEEN APRIL 1, 2002 AND MARCH 31, 2007 INVOLVING ASSAULT CAUSING BODILY HARM; SEXUAL ASSAULT; AND DEATH, INCLUDING DEATH CAUSED BY OPERATING A PERSONAL MOTOR VEHICLE (PMV).**

”

#### 4 (a) Methodology

##### Stage 1: CPC Selection Criteria

**To ensure the CPC established a strong pool of the most relevant RCMP cases for review, a timeframe of April 1, 2002 to March 31, 2007 was selected in the initial laying of the complaint.** This timeframe ensured that the most recent files could be reviewed and enhanced the likelihood that the police and civilians involved in each case would be more readily accessible to interview. This task could have proven more difficult had the investigative timeframe been broadened.

Bearing this five-year timeframe in mind, the CPC Review Team proceeded to identify specific selection criteria to determine which cases would be included in the review. As per the parameters of the complaint, the **three general categories for review included: (1) Assault Causing Bodily Harm; (2) Sexual Assault; and (3) Death.**

##### Stage 2: RCMP File Identification

To facilitate the file identification process, the CPC liaised with the RCMP who assisted by identifying a national point of contact from its Community, Contract and Aboriginal Policing Section to manage all CPC-related requests.

The RCMP further provided divisional contacts to facilitate the reviews. And

as per the established CPC selection criteria, these divisional contacts (RCMP Criminal Operations Officers in each division) were then asked to identify all files in their respective divisions related to criminal investigations of RCMP members by other RCMP members between April 1, 2002 and March 31, 2007 involving assault causing bodily harm; sexual assault; and death, including death caused by operating a personal motor vehicle (PMV).

Working from the explicit terms of reference and criteria outlined in the Chair-initiated complaint, the CPC and RCMP jointly determined that the best way to identify potential cases for consideration in the investigation was to have the RCMP search their records databases identifying the various sections of the *Criminal Code* related to charging offences of assault, sexual assault and death. In so doing, all potential cases could be captured. However, many divisions unilaterally searched their databases and then made a determination of those cases that fit within the terms of reference.

Once the cases were identified by the RCMP, they were then sent to the CPC. The CPC investigators manually looked at each case and made a determination as to whether or not each case fit within the parameters of the investigation.

The RCMP was further instructed to identify all possible files for the CPC Review Team, even cases where relevance was questionable.

“

ACCESS TO THE DATA ON MEMBER INVESTIGATIONS COULD NOT BE RETRIEVED THROUGH RCMP NATIONAL HEADQUARTERS DUE TO THE LACK OF CENTRALIZED TRACKING OR MONITORING OF THIS TYPE OF INFORMATION ON A NATIONAL SCALE.

”

### Stage 3: CPC Preliminary Review of RCMP Files

**A combined total of approximately 600 RCMP cases were initially identified across the country that fit the timeframe and offence category.**

It is critically important to note that access to the data on member investigations could not be retrieved through RCMP National Headquarters due to the lack of centralized tracking or monitoring of this type of information on a national scale. The CPC Review Team was therefore required to work with divisional contacts to get access to the necessary information for the purposes of this report.

Like National Headquarters, most divisions do not track member investigations in a formal way. As such, most divisions generated relevant files for the PIP analysis by searching through divisional records housed at their respective Headquarters using key word searches. Some divisions were better able to narrow the scope of their search to fit the parameters of the review through effective record-keeping processes making for easier retrieval, while other divisions did not have the same capacity. For example, due to record-keeping processes and time constraints, Alberta



(K) Division simply provided everything that could possibly fit the parameters of the complaint. This helps to explain the higher number of cases received from K Division relative to the rest of the country.

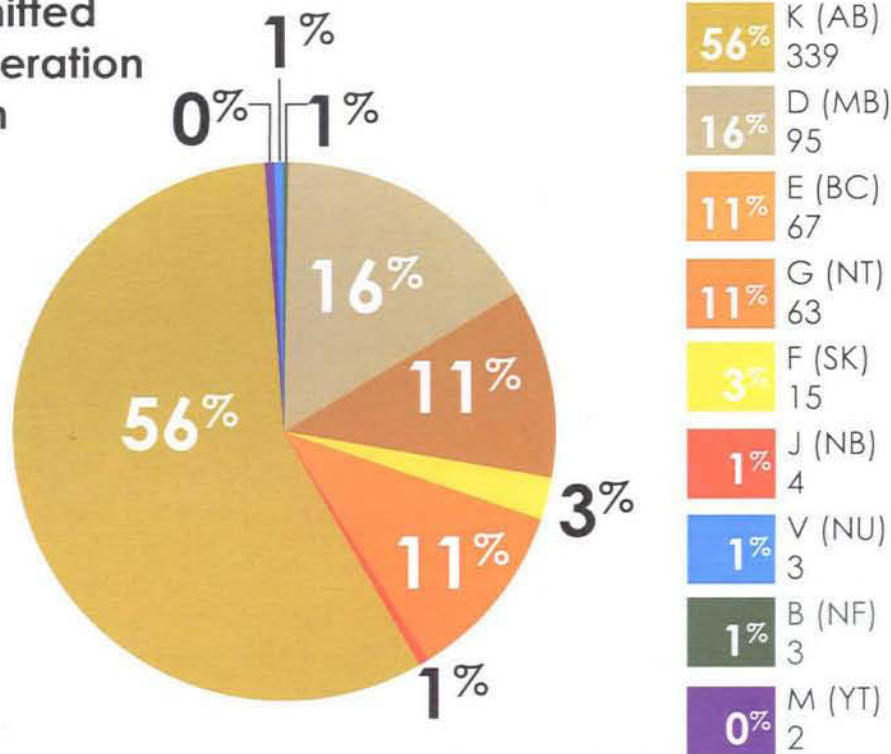
**Finding No. 4**

The lack of national and divisional data collection - or monitoring capacity - for member investigations (combined with varied divisional RCMP record-keeping and retrieval methods on this issue) demonstrates a lack of attention being placed on member investigations.

Where a determination needed to be made as to whether an RCMP file was relevant to the parameters of the public interest investigation, the files in question were assessed by the CPC's two investigators assigned the task. Where necessary, the CPC investigators were then deployed to the divisions in question to undertake a file review and make a determination of relevance.

Upon review by the CPC investigators, which in some cases involved traveling to various divisions and individual detachments, approximately 150 RCMP cases were deemed relevant to the parameters of the public interest investigation.

**Files Submitted for Consideration By Division**



## Stage 4 – CPC Sample Narrowed and Files Retrieved for CPC Review

Recognizing that it would be prohibitive to review *all* relevant cases in each of the three categories, it was determined at the outset that a smaller, more manageable number of cases would be selected for a full-file review.

This sample size was selected in order to narrow the number of case reviews to a more reasonable amount, thereby allowing for a comprehensive examination of the chosen cases, while respecting that a reasonable length of time would be required for each investigation to be undertaken.

**To secure a random sample for review, cases were first categorized by RCMP region/division, and by offence category (assault, sexual assault, death). From this list, a random selection was made to ensure that every RCMP Region and every offence category was represented.**

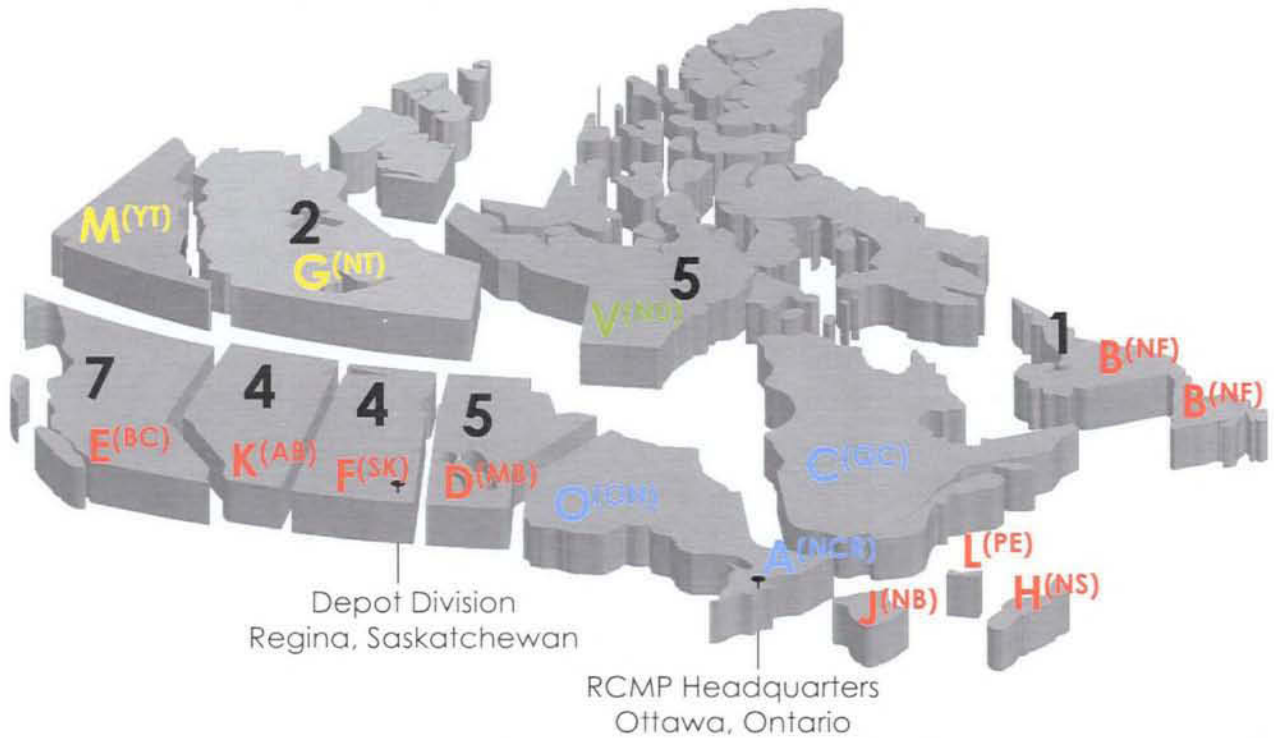
It is important to note, as per the map outlined next, that the **RCMP's Central Region was not represented in the random sample because no cases were identified by Quebec (C) Division; Ontario (O) Division; and HQ National Capital Region (A) Division** that fit the parameters of the Chair-initiated complaint. Furthermore, **no files were identified by Nova Scotia (H) Division, and Prince Edward Island (L) Division.** And while a small number of files were initially identified by the RCMP for New Brunswick (J) Division and Yukon Territory (M) Division, these files did not meet the criteria set out in the Chair initiated complaint and were therefore excluded. Of concern to the CPC is the absence of any cases identified by the bulk of the Maritimes, given the policing role (all levels of policing) undertaken in Nova Scotia (H) Division, New Brunswick (J) Division, and Prince Edward Island (L) Division, in particular.

“

OF CONCERN TO THE CPC IS THE ABSENCE OF ANY CASES IDENTIFIED BY THE BULK OF THE MARITIMES, GIVEN THE POLICING ROLE (ALL LEVELS OF POLICING) UNDERTAKEN IN NOVA SCOTIA (H) DIVISION, NEW BRUNSWICK (J) DIVISION, AND PRINCE EDWARD ISLAND (L) DIVISION, IN PARTICULAR.

”

## Number of RCMP Cases Examined by Division



Municipal, Provincial, Federal and First Nations Policing Activities	
Federal, Territorial, and First Nations Policing Activities	
Federal and Territorial Policing Activities	
Federal Policing Activities Only	

The CPC Review Team investigators analyzed all files and written material provided by the RCMP to assess the appropriate handling of each case against the Chair-initiated criteria and terms of reference (specifically: line management, level of response, timeliness, member conduct, and compliance with policy). In addition, the investigators also sought to determine overall, whether the investigative techniques used were appropriate (or whether others should have been employed), and whether the treatment of the subject member and witness officers was appropriate in each case.

When the final selection of cases was made, if any of the original cases selected were deemed to be outside the parameters of the public interest investigation, the file was removed from the sample and a new file was then randomly inserted in its place. This process ultimately resulted in **a random sample of 25 cases for review chosen from across the country. In addition, three cases previously reviewed by the CPC were added to the investigation, resulting in a total overall review of 28 cases.**

Overall, of the 28 investigations reviewed, seven (25%) were from British Columbia (E) Division; five (18%) were from Manitoba (D) Division; five (18%) were from Nunavut (V) Division; four (14%) were from Saskatchewan (F) Division; four (14%) were from Alberta (K) Division; two (7%) were from Northwest Territories (G) Division; and one (4%) was from Newfoundland and Labrador (B) Division.

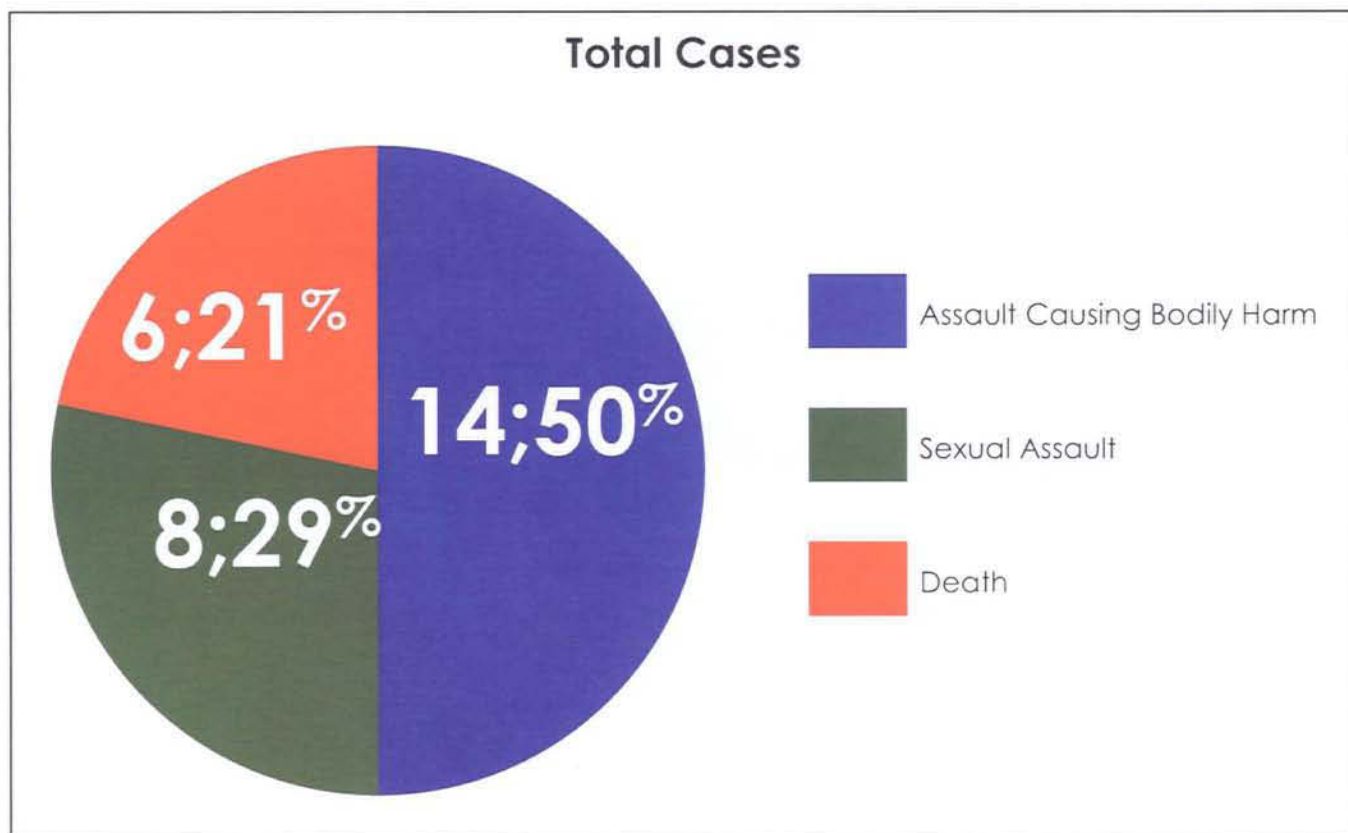


OF THE OVERALL 28 CASES REVIEWED, SIX WERE DEATH CASES, ANOTHER EIGHT INVOLVED SEXUAL ASSAULT AND THE 14 REMAINING CASES WERE ASSAULT CAUSING BODILY HARM.



### Types of cases reviewed by category

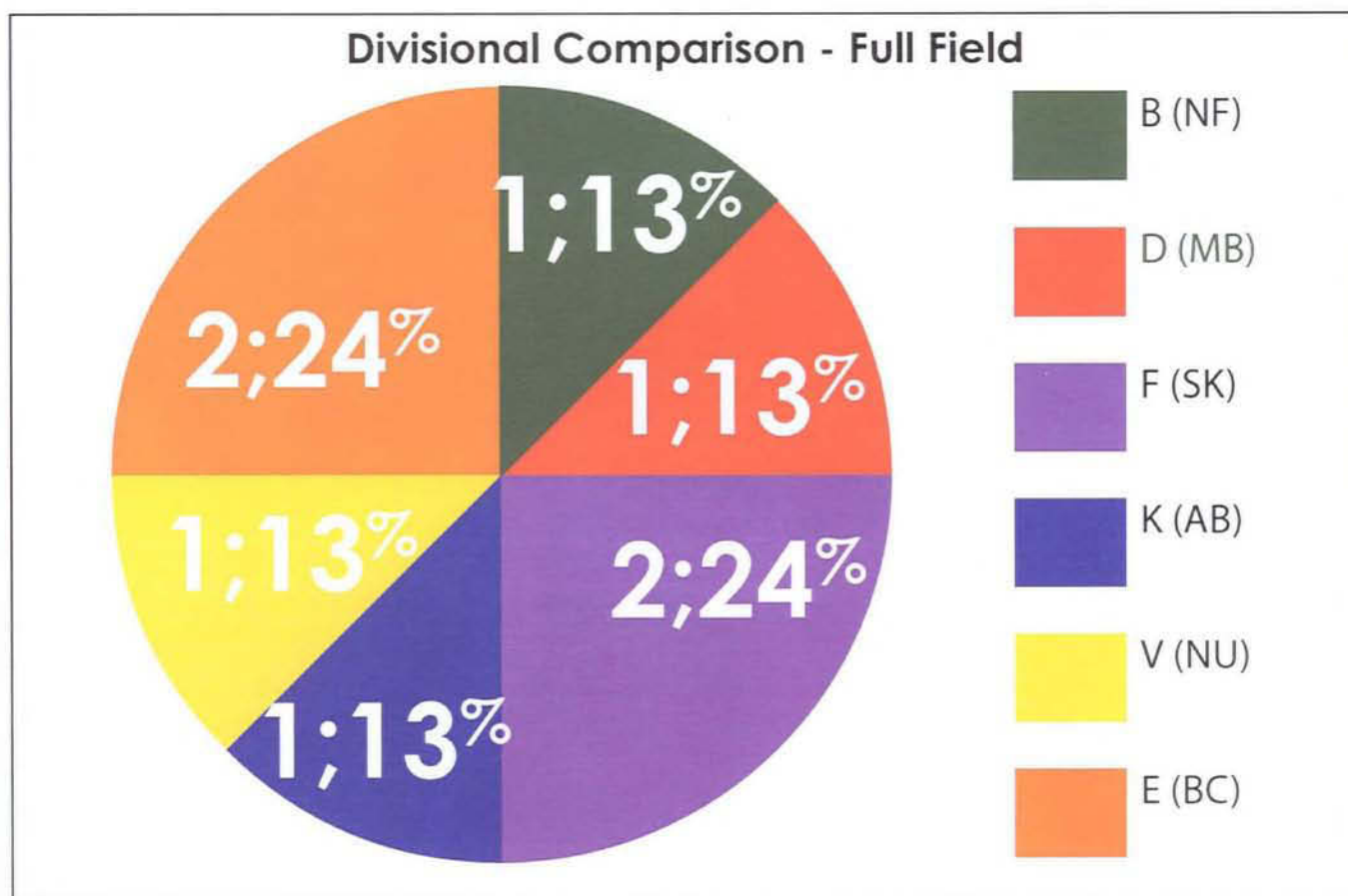
Of the overall 28 cases reviewed, six were death cases, another eight involved sexual assault and the 14 remaining cases were assault causing bodily harm.



## Stage 5: Cases for Full-Field Investigation

After completing a comprehensive file review of the 28 cases, the CPC Review Team investigators then recommended that full-field reviews be undertaken for a select number of cases. The general criteria used by the investigators to determine whether a full-field review should be pursued included: the severity of the alleged offence, the charge(s) laid (under- or over-charging or non-charging where it may have been deemed appropriate to do so), any aberrations or questionable practices, as well as best practices. It is important to highlight that one case was selected specifically because it was deemed to be a good example of how an investigation could be undertaken by police due to the exceptional quality of the administrative review.<sup>38</sup>

Overall, eight cases (which included the best practice case) were selected for full-field review. This included five cases from the RCMP-drawn files, as well as one case that was considered a "best practice" example, and three other cases specifically drawn from CPC housed files that fit the parameters of the Chair-initiated complaint.



<sup>38</sup> An independent review of all aspects of an incident undertaken with the express intent of identifying potential deficiencies in policy, training, equipment and/or member techniques

The final stage involved interviewing the subject and witness officers as well as civilians involved in the cases. The interviews began in October 2008 and included trips to various divisions and detachments. **In total, 31 members were interviewed regarding the files selected for in-depth review. Thirteen civilians were asked to be interviewed for the purposes of this report but refused or did not respond to our request for an interview.** One comment from a family member associated to one file stated: "It won't do any good, they have all been promoted and transferred out" when referring to the RCMP members involved.

Below is a table that briefly summarizes the location, type of offence, and outcome of each of the 28 cases. Each of the full-field investigations is shaded.

Case Number	Type of Offence	Description	Status/ Outcome
1 – Newfoundland and Labrador B Division Full-Field Investigation	Sexual Assault Sexual Exploitation	RCMP member accused of sexual relations with young persons while on duty in the victims' community.	Accused member criminally charged with one count of Sexual Assault (s. 271 C.C.) and one count of Sexual Exploitation (s. 153 C.C.).  Accused member pleaded guilty to the charge of Sexual Exploitation and was sentenced to a 12-month conditional sentence followed by 12 months probation.  The charge of Sexual Assault was withdrawn.  Accused member resigned from the RCMP.
2 – Manitoba D Division Case File Review	Sexual Assault	Unidentified RCMP member accused of sexually assaulting civilian while lodged in detachment cell block.	No charges recommended.  No charges laid.
3 – Manitoba D Division Case File Review	Assault Causing Bodily Harm	RCMP members accused of assaulting civilian during booking.	No charges recommended.  No charges laid.
4 – Manitoba D Division Case File Review	Sexual Assault	RCMP member accused of sexual assault against another RCMP member in a private residence.	Accused member criminally charged with Sexual Assault. (s. 271 C.C.)  Accused member acquitted of criminal charge at trial.

Case Number	Type of Offence	Description	Status/ Outcome
5 – Manitoba D Division Case File Review	Assault Causing Bodily Harm	RCMP members accused of assaulting civilian during arrest.	No charges recommended.  No charges laid.
6 – Manitoba D Division Full-Field Review	In-Custody Death:  Member-Involved Shooting (fatal)	RCMP member accused of fatally shooting a civilian following an arrest.	No charges recommended.  No charges laid.  Result of coroner's inquest: Found no fault on the part of the members involved.
7 – British Columbia E Division Case File Review	Assault	Members of RCMP ERT accused of using excessive force against a civilian during arrest.	No charges recommended.  No charges laid.
8 – British Columbia E Division Case File Review	In-Custody Death:  Sudden Death – Drowning	RCMP members accused of the drowning death of a civilian following a vehicle pursuit.	No charges recommended.  No charges laid.  Result of coroner's inquest: Found no fault against the RCMP.  One of the members involved in the incident had since retired.
9 – British Columbia E Division Case File Review	Assault	RCMP members accused of abducting and assaulting a civilian.	No charges recommended.  No charges laid.
10 – British Columbia E Division Case File Review	Historical Sexual Assault	RCMP member accused of sexual assault against a civilian.	No charges recommended.  No charges laid.

Case Number	Type of Offence	Description	Status/ Outcome
<p>11 – British Columbia</p> <p>E Division</p> <p>Case File Review</p>	<p>Assault Causing Bodily Harm</p>	<p>RCMP member accused of assault causing bodily harm against a civilian during questioning.</p>	<p>Accused member criminally charged with three offences: Assault Causing Bodily Harm (s. 267(b) C.C.); Torture (s. 269.1 C.C.); and Obstructing Justice (s. 139 C.C.).</p> <p>Accused RCMP member pled guilty to Assault Causing Bodily Harm; sentence unknown.</p> <p>Charges of Torture and Obstructing Justice were withdrawn.</p> <p>One RCMP member at the scene of the assault was charged with Code of Conduct offence and forfeited 10 days pay. No charges recommended. No charges laid.</p> <p>Auxiliary constable at the scene of the assault was dismissed. No charges recommended. No charges laid.</p>
<p>12 – British Columbia</p> <p>E Division</p> <p>Full-Field Review</p>	<p>Assault – Excessive Force</p>	<p>RCMP members accused of assaulting a civilian during arrest and booking.</p>	<p>No charges recommended.</p> <p>No charges laid.</p>
<p>13 – British Columbia</p> <p>E Division</p> <p>Full-Field Review</p>	<p>Historical Sexual Assault</p>	<p>RCMP members accused of sexually assaulting two young persons.</p>	<p>No charges recommended.</p> <p>No charges laid.</p> <p>One of the members involved resigned and the other member retired.</p>



Case Number	Type of Offence	Description	Status/ Outcome
14 – Saskatchewan  F Division  Case File Review	Sexual Assault	RCMP member accused of sexually assaulting a civilian in a private dwelling.	Accused member criminally charged with Sexual Assault (s. 271 C.C.).  Accused member pled guilty to the named offence and received a suspended sentence with 12 months probation.  Accused member charged with Code of Conduct offence and forfeited 10 days pay.
15 – Saskatchewan  F Division  Case File Review	Assault	RCMP members accused of assaulting civilian while lodged in detachment cell block.	No charges recommended.  No charges laid.
16 – Saskatchewan  F Division  Full-Field Review	Fatal Motor Vehicle Collision	RCMP members accused of fatally wounding a pedestrian who was lying on the roadway with their marked police car while responding to a call.	No charges recommended.  No charges laid.
17 – Saskatchewan  F Division  Full-Field Review	In-Custody Death	Deceased suffered a fatal stroke while in cells after being arrested for public drunkenness and causing a disturbance. (Prior to the arrest, the deceased was treated and released from hospital for injuries suffered from a physical altercation with another civilian.)	No charges recommended.  No charges laid.  Result of coroner's inquest: Found that death was in no way caused by another person.
18 – Northwest Territories  G Division  Case File Review	Assault	RCMP member accused of assaulting civilian on two separate occasions during arrest and booking.	No charges recommended.  No charges laid.

Case Number	Type of Offence	Description	Status/ Outcome
19 – Northwest Territories G Division Case File Review	Sexual Assault	RCMP member accused of sexually interfering with a young person.	No charges recommended. No charges laid.
20 – Alberta K Division Case File Review	Sexual Assault	RCMP member accused of assault and sexual assault against a civilian while in cells.	No charges recommended. No charges laid.
21 – Alberta K Division Case File Review	In-Custody Death	Deceased was arrested by RCMP members and lodged in cells where he later died.	No charges recommended. No charges laid. Result of Autopsy: Death by natural causes.
22 - Alberta K Division Case file review	Assault Causing Bodily Harm (Excessive Force)	RCMP members accused of excessive force while attempting to subdue a combative civilian in detachment cells.	No charges recommended. No charges laid. Civil litigation pending.
23 – Alberta K Division Full-Field Review	Assault Causing Bodily Harm	RCMP member accused of excessive force against a civilian during arrest.	Accused member criminally charged with Common Assault (s. 266 C.C.). Criminal charge against accused member stayed. Result of Code of Conduct investigation: Allegation of excessive force was unfounded.
24 – Nunavut V Division Case File Review	Assault	RCMP member accused of excessive force against a civilian during arrest.	No charges recommended. No charges laid.

Case Number	Type of Offence	Description	Status/ Outcome
25 – Nunavut V Division Case File Review	Improper Use of Force – Assault	RCMP member accused of assaulting a civilian during booking.	No charges recommended. No charges laid.
26 – Nunavut V Division Case File Review	Assault	RCMP member accused of assaulting a civilian during the execution of a search warrant.	No charges recommended. No charges laid.
27 – Nunavut V Division Case File Review	In-Custody Death: Member-Involved Fatal Shooting	RCMP members fatally shot a civilian who had taken a young person hostage.	No charges recommended. No charges laid.
28 – Nunavut V Division Full-Field Review	Assault Causing Bodily Harm	RCMP members accused of excessive force against a civilian during arrest.	No charges recommended. No charges laid.

## 4 (b) CPC Assessment of RCMP Cases

The 28 files reviewed by the CPC investigators were assessed on the criteria established in the November 26, 2007 complaint, outlined below.

<b>Standards Against Which Conduct is to be Assessed</b>	
<p>1. Whether the RCMP members involved in these investigations conducted the investigations free of actual or perceived conflict of interest, whether they responded appropriately and proportionately to the gravity of the incident, whether they responded in a timely fashion and whether their conduct adhered to the standards set out in section 37 of the <i>RCMP Act</i>.</p> <p>More specifically:</p>	
<b>(a) Line management</b>	
	<ul style="list-style-type: none"> <li>• Whether any actual or perceived conflict of interest.</li> <li>• Appropriateness of management structure and reporting relationships.</li> </ul>
<b>(b) Appropriate level of response</b>	
	<ul style="list-style-type: none"> <li>• Whether RCMP investigative team response to the incident was appropriate and proportionate to the gravity of the incident.</li> <li>• Whether qualified investigators have been assigned.</li> </ul>
<b>(c) Timeliness of the response</b>	
	<ul style="list-style-type: none"> <li>• Whether members of the RCMP investigative team responded in a timely fashion to the incident.</li> </ul>
<b>(d) Conduct</b>	
	<ul style="list-style-type: none"> <li>• Whether the conduct of members of the RCMP investigative team during the course of the investigation was consistent with section 37 of the <i>RCMP Act</i>.</li> </ul>
<p>2. Whether these same RCMP members complied with all appropriate policies, procedures, guidelines and statutory requirements for such investigations.</p>	

A detailed assessment of each of the CPC complaint criteria follows.

## **Criterion 1(a) Line Management: any actual/perceived conflict of interest; appropriateness of management structure and reporting relationships**

A baseline definition of what constitutes "appropriate" line management for the RCMP's handling of an investigation into another member was developed in order to effectively compare each individual case against established criteria for assessment. The key features of appropriate line management include the following:

- i. Sufficient physical and personal distance between the subject member and the primary investigator/investigative team tasked with the investigation.
  - Physical distance defined as investigation handled by a different detachment/division from the subject member's home detachment (or by an external police force entirely).
  - Personal distance defined as subject member not personally known to the investigative team members.
  - Particular attention must be paid to:
    - The primary investigator's physical and personal distance from the subject member;
    - Appropriate use and independence of specialized services used in the course of the investigation (polygraph examiner, accident reconstructionist, etc.).
- ii. Adequate investigative team makeup to undertake the task (i.e. primary investigator plus another investigative team member at a minimum; primary investigator should be at least one rank higher than the subject member being investigated).
- iii. Investigating member self-identification of conflict of interest adequately addressed (i.e. where self-identification occurs, appropriate removal from investigative team occurs).

This baseline criteria was assessed against the 28 cases reviewed. Some of the key findings from the CPC investigators' reviews are highlighted below.

## 1 (a) i. Physical and personal independence of investigative team maintained

Given the significant authority and level of decision-making afforded the position of the primary investigator, it was particularly important to determine what differential, if any, existed between the primary investigators' level of independence relative to the subject member. The proximity was not identified in five of the 28 cases. Three members did not respond to the questionnaire provided them. One investigator did not recall whether he knew the subject member prior to the investigation, and another investigator would not answer the CPC's questions given the civil litigation pending.

The CPC defined "personal knowledge" as any contact with the subject member prior to the incident, which could include:

- working with—or under the supervision of—the subject member prior to the incident (including physical or telephone contact);
- mutual participation or attendance at courses, seminars or any other training event;
- engagement in a function of a social or personal nature which could include an RCMP mess function, a seasonal event (Christmas party), golf tournament or retirement function.

This definition of "personal knowledge," outlined above, was used to assess the level of independence between the RCMP primary investigators and the subject members for each of the 28 cases.

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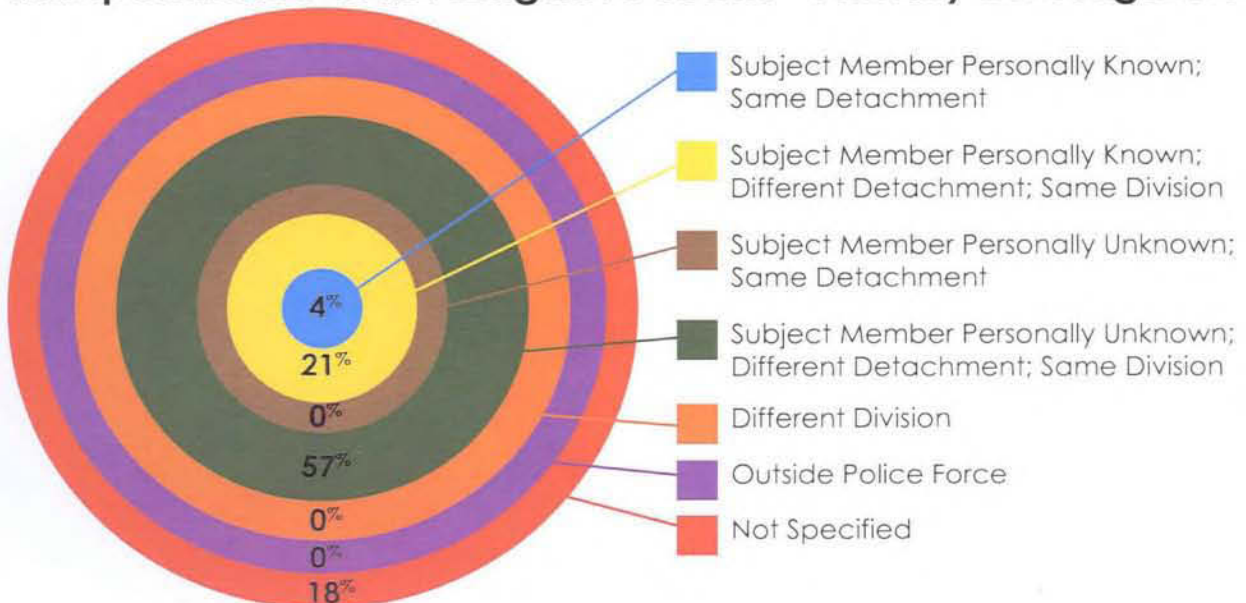
**THE CPC DEFINED “PERSONAL KNOWLEDGE” AS ANY CONTACT WITH THE SUBJECT MEMBER PRIOR TO THE INCIDENT.**

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### Finding No. 5

Overall, personal knowledge of subject member for primary investigators occurred 25% of the time and 4% of primary investigators were from the same detachment as the subject member.

### Independence of Investigative Team - Primary Investigators

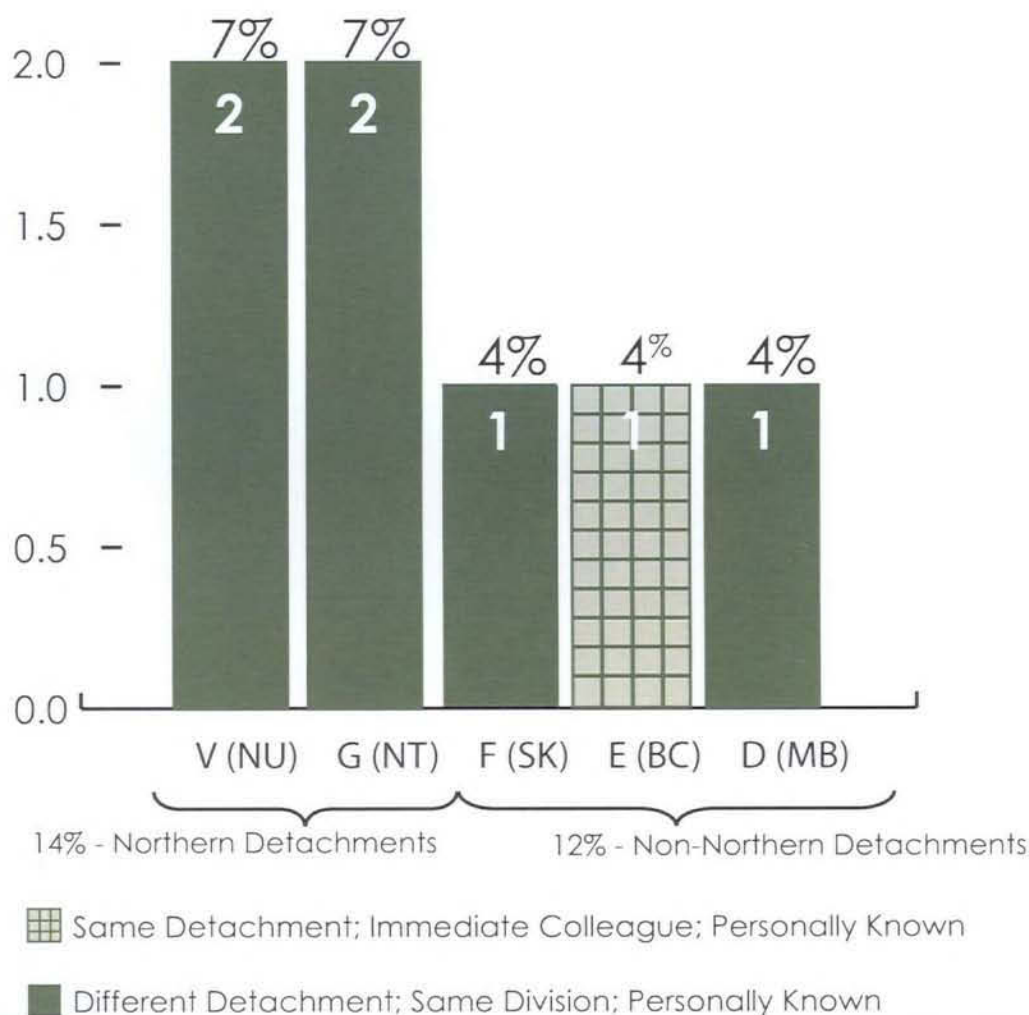


The CPC sought to assess whether the challenges faced by northern and remote RCMP detachments accounted for the bulk of the primary investigators with personal or physical proximity to the subject member. The CPC analysis revealed that of the primary investigators polled, 26%<sup>39</sup> identified themselves as "personally knowing" or "from the same detachment" as the subject member. Of these 26%, 14% were from a remote or northern posting (with 7% coming from Nunavut (V) Division and 7% from Northwest Territories (G) Division respectively).

### Finding No. 6

There was a slightly higher likelihood of primary investigators personally knowing the subject member (14%) in remote and northern postings than in other more centralized locations (12%). However, there does remain a large number of primary investigators (12%) from more centralized divisions where external assistance is more readily accessible.

**Investigator's Knowledge of Subject Member – Primary Investigators**



<sup>39</sup> Please note, the percentages in this graph have been rounded up and are therefore approximate figures, which explains the slightly higher percentage 26% (than in previous "target" graph, which was represented as 25%).

## Use and independence of specialized services

Equal attention must be made to ensure the independence of specialized services used in member investigations. These specialized services could include, but are not limited to, polygraph examiners, accident reconstructionists and provincial forensic science laboratories. Lack of independence in the specialized services used could raise a risk of real or perceived conflict of interest.

Out of the 28 cases reviewed, only four used specialized services, including a polygraph examiner in two cases, an accident reconstructionist in one case and a provincial transport vehicle safety examiner. All professionals used by the RCMP in each of these three cases were from different detachments, and in one case from a different division.

One of these four cases could be perceived as lacking independence in the use of specialized services. The accident reconstructionist used in a fatal motor vehicle accident that occurred in Saskatchewan was from a detachment in the same division. Recommendations around the degree of independence believed necessary to ensure impartiality and the absence of conflict of interest are addressed later.

### Finding No. 7

Overall, in the opinion of the CPC investigators, the use of expert witnesses in the cases was appropriate.

Where an expert was required, members did use specialist services available. In a police motor vehicle collision fatality, not only did the RCMP call in forensic personnel, but also requested an accident reconstructionist with the highest level of qualifications, in addition to a provincial ministry of transport vehicle safety examiner as well as an independent member of the First Nations community.

In the two cases reviewed where a polygraphist was used, the examiner was from another division and did not know the subject member.<sup>40</sup>

<sup>40</sup> The polygraph training dictates that the examiner should never examine another police officer whom he knows because of the potential to undermine the believability of the results.



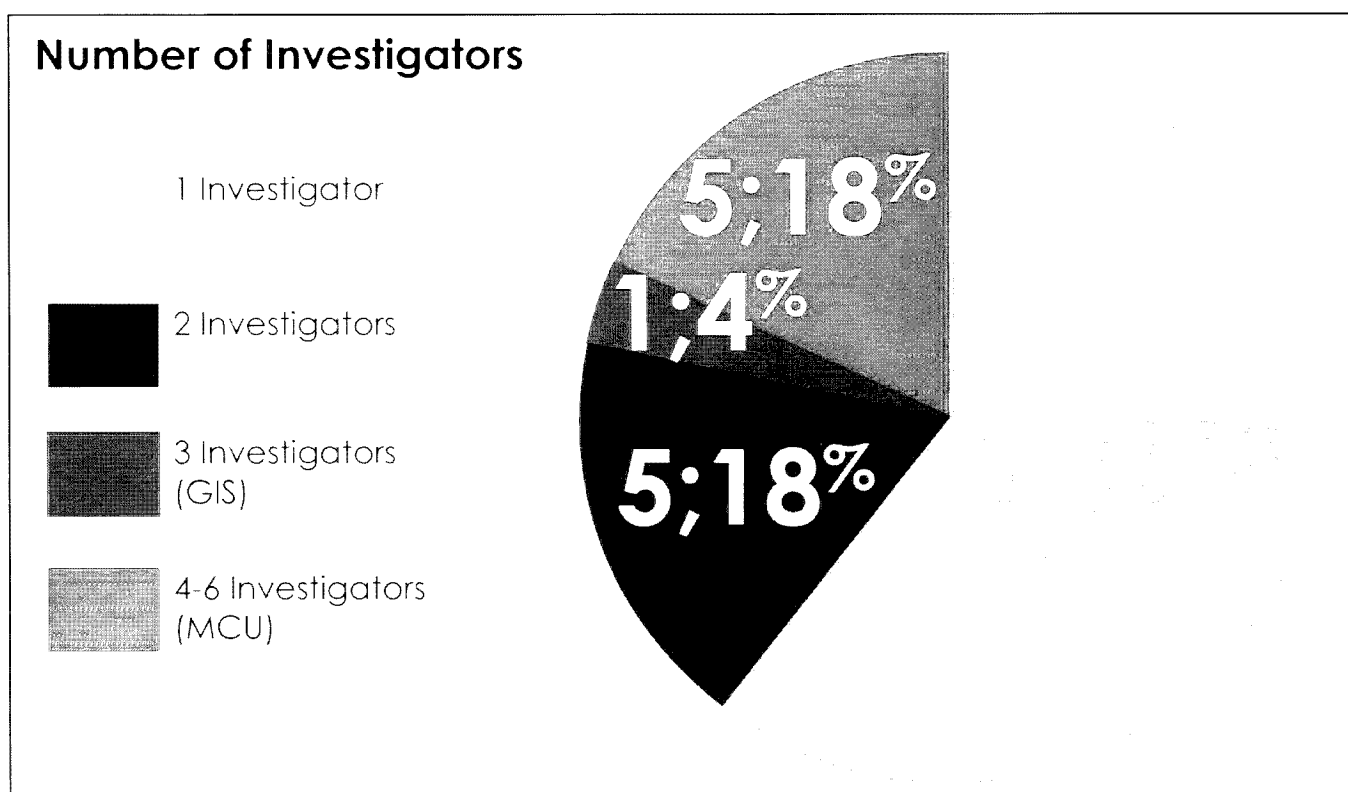
## 1 (a) ii. Appropriate investigative team makeup

Of the 28 cases reviewed, 17 of these had only one primary investigator assigned to a member investigation. Five of the cases had two investigators assigned, five cases were done by a Major Crime Unit (with four to six investigators assigned), and one case had three General Investigation Section (GIS) investigators assigned.

“

OF THE 28 CASES REVIEWED, 17 OF THESE HAD ONLY ONE PRIMARY INVESTIGATOR ASSIGNED TO A MEMBER INVESTIGATION.

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Furthermore, of the 28 RCMP files reviewed, seven of the files were investigated by a primary investigator of the same or lower rank as the subject member.<sup>41</sup>

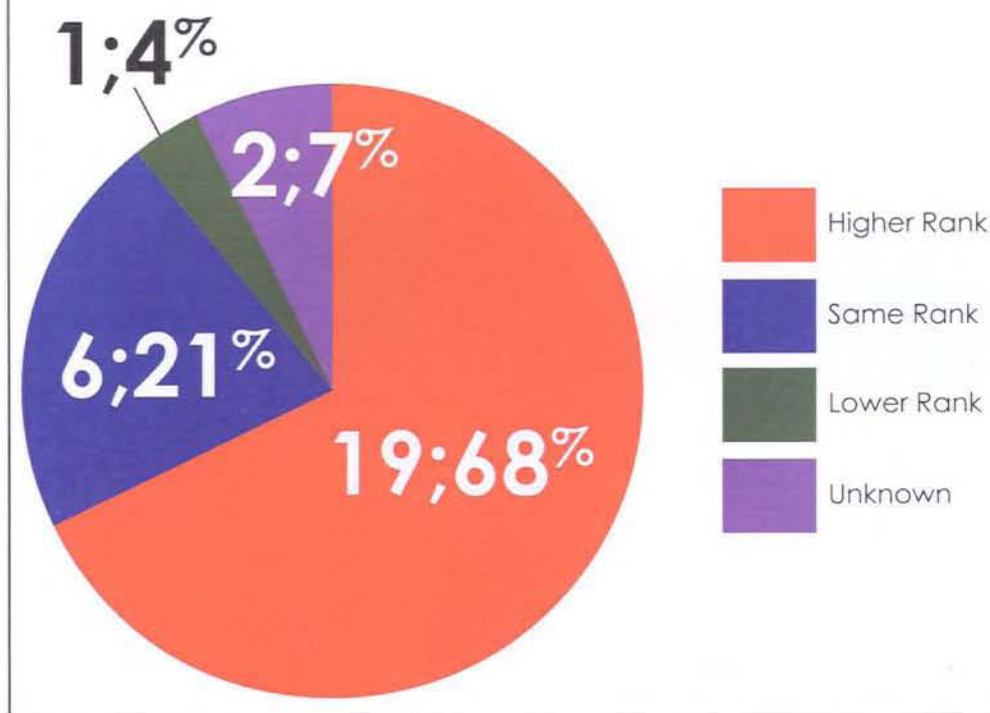
“

OF THE 28 RCMP FILES REVIEWED, SEVEN OF THE FILES WERE INVESTIGATED BY A PRIMARY INVESTIGATOR OF THE SAME OR LOWER RANK AS THE SUBJECT MEMBER.

”

<sup>41</sup> In six cases, members were the same rank as the subject member and in one case a lower rank.

## Primary Investigator's Rank Relative to Subject Member



This rank differential between the primary investigator and the subject member is deemed to be inappropriate given that it risks the potential for intimidation of the primary investigator by the higher ranking subject member. The possibility also exists that the primary investigator could potentially be supervised at a later date by the subject member, thereby creating the potential for a junior ranking primary investigator affording the higher ranking subject member preferential treatment in favour of future considerations. This potential conflict of interest must be taken into consideration.

The CPC recommends that the rank of the primary investigator be at least one rank higher than that of the subject member. The purpose for this is to avoid possible intimidation of the primary investigator by the higher ranking subject member.

### Recommendation No. 2

The CPC recommends that the rank of the primary investigator must be at least one rank higher than that of the subject member.<sup>42</sup>

In addition, assigning a single investigator to a member investigation (as was the case in 17 of the 28 cases reviewed) is a particular concern. Interviewing anyone involved (particularly the subject member) is best conducted by a two-member team. A one member investigation would contribute to the potential for (or perception of) a conflict of interest.

<sup>42</sup> Except where Major Case Management (MCM) principles apply. The MCM is a methodology for managing major cases that provides accountability, clear goals and objectives, planning, allocation of resources and control over the direction, speed and flow of the investigation. The MCM specifies that a Team Commander (TC) assigned is "an accredited individual" whose accreditation includes successful completion of the Canadian Police College sponsored MCM Team Commander Course, as well as experience and training in major cases focussing on leadership/managerial accomplishments. Where a criminal investigation is managed by the MCU, it is sufficient for the TC to be of a higher rank than that of the subject member. See Appendix 11 for a copy of the RCMP's revised MCM policy.

### **Finding No. 8**

Overall, the number of team members assigned to the 28 investigations was inadequate.

The conflict of interest issue must be taken into consideration in these cases. No explanation of the rationale (be it resources, location or seriousness of the offence) will satisfy the public or other special interest groups that these investigations are unbiased.

Ideally, a minimum of two members assigned to conduct the investigation would assist in expediting the investigation by ensuring that all aspects of an investigation could continue regardless if one member of the team is absent.

### **Recommendation No. 3**

In order to reduce the length of time to conduct statutory investigations against RCMP members, it is recommended that member investigations be assigned to a team of (minimum) two members in a specialized investigative unit.

For those investigations involving more than a single investigator (five files that were investigated by the Major Crime Unit (MCU) and the other files where two team members were assigned) the number team makeup is deemed overall appropriate.

### **1 (a) iii. Investigating member self-identification of conflict of interest adequately addressed (i.e. where self-identification occurs, appropriate removal from investigative team occurs)**

There was only one of the 28 cases where self-identified conflict of interest occurred. This file was from a northern community in a small detachment. The investigation had originally been assigned to the Officer in Charge of the Major Crime Unit (MCU) at the detachment; however, the member declined to investigate given that he was a personal friend of one of the subject members.

The self-identification of conflict of interest by the RCMP member was handled appropriately in this case given that he removed himself from the case. However, the results were less than desirable. The file was then eventually assigned to a Constable with approximately one year experience in the MCU. The Acting Criminal Operations Officer at the time of the investigation indicated to the CPC investigators that in hindsight this file should have been assigned to an outside municipal police service given that the injuries were severe.

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**THE SELF-IDENTIFICATION OF CONFLICT OF INTEREST BY THE RCMP MEMBER WAS HANDLED APPROPRIATELY.**

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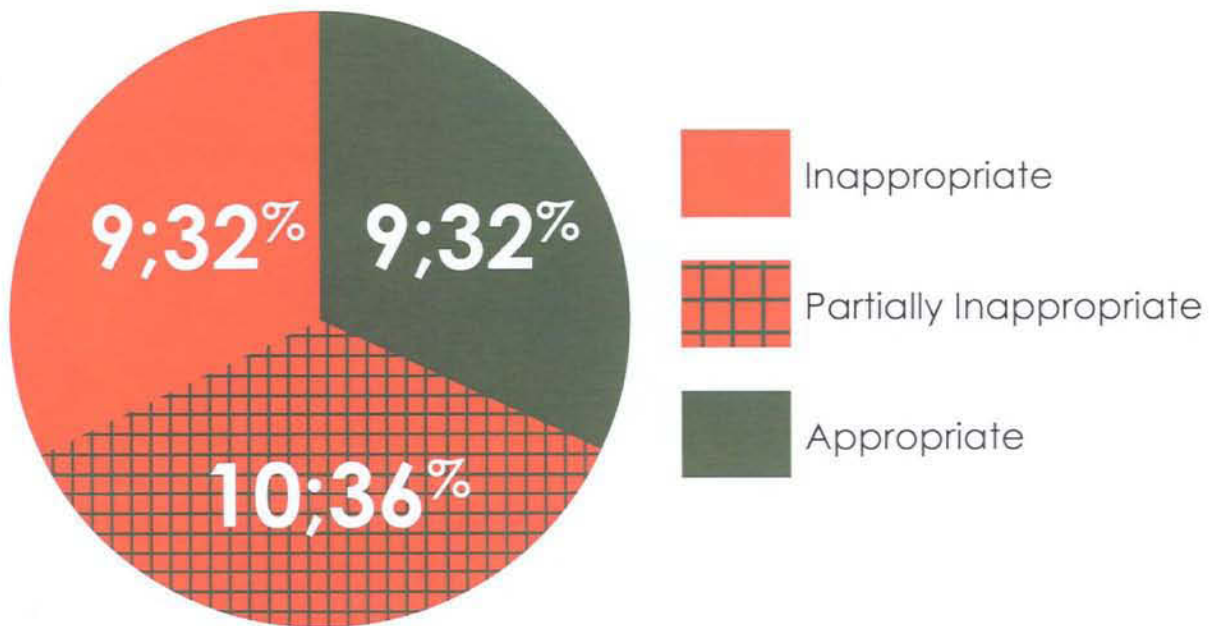
## Overall Assessment of CPC Criterion 1 (a) Line Management

Based on the preceding analysis, the graph below summarizes the CPC investigators' overall assessment of the total level of appropriateness of the RCMP line management in the 28 cases reviewed. A total of 19 cases (68%) were deemed to be handled either partially or entirely inappropriately. Of particular concern was the use of a lone investigator and the primary investigator's personal knowledge of the subject member.

### Finding No. 9

Overall, the CPC found the structure and reporting relationships of the 28 cases reviewed to be partially or entirely inappropriate (68%).

### Line Management Evaluation



## **Criterion 1(b) Appropriate Level of Response: response appropriate and proportionate to gravity of incident and whether qualified investigators have been assigned**

A definition of what constitutes an "appropriate" level of response with regards to the RCMP's handling of an investigation into another member was developed in order to effectively compare each individual case against established criteria for assessment. The key features of what constitutes an "appropriate" level of response include the following:

- i. Interviews of subject member and witnesses appropriate as well as appropriate access to information.
  - Use of expert witnesses appropriate (i.e. polygraphists, accident reconstruction personnel, identification specialists and other outside agencies were utilized when and where necessary).
- ii. Referral of investigation appropriate relative to the seriousness of the allegation (e.g. sexual assault, assault with a weapon, criminal negligence causing death).
  - Investigation appropriately redirected and run by the Major Crime Unit (MCU), where appropriate.
- iii. Investigators met or exceeded baseline qualifications recommended for investigators tasked with in-custody deaths, shootings, serious assaults/injuries and sexual assault investigations):
  - **Primary investigator:** Prior experience in conducting statutory, public complaint, and Code of Conduct investigations. In addition, the major crime course and interviewing or interrogating techniques courses with knowledge and experience with the Major Case Management (MCM),<sup>43</sup> where possible.
  - **Investigative team members:** At a minimum, the major crime course and interviewing or interrogating techniques courses. Knowledge and experience with MCM, where possible.
- iv. Workload of investigation team members adjusted (or reassigned) where appropriate to ensure ability to focus on member investigation.
- v. Appropriate consultation with provincial Crown attorney prior to laying of charges.
- vi. Appropriate use of the administrative review.<sup>44</sup>

This baseline criterion outlined above was assessed against the 28 cases reviewed. The key findings from the CPC investigators' reviews are highlighted below.

<sup>43</sup> MCM refers to a methodology for managing major cases that provides accountability, clear goals and objectives, planning, allocation of resources and control over the direction, speed and flow of investigation. Major cases are cases/ investigations that are "serious in nature" and their complexity, risk and resources require the application of the MCM principles.

<sup>44</sup> An administrative review is an independent review of all aspects of an incident undertaken with the express intent of identifying potential deficiencies in policy, training, equipment and/or member techniques.

## 1 (b) i. Interviews of subject member and witnesses appropriate

### Finding No. 10

Of the 28 files that the CPC investigators reviewed, it was found that in 17 of these files, the subject member and witnesses were investigated by a lone RCMP investigator.

**This is deemed to be inappropriate.** In reviewing the cases, it was determined that while this type of interviewing technique did not have any negative impact on the outcome, the potential did exist for a conflict of interest (either real or perceived). Furthermore, in order to address any Charter arguments (in relation to duress, intimidation, promises, inducements, etc.) the presence of a second investigator would help to eliminate this potential problem in any future court proceedings.

## 1 (b) ii. Referral of cases to appropriate section

In those cases involving member-involved shootings or deaths where the possibility of a homicide exists, the divisional Major Crime Unit (MCU) was assigned to the investigation. However, some of the serious assault causing bodily harm incidents were assigned to the Detachment Commanders or general duty members, thereby illustrating that there are no formal criteria in place to identify which section an investigation should be assigned.

It is important to address the inconsistent use of units/individuals assigned to member investigations across divisions. In some divisions, units assigned are called the Serious Crime Units; however, in other divisions they are referred to as the Major Crime Unit.

### Finding No. 11

Overall, the section or unit tasked with member investigations (including their mandates) lack uniformity across the country.

In one file, the primary investigator asked the Officer in Charge for assistance from the MCU and was refused because the complaint was over twenty years old. However, in the CPC's opinion, the request for the MCU to handle the investigation was valid given that the complainant alleged that members of the RCMP had murdered his son. This example serves to show that in some instances, complaints are not taken as seriously as they should be and not given the proper attention deserved, nor are they assigned to the appropriate units/sections.

“

**OF THE 28 FILES THAT THE CPC INVESTIGATORS REVIEWED, IT WAS FOUND THAT IN 17 OF THESE FILES, THE SUBJECT MEMBER AND WITNESSES WERE INVESTIGATED BY A LONE RCMP INVESTIGATOR.**

”

## 1 (b) iii. Qualifications

Earlier in this chapter, a baseline for the qualifications expected for both the primary investigator and the investigative team member were set:

- **Primary investigator:** Prior experience in conducting statutory, public complaint, and Code of Conduct investigations. In addition, the major crime course and interviewing or interrogating techniques courses with knowledge and experience with the Major Case Management (MCM),<sup>45</sup> where possible.
- **Investigative team members:** At a minimum, the major crime course and interviewing or interrogating techniques courses. Knowledge and experience with MCM, where possible.

When comparing member qualifications against this criterion, the CPC investigators found that there was a lack of consistency in the qualifications of the members assigned to undertake member investigations. For example, one member had no formal general investigation experience at all (however, he did have 15 years experience in general police duties and had previously conducted approximately 40 statutory investigations).

<sup>45</sup> MCM refers to a methodology for managing major cases that provides accountability, clear goals and objectives, planning, allocation of resources and control over the direction, speed and flow of investigation. Major cases are cases/investigations that are "serious in nature" and their complexity, risk and resources require the application of the MCM principles.

### Finding No. 12

In the 28 case files reviewed, the qualifications of the investigators varied greatly. Some had all the major crime and related courses, while others had as few as two years experience in the General Investigation Section.

Based on this analysis, the CPC investigators made additional recommendations regarding the qualifications necessary for members assigned to member investigations.

### Recommendation No. 4

The RCMP should assign competent senior investigators with a proven track record in court who have completed the appropriate courses (e.g. sexual assault, major crime, interviewing and interrogation techniques and statement analysis); who can effectively interview witnesses with strong analytical skills.

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CPC INVESTIGATORS  
FOUND THAT THERE WAS A  
LACK OF CONSISTENCY IN  
THE QUALIFICATIONS OF  
THE MEMBERS ASSIGNED  
TO UNDERTAKE MEMBER  
INVESTIGATIONS.

”

## 1 (b) iv. Workload of investigation team members adjusted (or reassigned) where appropriate to maximize focus on member investigation

The workload of the members assigned was a questionable issue. When a file was assigned to a general duty member, in most cases the CPC found that the investigator was not relieved of regular duties. This issue was raised by most members interviewed. As such, member investigations are dealt with when time permits. In cases where the incident is alleged to have occurred some time in the past, members expressed no urgency in completing the investigation.

In the course of an interview with the CPC investigators, one RCMP member revealed that as far as he was concerned, the member investigation was "just another file" among many to him, stating that the file was just another one added to the "pile." The notion of members being given multiple files and no workload adjustment to ensure that adequate attention is paid to ensure an effective and timely investigation is problematic.

### Finding No. 13

Overall, it was found that the investigations conducted by the Major Crime Unit were focused and completed in a timely fashion, as they had the ability, resources and the time to conduct the investigation. This was not found to be the case when the investigation was assigned to a Detachment Commander or General Duty or GIS member whose heavy workload was not adjusted accordingly.

### Recommendation No. 5

Workload of members assigned to member investigations should be reassigned or adjusted to prioritize member investigations accordingly.

“

THE NOTION OF MEMBERS BEING GIVEN MULTIPLE FILES AND NO WORKLOAD ADJUSTMENT TO ENSURE THAT ADEQUATE ATTENTION IS PAID TO ENSURE AN EFFECTIVE AND TIMELY INVESTIGATION IS PROBLEMATIC.

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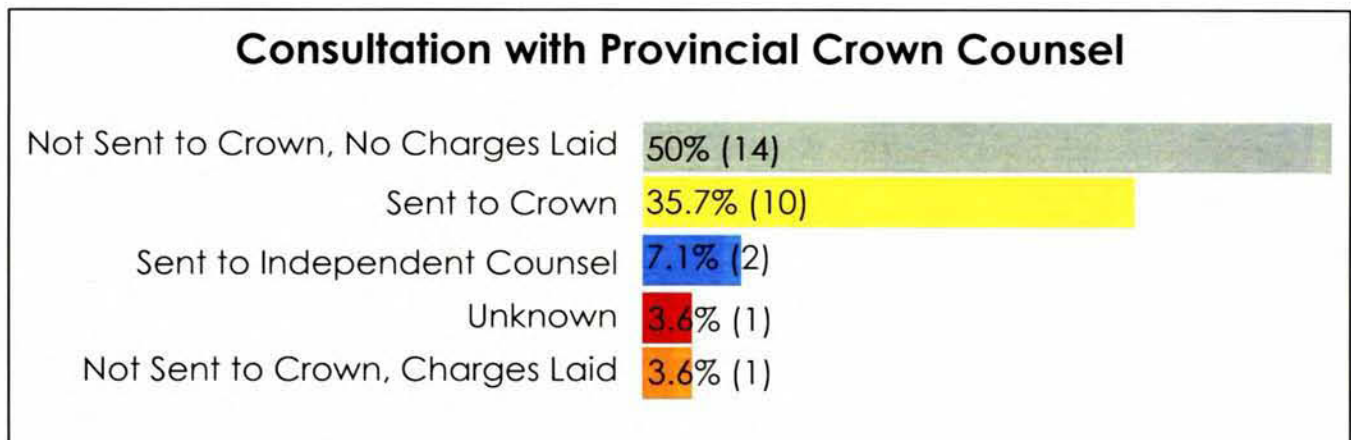
## 1 (b) v. Appropriate consultation with the Crown for determination of charges laid against subject member

One issue of particular relevance in structure and line management is the consultation with a provincial Crown counsel before the laying of a charge. The *Criminal Code* of Canada gives the police the authority to lay a criminal charge. However, the provincial governments in British Columbia, Quebec, and New Brunswick make it mandatory for police to consult with a provincial Crown counsel before a criminal charge is laid against a police officer or any other person.

National RCMP policy requires consultation with the Crown in all cases as per the national *Investigation Guidelines* policy, which states:

- a. F.2. "If there is evidence to support a prosecution, consult Crown counsel."
- b. F.2.(a). "If there is any conflict with the Crown counsel, refer it to the Cr. Ops. Officer."

Below is a detailed breakdown of the consultation with Crown counsel for the 28 cases:



The CPC review found that the RCMP's consultation with the Crown when laying a charge was handled appropriately overall, with the exception of one case.

This was a Manitoba sexual assault case against a member which resulted in the RCMP laying charges against a member without seeking Crown opinion. The member charged was later acquitted in court. While the lack of consultation is not deemed to have had any direct impact on the outcome of the case, it is a violation of policy that the RCMP must guard against, particularly given the sensitivity, level of transparency and impartiality required for these investigations.

Overall, while member actions did comply with policy, the CPC found a discrepancy between the current consultation process with the Crown for cases involving RCMP members and all other cases. At present, when the RCMP sends a file to the Crown which involves an RCMP member, the RCMP does not include a recommendation regarding

how the member should be charged. This differs from the standard procedure for all other cases (not involving RCMP members) where a recommendation on how to proceed is, in fact, included.

Within the context of his Inquiry into the Death of Frank Paul, Justice William H. Davies, Q.C. also found that in British Columbia, in the case of every police-related death, the Vancouver Police Department forwards a "neutral" report to Crown counsel without making a recommendation as to whether criminal charges should be laid, which contradicts the departmental manual requiring police officer to send the report to Crown counsel only "if the evidence supports a charge."

#### **Recommendation No. 6**

Special attention should be paid to enforce the RCMP requirement to consult with the Crown prior to laying any charges against members, given the particular need for independence and impartiality in member investigations. The RCMP should also undertake a review regarding recommendations made to the Crown in cases involving RCMP members.

## **1 (b) vi. Appropriate use of administrative review**

As outlined previously in this report, an administrative review is generally defined as an independent review of all aspects of an incident undertaken with the express intent of identifying potential deficiencies in policy, training, equipment and/or member techniques.

#### **Finding No. 14**

Of the 28 cases reviewed, six of which involved death, an administrative review was only undertaken in four cases: two of which were member-involved shootings (Manitoba (D) & Nunavut (V) Divisions); and two of which were in-custody deaths (Saskatchewan (F) and Alberta (K) Divisions).

The four administrative reviews undertaken resulted in one instance of the investigators being instructed to interview one or two more witnesses before completing the investigation.

“

AN ADMINISTRATIVE REVIEW IS GENERALLY DEFINED AS AN INDEPENDENT REVIEW OF ALL ASPECTS OF AN INCIDENT UNDERTAKEN WITH THE EXPRESS INTENT OF IDENTIFYING POTENTIAL DEFICIENCIES IN POLICY, TRAINING, EQUIPMENT AND/OR MEMBER TECHNIQUES.

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### **Recommendation No. 7**

Given the sensitivity and transparency required for member investigations, it is recommended that administrative reviews be undertaken in all cases of serious injury, sexual assault or death.

## **Use of the probe**

The use of a "probe" in one specific division, Manitoba (D), is a best practice worth noting.

A "probe" is often ordered when a complaint has a criminal element but may lack sufficient information to determine how to proceed.

The "probe" consists of:

- Interviews with the complainant, victim and any other third-party witnesses;
- A review of operational files related to the complaint; and
- A review of members' notes and reports.

*\* It is important to note that subject members are not to be requested to provide witness or warned statements at this time.*

The investigator assesses the information collected from the probe and drafts a report that summarizes the incident, the complainant's statement, and the results of the file review, helping to determine how best to proceed.

### **Recommendation No. 8**

The RCMP should consider applying the use of the "probe" to lower-end investigations in all divisions.

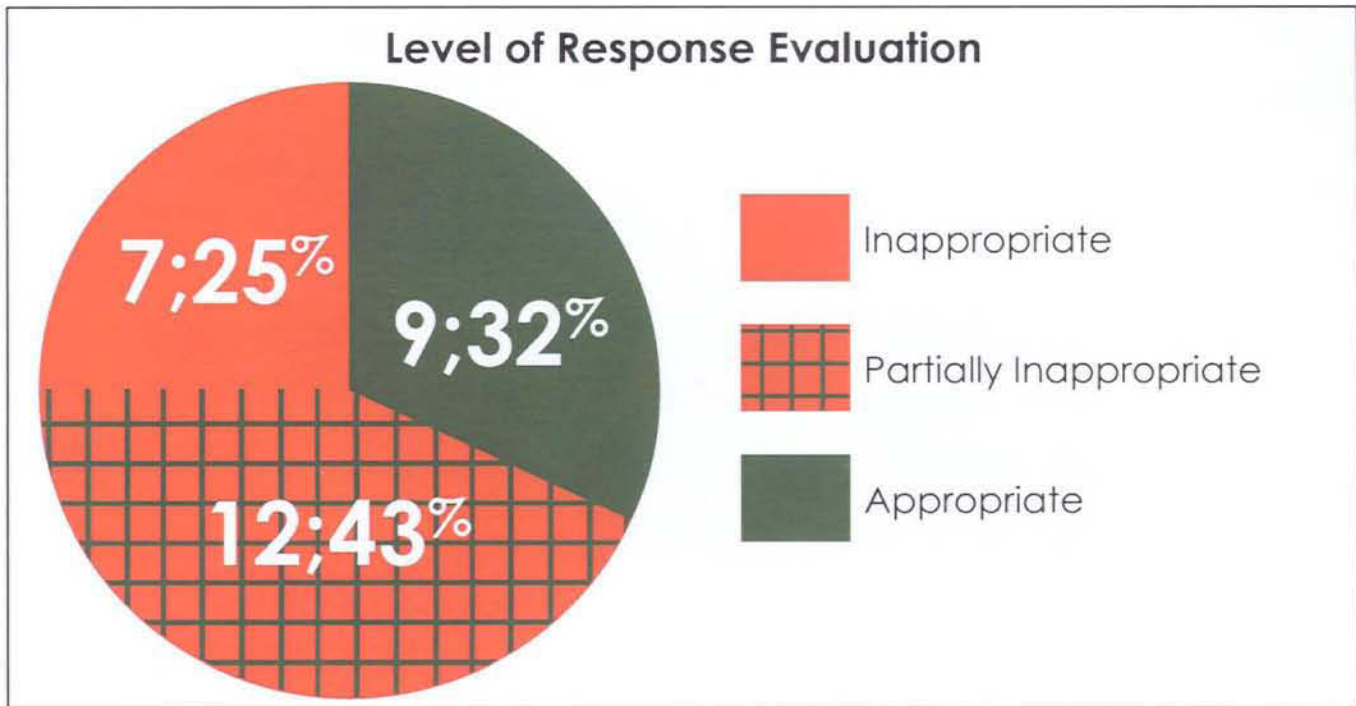
### **Recommendation No. 9**

The RCMP could consider recommending that the Officer in Charge of the Criminal Operations Section be the appropriate recipient of the probe report in order to determine whether or not a lower-end investigation should proceed to a statutory investigation.

In addition, the probe report should be in an investigation report form and should include appendices of all referenced material, including a copy of the operational file from which the complaint stemmed. It is important that the report be fact-based, and not opinion based. The investigators' role is to simply present the facts and should focus solely on the criminal aspects of the complaint and not any potential Code of Conduct issues.

## Overall Assessment of Criterion 1(b) Level of Response

Based on the preceding analysis, the graph below depicts the CPC investigators' overall assessment of the level of appropriateness of the RCMP level of response in the 28 cases reviewed. Sixty-eight percent of cases were deemed to be handled partially or entirely inappropriately.



### Finding No. 15

The CPC found that, overall, the level of response was handled partially or entirely inappropriately (68%). Key concerns related to interviews being undertaken by lone investigators as well as inconsistent referral of cases to the appropriate investigative unit.

Otherwise, it was found that all witnesses who were willing to cooperate were interviewed, witness statements taken, as well as expert witnesses (i.e. polygraph examiners, accident reconstruction personnel, identification specialists and other outside agencies) were used when and where necessary.

## Criterion 1(c) Timeliness of Response: investigative team responded in timely manner

A baseline definition of what constitutes a “timely” response by the investigative team was developed in order to effectively compare each individual case against established criteria for assessment. The key features of appropriate timeliness of member investigations include the following:

- i. Member investigation undertaken and completed in six months (or less).
- ii. Investigations, if possible, should not exceed one year.<sup>46</sup>
- iii. Immediate dispatch of necessary personnel where timely response required.

The following section assesses the overall timeliness of the 28 cases reviewed against the established baseline criteria, outlined above.

### 1 (c) i. Overall completion of member investigation in six months (or less)



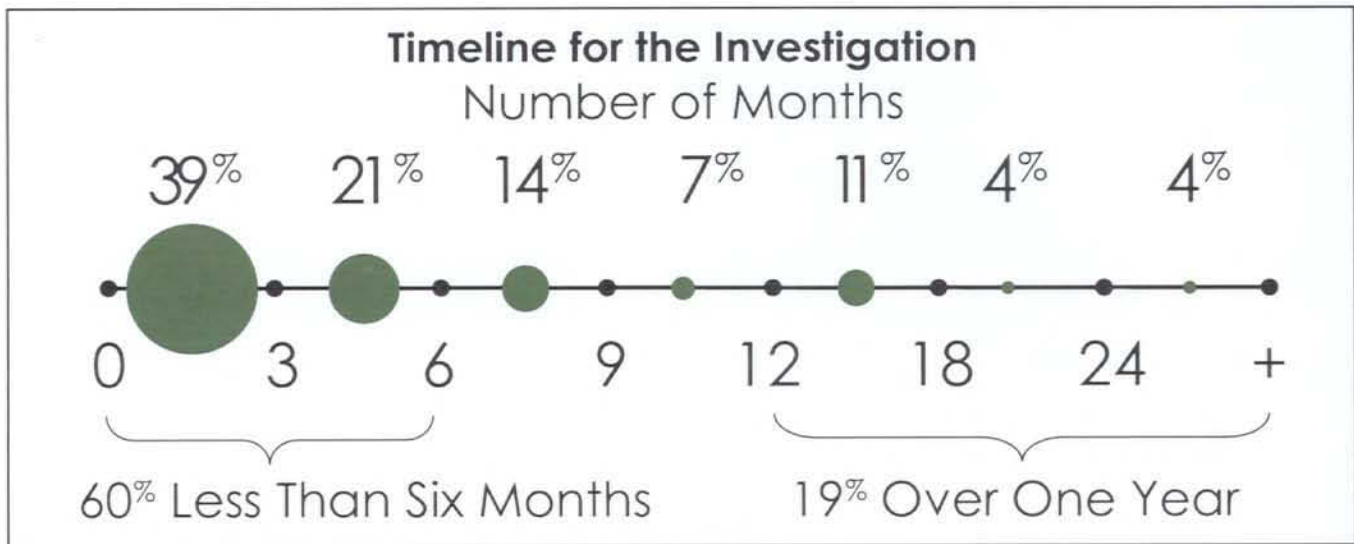
The CPC review revealed that the average amount of time for the 28 criminal member investigations was six months. In taking a closer look at these numbers, the graphic below demonstrates that **the timeliness of the member investigations is, overall, appropriate.** The bulk of the cases (60%) were completed in less than six months. However, 19% of the cases did exceed the one-year mark, as addressed next.

“

THE CPC REVIEW REVEALED  
THAT THE AVERAGE  
AMOUNT OF TIME FOR THE  
**28** CRIMINAL MEMBER  
INVESTIGATIONS WAS SIX  
MONTHS.

”

<sup>46</sup> This is particularly important given that when an investigation of a member takes more than one year to complete (regardless if a criminal charge is ultimately laid), section 43(8) of the RCMP Act then prohibits any Code of Conduct action against the offending member.

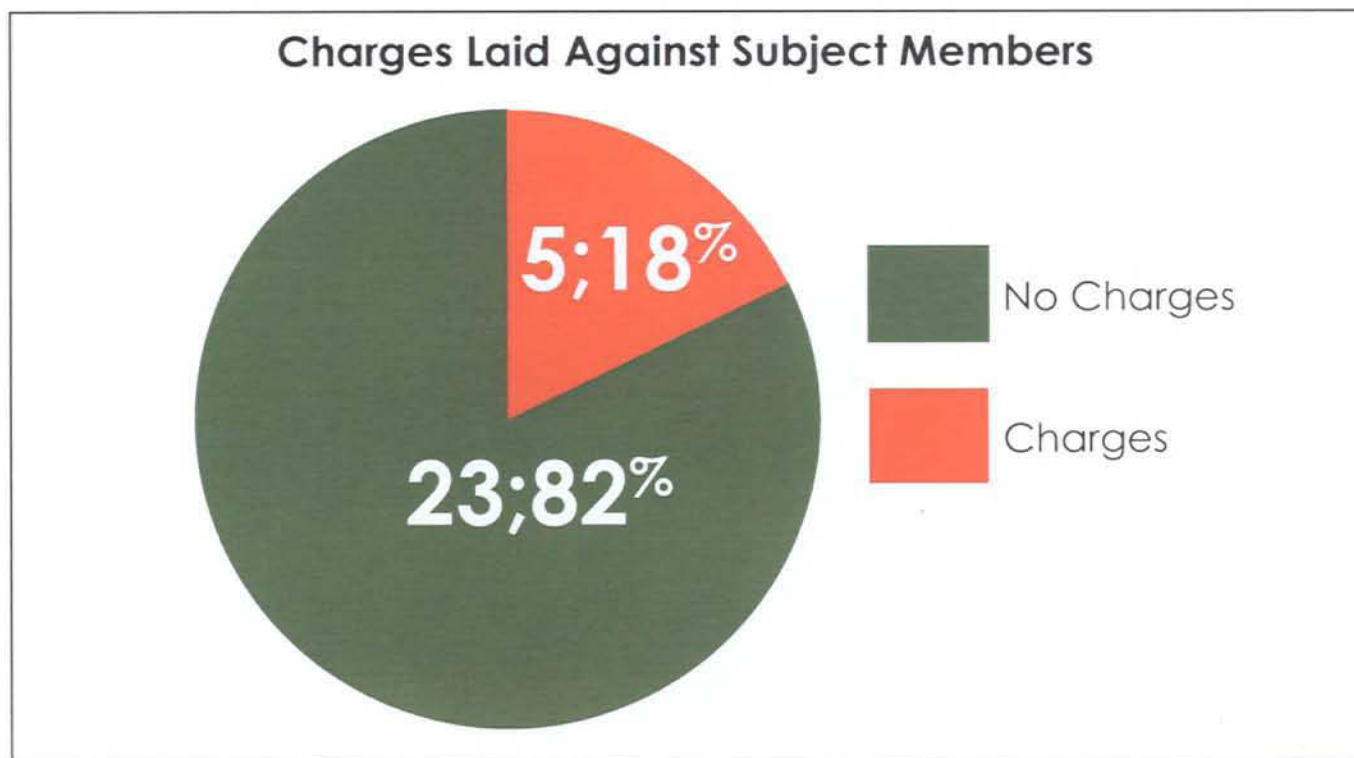


**1 (c) ii. Investigations, if possible, should not exceed one year**

As per the above timeline, when a member investigation takes longer than one year to complete, these subject members could be excluded from any Code of Conduct (section 43(8) of the *RCMP Act*) action that may follow. In addition, should the one-year limitation period lapse, members could also be

precluded from being charged under some offences of the *Criminal Code*. This requires that particular attention be paid to ensure the timeliness of these investigations. Out of the 28 cases reviewed, 19% (five cases) took over one year to complete—which could have excluded members from the RCMP internal disciplinary processes, if required.

It is important to contextualize that of the 28 cases reviewed, no charges were laid in 23 cases.

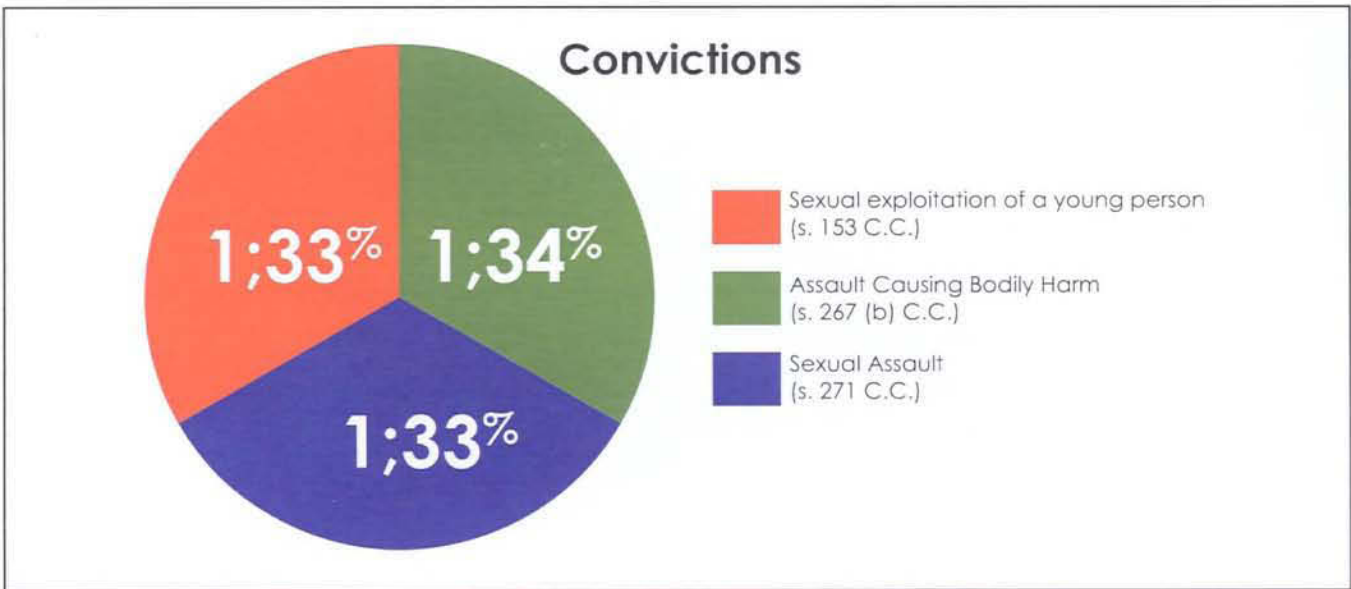


## Cases Where Charges Were Laid Against Subject Members<sup>47</sup>

Of the five cases where charges were laid, a total of eight charges were laid.

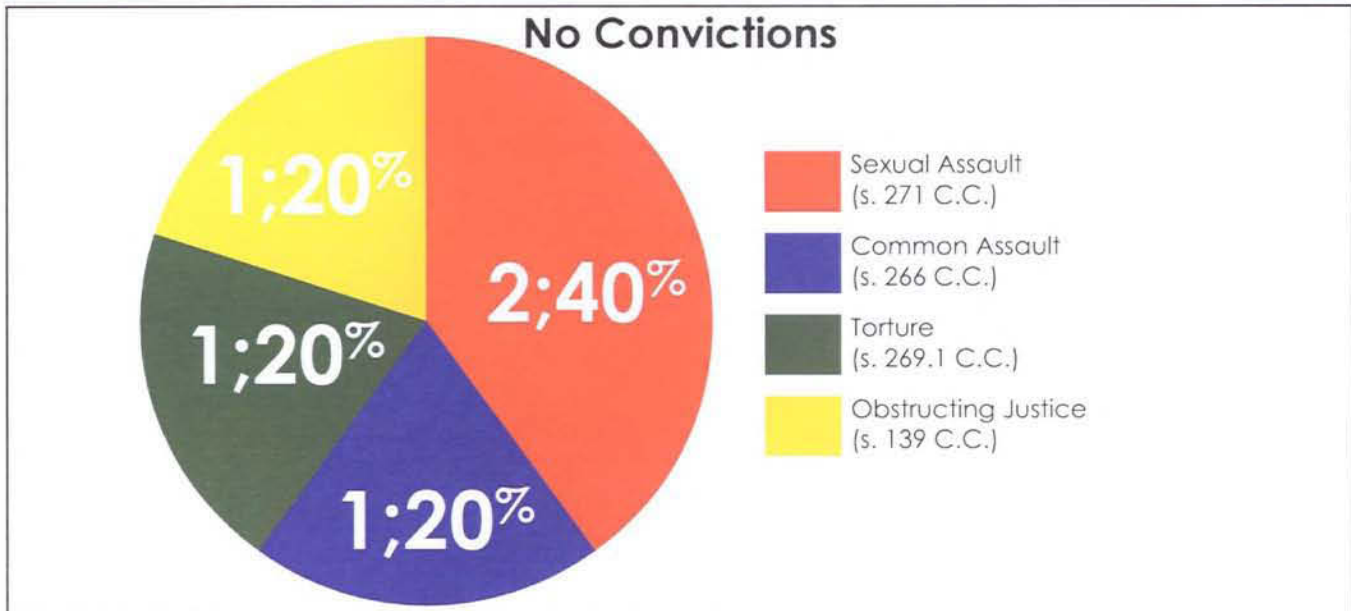
1. One case that occurred in Newfoundland and Labrador (B) Division, where the subject member was accused of sexual relations with young persons while on duty in the victims' community, the following charges were laid:
  - Sexual Assault (s. 271 C.C.)  
**Outcome:** Charge withdrawn.
  - Sexual Exploitation (s. 153 C.C.)  
**Outcome:** Subject member pleaded guilty.
2. One case that occurred in Manitoba (D) Division, where the subject member was accused of sexually assaulting another RCMP member in a private residence, the following charge was laid:
  - Sexual Assault (s. 271 C.C.)  
**Outcome:** Subject member acquitted of charge at trial.
3. In the case that occurred in British Columbia (E) Division, where the subject member was accused of assault causing bodily harm against a civilian during questioning, the following charges were laid:
  - Assault Causing Bodily Harm (s. 267 (b) C.C.)  
**Outcome:** Subject member pleaded guilty.
  - Torture (s. 269.1 C.C.)  
**Outcome:** Charge withdrawn.
  - Obstructing Justice (s. 139 C.C.)  
**Outcome:** Charge withdrawn.
4. In the case that occurred in Saskatchewan (F) Division, where the subject member was accused of sexually assaulting a civilian in a private dwelling, the following charge was laid:
  - Sexual Assault (s. 271 C.C.)  
**Outcome:** Subject member pleaded guilty.
5. In the case that occurred in Alberta (K) Division, where the subject member was accused of using excessive force against a civilian during arrest, the following charge was laid:
  - Common Assault (s. 266 C.C.)  
**Outcome:** Charge stayed.

<sup>47</sup> This includes all cases where charges were laid (regardless of the outcome of the charge).



### Finding No. 16

Of the eight charges laid, three (37.5%) resulted in successful convictions, while five (62.5%) resulted in no convictions.<sup>48</sup>



Of the eight charges laid, only one went to full trial resulting in an acquittal.

#### <sup>48</sup>Successful convictions:

1. Sexual Exploitation (s. 153 C.C.)  
Outcome: Subject member pled guilty.
2. Assault Causing Bodily Harm (s. 267 (b) C.C.).  
Outcome: Subject member pled guilty.
3. Sexual Assault (s. 271 C.C.)  
Outcome: Subject member pled guilty.

#### No convictions:

1. Sexual Assault (s. 271 C.C.)  
Outcome: Charge withdrawn.
2. Sexual Assault (s. 271 C.C.)  
Outcome: Subject member acquitted at trial.
3. Torture (s. 269.1 C.C.)  
Outcome: Charge withdrawn.
4. Obstructing Justice (s. 139 C.C.)  
Outcome: Charge withdrawn.
5. Common Assault (s. 266 C.C.)  
Outcome: Charge stayed.



### 1 (c) iii. Immediate dispatch of necessary personnel where timely response required

The overall timely completion of the investigations depended a great deal on what unit was assigned the investigation. For example, should the investigation be assigned to only one regular General Investigation Section member with an active workload, the investigation could take months to complete. Given that 17 of the 28 cases involved a single investigator assigned to the file, in some cases, this resulted in the file standing still due to the member's time off, sick leave, court appearances, attendance at courses as well as regular days off.

**Another major factor that affects the timeliness of the investigation is the transient nature of the civilians and witnesses involved.** This was evident in some of the files reviewed. In one particular case the primary investigator sent alerts to the detachments in an attempt to locate the complainant resulting in weeks of inactivity on the file. When located after several weeks, the complainant told the primary investigator that he did not want to become involved. It should be noted here that this was a third party complaint that was made and assigned to a General Investigation Section member who again had a significant workload. In another file, the complaint named a witness who lived in various towns and who was extremely difficult to locate, only to discover, upon interviewing him, that the witness knew nothing of the incident being reported.

“

THE OVERALL TIMELY COMPLETION OF THE INVESTIGATIONS DEPENDED A GREAT DEAL ON WHAT UNIT WAS ASSIGNED THE INVESTIGATION.

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#### Finding No. 17

In cases where an immediate response was required, such as member-involved shootings and in-custody deaths, the CPC investigators found that all necessary personnel were dispatched to the incident as soon as possible and practicable.

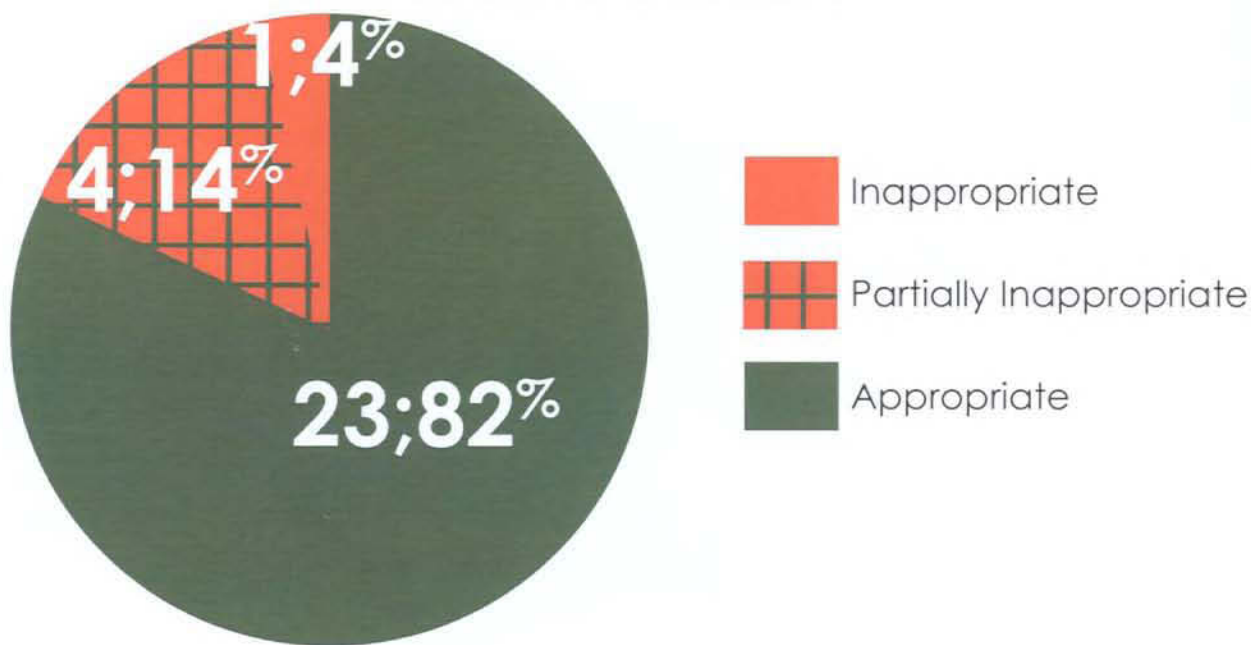
### Overall Assessment of Criterion 1 (c) Timeliness

As illustrated in the graph below, the timeliness of the 28 cases was deemed to be overall appropriate (82%).

#### Finding No. 18

The CPC found that most investigations were completed in a timely manner. The files that took significantly longer to complete were not due to a lack of interest but rather to the heavy workload of the investigator in addition to general hindrances encountered (court dates, difficulty locating witnesses or complainants, employee absence, etc.).

## Timeliness Evaluation



### Criterion 1(d) Conduct: conduct consistent with section 37 of the RCMP Act

A baseline definition of what constitutes "appropriate" member conduct, for the purposes of this analysis, was based on how well members complied with section 37 of the RCMP Act. Section 37<sup>49</sup> legislates eight specific criteria requiring that members, as representatives of the RCMP, act respectfully, dutifully and free from conflict of interest.

The CPC investigators based their opinion regarding the conduct of the investigating members on the thoroughness of the files, the quality of the reports, the video taped interviews of subject members, and the manner in which the interviewed members conducted themselves with the CPC investigators. Also taken into consideration in determining the conduct of the subject

members was the fact that in most cases statements were supplied to the investigators despite not being compelled to do so.

The CPC investigators assessed the conduct of the primary investigator and the other investigative team members and did not identify any issues with regards to the conduct of these RCMP members. It is worth noting that in one investigation the conduct of the subject members came into question by the trial judge. It was his opinion that the civilian person charged with assaulting police was in fact the subject of police brutality.

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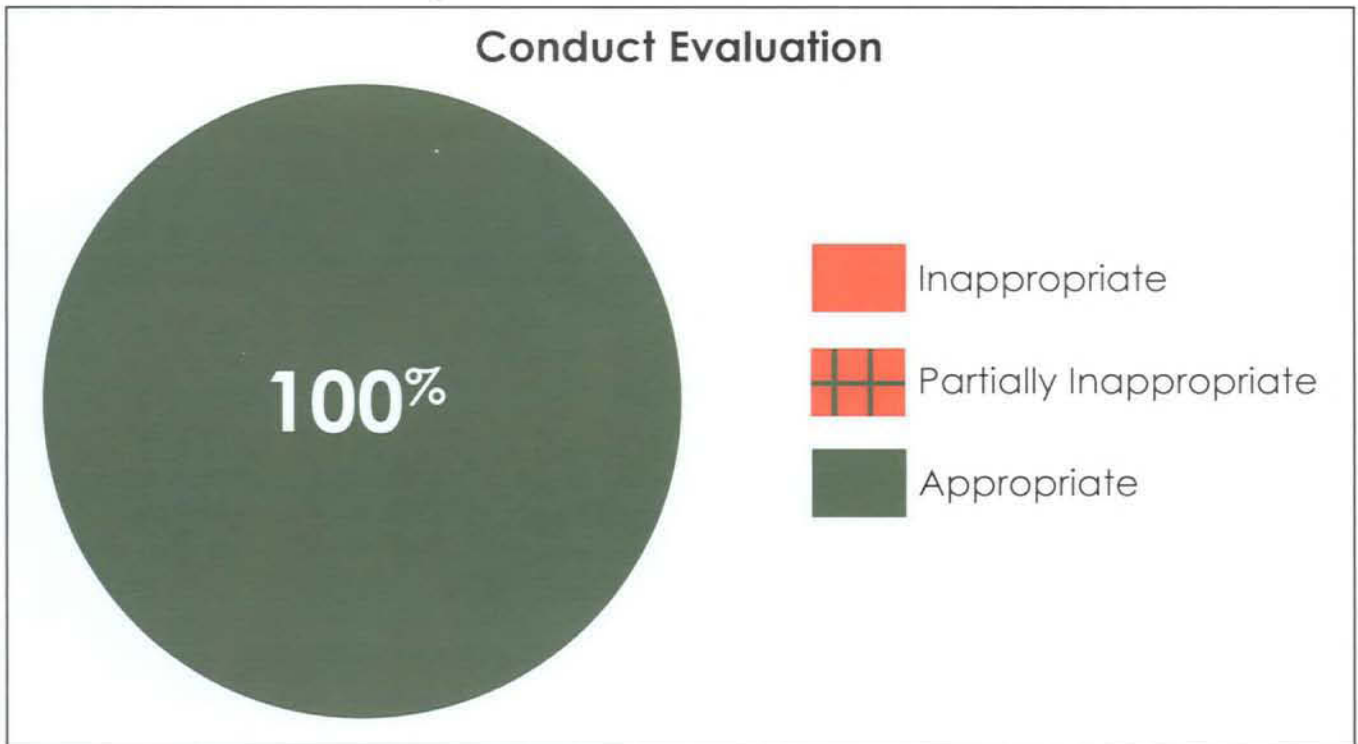
**THE CPC INVESTIGATORS ASSESSED THE CONDUCT OF THE PRIMARY INVESTIGATOR AND THE OTHER INVESTIGATIVE TEAM MEMBERS AND DID NOT IDENTIFY ANY ISSUES WITH REGARDS TO THE CONDUCT OF THESE RCMP MEMBERS.**

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<sup>49</sup> Go to chapter 3, (1) Legislation section on page 15 for full list of eight criteria in section 37 (Conduct) of the RCMP Act.

## Overall Assessment of Criterion 1(d) Conduct

The overall assessment of appropriate member conduct is depicted below. CPC investigators found that 100% of cases were handled in full compliance with section 37 of the RCMP Act.



### Finding No. 19

Overall, the CPC found that the RCMP investigators were free of bias and were professional and conscientious in their approach to their assignments. It was also found that most subject members and witness members cooperated with the CPC investigators and conducted themselves in a professional manner.

## Handling of Historical Cases

A key issue that emerged from the case file review involved the RCMP's handling of historical complaints in particular. **A complaint filed months or years following an incident is referred to as a "historical case."** The very nature of historical cases can make access to evidence and witnesses more challenging, requiring specialized skills and attention not typical of most investigators. These types of investigations can be further complicated by witness memory (or lack thereof), loss of evidence, an inability to locate identified witnesses and the inability to properly identify the subject member in question. Furthermore, not having the appropriate time to conduct a thorough investigation can

result in a perception of a conflict and a lack of interest by the investigator.

In these types of historical cases, it was found that the push for immediate action on the part of the investigating member was not paramount. It was found that historical allegations would be investigated like any other file and would fall into the everyday workload of the investigator. During a CPC interview, one investigator questioned why he would prioritize a historical complaint against a member over his other investigations which were just as important to him (as well as to the complainants).

An assessment of whether RCMP historical member investigations were handled appropriately revealed that, overall, these types of cases were not given priority and took an atypically long time to investigate. Of the three historical cases reviewed, two of them took more than a year to complete the investigation.

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**AN ASSESSMENT OF WHETHER RCMP HISTORICAL MEMBER INVESTIGATIONS WERE HANDLED APPROPRIATELY REVEALED THAT, OVERALL, THESE TYPES OF CASES WERE NOT GIVEN PRIORITY AND TOOK AN ATYPICALLY LONG TIME TO INVESTIGATE.**

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### How Long Do Historical Cases Take?

Three cases reviewed relate to incidents which took place before 1990. The following graphs indicate the length of time it took the RCMP to investigate these incidents starting from the complaint date.

**Case 1:**  2 Months

**Case 2:**  14 Months

**Case 3:**  28+ Months\*

\* The investigation for Case 3 was ongoing for 28 months and had not been concluded at the time of this report.

### Recommendation No. 10

Historical cases require expertise not typical of most investigators. It is therefore recommended that these types of cases be handled by a specialized unit at the national or regional level.

## Criterion 2: Policy Compliance

*Whether these same RCMP members complied with all appropriate policies, procedures, guidelines and statutory requirements for such investigation.*

In order to assess member compliance with RCMP policy, the CPC investigators were required to access and review *all* policies, procedures and statutory requirements in place to guide member actions with regard to member investigations.<sup>50</sup> Given the varied timeframes in which each of the 28 investigations took place, the CPC Review Team requested—and was provided with—all relevant detachment, divisional and national RCMP policies, procedures or guidelines in place at the time of each investigation. This resulted in a sizeable number of relevant documents for review in each case.<sup>51</sup>

Following receipt of these documents, the CPC investigators then assessed if members were in compliance with the policies in place at the time the RCMP investigations were undertaken.

It is important to note that **this section is intended to focus solely on compliance with policy (not adequacy, which is assessed in greater detail in chapter 3)**. It is worth noting, however, that the CPC investigators echoed the sentiment that policies varied between divisions and even detachments.

### Overall assessment

The relatively minor occurrences of non-compliance with policy were discovered by the Senior Officer conducting an administrative review relating to two violations of the cell block policy. They were as follows:

- i. The members did not have detailed notes placed on the investigative file certifying the person to be fit for incarceration in contravention of the *Assessing Responsiveness/Medical Assistance* policy (OM19.2.2.5).
- ii. The lodging member failed to complete the area on C-13, which is the cell block form that lists all the persons in the cells and why they are there, indicating the date, time and who medically examined the prisoner and determined he was fit to be incarcerated in contravention of the *Assessing Responsiveness/Medical Assistance* policy (OM19.2.2.5.1).

In another file involving an alleged sexual assault, the investigators laid a charge without consulting with the provincial Crown. This therefore contravenes national policy as per the national *Investigation Guidelines* policy, which states:

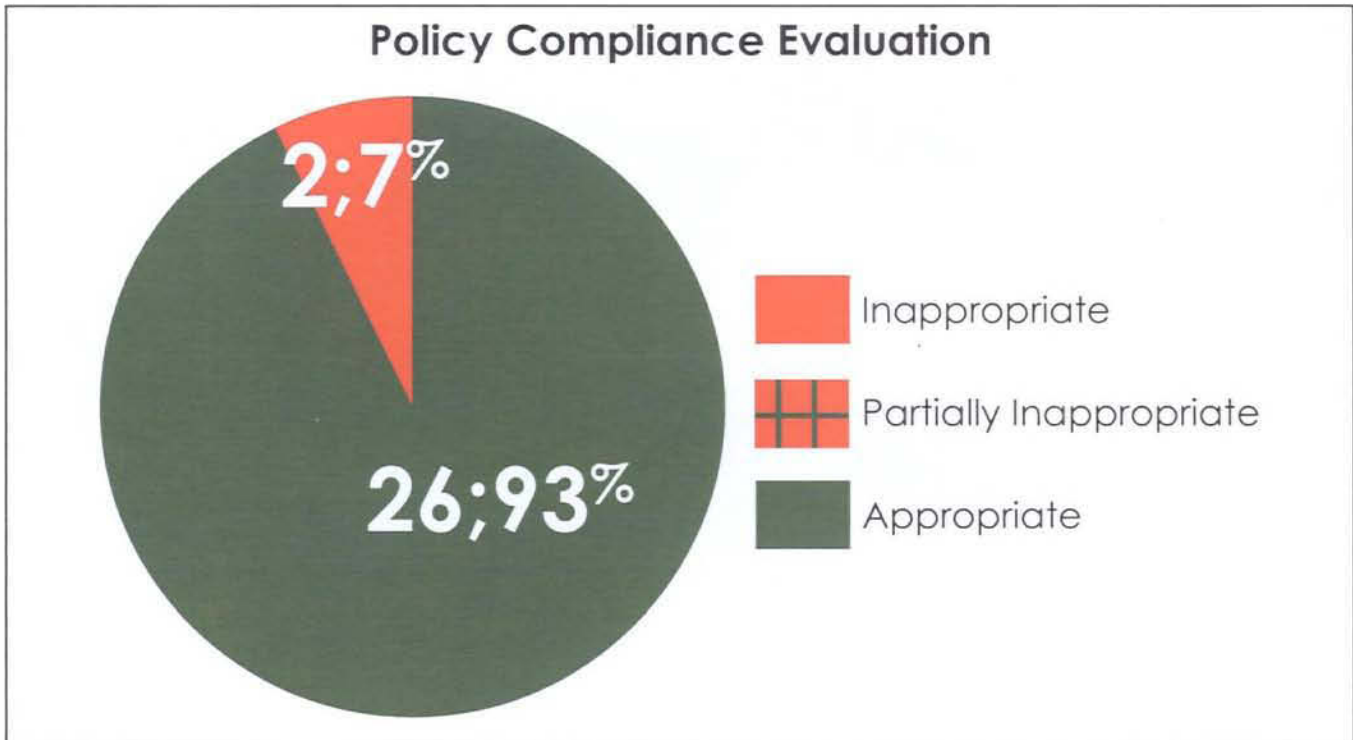
- c. F.2. "If there is evidence to support a prosecution, consult Crown counsel."
- d. F.2.(a). "If there is any conflict with the Crown counsel, refer it to the Cr. Ops. Officer."

<sup>50</sup> See chapter 3, (3) RCMP Policy on page 19 for more details.

<sup>51</sup> See Appendix 7 for the full list of policies reviewed.

## Overall Assessment of Criterion 2 Policy Compliance

The graph below depicts the overall assessment of compliance with RCMP policies (93%). In only two cases, the failure of consultation with the Crown counsel and failure to comply in full with the *Assessing Responsiveness/Medical Assistance* policy led to non-compliance with the required policies.



### Finding No. 20

After an in-depth review of the randomly selected cases, it was found that in most cases, the appropriate policies were complied with. In the few cases where it was found that some aspects of the related policies were not adhered to, they were minor in nature and did not appear to have any effect on the outcome of the investigation.

### Recommendation No. 11

Policy guiding criminal investigations of RCMP members should be standardized nation wide. This would allow for the statutory investigations into RCMP members to be conducted uniformly across the country.

#### 4 (c) Overall assessment of cases based on terms of reference as per the Chair-initiated complaint

The intent of this section of the chapter is to provide an overall summary of the issues and highlight the CPC investigators' findings from the 28 RCMP member investigations (six cases involving death; eight cases involving sexual assault and 14 cases involving assault causing bodily harm).

As per the complaint parameters, the CPC investigators assessed 28 cases in order to determine how appropriately each investigation was handled against five key criteria (outlined in detail in this chapter) which include: line management, level of response, timeliness, conduct and compliance with RCMP policy.

The grid below summarizes the total level of appropriateness (from highest to lowest) of the 28 cases for each of the five complaint criteria.

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THE CPC INVESTIGATORS ASSESSED 28 CASES IN ORDER TO DETERMINE HOW APPROPRIATELY EACH INVESTIGATION WAS HANDLED AGAINST FIVE KEY CRITERIA WHICH INCLUDE: LINE MANAGEMENT, LEVEL OF RESPONSE, TIMELINESS, CONDUCT AND COMPLIANCE WITH RCMP POLICY.

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OVERALL, RCMP MEMBER CONDUCT WAS DEEMED HIGHLY APPROPRIATE (100%).

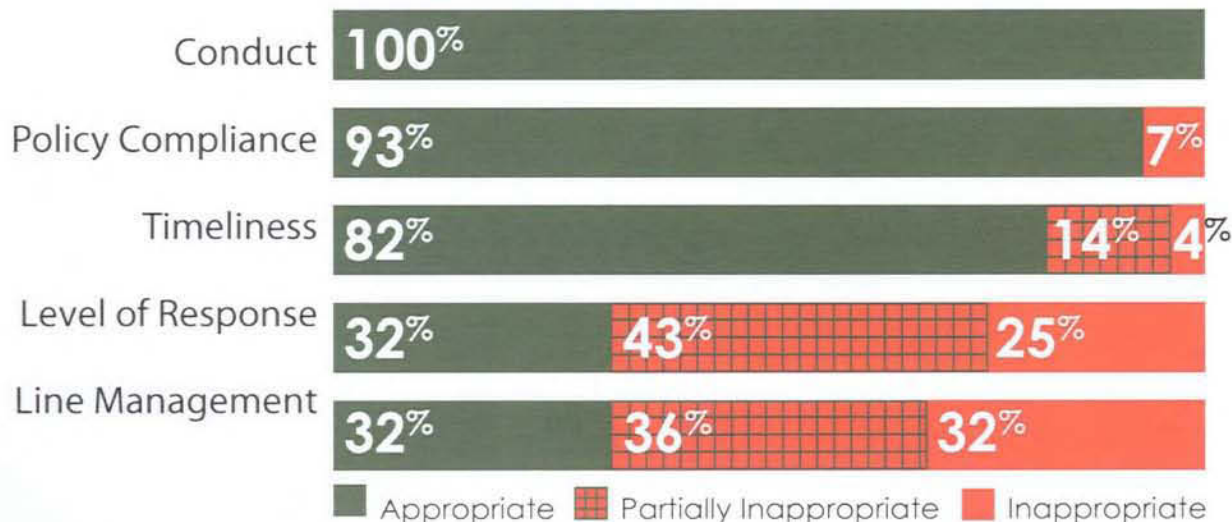
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“

RCMP MEMBER POLICY COMPLIANCE IN EACH OF THE CASES WAS OVERALL HIGHLY APPROPRIATE (93%).

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#### CPC Complaint Criteria – Overall Assessment



Overall, RCMP member **conduct** was deemed highly appropriate (100%). The CPC found that the RCMP investigators charged with the task of investigating another member acted professionally and free from bias.

The CPC investigators also concluded that RCMP member **policy compliance** in each of the cases was overall highly appropriate (93%). Two minor violations of RCMP policy were found. In one case, an administrative review caught violations of the RCMP's *Assessing Responsiveness / Medical Assistance* policy. Specifically, members failed to have detailed notes on the investigative file certifying that the person was fit for incarceration, and members also failed to appropriately complete cell block log information. The second case involved an investigator laying a charge without consulting the provincial Crown, which contravenes the RCMP's national *Investigation Guidelines* policy, which requires consultation with provincial Crown prior to the laying of any charge.

The **timeliness** of investigations was also deemed overall appropriate (82%). Of the 28 cases reviewed, 60% were complete in six months or less. However, 19% of these cases took over one year to complete, thereby excluding members from internal disciplinary processes, if required. Specific concerns were also raised around the handling of historical cases which took considerably longer to investigate (one historical case still remained ongoing after 28 months at the time this report was published).

The two criteria the CPC investigators found of greatest concern were the RCMP's handling of the investigations in relation to **level of response** and **line management**. Given the fact that these two criteria specifically relate to the process of how member investigations

are handled, this analysis further helps to illustrate the fact that CPC concerns relate largely to the current RCMP process (which is flawed) and not individual RCMP member action.

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THE TIMELINESS OF INVESTIGATIONS WAS DEEMED OVERALL APPROPRIATE (82%).

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THE TWO CRITERIA THE CPC INVESTIGATORS FOUND OF GREATEST CONCERN WERE THE RCMP'S HANDLING OF THE INVESTIGATIONS IN RELATION TO LEVEL OF RESPONSE AND LINE MANAGEMENT. GIVEN THE FACT THAT THESE TWO CRITERIA SPECIFICALLY RELATE TO THE PROCESS OF HOW MEMBER INVESTIGATIONS ARE HANDLED, THIS ANALYSIS FURTHER HELPS TO ILLUSTRATE THE FACT THAT CPC CONCERNS RELATE LARGELY TO THE CURRENT RCMP PROCESS (WHICH IS FLAWED) AND NOT INDIVIDUAL RCMP MEMBER ACTION.

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OF CONCERN TO THE CPC WAS THE APPROPRIATENESS OF THE RCMP LEVEL OF RESPONSE (32%).

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Of concern to the CPC was the appropriateness of the RCMP level of response (32%) in the cases reviewed. Particular concerns arose around the fact that investigations of subject members and witness officers were undertaken by a lone investigator in 17 of the 28 cases (60%) resulting in the potential for a conflict of interest or intimidation. It is important to note that while no specific conflicts of interest were found to result in these cases, the practice itself was deemed to be inappropriate.

Other concerns with the appropriateness of the RCMP level of response arose in relation to the referral of cases to the appropriate sections. CPC investigators noted inconsistent assignment of files across divisions and an absence of formal criteria to identify which section should be assigned which cases. CPC investigators also found significant disparity in the qualifications of the investigators (including the primary investigators). In addition, the complete absence of reassignment of duties or adjustment of workload for members assigned to investigators undertaking member investigations was also noted as a serious concern impacting the integrity and timeliness of investigations undertaken.

Some areas of the RCMP level of response were handled well. For example, the consultation with the Crown was handled appropriately, with one exception where charges were laid without appropriate consultation. The call for an administrative review of member investigations was also found to be inconsistently applied across the country (an administrative review was only called for in four of the 28 cases). Given the concerns with the level of response criteria in particular, significant

recommendations are made in chapter 7 of this report.

Of greatest concern to the CPC was the level of appropriateness of the RCMP's line management (32%). The bulk of the 28 cases reviewed were deemed to be hand-led either partially or entirely inappropriately (68%). Specifically, 25% of primary investigators identified themselves as either personally knowing the subject member. Another critical concern was the fact that in 60% of the cases reviewed, a single investigator was assigned to investigate another member, thereby placing the integrity of the member investigation at serious risk for potential conflict of interest or perception of bias. In addition, in 25% of the cases, the primary investigator assigned was the same or of a lower rank than that of the subject member, thereby creating the potential for intimidation. Recommendations to address these concerns are outlined in greater detail in chapter 7, Recommended Model for RCMP Member Investigations.

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OF GREATEST CONCERN TO THE CPC WAS THE LEVEL OF APPROPRIATENESS OF THE RCMP'S LINE MANAGEMENT (32%). THE BULK OF THE 28 CASES REVIEWED WERE DEEMED TO BE HANDLED EITHER PARTIALLY OR ENTIRELY INAPPROPRIATELY (68%).

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## Chapter 5

### 5. DIFFERENT REVIEW AND OVERSIGHT MODELS

There are currently different models for police oversight and review both within Canada and internationally. Across Canada, provincial governments have set up agencies with varying levels of authority and independence — some have even established more than one. Most provinces have seen numerous legislative changes at least once since the bodies' creation.

An analysis of police oversight bodies in other democracies rooted in British common law tradition reveals an equally diverse array of powers, obligations and scope of review among the oversight models ranging from the municipal level (Chicago) and the regional level in South Australia, to country-wide in Northern Ireland, New Zealand and the United Kingdom.

A comparison of other models, much less their application to the Canadian context, cannot be done without the acknowledgement of the particular characteristics of our country. The size of the territory and sheer vastness of Canada must be taken into account when attempting to "import" a model from a much smaller country like Northern Ireland, or a country with only one police service such as New Zealand. Factors such as historical relationships between Canadian communities and the police, socio-political stability and even budget constraints need to be taken into consideration — as many interlocutors point out, one single model "cannot be simply exported anywhere and operate just as effectively."<sup>52</sup>

Nevertheless, it is useful to analyze police oversight in other jurisdictions for the purpose of legislative and factual comparison. How other governments choose to handle allegations of police misconduct can offer some valuable lessons on how best to undertake adequate and effective investigations of police here at home.

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IT IS USEFUL TO ANALYZE POLICE OVERSIGHT IN OTHER JURISDICTIONS FOR THE PURPOSE OF LEGISLATIVE AND FACTUAL COMPARISON.

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#### Methodology

**An analysis of several police review or oversight agencies was conducted through a review of available literature as well as interviews with individuals holding high ranking positions within such agencies.** Information analyzed was either in electronic format or hard copy such as the agency's annual report, statistical reports and departmental performance reports. In addition, news releases and relevant literature were examined in order to acquire a full picture of the agency under study.

Between October 27, 2008 and November 25, 2008, interviews via telephone were conducted with high ranking officials from each of the 14 bodies examined in this chapter. The discussions ranged between 45 and 90 minutes in length and were extremely helpful in providing additional information and clarification.

52 *Interview with Police Ombudsman for Northern Ireland, October 30, 2008.*

Each body was assessed according to the following criteria: mandate, background, jurisdiction, legislative basis, handling of the complaint process (or handling of the investigation), statistical analysis,<sup>53</sup> structure, budget and financing, investigator credentials and training, and policies and procedures. Individuals from each agency were sent a copy of a profile created as a result of researching the agency (web, etc. and interviews) as well as a questionnaire detailing each agency's powers. All interviewees offered useful feedback regarding the profiles, as well as detailed answers to all questions.

In addition, individuals interviewed were asked questions in reference to the extent of their legislative powers. Information gathered allowed for a more complete profile of each agency, and in one case—that of the recently created office of the Independent Police Review Director (IPRD) in Ontario—offered information that is not yet available in written form.

Finally, individuals were asked opinion-type questions regarding the characteristics of an "ideal" police oversight body, as well as features of an oversight system most suitable for Canada. Their answers are provided throughout the body of this chapter.

53 *Statistical analysis includes such items as the total number of investigations conducted, the total number of complaints received, the number of investigations and/or complaints disposed of, the number of cases where the complaints were withdrawn, number of cases where charges were laid, etc., in the most recent fiscal year that was provided by the oversight agency in question.*

From this work, results were compiled into one complete profile of each review or oversight body. Examination of all existing bodies in practice generated an understanding that created three main models of police oversight.<sup>54</sup>

## Types of Models

In the most general of terms, **police oversight models differ in the level of dependence by the oversight body on the police in criminal investigations.**

Additional features that set the models apart include the level of influence exercised over an investigation, the ability to refer an investigation to another police force, as well as the nature of the investigative team.

There are three main categories of police oversight models: (1) Dependent Model; (2) Interdependent Model; and (3) Independent Model.

The **dependent** model essentially represents more traditional "police investigation of police." There is no civilian involvement in the criminal investigation and, therefore, there is a total dependence on the police for the handling of criminal investigations. There are two sub-categories to this model: (1.1) police investigating police and (1.2) police investigating another police force.

54 *The description of each model and its advantages and disadvantages, as well as the highlights of the analytical findings can be found in Appendix 8.*

In the police investigating police sub-category, the police service is fully responsible for the criminal investigation and administration of public complaints alleging criminal offences. The oversight body in question does not conduct criminal investigations, but it may recognize complaints regarding service, internal discipline or public trust.

The second sub-category involves "police investigating *another* police force" in specific cases so that the police service does not investigate its own members in instances of serious injury or death. In selected Canadian provinces, memoranda of agreement exist between the local police and the RCMP that allow an outside police force to handle the investigations of the RCMP member(s).

The **interdependent** model introduces into the criminal investigation civilian involvement to varying degrees. There are also two sub-types to this model: (2.1) civilian observation and (2.2) hybrid investigation.

In the first sub-type of the interdependent model, a civilian observer is assigned to the police investigation to ensure that the latter is conducted with impartiality.

The hybrid investigation comprises mostly of a civilian oversight body whose involvement in the investigation goes beyond the role of mere overseer. In this model, the police force may be engaged in some form of collaboration with the oversight body, although the latter may have the ability to conduct the investigation entirely on its own.

The **independent** model is embodied by a totally independent investigation. There is no police involvement in the investigation. The oversight body composed of civilians undertakes independent criminal investigations that cannot be referred to the police force, and may have the authority to make binding findings and lay charges. The following table illustrates the characteristics of each model.

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THE INTERDEPENDENT MODEL INTRODUCES INTO THE CRIMINAL INVESTIGATION CIVILIAN INVOLVEMENT TO VARYING DEGREES.

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THE INDEPENDENT MODEL IS EMBODIED BY A TOTALLY INDEPENDENT INVESTIGATION. THERE IS NO POLICE INVOLVEMENT IN THE INVESTIGATION. THE OVERSIGHT BODY COMPOSED OF CIVILIANS UNDERTAKES INDEPENDENT CRIMINAL INVESTIGATIONS.

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1. Dependent Model		2. Interdependent Model		3. Independent Model
1.1 Police Investigating Police	1.2 Police Investigating Another Police Force	2.1 Civilian Observation	2.2 Hybrid Investigation	3. Independent Investigation
<p>Represents police investigating police criminal investigations</p> <ul style="list-style-type: none"> <li>• Police fully responsible for the investigation and administration of public complaints</li> <li>• No civilian involvement in a <i>criminal</i> investigation</li> <li>• Oversight body recognizes complaints regarding service, internal discipline or public trust</li> <li>• Oversight body may be an appellate authority</li> </ul>	<p>Represents police investigating another police force</p> <p>Involves formal arrangements (memoranda of agreement) in place with another police force to handle investigation of police officers in cases of death or serious bodily harm.</p> <ul style="list-style-type: none"> <li>• Unlegislated process</li> <li>• In place only in select provinces in Canada</li> </ul>	<p>Introduces civilian observation to investigation</p> <p>Civilian observer responsible to monitor criminal investigation (not direct or oversee investigation)</p> <ul style="list-style-type: none"> <li>• Regular reporting on status of investigation required</li> <li>• Police responsible for investigation, adjudication and administration of public complaints</li> </ul>	<p>Oversight body may choose from various options which include:</p> <p>a) may supervise/ manage parts of police criminal investigation (beyond monitor/ oversee) conducted by police</p> <p>b) may assume control over police investigation</p> <p>c) may undertake independent criminal investigation</p> <ul style="list-style-type: none"> <li>• Oversight body can refer investigation to police force</li> <li>• Police can be involved in some form of collaboration, cooperation or coordination of the actual investigation of public complaints with oversight body</li> </ul>	<p>Oversight body undertakes independent criminal investigation for cases within its mandate</p> <ul style="list-style-type: none"> <li>• Police are excluded or removed from process of investigating public complaints</li> <li>• Hallmark of this system is that civilian personnel are fully responsible for investigation</li> <li>• Nil ability to refer investigation to police</li> </ul>

It is important to note that each oversight body under analysis has its own particular characteristics that separate it from other similar agencies, even when those are the broad representation of the same model. In the same vein, each of the oversight entities carries its own features which may not be captured by one general definition. However, we have, for the purposes of this discussion, set out general parameters for comparison.

# 1. The Dependent Model

## 1.1 Police Investigating Police

The police investigating police sub-type is representative of an oversight agency that does not undertake criminal investigations. It remains essentially a model that exists alongside police forces responsible to undertake criminal investigations into cases involving other police officers.

This model may involve a civilian review body that investigates allegations of disciplinary misconduct (exemplified by Manitoba's Law Enforcement Review Agency) or an appellate authority with respect to public complaints about the policies, services or conduct of police officers without interlocutory powers of review (Ontario's Civilian Police Commission). It may be an agency that recognizes complaints limited to service or policy, internal discipline or public trust (such as Police Complaint Commissioner in British Columbia), or it may be an independent civilian body which administers the public complaints process (the newly established office of the Independent Police Review Director in Ontario). It could also be a body which examines potential violations of the code of ethics by police officers, special constables and highway controllers (represented by the oversight system in Quebec in the authority of the Police Ethics Commissioner and the Police Ethics Committee).

In any case, the agency is responsible for non-criminal complaints and in the case of potential criminal offences, it refers the file either to the appropriate police force or the office of the Attorney General for further decision.

The composition of the police investigating police model is varied, consisting of a mixture of civilians and former police officers. In the case of the Quebec Police Ethics Commissioner's investigative team, a specific provision mandates that should the investigators be former police officers, they cannot participate in a case involving their former police department.

## Dependent Model

### ADVANTAGES

Some of the perceived advantages of this dependent model sub-category include the tenet that police have the necessary investigative skills and access to appropriate resources (e.g. forensic support) for the task, in addition to the requisite legal authority and powers to complete investigations, particularly regarding *Criminal Code* issues. Further, others posit that police have a better understanding of the RCMP's operating organizational and cultural dynamics which can secure more legitimacy in the process in the eyes of members, thereby resulting in enhanced cooperation.

### CHALLENGES

The challenges associated with the police investigating police model have been highlighted previously. To summarize, some argue that police do not take seriously most public complaints and assign limited investigative resources and expertise to the process. Police officers are deemed to be sympathetic and responsive to informal police cultural norms and perspectives which protect individual officers and undermine the investigative process.<sup>55</sup> Police officers can be pressured by other police and the police culture ("blue wall" "blue curtain", "code of silence") to conduct ineffective investigations. At most salient, this model is deemed failing to meet the basic standards of public accountability.

## Domestic examples of police investigating police

As shown in the previous section, examples of the police investigating police model reviewed are all Canadian-based, having been created by different provincial governments. Ontario is a unique case with two agencies within this category.

Quebec's police oversight system, composed of the Police Ethics Commissioner and the Police Ethics Committee, is chiefly concerned with the potential violations of the *Code of Ethics* pertaining to police officers, special constables and highway controllers. Of particular interest is the provision which mandates that only those who have been called to the bar for at least 10 years can be appointed as full-time members of the Committee.

The Ontario Civilian Commission on Police Services (OCCPS), soon to be renamed Ontario Civilian Police Commission upon the proclamation of Bill 103, the *Independent Police Review Act*, is a quasi-judicial agency and the final appellate authority with respect to public complaints made against all municipal police services in the province. The Commission has recently lost its interlocutory powers of review to the newly established office of the Independent Police Review Director (IPRD). The IPRD is also responsible for

55 KPMG, *Feasibility of an independent system for investigating complaints against the police* (London: Home Office, Research, Development and Statistics Directorate, 2000). A study was commissioned by the British Home Office in response to the Stephen Lawrence Inquiry, 1999. KPMG sought to strike a balance between improved independence of the complaints process and the cost and efficiency. The final report recommended the establishment of a new body in Great Britain, the Independent Agency for Complaints against the Police, which would investigate certain categories of complaints, while the majority of investigations would be conducted by the police.



the initial screening of public complaints and may establish rules and guidelines for police chiefs and police boards for complaints made by the public.

The two remaining bodies exemplifying the dependent model, Manitoba's Law Enforcement Review Agency (LERA) and the office of the Police Complaint Commissioner (PCC) in British Columbia, are both witnessing legislative developments that may affect their respective powers and obligations. In Manitoba, the recently published Taman Inquiry report called for the establishment of a new independent unit responsible for all criminal investigations of Manitoba's police officers, and the current government pledged to abide by all 14 recommendations made in the report when it introduces changes to the *Police Act* in 2009.<sup>56</sup>

In the meantime, the LERA remains the sole independent police oversight agency in Manitoba, but it does not handle criminal investigations. Instead, the agency investigates such allegations as the abuse of authority, false statements and lack of restraint in the use of a firearm.

British Columbia's Public Complaint Commissioner (PCC) is an independent officer of the legislature whose role is to oversee the public complaints process involving municipal police officers in the province. The Commissioner can initiate investigations with Ordered Investigations based on information received from a member of the public or from a police department. In exceptional cases, the PCC may delegate the investigation to an external agency, including the RCMP in its capacity as the provincial police force. The Commissioner has been

seeking legislative changes for several years, expressing the need for such additional features as compellability of police officers with respect to disciplinary proceedings.

In July 2005, the British Columbia Minister of Public Safety and Solicitor General ordered a review of the police complaints process in the province. B.C. Appeal Court Judge Josiah Wood, the appointed Director of the review, released the final report in February 2007. The report contained 91 recommendations to improve the system; stiffer penalties for officers guilty of misconduct were among many suggested venues for improvement. In February 2008, the B.C. government announced changes to the province's *Police Act* to implement the report's recommendations.

On March 4, 2009, the provincial government introduced amendments to the *Police Act: Bill 6 – 2009 Police (Misconduct, Complaints, Investigations, Discipline and Proceedings) Amendment Act, 2009* and *Bill 7 – 2009 Police (Police Complaint Commissioner) Amendment Act, 2009*.

B.C. Solicitor General John van Dongen stated that the proposed legislative changes address "virtually all" of Wood's recommendations. NDP public safety critic Mike Farnworth emphasized that the changes are insufficient because the RCMP, which constitutes the majority of patrol outside greater Vancouver and southern Vancouver Island, remains excluded from the Act's jurisdiction. There has been some criticism that the amendments fail to provide adequate civilian oversight since investigations into police misconduct remain largely in the hands of police officers. To that B.C. Solicitor General van Dongen replied

<sup>56</sup> A new *Police Services Act* was anticipated to be introduced in Manitoba's legislature in 2009 but had not been at the time of the drafting of this Interim Report.

that the creation of an entirely civilian investigator team is not practicable and implied that police investigators are sufficiently experienced for the task. The B.C. Solicitor General is confident that the province can strike a good balance of public and police involvement in the police complaints process.

A key feature of the new legislation calls for “[m]andatory external investigation of death and serious harm” (s. 89) and requires that the PCC be “immediately” notified by a chief constable when a person “suffers serious harm” or dies while in police custody or as a result of Police Actions (s. 89(1)a), as well as when the serious injury or death of a person *could* be seen as the result of the conduct of a municipal police department or police operations (s. 89 (1)b).

### **1.2 Police Investigating Another Police Force**

**The second sub-category of the dependent model involves outside police force investigation.** In essence, it is still representative of “police investigating police,” but in cases involving serious injury or death, police investigate another police force. Formal agreements or protocols such as memoranda of understanding between different policing bodies in some cases ensure that one police force is not in charge of investigations of incidents involving its own members.

In the Canadian context, formal agreements between some local police forces and the RCMP allow an outside police force to handle the investigations of RCMP members. Such mechanisms allow for a perception of independence and objectivity of the investigation and minimize the negative effects of internal loyalty and solidarity on the completion

of a fair investigation. In addition, the external police invited to conduct the investigation possess all the required expertise and resources to investigate in an effective manner, as well as the necessary understanding of the organizational and cultural dynamics required for investigations.

However, the use of an external police force for member investigations remains highly discretionary and inconsistently applied across RCMP divisions. Having an external police force investigate the RCMP may provide only the appearance—but not the reality—of an independent investigation. Many seriously question the possibility of independence for external police investigations due to occupational and cultural police philosophies which can jeopardize the protection of the individual member thereby undermining the integrity of the investigation (e.g. “blue wall,” “blue curtain” or “code of silence”).

There is also little evidence that external police officers do actually obtain higher levels of police cooperation from other police in complaint investigations to justify their involvement, and without public oversight external investigations of this nature often produce similar findings to an internal investigation and result in a low level of substantiated complaints.

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THE USE OF AN EXTERNAL  
POLICE FORCE FOR MEMBER  
INVESTIGATIONS REMAINS  
HIGHLY DISCRETIONARY AND  
INCONSISTENTLY APPLIED  
ACROSS RCMP DIVISIONS.

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## Domestic examples of police investigating another police force

This model is typically an unlegislated process and is currently present in a select few provinces. Memoranda of agreement exist between the RCMP division and the local police service(s). The three examples of this model are: the Memorandum of Agreement between the RCMP Nova Scotia (H) Division and the Halifax Regional Police (HRP), the Memorandum of Agreement between the RCMP Newfoundland and Labrador (B) Division and the Royal Newfoundland Constabulary, and the Memorandum of Agreement between the RCMP New Brunswick (J) Division and the police services of New Brunswick.

In Nova Scotia, the July 2003 agreement set up the Integrated Critical Investigation Team (ICIT), comprised of officers from both the RCMP and the Halifax Regional Police. The purpose of the ICIT is to investigate critical incidents or any other incident designated by the Chief of HRP or the Commanding Officer of H Division. Article 4 of the agreement stipulates that the officer in charge of the investigation and the primary investigator be a member of an independent agency (the agency without officers involved in the incident in question). The ICIT team was most recently deployed in a member-involved shooting in Yarmouth and a Taser death in Digby.

The Memorandum of Agreement in Newfoundland and Labrador is identical to the mechanism in place in Nova Scotia.

In New Brunswick, an agreement exists between the RCMP J Division and the Bathurst City Police Force, the Beresford Nigadoo Petit-Rocher Regional Police Force, the Edmundston Police Force, the Fredericton Police Force, the Miramichi Police Force, the Rothesay Regional Police Force, the Saint John Police Force, and the Woodstock Police Force. It creates the Use of Force Investigation Team (UFIT), which investigates the critical incident, led by an officer in charge and a primary investigator, both members of the independent agency. The UFIT has been in operation for about five years.

## 2. The Interdependent Model

### 2.1 Civilian Observation

The first sub-category of the interdependent model combines the police investigation with the input of an independent civilian observer who monitors the impartiality of the investigation. This model allows for engaged civilian oversight and direct influence in the investigative process.

In addition, civilian observation is viewed as costly, ineffective and time-consuming; poor value for money; and despite civilian involvement in the review of police investigations some critics argue that it has not created an increase in sustained complaints and publicly satisfactory outcomes.

### Domestic examples of civilian observation

After the Canadian public expressed concerns regarding the issue of transparency and accountability in relation to RCMP investigations of their own members in cases of serious injury or death, the CPC decided to contribute to the enhancement of public confidence by assessing the impartiality of RCMP investigations in an objective and timely manner. On March 21, 2007, it established the Independent Observer Pilot Project in British Columbia (E) Division.

#### Interdependent (Civilian Observation) Model

##### ADVANTAGES

One advantage of this model is that it offers a civilian, non-police influence, thereby enhancing public accountability and transparency to an otherwise internal police-centric public complaints process. Civilian observation provides an opportunity to monitor the adequacy and effectiveness of police complaint investigations. Civilian observation of police investigating police provides a level of transparency and public information to an otherwise internal and closed process.

##### CHALLENGES

A potential disadvantage is that civilian observers cannot conduct their **own investigations and are therefore entirely dependent upon police investigations of police officers in the first instance.** Concern also exists as to which part of the criminal investigation the observer should be privy to, as the observer's presence then allows for compellability in court. Also, civilian observation of police investigations may be viewed as illegitimate, unqualified and inappropriate by some police officers and associations.

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CIVILIAN OBSERVATION PROVIDES AN OPPORTUNITY TO MONITOR THE ADEQUACY AND EFFECTIVENESS OF POLICE COMPLAINT INVESTIGATIONS.

CIVILIAN OBSERVATION OF POLICE INVESTIGATING POLICE PROVIDES A LEVEL OF TRANSPARENCY AND PUBLIC INFORMATION TO AN OTHERWISE INTERNAL AND CLOSED PROCESS.

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Today a fully developed program, the Independent Observer Program (IOP) offers timely observations regarding the impartiality of RCMP investigations of its own members in cases involving serious injury or death, and in cases that are viewed as sensitive or high profile in nature. The impartiality of the investigation is assessed against four criteria: line management, appropriate level of response, timeliness of the response, and conduct. In order to qualify as an Observer, the candidate needs extensive legal training (or education in criminology or policing), experience in the area of public complaints against police officers, and experience in police investigations.

Between March 2007 and June 2008, the IOP was involved in six E Division investigations. A one-year review of the IOP by the CPC and RCMP, via an independent contractor, determined that the program was effectively fulfilling its mandate and recommended the possibility of establishing the Observer Program in other RCMP divisions "on a pilot project basis."<sup>57</sup>

On December 4, 2008, it was announced that an Independent Observer was to be deployed outside British Columbia for the first time. At the request of Yukon's M Division, the program was introduced to the RCMP investigation into the in-custody death of an individual in Whitehorse, Yukon. As of January 2009, an observer had been deployed a total of 10 times and found no concerns with RCMP impartiality.

<sup>57</sup> Scott Clark Consulting Inc., *Review of the Independent Observer Pilot Project*, June 2008.

The IOP is not part of the RCMP legislative framework. One of the Independent Observers admitted that becoming part of the legislation is a desirable feature that would enhance his powers. This would give the Observer the authority, strength and credibility it needs.<sup>58</sup>

## 2.2 Hybrid Investigation

**The second sub-type of the interdependent model is a hybrid investigation. This model involves active participation of civilians in the investigative process in the form of collaboration with the police force, management of the police investigation, or, in exceptional circumstances, the ability to assume control of the investigation.**

In most cases, therefore, the hybrid model assumes some form of engagement between the oversight agency and the police force. The latter is still involved

in the investigation but it is obliged to report to, follow, and cooperate with, the oversight body. In exceptional cases, the police may even reassign its authority over the investigation to an outside agency whose role goes far beyond that of an overseer.

**One example of this model is the Alberta Serious Incident Response Team (ASIRT), an agency that was created to be deployed in events involving serious injury or death (and other sensitive or serious matters). The ASIRT, therefore, embodies this model given its blend of civilians and seconded police officers who work together on investigations.**

<sup>58</sup> Interview with a CPC Independent Observer (British Columbia), November 4, 2008.

The hybrid sub-category, however, also allows for the possibility that the oversight body conduct an investigation on its own. Saskatchewan's Public Complaints Commission (PCC) has the ability to assume the responsibility of the police investigation at any point it feels necessary to do so and in that instance the police service must desist from its investigation and provide all required assistance to the members of the PCC. **The Independent Police Complaints Commission (IPCC) from the United Kingdom can supervise an investigation conducted by the police, but it can also manage the investigation or undertake one independently, the outcome of which is not subject to appeal.** In exceptional cases, South Australia's Police Complaints Authority (PCA) may decide to conduct an investigation on its own and recently, the PCA Chair has in fact investigated one case to avoid giving rise to the appearance of bias.

In most cases, however, such occurrences are an exception to the rule. Agencies that represent the hybrid model rely largely on the investigative expertise of the police service and use it as groundwork for the proceedings. The United Kingdom's IPCC admits that often it uses a police forensic investigator to secure the scene of the incident. **The Independent Police Conduct Authority (IPCA) from New Zealand can oversee a police investigation and may give directions to the police in that respect. It cannot remove the investigation from the police control, but it can carry out its own separate investigation.** The IPCA investigators, thus, largely use the work done by the police as the foundation upon which to develop their own further investigation. In the case of South Australia, most investigations are conducted by the internal investigation unit of its police service and the role of the PCA revolves around monitoring and inspection functions.

The composition of bodies representing the hybrid sub-category varies depending on their nature and mandate.

- The Alberta Serious Incident Response Team exemplifies a mix of civilians and seconded provincial as well as RCMP police officers.
- The remaining four bodies, Saskatchewan's Public Complaints Commission, UK's IPCC, South Australia's PCA and New Zealand's IPCA, are composed of civilians and retired/former police officers from the local police force, the federal police force, or abroad.
- In the case of the United Kingdom's Independent Police Complaints Commission, legislation mandates that none of its 15 Commissioners have worked for the police service, Her Majesty's Revenue and Customs (HMRC) or the Serious Organised Crime Agency (SOCA) in any capacity.

## Interdependent (Hybrid) Model

### ADVANTAGES

An obvious advantage of a hybrid investigation model is that it **combines the expertise and capabilities of policing with civilian independence and objectivity**. Seconded police officers retain essential police powers for the conduct of criminal investigations which civilian counterparts do not normally possess. Seconded or retired police officers also bring an understanding of the police organization and culture, which may produce a more cooperative investigative environment. In addition, seconded or retired officers could have specialized investigative skills and aptitudes that civilian investigators may not possess. Overall, a synergy between the different skills and experience of civilian and police investigators enhance the complaints investigation process.

### CHALLENGES

A potential disadvantage of this model is that **the introduction of police culture and police values through the ongoing involvement of retired or seconded police may inhibit the development of a new civilian organizational culture**. This risks jeopardizing the process and it may also be difficult to either second or attract experienced senior police investigators to an integrated model in which they do not have authority or control.

The Director of the Alberta Serious Incident Response Team pointed out that "it's really important to strike a balance between investigative expertise and independence. A truly integrated unit reporting to a civilian ensures independence."<sup>59</sup> The integrated approach of ASIRT gives it "immense strength."<sup>60</sup> The Police Ombudsman for Northern Ireland expressed similar sentiment: "If you build a mix of seconded and retired police officers as well as civilians, you will build a body that is competent, professional, fair and accountable."<sup>61</sup>

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THE DIRECTOR OF THE ALBERTA SERIOUS INCIDENT RESPONSE TEAM POINTED OUT THAT "IT'S REALLY IMPORTANT TO STRIKE A BALANCE BETWEEN INVESTIGATIVE EXPERTISE AND INDEPENDENCE. A TRULY INTEGRATED UNIT REPORTING TO A CIVILIAN ENSURES INDEPENDENCE."<sup>59</sup>

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<sup>59</sup> Interview with Director of ASIRT, October 27, 2008.

<sup>60</sup> Ibid.

<sup>61</sup> Interview with Police Ombudsman for Northern Ireland.

Furthermore, the hybrid model can be seen as cost-effective and time-efficient. By using seconded or former police officers alongside civilian employees saves the time it would take to properly train civilian investigators who lack field experience. Saskatchewan's PCC Director admits that investigative expertise is crucial: "There is a point to be made that a good investigator has to have good knowledge of what he investigates."<sup>62</sup> The Police Ombudsman for Northern Ireland emphasizes: "To investigate properly, we have to be just as good if not better [than police officers involved] and it takes a great deal of sophistication and time to properly train investigators."<sup>63</sup>

Finally, the hybrid investigation model effectively allows the police to take an active part in the oversight process. By introducing police officers into the mechanism of police oversight and review, it increases the chance that the findings from the investigation are heard and recommendations followed. The Chair of the South Australian Police Complaints Authority points out that the key advantage of the hybrid model is that it "creates a system in which the police are very much part of the solution to whatever problems they may have."<sup>64</sup> According to the PCA Chair, this is essential to the success of good policing: "If you want your jurisdiction to have a good police force, the force has to be a part of the solution."<sup>65</sup>

## Domestic examples of Hybrid investigation

In Canada, two agencies are representative of the hybrid investigation model: the Alberta Serious Incident Response Team (ASIRT) and Saskatchewan's Public Complaints Commission (PCC).

**ASIRT is the only hybrid example that has the authority to lay charges. The Director of ASIRT has all the powers of a police chief as defined by Alberta's Police Act. The agency's mandate is focused on incidents of serious injury or death, as well as other matters considered serious or sensitive in nature that resulted or may have resulted from the actions of a police officer.** In operation since the spring of 2007, ASIRT is relatively new and in late November 2008 the body officially completed its first investigation. On January 6, 2009, ASIRT laid criminal charges for the first time when an RCMP officer was charged with sexual assault.

The **Public Complaints Commission in Saskatchewan** was established to increase public confidence in the accountability of the police and to improve the relationship between the province's Aboriginal population and the police. The 2005 amendments incorporated into the guiding legislation included a provision that outlined the composition of the PCC—in order to be truly representative of Saskatchewan's population. From this point on, one of the members of the board has to be a person of First Nations ancestry, one has to be of Métis origin, and one has to be a lawyer. The PCC has jurisdiction over all municipal police officers in the province (excluding RCMP members). The PCC has the authority to conduct investigations on its own, to monitor police investigations, or to refer investigations to

62 *Interview with Director of Public Complaints Commission (Sask.), October 30, 2008.*

63 *Interview with Police Ombudsman for Northern Ireland.*

64 *Interview with Chair of Police Complaints Authority (S. Australia), October 29, 2008.*

65 *Ibid.*



the affected police force or to another police force.

Subsection 91.1(1) of the Act dictates that in cases of serious injury or death, the RCMP providing policing services within a municipality must request that the Deputy Minister of Justice appoint an observer "from another police service or detachment of the RCMP" to oversee the investigation. This observer shall be given "full access" to the investigation and report on all aspects of the investigation.

## International examples of Hybrid Investigation

In the United Kingdom, the **Independent Police Complaints Commission (IPCC)** has undergone numerous legislative changes since the creation of the original Police Complaints Board. On April 1, 2004, the IPCC replaced the Police Complaint Authority following the release of *The Stephen Lawrence Inquiry, 1999* report which reignited the debate about racism and policing in the United Kingdom<sup>66</sup>. Initially given jurisdiction over the police in England and Wales, in April 2006 the IPCC acquired authority over the Serious Organised Crime Agency (SOCA) and Her Majesty's Revenue and Customs (HMRC), and since February 2008 it has been given jurisdiction over the UK Border Agency (UKBA). In addition to complaints, certain incidents such as serious injury resulting from contact with the police, HMRC, SOCA or UKBA, must be reported to the IPCC. The IPCC's broad mandate is supported by the fact that its budget exceeds £34 million, making

<sup>66</sup> In 1985, the Police Complaints Authority replaced the Police Complaints Board in response to Lord Scarman's report on the 1981 Brixton Disturbances, which involved three days of rioting following an arrest of a black man. Lord Scarman's report revealed the problematic state of police/community relations, led by a widespread belief that police targeted civilians based on racial prejudice. The Stephen Lawrence Inquiry, 1999 analyzed the police investigation of a 1993 murder of a young black man and reignited the debate on policing and racism.

its funding base many times higher than the funding provided to other oversight bodies in the Commonwealth with a similar mandate. Interestingly, the IPCC has the authority to audit police policies and practices, but its staff is not likely to conduct these in reality, due primarily to resource constraints.

Unlike the circumstances surrounding the creation of some oversight bodies, the **South Australian Police Complaints Authority** was not established in response to public pressures and discontent. Rather, it was prompted by a wave of oversight agencies being created in other Australian regions, and the general consensus that such oversight was desirable. The PCA follows a model of "external monitoring of internal investigation" which delegates the primary investigation of complaints to the South Australian Police (SAPOL) Internal Investigation Branch (IIB). In exceptional circumstances, however, the PCA may conduct primary investigations of complaints and it may investigate the officers of the IIB. The Chair of the PCA admits to enjoying a good working relationship with SAPOL.<sup>67</sup> The two agencies have a memorandum of understanding pursuant to which SAPOL notifies the PCA of any case where a fatality occurs in the course of a police operation.

<sup>67</sup> Interview with Chair of Police Complaints Authority (S. Australia).

**In terms of New Zealand, a memorandum of understanding exists between the Independent Police Conduct Authority (IPCA) and the police service which stipulates that matters of serious misconduct or neglect of duty reported internally within the police be notified to the IPCA.** In addition, a protocol of cooperation between the IPCA Chair and the Commissioner of Police ensures collaboration between the investigators of the two agencies. Similar to Canada's Alberta Serious Incident Response Team, New Zealand's IPCA does not have the authority to initiate investigations on its own into sensitive cases not subject to complaints or referral. This is one of the features mentioned in the Amendment Bill proposed by the IPCA which was approved in draft form and that is currently awaiting formalization by New Zealand's recently elected government.

### **3. The Independent Model: Independent Investigation**

The independent model consists of an investigation where the civilians are in charge of the investigation and police officers have no formal input of influence over the process involving their colleagues.

The key feature that differentiates independent investigation from the interdependent model is that there is no investigative collaboration between the oversight body and the police. For all cases that fall within its mandate, **the oversight body investigates alone and does not refer the investigation back to the police force.**

When asked whether his agency has the authority to conduct joint investigations with the police, the Executive Officer of Ontario's Special Investigations Unit (SIU) replied "No, we conduct 'parallel' investigations."<sup>68</sup> The police service and the oversight body may cross the same paths during the fulfillment of their mandate but not as a result of simultaneously conducting the same investigation. The Chief Administrator of Chicago's Independent Police Review Authority (IPRA) was hard-pressed to find an example of a "parallel" investigation possibly taking place between IPRA and the Chicago Police Department.<sup>69</sup> The Police Ombudsman for Northern Ireland was adamant that his office does not conduct investigations in collaboration with the police: "We conduct our own investigations."<sup>70</sup>

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**THE INDEPENDENT MODEL CONSISTS OF AN INVESTIGATION WHERE THE CIVILIANS ARE IN CHARGE OF THE INVESTIGATION AND POLICE OFFICERS HAVE NO FORMAL INPUT OF INFLUENCE OVER THE PROCESS INVOLVING THEIR COLLEAGUES.**

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68 Interview with Executive Officer of Special Investigations Unit (SIU), October 28, 2008.

69 Interview with Chief Administrator of Independent Police Review Authority (Chicago), November 5, 2008. The Chief Administrator emphasized that it is possible in very limited and specific situations; for instance, if the police "happened" to be investigating the same police officer IPRA investigated for another offence.

70 Interview with Police Ombudsman for Northern Ireland.

An oversight body representing the independent investigation model is an agency composed of civilians who are fully responsible for the investigation. It may have the authority to lay charges, which is the case for Ontario's Special Investigations Unit (SIU) and the Police Ombudsman for Northern Ireland. It may offer recommendations that are extremely hard to refuse on the part of the police commissioner, which is the case with Chicago's IPRA.

Members that form the body which represent the independent model may be retired police officers who no longer possess their original police powers, police officers not active on behalf of the police under the agency's jurisdiction, or civilians with no prior police experience. The staff comprising the office of the Police Ombudsman for Northern Ireland, for instance, includes several police officers seconded from police services other than the service of Northern Ireland.

One of UK's IPCC Commissioners points out that the required investigative expertise need not be obtained solely from experience as a police officer. It is possible to have good investigators with no police experience, and there are some civilian investigators who are "exceptional" in their skills: "You do not need in itself to have a former police officer—what you have to be is qualified and experienced."<sup>71</sup> Moreover, retired police officers are not necessarily the ideal source of investigative skills—their skills may become outdated. The Police Ombudsman for Northern Ireland believes that the ideal combines seconded and retired police officers in addition to civilians.<sup>72</sup>

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**“YOU DO NOT NEED IN ITSELF TO HAVE A FORMER POLICE OFFICER—WHAT YOU HAVE TO BE IS QUALIFIED AND EXPERIENCED.”**

- UK IPCC COMMISSION

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Disappointed by unsuccessful and failed investigations, members of the public will lose confidence in the fully independent civilian review model. Many argue that this is the most expensive model, as it requires additional resources to ensure professional investigations (e.g. forensic services). It may involve higher training costs for skill development, enhancement and ongoing education. Civilian models require special legal and investigative powers in order to deal adequately with serious investigations. This model may be perceived as undermining the authority and responsibility of police management with regard to a spectrum of operational and administrative processes.

71 *Interview with Commissioner of Independent Police Complaints Commission (UK), November 6, 2008.*

72 *Interview with Police Ombudsman for Northern Ireland.*

## Independent Model

### ADVANTAGES

The key advantage of this model is that **by removing control of the criminal investigation from the police influence, the oversight body appears totally independent and objective.** A more accountable and transparent culture informs the investigative process and the complainant may perceive it as more trustworthy and therefore may cooperate more freely with the investigators. In some circumstances the independence of the civilian investigative process would provide police with a stronger public validation of their position.

### CHALLENGES

A possible disadvantage of this model is that a **lack of police legitimacy may diminish police cooperation and participation which may ultimately lead to unsuccessful and/or failed investigations.** A civilian-only investigative/adjudication process may be perceived by most police as being inadequate and unsympathetic to police concerns and their operational realities. Should the oversight body be staffed by civilians with no police experience, it **may be criticized as lacking knowledge and understanding of police organization and culture required to conduct fair and effective investigations.**

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MEMBERS THAT FORM THE BODY WHICH REPRESENT THE INDEPENDENT MODEL MAY BE RETIRED POLICE OFFICERS WHO NO LONGER POSSESS THEIR ORIGINAL POLICE POWERS, POLICE OFFICERS NOT ACTIVE ON BEHALF OF THE POLICE UNDER THE AGENCY'S JURISDICTION, OR CIVILIANS WITH NO PRIOR POLICE EXPERIENCE.

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### Domestic example of the independent model

Ontario's Special Investigations Unit (SIU) is the Canadian example of the model of independent investigation. Created in 1990, the SIU investigates the circumstances of serious injury or death as well as allegations of sexual assault that may have resulted from criminal offences committed by police officers. The agency has full powers to investigate and charge officers with a criminal offence. The SIU has recently undergone some criticism from the Ontario Ombudsman who in September 2008 released a report on the SIU entitled *Oversight Unseen*. The Ombudsman noted, however, some positive features such as no evidence of biased investigations and the strong commitment of SIU staff.

## International examples of the independent model

Within the international context, the municipal **Independent Police Review Authority (IPRA) for the city of Chicago** embodies the independent investigation model, whereas the **Police Ombudsman for Northern Ireland** exemplifies the model in Europe.

**IPRA** was created in September 2007. The Office of Professional Standards (OPS) became separated from the Chicago Police Department (CPD) and IPRA replaced the OPS as an independent department of the City of Chicago. In the case of IPRA, all complaints are logged automatically and are therefore on record. IPRA retains those which pertain to its mandate.

**IPRA** investigates complaints made against all CPD officers in cases of domestic violence, excessive force, coercion and verbal abuse based on bias. In addition, IPRA automatically investigates all cases where a firearm or taser was discharged in a manner that could potentially strike an individual regardless of whether there is any alleged misconduct, as well as all "extraordinary occurrences" (any death or injury to a person while in police custody, any suicide or attempted suicide).

**The office of the Police Ombudsman for Northern Ireland**, established in 2000, was part of several developments in the area of policing that occurred following the *Belfast Agreement*. It has jurisdiction over police officers of Belfast Harbour, Larne Harbour, Belfast International Airports and the Ministry of Defence, as well as the Serious Organized Crime Agency and is expected to be extended shortly to the UK Border Agency. The Police

Ombudsman has several options upon the completion of the investigation: he/she may recommend prosecution, disciplinary proceedings, compensation, or reject the complaint altogether. In 2007–2008, 11 cases involving 12 police officers were prosecuted.

## Conclusion

In summary, this chapter reviewed the police oversight and review bodies in practice in Canada and for some countries with common law rooted in the British tradition. Three types of models were identified based on the level of civilian involvement in the investigation and respective oversight powers.<sup>73</sup>

**The dependent model comprises two sub-types: police investigating police and police investigating another police force.** This model involves agencies that essentially do not get involved in a criminal investigation and the police service conducts the investigation of its own officers or members of another police service.

**The interdependent model, present in British Columbia, Saskatchewan, Alberta, Yukon, New Zealand, United Kingdom and South Australia, introduces civilian involvement into the police criminal investigation.** The first sub-category of this model refers to a civilian observer who monitors the police investigation for impartiality. Hybrid investigation, the other embodiment of interdependence, is represented by an agency whose civilian personnel is active in the investigation and may conduct investigations in collaboration with the police, or undertake them entirely on its own. This model is representative of

<sup>73</sup> Appendix 9 contains the chart representing the different models and their respective oversight bodies.

a combination of police investigative experience and civilian independence.

**The independent model involves civilians or police officers without any ties to the police service under their jurisdiction.**

In the model of independent investigation, the oversight body does not refer the investigation to the police force for any case falling within its mandate. The police service under investigation has no influence over the investigation of its officers. Ontario's SIU, IPRA in Chicago and the Police Ombudsman for Northern Ireland are representative of this model. The key advantage of an independent oversight body is that it offers an appearance of total independence and objectivity.

For Canada, there is no one model that can simply be imported in its current form and expected to function effectively without taking into account particular characteristics of our country. The size of the territory and sheer vastness of the country, coupled with budget constraints, needs to be considered before advocating a duplication of the independent investigation model from a much smaller Northern Ireland, or the interdependent hybrid model from the costly Independent Police Complaints Commission (UK). Some valuable lessons can be learned, however, from our counterparts.

## Chapter 6

### 6. STAKEHOLDER PERSPECTIVES

#### What do others think is the right model?

How police are investigated is not just a “police” issue. Nor is it just a legislative or political one. How police investigate themselves is a fundamentally *human* issue. No member of the public who has experienced the death of a loved one as a result of police action would ever want another to experience the same pain. No RCMP member would ever want another member to have to take a life which they are deeply committed to protecting. And no police officer would ever want to investigate a colleague who has violated the laws (and honour code) which they are dedicated to uphold.

Thus, the perspectives of *all* those impacted by the issue are critical in order to help inform the most appropriate way forward. To this end, the **CPC sought to discover the key recommendations on the issue of police investigating police from a wide cross section of stakeholders by (a) seeking public submissions from all interested parties, (b) conducting interviews with domestic and international bodies, and (c) undertaking a review of a number of federal, and provincial reports** (including a review of all provincial coroner and ombudsman reports between 2001 and present).

All recommendations impacting the issue of the police investigating police were captured, reviewed and considered in the development of the recommended model for the RCMP. Below is a summary of the key recommendations raised from the cross-section of key stakeholders, identified by model.

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HOW POLICE ARE INVESTIGATED IS NOT JUST A “POLICE” ISSUE. NOR IS IT JUST A LEGISLATIVE OR POLITICAL ONE. HOW POLICE INVESTIGATE THEMSELVES IS A FUNDAMENTALLY *HUMAN* ISSUE.

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#### Model 1: Dependent Model

*Police depend on police to undertake investigations—with discretionary use of external police*

#### Key stakeholders that recommend this model as the way to go

The CPC identified a number of recommendations that advocate a dependent model for police investigations of their own members. Of these recommendations, four by coroner’s juries, and by a judge, specifically advocated that investigations of “serious injury, assault or death”<sup>74</sup> involving the police be conducted by “an external police agency.”<sup>75</sup>

A medical examiner suggested that it is not improper for police services to investigate their own members in cases of serious injury or death, since they become public inquiries “where

74 B.C. Coroner’s Service, “Death of 46-year-old male – Case 1 of 3 Police Shootings,” in *2004 Annual Report*.

75 Judge Josiah Wood, *Report on the Review of the Police Complaint Process in British Columbia*, February 2007.

concerned parties can raise questions."<sup>76</sup> A police force supported the idea of a dependent police investigations model, but made an important distinction. Although the police service supported an "integrated police response" to critical police-related incidents, "with investigators from multiple jurisdictions including the subject police service," they were careful to specify that "[t]he lead investigator, however, should not be from the subject police service."<sup>77</sup> Another recommendation echoed a similar sentiment, calling for an integrated regional team to be assembled to investigate "statutory complaints where the circumstances of a complaint necessitate a more thorough investigation than usual."<sup>78</sup>

Three recommendations focused on the specifics of these police-involved incidents, and not the models themselves. The first of these called for a review of police-involved incidents by the police force involved in order to determine "whether re-training of the officer is required before the officer resumes active police duties."<sup>79</sup> The next recommended that formal debriefing sessions be held "with all involved police officers following the completion of any [...] investigation after an incident involving a fatality while in custody."<sup>80</sup> The final recommendation requested that interviews of involved officers be conducted within a specific time frame after a lethal force situation.<sup>81</sup>

76 Chief Medical Examiner of Manitoba, *Public Submission*.

77 RCMP's National Executive Staff Relations Representative Program, *Public Submission*.

78 Member of public, *Public Submission*.

79 Ontario Coroner, *Inquest into the death of O'Brien Christopher-Reid*, 2007.

80 Ontario Coroner, *Inquest into the death of Robert Walker*, 2008.

81 B.C. Coroner, *Inquest into the death of Daniel Antony King*, 2008.

## Model 2: Interdependent Model

*Police and civilians work together to varying degrees throughout criminal investigation*

### Key stakeholders that recommend this model as the way to go

The CPC has identified a total of seven recommendations that advocate the adoption of an interdependent model to conduct the investigation of police-involved serious incidents. Many gave salient explanations for their choice to support an interdependent model. The head of a police commission stated that "for any oversight agency to be effective, it requires a range of capacities and people with a range of skills. It's helpful to have both perspectives—you need a combination of individuals with practical police knowledge to bring both perspectives so that you can make balanced decisions."<sup>82</sup>

Another recommendation stated that "it's really important to strike a balance between investigative expertise and independence. A truly integrative unit reporting to a civilian ensures independence."<sup>83</sup>

An international recommendation supported the hybrid approach to these investigations because it "creates a system in which the police are very much part of the solution to whatever problems they may have."<sup>84</sup> Another international recommendation addressed the uniqueness of the Canadian policing en-

82 Interview with Chair of the Ontario Civilian Commission on Police Services (OCCPS), November 24, 2008.

83 Interview with ASIRT Director, October 27, 2008.

84 Interview with Chair of South Australia Police Complaints Authority, October 29, 2008.



vironment by stating that “a ‘totally civilian’ body may be impractical. It takes a great degree of sophistication and time to properly train investigators. That is why introducing seconded police officers may be preferable.”<sup>85</sup> Yet another international agency recommended that an interdependent model “to best support the public interest, serious complaints of police misconduct should be carried out by independent investigators, or by police investigators working under the oversight of an independent authority.”<sup>86</sup>

Finally, a recommendation contained in the CPC’s Kingsclear Investigation Report advocated that “appropriate response and accountability mechanisms be put in place at the senior officer level to enable senior officers to monitor continuously the progress of any sensitive or large-scale investigation and assure the public of transparency, effectiveness and impartiality.”<sup>87</sup> Justice Dennis O’Connor, in his report following the Public Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, recommended that the CPC be expanded to include more powers and the ability to “conduct joint reviews or investigations with SIRC and the CSE Commissioner into integrated national security operations involving the RCMP.”<sup>88</sup> Another recommendation from the same report also stated that the reformed organization should have the ability to “refer a complaint to the RCMP or to investigate the complaint itself, if deemed appropriate.”<sup>89</sup>

85 Interview with Police Ombudsman for Northern Ireland, October 30, 2008.

86 New Zealand Commissioner of Police, *Public Submission*, March 31, 2008.

87 CPC, *Kingsclear Investigation Report*, 2007.

88 Justice Dennis O’Connor Report, *A New Review Mechanism for the RCMP’s National Security Activities* (2006), Recommendation 3c.

89 *Ibid.*, Recommendations 2, 3c, and 5a.

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“A ‘TOTALLY CIVILIAN’ BODY MAY BE IMPRACTICAL. IT TAKES A GREAT DEGREE OF SOPHISTICATED AND TIME TO PROPERLY TRAIN INVESTIGATORS. THAT IS WHY INTRODUCING SECONDED POLICE OFFICERS MAY BE PREFERABLE.”

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“TO BEST SUPPORT THE PUBLIC INTEREST, SERIOUS COMPLAINTS OF POLICE MISCONDUCT SHOULD BE CARRIED OUT BY INDEPENDENT INVESTIGATORS, OR BY POLICE INVESTIGATORS WORKING UNDER THE OVERSIGHT OF AN INDEPENDENT AUTHORITY.”

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### **Model 3: Independent Model**

*Civilian criminal investigation of police  
(police removed from process)*

### **Key stakeholders that recommend this model as the way to go**

The commission identified a total of 11 recommendations that advocated an independent model to conduct investigations of member-involved serious incidents. While some of these recommendations centered on the need to create bodies independent of the police to investigate critical

police-involved incidents,<sup>90</sup> others simply reiterated the need for all such investigations to be undertaken by independent bodies in those provinces where such an organization currently exists.<sup>91</sup> Where such organizations do exist, recommendations were made to enhance cooperation and communication between the body and the police forces they investigate,<sup>92</sup> and instructions given to ensure that interviews are conducted in a culturally sensitive manner.<sup>93</sup> A recommendation was also made by a coroner's jury specific to police-involved fatal motor vehicle incidents, which suggested that "collision reconstructionists contracted by the Chief Coroner" investigate such incidents.<sup>94</sup>

Two non-governmental organizations (NGOs) emphasized that the RCMP should no longer conduct investigations in cases of serious injury or death that resulted from the actions of their own members. One NGO proposed dissolution of the current CPC and establishment of a brand new civilian oversight body which would, among others, have the authority to investigate cases of police-involved death or serious injury, or a "matter of great public concern."<sup>95</sup> The second NGO advocated the creation of a new agency independent of the RCMP, which would investigate officers whose on-duty conduct resulted in serious injury or death.<sup>96</sup> It was recommended that this

new oversight body should be comprised of men and women who are not currently members of any police force.<sup>97</sup> A further recommendation states that any former RCMP members employed by this body should be prohibited from investigating their former departments or colleagues<sup>98</sup>, a concern which was echoed in the Ontario Ombudsman's investigation into the Special Investigations Unit.<sup>99</sup> The Ombudsman also made numerous recommendations concerning the need to ensure that the recruitment of civilian investigators is increased through an open process.<sup>100</sup>

90 *Tomon Inquiry into the Investigation and Persecution of Derek Horvey-Zenk*, October 2008; and B.C. Coroner Service "Death of 46-year-old mole – Case 1 of 3 Police Shootings" in *2004 Annual Report*.

91 Ontario Coroner, *Inquest into the death of Sean Trudeau*, 2007.

92 Ontario Coroner, *Inquest into the death of Mork Norman Grohom*, 2002; Ontario Coroner, *Inquest into the death of Michael Kolisnyk*, 2006.

93 Ontario Coroner, *Inquest into the death of Maurice Linklater*, 2003.

94 B.C. Coroner Service, "Death of a 29-year-old mole – Case 1 of 1 Police Pursuit" in *2005 Annual Report*.

95 British Columbia Civil Liberties Association, Public Submission, April 14, 2008.

96 Canadian Civil Liberties Association, Public Submission, March 31, 2008.

97 *Ibid.*, Recommendation 6.

98 *Ibid.*, Recommendation 7.

99 Ontario Ombudsman, *Oversight Unseen: Investigation into the Special Investigations Unit's Operational Effectiveness and Credibility* (September 2008), Recommendations 9 and 10.

100 *Ibid.*, Recommendations 11, 12 and 28.

## Chapter 7

# 7. CPC RECOMMENDED MODEL FOR RCMP MEMBER INVESTIGATIONS

Upon consideration of all the CPC findings and recommendations, this report concludes with what is deemed to be the most appropriate model for the handling of RCMP member investigations involving serious injury or death.

To one end of the spectrum lies the "**dependent model**" under which the RCMP is overall currently operating.<sup>101</sup> As outlined in greater detail previously in the report, this model largely represents the status quo for RCMP member investigations. This option would allow the RCMP to continue to investigate itself with a discretionary ability to refer investigations to external police forces (where deemed appropriate to do so by RCMP divisional representatives). No mandatory requirements and minimal national uniformity would be applied to the handling of such investigations.

Given that the RCMP overall already operates within this model, maintaining the status quo would, therefore, require nil additional human or financial resources; no policy or procedural changes; and no legislative changes.

The "**interdependent model**" would introduce the new RCMP Review Body's ability to formally monitor any and all RCMP member investigations (without requiring RCMP permission to do so, as

is currently the case). This model would also allow the RCMP Review Body to refer an RCMP member investigation to another police force, where deemed appropriate. This would thereby remove the RCMP's current discretionary ability to decide when an investigation should be referred (and to whom). This model would also allow the new RCMP Review Body to undertake joint investigations with federal and provincial similarly-mandated bodies.

Overall, this "interdependent model" would require moderate financial and human resources for the new RCMP Review Body. Significant structural, procedural and policy changes for the RCMP would be required. In addition, legislative enhancements to create a new RCMP Review Body capacity to monitor, refer or conduct joint investigations with like bodies should also be considered.

At the very other end of the spectrum lies the creation of an entirely "**independent body**" that would be mandated to undertake all serious injury or death-related criminal investigations into RCMP members. This would ensure that the RCMP was removed entirely from the investigative process with only civilians mandated to undertake criminal investigations into members involved in serious injury or death.

This independent model would therefore require significant human and financial resources and substantial legislative drafting to create a national body with

<sup>101</sup> It is important to note here that the current model the RCMP operates within also has an Observer Pilot Project in place—and the observer is a feature of the interdependent model. That said, the RCMP is not considered an interdependent model because the observer is only operating in two RCMP divisions and remains at the discretion of the RCMP to allow CPC involvement.

the mandated powers to undertake criminal investigations into the RCMP. Given the geographic, political and legislative climate within which the RCMP is currently operating, this option may be considered. However, given the role of provinces in the administration of justice and the growing number of provincial criminal investigative bodies emerging (like SIU, ASIRT and others) **it is therefore recommended that the new RCMP Review Body be provided with enhanced legislative powers to effectively work with these provincial bodies (through joint investigations and enhanced monitoring capacity for RCMP member investigations), as per detailed recommendations outlined below.**

## Key features of the recommended "Interdependent Model"

In seeking to identify the best option for the handling of member investigations, the CPC's recommended option underlines the importance of police in the process (as part of the solution), while also recognizing that an enhanced degree of civilian engagement in the criminal investigation process is fundamental to ensure its impartiality and integrity. To that end, the CPC recommends shifting from the current "dependent model" towards the "interdependent model."

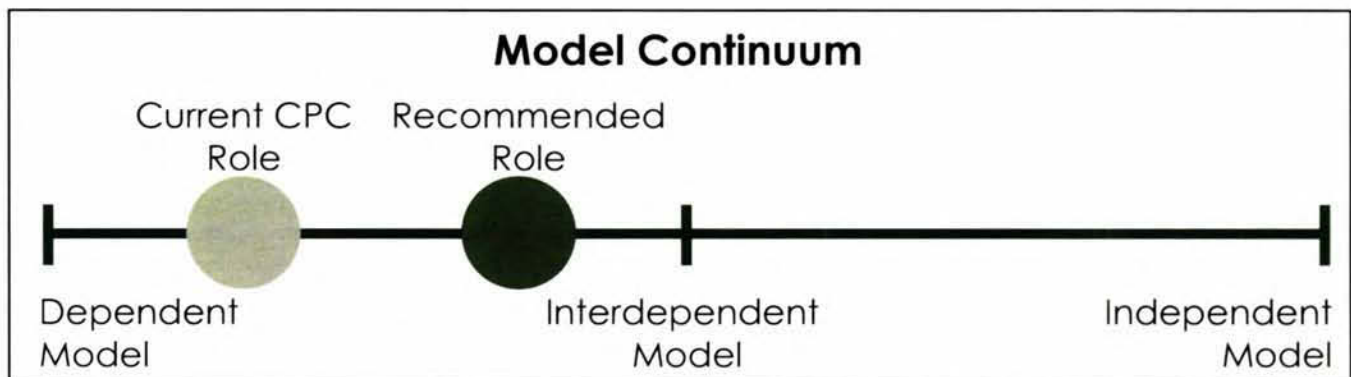
The recommended "interdependent model" rests between the basic dependent model and the full-featured interdependent model.

Overall, the CPC believes that a criminal investigation resulting from member conduct is unlike *any other* criminal investigation and, accordingly, must be handled procedurally very differently. Therefore, to help transition the RCMP from its current "dependent model" to the "interdependent model," the following legislative, structural, and policy changes are recommended.

“

IN SEEKING TO IDENTIFY THE BEST OPTION FOR THE HANDLING OF MEMBER INVESTIGATIONS, THE CPC'S RECOMMENDED OPTION UNDERLINES THE IMPORTANCE OF POLICE IN THE PROCESS (AS PART OF THE SOLUTION), WHILE ALSO RECOGNIZING THAT AN ENHANCED DEGREE OF CIVILIAN ENGAGEMENT IN THE CRIMINAL INVESTIGATION PROCESS IS FUNDAMENTAL TO ENSURE ITS IMPARTIALITY AND INTEGRITY.

”



## A. Legislative Recommendations

Given the CPC's finding that the issue today is not whether civilian review is desirable, but rather, how civilian involvement in investigations can be most effective, it is recommended that CPC legislation be modified to provide the new RCMP Review Body with the mandate to:

- Refer an RCMP member investigation.

**It is recommended that the current legislation be updated to allow the RCMP Review Body to: “refer the investigation to a police force other than the RCMP or to another criminal investigative body in Canada.”**

- Monitor RCMP member investigations.
  - **The new RCMP Review Body should be responsible to determine when the monitoring capacity should be applied** (discretion would lie with the RCMP Review Body and not with the RCMP, as is currently the case).
  - Additionally, **grant the new RCMP Review Body with the authority to monitor any criminal investigation relating to a member of the RCMP, where it deems it appropriate to do so.** This would therefore extend the RCMP Review Body's ability to deploy the observer to an investigation into an RCMP member being undertaken by an external police service and/or provincial criminal investigative body.
    - While permission from the investigating agency/body would be required to embed the observer, the authority would at least provide the

new RCMP Review Body with the power where granted permission to observe.

- **Undertake joint investigations with like-mandated bodies.**

Proposed draft legislation could include: “The board may conduct a joint investigation, review, inquiry, audit or hearing with another body in Canada which has powers, duties and functions that are similar to the board's, including provincial criminal investigative bodies.” This would allow the new RCMP Review Body to undertake investigations with new criminal investigative bodies (like ASIRT) as they emerge.

- **The RCMP Commissioner revise the current version of his Standing Orders to:**

- Include new Standing Orders to direct handling of member investigations, as per the recommendations herein this report.
  - Specify that member investigations are not to be handled like any other criminal investigation and must, therefore, follow strict procedures set out for member investigations.
- Specifically revise current section 9: *A member shall not investigate a complaint where that member may be in a conflict of interest situation.*
  - It is recommended that the term “conflict of interest” be further defined.

## B. Structural Recommendations

The CPC's finding that national and divisional data collection is non-existent for member investigations (combined with varied divisional RCMP record-keeping and retrieval methods on this issue) demonstrates a lack of attention being placed on member investigations, and the CPC makes the following key recommendations:

- **Create the position of National RCMP Member Investigation Registrar to manage, track, train, promote and advise on all issues related to member investigations.**
  - This position would help address CPC findings related to the lack of consistency in current data gathering, monitoring and analysis of member investigations.
- The National Registrar would be responsible to:
  - **Create an RCMP National Registry for all police investigating police data** (especially for serious injury, sexual assault and death cases) with timely sharing of data with the CPC.
  - **Create and manage an RCMP Police Investigating Police Advisory Group** to help determine actions to be taken in sensitive cases.
  - **Monitor effective compliance with policy and enforce compliance where necessary** (e.g. consultation with Crown re: laying of charges mandatory).
- **Create and oversee a specialized unit with expertise on the handling of RCMP historical cases** to be consulted—or deployed—where necessary.
- **Create a mobile critical incident member investigation team (with a CPC civilian observer embedded)** that can be deployed where both the RCMP National Registrar and the CPC Chair jointly determined it necessary to do so.
  - A pool of qualified senior investigators placed on standby that can be deployed quickly (e.g. peacekeepers).

## C. Policy and procedural recommendations

### Procedural recommendations

Prior to addressing the specific policies and protocols required for the handling of RCMP member investigations, it is first necessary to point out that, in the opinion of the CPC, there are certain instances where the RCMP should *not* investigate itself. Following is a chart that delineates that as the seriousness of the member-involved offence increases, a corresponding degree of independence and impartiality in that member investigation is required.

As identified through the report's case file and policy reviews, the current RCMP handling of member investigations (regardless of the type) remains *entirely discretionary* at the divisional level. There is no current national, HQ oversight of the process and no mandatory actions required for any member investigation. The chart below highlights the CPC's contention that as the seriousness of the offence alleged against a member rises, the discretion for the RCMP to respond as it deems appropriate must be removed and mandatory requirements inserted in its place.

“

THERE ARE CERTAIN INSTANCES WHERE THE **RCMP** SHOULD *NOT* INVESTIGATE ITSELF.

”

“

AS IDENTIFIED THROUGH THE REPORT'S CASE FILE AND POLICY REVIEWS, THE CURRENT **RCMP** HANDLING OF MEMBER INVESTIGATIONS (REGARDLESS OF THE TYPE) REMAINS *ENTIRELY DISCRETIONARY* AT THE DIVISIONAL LEVEL. THERE IS NO CURRENT NATIONAL, **HQ** OVERSIGHT OF THE PROCESS AND NO MANDATORY ACTIONS REQUIRED FOR ANY MEMBER INVESTIGATION.

”

# Recommended RCMP Response to Member Investigations

Type of offence defined	Member offence (by level of seriousness)	Current RCMP handling	Recommended RCMP handling of member investigation
<b>MANDATORY RCMP ACTION WITH CPC ROLE</b>			
<b>Indictable offences<sup>102</sup></b> An offence which, in Canada, is more serious than those which can proceed by summary conviction. In many regards, this is the Canadian equivalent to the USA felony. Murder and treason are examples of crimes committed in Canada which would be indictable offences. These crimes are usually tried by federally-appointed judges and carry heavy sentences.	<b>Death</b> Criminal Negligence causing Death (s. 220 CCC)	<b>Discretionary at RCMP Division level</b>	<b>RCMP Mandatory Action:</b> <ul style="list-style-type: none"> <li>CPC to refer all death cases to external police service or provincial criminal investigative body (no RCMP member involvement)</li> <li>Divisional MOUs activated</li> <li>CPC Observer embedded</li> </ul>
	<b>Serious Injury &amp; Sexual Assault</b> Assault with Weapon or Assault Causing Bodily Harm (s. 267 CCC)  Sexual Assault (s. 272 CCC)	<b>Discretionary at RCMP Division level</b>	<b>RCMP Mandatory Action:</b> CPC and National Registrar to determine appropriate response from options below for serious injury/sexual assault cases: <ul style="list-style-type: none"> <li>Referral to external police service or to provincial investigative body through MOU<sup>103</sup></li> <li>Deployment of RCMP HQ mobile critical incident member investigation team</li> <li>CPC Observer embedded</li> </ul>
<b>DISCRETION RETAINED BY THE RCMP</b>			
<b>Hybrid Offences</b> Dual Procedure Offences which Crown can elect to proceed with an indictable offence or a summary conviction.	<b>Assault</b> (s. 265 CCC)	<b>Discretionary at RCMP Division level</b>	<b>RCMP HQ National Registrar retains discretion to determine appropriate response.</b>
<b>Summary Conviction</b> In Canada, a less serious offence than indictable offences for which both the procedure and punishment tends to be less onerous.	<b>Example:</b> Theft under \$5,000	<b>Discretionary at RCMP Division level</b>	<b>RCMP HQ National Registrar retains discretion to determine appropriate response.</b> <ul style="list-style-type: none"> <li>Recommended CPC standard policies and procedures are followed (outlined next).</li> </ul>

**MANDATORY**

**DISCRETIONARY**

## Recommendation No. 12

Create the position of National RCMP Member Investigation Registrar responsible to provide the CPC Chair with regular monthly reports for all member investigations undertaken for indictable offences, hybrid offences and summary convictions.

<sup>102</sup> See Appendix 10 for the full list of Criminal Code Offence Grid which specifies whether an offence is indictable, summary or hybrid.

<sup>103</sup> The RCMP National Registrar is to oversee the creation and signing of new memoranda of understanding in all divisions to explicitly define the circumstances under which an external police force or criminal investigative body must undertake an investigation, when RCMP members can form part of the investigative team, and when the CPC Observer should be embedded (as per above recommendations).



## Policy Recommendations

The CPC's policy analysis revealed that RCMP policies, while voluminous, are inconsistent and do not adequately address the handling of member investigations. Criminal investigations into members should not be treated the same as any other criminal investigation. To address the current void in effective and consistent policies and procedures related to the handling of member investigations, the CPC recommends the following key changes:

- Criminal investigations of RCMP **members into allegations of serious injury, sexual assault or death in hardship or remote postings must be consistent with all other member investigation protocols, no exception.**
- **An administrative review is mandatory for all member investigations.**
- **The RCMP establish formalized MOUs for every RCMP division to ensure the mandatory referral of member investigations to an external police service is consistent and documented.** At present, only New Brunswick (J) Division, Nova Scotia (H) Division and Newfoundland (B) Division have formalized MOUs in place.

### Recommendation No. 13

The RCMP should formalize a memorandum of understanding for every division across the country to ensure consistency in the referral of member investigations to an external police service.

Where it is deemed appropriate for the RCMP to handle its own member investigation or where an RCMP member forms part of the investigative team (led by an external police force), the following policy recommendations would apply.

“

**THE CPC'S POLICY ANALYSIS REVEALED THAT RCMP POLICIES, WHILE VOLUMINOUS, ARE INCONSISTENT AND DO NOT ADEQUATELY ADDRESS THE HANDLING OF MEMBER INVESTIGATIONS. CRIMINAL INVESTIGATIONS INTO MEMBERS SHOULD NOT BE TREATED THE SAME AS ANY OTHER CRIMINAL INVESTIGATION.**

”

- **Create an RCMP integrated manual** to specifically address procedures for investigations undertaken by the RCMP into one of its own members. This integrated manual should have links to any additional relevant policies for ease of reference. Key features to be included in the integrated manual:

## CPC recommended investigative team structure:

- ❑ **Qualified primary investigator at least one rank higher than that of subject member;**
- ❑ **A minimum of two members required for every member investigations** (including for subject and witness officer interviews) [the CPC found that 17 of 28 cases reviewed had only a single member assigned];
- ❑ **Qualifications of investigative team mandatory** [as per recommendation];
- ❑ **Workload of members assigned to member investigations reassigned or adjusted** to prioritize member investigation accordingly;
- ❑ **Timely completion of investigation** preferably six months and not recommended to exceed one year;
- ❑ **Assign liaison position to member of investigative team to ensure timely and effective communication with public, family and subject member;**
- ❑ **Self-identification of knowledge of subject member mandatory** (i.e. conflict of interest form);
- ❑ **Use of a probe for lower-end investigations.**<sup>104</sup>

## Recommendation No. 14

The RCMP should create an Integrated Manual to specifically address procedures for investigations undertaken by the RCMP into one of its members.

<sup>104</sup> The "probe" consists of interviews with the complainant, victim and any other third-party witnesses; a review of operational files related to the complaint; and a review of members' notes and reports. This information is used to draft a report to help determine how a lower-end statutory investigation should proceed.

## Chapter 8

# 8. Complete list of findings and recommendations

### CPC Key findings

#### **Finding No. 1**

What is at issue today is no longer whether civilian review is desirable, but rather, how civilian involvement in investigations can be most effective.

#### **Finding No. 2**

The very nature of conducting criminal investigations requires that police, to some extent, must be part of the solution.

#### **Finding No. 3**

RCMP policies, while voluminous, are inconsistent and do not adequately address the handling of member investigations.

#### **Finding No. 4**

The lack of national and divisional data collection - or monitoring capacity - for member investigations (combined with varied divisional RCMP record-keeping and retrieval methods on this issue) demonstrates a lack of attention being placed on member investigations.

#### **Finding No. 5**

Overall, personal knowledge of subject member for primary investigators occurred 25% of the time and 4% of primary investigators were from the same detachment as the subject member.

#### **Finding No. 6**

There was a slightly higher likelihood of primary investigators personally knowing the subject member (14%) in remote and northern postings than in other more centralized locations (12%). However, there does remain a large number of primary investigators (12%) from more centralized divisions where external assistance is more readily accessible.

#### **Finding No. 7**

Overall, in the opinion of the CPC investigators, the use of expert witnesses in the cases was appropriate.

### **Finding No. 8**

Overall, the number of team members assigned to the 28 investigations was inadequate.

### **Finding No. 9**

Overall, the CPC found the structure and reporting relationships of the 28 cases reviewed to be partially or entirely inappropriate (68%).

### **Finding No. 10**

Of the 28 files that the CPC investigators reviewed, it was found that in 17 of these files, the subject member and witnesses were investigated by a lone RCMP investigator.

### **Finding No. 11**

Overall, the section or unit tasked with member investigations (including their mandates) lack uniformity across the country.

### **Finding No. 12**

In the 28 case files reviewed, the qualifications of the investigators varied greatly. Some had all the major crime and related courses, while others had as few as two years experience in the General Investigation Section.

### **Finding No. 13**

Overall, it was found that the investigations conducted by the Major Crime Unit were focused and completed in a timely fashion, as they had the ability, resources and the time to conduct the investigation. This was not found to be the case when the investigation was assigned to a Detachment Commander or General Duty or GIS member whose heavy workload was not adjusted accordingly.

### **Finding No. 14**

Of the 28 cases reviewed, six of which involved death, an administrative review was only undertaken in four cases: two of which were member-involved shootings (Manitoba (D) & Nunavut (V) Divisions); and two of which were in-custody deaths (Saskatchewan (F) and Alberta (K) Divisions).

### **Finding No. 15**

The CPC found that, overall, the level of response was handled partially or entirely inappropriately (68%). Key concerns related to interviews being undertaken by lone investigators as well as inconsistent referral of cases to the appropriate investigative unit.

### **Finding No. 16**

Of the eight charges laid, three (37.5%) resulted in successful convictions, while five (62.5%) resulted in no convictions.

### **Finding No. 17**

In cases where an immediate response was required, such as member-involved shootings and in-custody deaths, the CPC investigators found that all necessary personnel were dispatched to the incident as soon as possible and practicable.

### **Finding No. 18**

The CPC found that most investigations were completed in a timely manner. The files that took significantly longer to complete were not due to a lack of interest but rather to the heavy workload of the investigator in addition to general hindrances encountered (court dates, difficulty locating witnesses or complainants, employee absence, etc.).

### **Finding No. 19**

Overall, the CPC found that the RCMP investigators were free of bias and were professional and conscientious in their approach to their assignments. It was also found that most subject members and witness members cooperated with the CPC investigators and conducted themselves in a professional manner.

### **Finding No. 20**

After an in-depth review of the randomly selected cases, it was found that in most cases, the appropriate policies were complied with. In the few cases where it was found that some aspects of the related policies were not adhered to, they were minor in nature and did not appear to have any effect on the outcome of the investigation.

# CPC Recommendations

## Recommendation No. 1

Overall, it is the CPC's contention that criminal investigations into members should not be treated the same as any other criminal investigation.

## Recommendation No. 2

The CPC recommends that the rank of the primary investigator must be at least one rank higher than that of the subject member.

## Recommendation No. 3

In order to reduce the length of time to conduct statutory investigations against RCMP members, it is recommended that member investigations be assigned to a team of (minimum) two members in a specialized investigative unit.

## Recommendation No. 4

The RCMP should assign competent senior investigators with a proven track record in court who have completed the appropriate courses (e.g. sexual assault, major crime, interviewing and interrogation techniques and statement analysis); who can effectively interview witnesses with strong analytical skills.

## Recommendation No. 5

Workload of members assigned to member investigations should be reassigned or adjusted to prioritize member investigations accordingly.

## Recommendation No. 6

Special attention should be paid to enforce the RCMP requirement to consult with the Crown prior to laying any charges against members, given the particular need for independence and impartiality in member investigations. The RCMP should also undertake a review regarding recommendations made to the Crown in cases involving RCMP members.

## Recommendation No. 7

Given the sensitivity and transparency required for member investigations, it is recommended that administrative reviews be undertaken in all cases of serious injury, sexual assault or death.

### **Recommendation No. 8**

The RCMP should consider applying the use of the "probe"<sup>105</sup> to lower-end investigations in all divisions.

### **Recommendation No. 9**

The RCMP could consider recommending that the Officer in Charge of the Criminal Operations Section be the appropriate recipient of the probe report in order to determine whether or not a lower-end investigation should proceed to a statutory investigation.

### **Recommendation No. 10**

Historical cases require expertise not typical of most investigators. It is therefore recommended that these types of cases be handled by a specialized unit at the national or regional level.

### **Recommendation No. 11**

Policy guiding criminal investigations of RCMP members should be standardized nation wide. This would allow for the statutory investigations into RCMP members to be conducted uniformly across the country.

### **Recommendation No. 12**

Create the position of National RCMP Member Investigation Registrar responsible to provide the CPC Chair with regular monthly reports for all member investigations undertaken for indictable offences, hybrid offences and summary convictions.

### **Recommendation No. 13**

The RCMP should formalize a memorandum of understanding for every division across the country to ensure consistency in the referral of member investigations to an external police service.

### **Recommendation No. 14**

The RCMP should create an Integrated Manual to specifically address procedures for investigations undertaken by the RCMP into one of its members.

<sup>105</sup> A probe is a divisional best practice identified which is ordered when a complaint has a criminal element but may lack sufficient information to determine how to proceed. The "probe" consists of interviews with the complainant, victim and any other third-party witnesses; a review of operational files related to the complaint; and a review of members' notes and reports. This information is used to draft a report to help determine how a lower-end statutory investigation should proceed.

Pursuant to paragraph 45.42(3)(a) of the *RCMP Act*, I respectfully submit my Interim Report.



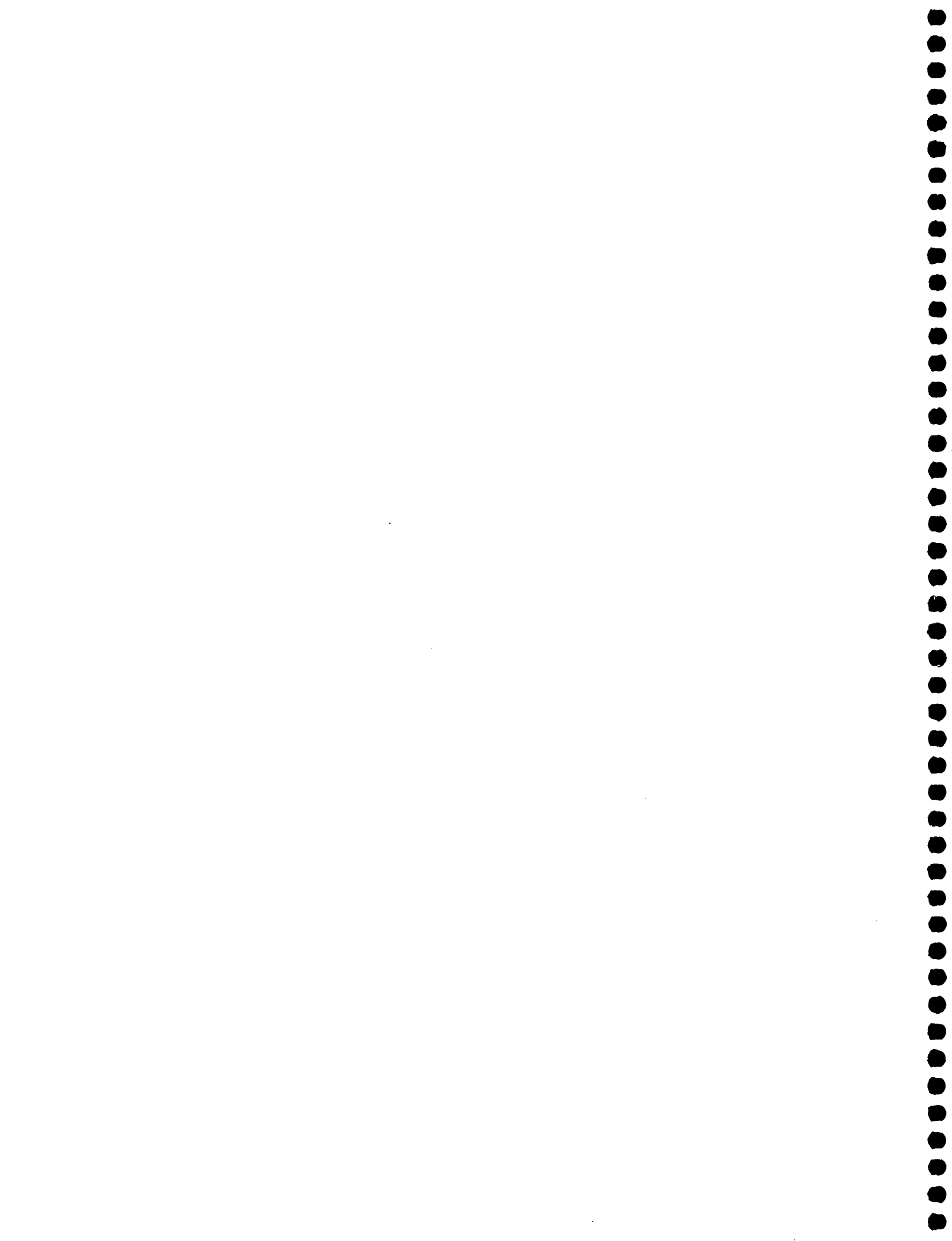
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Paul E. Kennedy  
Chair





# Appendices



# Appendices

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## Chair-Initiated Public Complaint

### Police Investigating Police – RCMP Investigations into other RCMP Members in Cases Involving Serious Injury or Death

November 28, 2007

File No. 2006-1532

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As Chair of the Commission for Public Complaints Against the RCMP, I am initiating a complaint into the conduct of those unidentified RCMP members who have conducted criminal investigations into the activities of other RCMP members, in cases that involved serious injury or death, which have taken place anywhere in Canada between April 1, 2002 and March 31, 2007.

Various members of the public and the media have expressed concern about the propriety of RCMP members investigating other RCMP members, especially in cases of this nature.

I am satisfied that there are reasonable grounds to investigate the conduct of those members of the RCMP who have conducted criminal investigations into the activities of other RCMP members in cases that involved serious injury or death. Accordingly, pursuant to subsection 45.37(1) of the *RCMP Act*, I am today initiating a complaint into the conduct of the RCMP members involved in such investigations during the time period shown above, specifically:

1. whether the RCMP members involved in these investigations conducted the investigations free of actual or perceived conflict of interest, whether they responded appropriately and proportionately to the gravity of the incident, whether they responded in a timely fashion and whether their conduct adhered to the standards set out in section 37 of the *RCMP Act*;
2. whether these same RCMP members complied with all appropriate policies, procedures, guidelines and statutory requirements for such investigations; and
3. whether existing RCMP policies, procedures and guidelines are adequate to ensure that fair, effective, thorough and impartial investigations are carried out by RCMP members when investigating fellow RCMP members.

Furthermore, I am instituting a public interest investigation into this complaint, pursuant to subsection 45.43(1) of the *RCMP Act*.

---

## Police Investigating Police Public Interest Investigation

### Terms of Reference

#### General Scope

- The Commission for Public Complaints Against the RCMP (CPC) will conduct a public interest investigation into the following Chair-initiated complaint:
  - Complaint into the conduct of those unidentified RCMP members who have conducted criminal investigations into the activities of other RCMP members, in cases that involved serious injury or death, which have taken place anywhere in Canada between April 1, 2002 and March 31, 2007.
- In conducting its public interest investigation, the CPC will not necessarily examine all such criminal investigations; rather, a sample of cases will be selected from across Canada drawn from the five regions policed by the RCMP.

#### Standards Against Which Conduct is to be Assessed

1. Whether the RCMP members involved in these investigations conducted the investigations free of actual or perceived conflict of interest, whether they responded appropriately and proportionately to the gravity of the incident, whether they responded in a timely fashion and whether their conduct adhered to the standards set out in section 37 of the *RCMP Act*.

More specifically:

- Line management
    - Whether any actual or perceived conflict of interest.
    - Appropriateness of management structure and reporting relationships.
  - Appropriate level of response
    - Whether RCMP investigative team response to the incident was appropriate and proportionate to the gravity of the incident.
    - Whether qualified investigators have been assigned.
  - Timeliness of the response
    - Whether members of the RCMP investigative team responded in a timely fashion to the incident.
  - Conduct
    - Whether the conduct of members of the RCMP investigative team during the course of the investigation was consistent with section 37 of the *RCMP Act*.
2. Whether these same RCMP members complied with all appropriate policies, procedures, guidelines and statutory requirements for such investigations.
  3. Whether existing RCMP policies, procedures and guidelines are adequate to ensure that fair, effective, thorough and impartial investigations are carried out by RCMP members when investigating fellow RCMP members.

## Salient CPC cases with significant implications

It is important to learn from past experience by looking at some of the seminal CPC reviews undertaken in order to consider the key recommendations made in these specific cases that could help inform how the RCMP should investigate members involved in serious injury or death more generally.

### 1. Kingsclear Youth Training Centre Final Report

In October 2007, the CPC released the Final Report of the public interest investigation into complaints received with regard to RCMP investigations of alleged sexual abuse at the Kingsclear Youth Training Centre in New Brunswick.

The investigation examined allegations of an improper RCMP investigation of alleged criminal conduct by Staff Sergeant Clifford McCann, Kingsclear staff and residents, as well as allegations that RCMP officers engaged in activities designed to cover up the alleged criminal conduct. The final report found that the RCMP's criminal investigations were inadequate to such an extent that they created a perception of a cover-up.

Among the many recommendations, the CPC advised that:

- "any sensitive or large-scale investigation into allegations which impact on the community's trust in the RCMP should be tasked to another police service or, at the very least, to a team of RCMP officers from another region or province who would have the appropriate experience and who would be unfamiliar with the member under investigation. This would assist in limiting the perception of bias and ensure that public trust in the RCMP is maintained."
- In reply to the abovementioned recommendation, the RCMP Commissioner agreed, stating: "appropriate policies and practices need to be in place to provide for independent investigations" and that a development of policies addressing the matter of such investigations is "under way."<sup>1</sup> A new *External Investigations or Review Policy* (outlined in greater detail in the next chapter) was developed and is anticipated to be published shortly.

### 2. Chair-Initiated Complaint into the Shooting Death of Ian Bush

In October 2005, Ian Bush, a 22-year-old mill worker, was shot to death by an RCMP Constable in Houston, British Columbia. In September 2006, a CPC review was launched into the circumstances surrounding Ian Bush's death as well as the integrity of the subsequent criminal investigation.

In the Final Report issued on November 28, 2007, the following findings, among others, were presented:

- The RCMP Major Crime Unit members who investigated Mr. Bush's death did so in a manner free from any conflict of interest, bias or partiality.

<sup>1</sup> In his reply letter dated September 13, 2007, the Commissioner acknowledged the receipt of the CPC report and provided comments in response.

## Appendix 2

- The North District Major Crime Unit conducted a highly professional investigation into Mr. Bush's death and exemplified a best practice for major crime investigations.
- The CPC cleared the RCMP officer involved of any wrongdoing.

Key recommendations included:

- The RCMP develop policy that provides direction to on-scene RCMP members in major cases involving investigation of police conduct, i.e. situations where the police investigate the police, including the need to ensure real and perceived impartiality.

The CPC's findings were met with disappointment on the part of the Bush family, who decided to proceed with a civil lawsuit against the RCMP, the B.C. Solicitor General and the B.C. Attorney General.

There are two other salient cases that are subject to a CPC review but currently remain underway with a Final Report and recommendations pending. Below is a summary of the two cases, for information purposes.

### **3. Chair-Initiated Complaint into the Shooting Death of Kevin St. Arnaud**

On December 19, 2004, Kevin St. Arnaud, a robbery suspect, was fatally shot by Constable Ryan Shermetta, a member of the Vanderhoof RCMP Detachment in British Columbia. The shooting was investigated by the "E" Division North District Major Crime Unit based in Prince George.

In January 2005, the British Columbia Civil Liberties Association filed a public complaint against the RCMP alleging that Mr. St. Arnaud was shot without justification. Because there were three investigative processes relating to the case already in place, the RCMP Commissioner decided against a public complaint investigation.

In February 2006, the regional Crown counsel stated that no criminal charges would be laid against the involved RCMP officer. As a result, in March 2006, the CPC initiated a complaint into the events surrounding the death of Kevin St. Arnaud. In January 2007, the coroner's inquest brought the adequacy of the original criminal investigation into question and the CPC added to the complaint the allegation of inadequate investigation conducted by the RCMP.

The investigation conducted by the RCMP public complaints investigator and the CPC file analyst revealed facts that led to the suspension of the RCMP officer involved in the incident, as well as a referral of the investigation to Crown counsel for possible perjury charges.



## 4. Chair-Initiated Complaint into the In-Custody Death of Robert Dziekanski

On October 14, 2007, in an attempt to subdue a man at the Vancouver International Airport, four RCMP officers deployed a conducted energy weapon. The man, a Polish immigrant who did not speak either of Canada's official languages, died at the scene. The event was videotaped by a bystander and broadcast around the world, causing public outrage about the use of conducted energy weapons and the RCMP officers' handling of the incident.

In November 2007 the CPC launched a complaint into the conduct of the RCMP members present at the Vancouver International Airport on October 14, 2007, and the adequacy of the subsequent criminal investigation. In May 2008, an inquiry was launched headed by retired Court of Appeal Judge Thomas Braidwood. In a December 12, 2008 announcement, B.C. Crown prosecutors declared that none of the RCMP officers involved would be criminally charged for their actions.

The CPC review and the Braidwood inquiry both remain ongoing. The CPC report is anticipated to be released in the near future.



## Additional relevant reports

Four additional high profile reports have recently been released that address the issue of police investigating police. Each made significant recommendations for change to improve the current police oversight system—all of which were actively considered by the CPC in the development of its own recommended model for the RCMP. Highlights are outlined below.

### 1. **December 2006: Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar: A New Review Mechanism for the RCMP's National Security Activities.**

The report made 13 recommendations for enhancements to the review of the RCMP's national security activities (in addition to the national security activities of other government departments). Of particular relevance to the police investigating police issue were the following recommendations for the CPC (which Justice O'Connor recommended should be restructured and renamed the Independent Complaints and National Security Review Agency for the RCMP, ICRA for short):

- **Recommendation 3a:** ICRA [should have the authority to] conduct self initiated reviews with respect to the RCMP's national security activities, similar to those conducted by the Security Intelligence Review Committee (SIRC) with respect to CSIS.
- **Recommendation 3c:** ICRA's mandate should include authority to conduct joint reviews or investigations with SIRC and the [Communications Security Establishment] CSE Commissioner into integrated national security operations involving the RCMP.
- **Recommendation 3d:** ICRA [should have the authority to] conduct reviews or investigations into the national security activities of the RCMP where the Minister of Public Safety so requests.
- **Recommendation 4:** ICRA should have the following powers:
  - (a) extensive investigative powers, similar to those for public inquiries under the *Inquiries Act*, to allow it to obtain the information and evidence it considers necessary to carry out thorough reviews and investigations; those powers should include the power to subpoena documents and compel testimony from the RCMP and any federal, provincial, municipal or private sector entity or person;
  - (b) power to stay an investigation or review because it will interfere with an ongoing investigation or prosecution; [...]
  - (d) power to engage in or to commission research on matters affecting the review body.
- **Recommendation 5a:** ICRA should [have] in the first instance, ability [...] to refer a complaint to the RCMP [...] or to investigate the complaint itself, if deemed appropriate.

- **Recommendation 5e:** With respect to complaints, opportunity for the Commissioner of the RCMP and affected members of the RCMP to make representations to ICRA and, when a hearing is commenced, to present evidence and be heard personally or through counsel.
- **Recommendation 5i:** ICRA [should have] the ability [...] to seek the opinions or comments of other accountability bodies such as the Canadian Human Rights Commission, the Privacy Commissioner of Canada and the Information Commissioner of Canada.
- **Recommendation 8:** ICRA should have an adequate budget to fulfill its mandate in relation to the RCMP's national security activities, including for purposes of self-initiated review.
- **Recommendation 11:** The government should establish statutory gateways among the national security review bodies, including ICRA, in order to provide for the exchange of information, referral of investigations, conduct of joint investigations and coordination in the preparation of reports.
- **Recommendation 12:** The government should establish a committee, to be known as the integrated National Security Review Coordinating Committee...comprising the chairs of ICRA and [SIRC], the CSE Commissioner and an outside person to act as Committee Chair. INSRCC would have the following mandate:
  - to report on accountability issues relating to practices and trends in the area of national security in Canada;
  - to initiate discussion for co-operative review with independent review bodies for provincial and municipal police forces involved in national security activities.

## **2. December 2007: *Rebuilding the Trust: The Task Force on Governance and Culture Change in the RCMP***

The Task Force on Governance and Culture Change in the RCMP, headed by David Brown, Q.C., released its findings on December 14, 2007.<sup>1</sup> This review was important to all provinces that utilize the RCMP as their provincial police force, as the western provinces do. The report revealed that "radical changes" are needed in the way that the RCMP accounts to the public. One of the report's 49 recommendations opted for the creation of a new Independent Commission for Complaints and Oversight of the RCMP.<sup>2</sup> The report included the following recommended features of a public complaints process:

- The RCMP should attempt informal resolution of complaints as early as possible.
- If the RCMP is unable to resolve complaints informally, the report recommends that an "effective complaints body must have complete authority to oversee, monitor, review, initiate and, if necessary, investigate complaints."
- Where complaints relate to policy or service issues, they should be referred directly to a public complaints body for consideration and response.
- Complaints relating to actions of a police officer or the performance of an officer's duties should be referred initially to the head of the Force.

<sup>1</sup> *Rebuilding the Trust – Report of the Task Force On Governance and Cultural Change in the RCMP, December 2007.*

<sup>2</sup> Recommendation 3.

### **Create an Independent Commission for Complaints and Oversight for the RCMP (ICCOR)**

— established under the *RCMP Act* reporting to the Minister. Proposed body would:

- Incorporate the mandates of the CPC and the ERC with expanded responsibilities and authorities (consistent with an Ombudsman). The proposed ICCOR structure:
  - Investigations unit with experienced investigators;
  - Dispute mediation unit;
  - Complaint evaluation and data collection unit;
  - Separate external review function for grievance and discipline appeals.

#### **Proposed ICCOR responsibilities:**

- Initiate investigations.
- Self-initiate reviews (or at the request of the Minister, the Commissioner or the proposed RCMP Board of Management) of any incident/aspect of RCMP operations.
- Act as central and single collection and processing point for all complaints against RCMP members, regardless of origin.
- Track and evaluate complaints, discipline and grievances to identify systemic issues and trends (or key deficiencies).
- Mandate to review any aspect of police operations including operational reviews;
- Make recommendations to the Commissioner and the proposed Board of Management as well as report publicly on recommendations and findings;
- Consider complaints and conduct investigations in private (if appropriate).

### **3. September 2008: Oversight Unseen: Investigation into the Special Investigations Unit's Operational Effectiveness and Credibility**

After receiving public complaints questioning the thoroughness and independence of Ontario's Special Investigations Unit (SIU) investigations, the Ontario Ombudsman, Mr. André Marin, launched an investigation into the agency's credibility and effectiveness.

The Ombudsman determined that the SIU faces numerous challenges, "continues to struggle to assert its authority," and because it is staffed by several former police officials, it is "steeped in police culture." The Ombudsman insisted on the need for greater transparency and independence.

The report contained 46 recommendations directed at the SIU, the Attorney General, and the Ontario Government. Among them, the Ombudsman advised that none of the SIU members should be involved "in any capacity" in cases implicating their former police force; that the agency take "immediate steps" to ensure civilian representation among investigative managers; and that concerns pertaining to certain policing practices, such as the use of Tasers<sup>3</sup>, that emerge during the course of SIU investigation, should be made public.

3 Also known as conducted energy weapons.

Following the release of the report, on September 30, 2008, the Ministry of the Attorney General pledged several concessions, including increases in the budget of the unit and funding for a Mobile Investigative Centre that will allow the SIU investigators to arrive at the scene of major incidents independent of the police service involved.

#### **4. February 2009: *Alone and Cold: Inquiry into the Death of Frank Paul – The Davies Commission, Interim Report***

- In December 1998, Frank Paul was rejected from jail, not given an option of staying in the sobering unit of the Detox Centre and left in an alley overnight by two police officers from the Vancouver Police Department (VPD).
- On February 22, 2007 the Minister of Public Safety and Solicitor General announced a public inquiry into the Frank Paul case.
- The Commission of Inquiry, headed by former B.C. Supreme Court Judge William H. Davies, Q.C., examined the circumstances of Paul's death as well as the pursuant police investigation, an investigation "flawed by reason of inadequate policies and conflicts of interest inherent in police officers investigating fellow police officers for possible criminal conduct."
- The report was released on February 12, 2009. It contains 12 recommendations. Of particular interest are:
  - 4. I recommend that British Columbia develop a civilian-based criminal investigation model for the investigation of police-related deaths occurring in the municipalities policed by the 11 municipal police departments.
  - 5. I recommend that the initial mandate of this organization (which I suggest be named the Independent Investigation Office [IIO]) [...] include a wide variety of factual circumstances, including [...] a death in a police department jail cell, a death resulting from an officer's use of force or a motor vehicle, or a death arising from some other form of police interaction with the deceased.
  - 8. To ensure the IIO's unquestioned authority to act, I recommend that its essential powers be entrenched in legislation, such as:
    - the IIO director and investigators have the status of peace officers;
    - the IIO becomes the lead investigative agency, and the home police department has no investigative responsibility or authority, except as granted by IIO.
  - 9. I recommend that the director recommends to the Criminal Justice Branch whether criminal charges should be laid, and if so, which charges, involving which officer or officers.
  - 11. I recommend that the statutory mandate of the Police Complaint Commissioner be extended to include the requirement that the commissioner conduct professional standards investigations of all police related deaths arising in those British Columbia jurisdictions policed by municipal police departments.
  - 12. I recommend that Recommendations 29-35 of Mr. Wood's 2007 Report be implemented.

## RESPONSES TO Request for Submission: “Police Investigating Police”

### ***International Bodies***

1. South Australia Police Complaints Investigation Process
2. New Zealand Police
3. Commissioner, Police Integrity Commission, Sydney, Australia

### ***Public***

4. RCMP member
5. RCMP member
6. Counsel for RCMP & RCMP members
7. Member of Public
8. Member of Public
9. Member of Public
10. Member of Public

### ***Coroners***

11. Chief Medical Examiner, Justice, Winnipeg

### ***Provincial ADMs***

12. Dept of Justice, Public Protection and Support Services Newfoundland Labrador
13. Dept of Justice, Public Safety Division, Nova Scotia
14. Solicitor General and Public Security – Public Security Division, Alberta

### ***NGOs***

15. Civil Liberties Association, Toronto
16. Civil Liberties Association, B.C.

### ***Police Commissions & Associations***

17. Staff Relations Representative Program
18. Canadian Police Association
19. Public Complaints Commission, Saskatchewan





## Provincial police oversight legislation Chart

	British Columbia	Alberta	Saskatchewan	Manitoba	Ontario
Legislation	Police Act, R.S.B.C. 1996	Police Act, R.S.A. 2000	The Police Act, 1990, S.S. 1990-91	Provincial Police Act, C.C.S.M., Law Enforcement Review Act	Police Services Act, R.S.O. 1990 Reg. 673/98
Oversight body	Police Complaints Commissioner (PCC)	Alberta Serious Incident Response Team (ASIRT)	Public Complaints Commission (PCC)	Law Enforcement Review Authority (LERA)	- Special Investigations Unit (SIU) - Ontario Civilian Commission on Police Services (OCCPS) - Independent Police Review Director (IPRD)
Legislation allows joint investigations	No	Yes 46.1(a)	Yes 39(1)d	No	Yes* Reg. 673/98 5 & 11(1)
Leg. allows to monitor investigations	Yes 56.1(1); 56.1(2); 56.1(3)	Yes 46.1(2)(c)	Yes 39(1)e; 91.1(1); 91.1(2); 91.1(3)	No	No
Leg. allows referral of criminal investigations to other police force	Yes 55.1(1); 55.1(2); 55.2(1); 55.2(2); 55.2(3); 56.1(3)	Yes 45(0.1); 45(5); 45(6); 46.1(2)(b); 46.2(1); 46.2(2); 46.2(3)	Yes 45(3)d; 91.1(1)	No	Yes 61(5); 61(6); 71(3); 76(4); 76(5); 78(1);
Leg. allows power to conduct independent criminal investigation	No	Yes 46.2(1)	Yes 45(6)	No	Yes 113

	Quebec	Newfoundland	Nova Scotia	New Brunswick	Yukon
Legislation	Police Act, R.S.Q.	Royal Newfoundland Constabulary Act, 1992	Police Act, S.N.S. 2004; Police Regulations, N.S.	Police Act, S.N.B 1977	Auxiliary Police Act 2002
Oversight body	- Police Ethics Commissioner - Police Ethics Committee	Royal Newfoundland Constabulary Public Complaints Commissioner	Nova Scotia Police Complaints Commission	New Brunswick Police Commission	Auxiliary Police Advisory Committee
Legislation allows joint investigations	No	No	No	No	No
Leg. allows to monitor investigations	No	No	No	No	No
Leg. allows referral of criminal investigations to other police force	Yes 171	No	Yes 71(3); 73(3); 74(2); Reg. 46(2)	Yes 28.1(1); 28.1(2); 28.1(3); 28.3	No
Leg. allows power to conduct independent criminal investigation	No	No	No	No	No

i S.N.L.: Royal Newfoundland Constabulary Public Complaints Regulations, C.N.L.R.

ii In the case of the Special Investigations Unit (SIU), these are "parallel" investigations.



## National RCMP Policies Deemed Relevant to the CIC

### **Arrest – OM III.2 “Arrest” and OM 18.1 “Arrest”**

- 1997-06-13
- 1998-03-13; 1998-08-14; 1998-09-18
- 2000-02-18; 2000-03-24; 2000-07-21
- 2001-12-06; 2001-12-20
- 2002-03-14; 2002-04-11; 2002-05-15; 2002-06-12; 2002-06-19; 2002-09-25; 2002-10-30
- 2003-05-01; 2003-05-09; 2003-06-13; 2003-08-06
- 2004-04-30; 2004-06-23; 2004-09-08
- 2005-06-01; 2005-06-09; 2005-07-28
- 2007-07-31

### **Emergency Vehicle Operations (EVO) – OM IV11. “Traffic Services” and OM 5.4 “Emergency Vehicle Operations (Pursuits)”**

- 2002-06-12
- 2003-03-05; 2003-10-06
- 2004-02-18
- 2005-06-16
- 2006-03-16; 2006-09-14; 2006-11-14

### **Guarding Prisoners – OM 19.3 “Guarding Prisoners/Personal Effects”**

- 2007-05-03 - Current

### **Human Deaths – OMII.10 – “Human Deaths” and OM 41.3 “Human Deaths”**

- 2001-01-26; 2001-08-30
- 2002-08-21
- 2005-01-26; 2005-04-01
- 2007-05-23

### **In-Custody Death – OMIII.3 “Prisoners and Mentally Disturbed Persons” and OM 19.5 “In-Custody Death of a Prisoner” / “In-Custody Death”**

- 1998-10-02
- 2003-05-28; 2003-09-05
- 2004-04-30
- 2005-04-01
- 2007-11-27

### **Investigation Guidelines – OM II.1 “Investigative Guidelines”**

- 2001-05-17; 2001-06-07; 2001-07-19; 2001-07-26; 2001-08-30
- 2003-08-25; 2003-10-29; 2003-11-26; 2003-12-31
- 2004-02-11
- 2005-03-07
- 2006-01-10 - Current

**Major Case Management (MCM) – OM 25.3 “Major Case Management”**

- 2007-05-03 - Current

**Sexual Offences – OM IV.1 “Criminal Code Offences” – Section K “Sexual Offences” and OM 2.1 “Sexual Offences”**

- 1990-04-30; 1990-11-09
- 1993-04-09; 1993-09-20
- 1996-08-22; 2001-07-26
- 2002-03-21
- 2003-10-15
- 2004-04-21; 2004-06-17
- 2005-07-27
- 2006-10-24;
- 2008-05-16 - Current

**Public Complaints – AM XII.2 “Public Complaints”**

- 2003-12-31
- Undated policy that has been identified as the most recent

**Code of Conduct – AM XII.4. “Code of Conduct (Part IV) Investigations”**

- 2004-10-15 - Current

**Discipline – AM XII.6 “Discipline”**

- 2006-09-20 – Current

**Divisional RCMP Policies Deemed Relevant to the CIC**

**B Division**

**Memorandum of Agreement Integrated Critical Incident Team (Halifax Regional Police and RCMP “B” Division)**

**D Division**

**Investigation Guidelines – D OM II.1 “Investigation Guidelines”**

- 2004-06-29
- 2005-03-10
- 2006-12-13
- Date Unknown

## **E Division**

### **Arrest – E OM III-2 “Arrest” and E OM 18.1 “Arrests”**

- 1998-07-31
- 2004-06-30
- 2005-06-16
- 2006-05-26
- 2006-09-29

### **Detachment Policy**

- 2001-10-09

### **Sudden Deaths – E OM 41.3 “Sudden Deaths”**

- 2004-11-04
- 2006-08-04

### **In-Custody Deaths – E OM III.3 “Prisoners and Mentally Disturbed Persons”**

- 2004-02-26
- 2006-03-10

### **Detachment Policy**

- 2003-03-03

### **Investigation Guidelines – E OM II.1 “Investigation Guidelines”**

- 2003-09-04 (E OM II.1.F “Major Incidents”)

### **Detachment Policy**

- 2004-12-07

### **Sexual Offences – E OM IV.1.K “Sexual Offences”**

- 2001-08-23

### **Emergency Vehicle Operations (EVO) – E OM 5.4 “Emergency Vehicle Operations (Pursuits)”**

- 2004-02-05 (E Bulletin OM-396 “A Dangerous Tactic – Shooting at Vehicles”)
- 2005-05-17

### **Detachment Policy**

- 2004-12-07 (OM II.6 “Specialized Support Hazardous Pursuits”)

### **Reporting – E OM 4.8 “Reporting”**

- 2006-03-31

### **Independent Officer Review – E OM 101.3 “Independent Officer Review (IOR)”**

- 2006-08-18

### **Reporting Procedures – E OM VI.1 “Reporting Procedures”**

- 2004-09-30

**Sudden Death Investigations – Detachment Policy OM II.10 “Sudden Deaths Investigation”**

- 1998-04-01

**Major Crime Section – Detachment Policy OM II.6 “Major Crime Section”**

- 2005-01-04

**Public Complaints – E AM XII.2 “Public Complaints”**

- 1998-02-16
- 2000-09-05
- 2004-01-08

**Code of Conduct – E AM XII.4 “Code of Conduct (Part IV) Investigations”**

- 1999-03-16
- 2004-01-20

**Discipline – E AM XII.6 “Discipline”**

- 1996-11-25
- 2005-05-30

**F Division**

**Investigation Guidelines – F OM II.1 “Investigation Guidelines”**

- 2006-04-03 (F OM II.1.G “Serious Incident or Case of Interest”)
- 2006-10-26

**Sexual Offences – “Sexual Offences”**

- 2000-03-16

**Human Deaths – F OM II.10 “Human Deaths” and F OM 41.3 “Human Deaths”**

- 2001-03-day unknown
- 2006-12-12

**G Division**

**Investigation Guidelines – G OM II.1 “Investigation Guidelines”**

- 2002-04-15

**Member Involved Serious Injury or Death – G OM App II-1-2 “Member Involved Serious Injury/Deaths”**

- Date Unknown

**K Division**

**Sexual Assault – K OM IV.1 “Sexual Assault”**

- 2005-08-11

**Statutory Investigations – “2. Part VII – Statutory Investigations”**

- 2003-08-26

**V Division****In – Custody Death – V Division “In Custody Death”**

- Date Unknown

**Detachment Cells Memos and Policy – Detachment “Guardroom memos and policy updates”**

- 2006-05-26 (date of attached OM 19.3 “Guarding Prisoners/Personal Effects”)

**Alternate Division****Memorandum of Agreement Integrated Critical Incident Team (Halifax Regional Police and RCMP “H” Division)****Sexual Assault – “Sexual Assault Investigation Guidelines”**

- Directive, date unknown







Commission for  
Public Complaints Against the Royal  
Canadian Mounted Police

Commission des  
plaintes du public contre la  
Gendarmerie royale du Canada

## DRAFT MODEL LEGISLATION

An Act to create the Federal Law Enforcement Review Board and to amend other Acts in consequence

### Short title

1 *The Federal Law Enforcement Review Board Act.*

## PRINCIPLES

### Principles

2 This Act shall be carried out in recognition of, and in accordance with, the following principles:

- (a) maintaining and keeping public confidence in police services is an essential value to be protected in our democracy;
- (b) recommendations of an independent review board do contribute to the sound and effective direction and management of police services;
- (c) Canadians have the right to complain about unacceptable conduct of law enforcement officers and to have their complaints impartially investigated and fairly resolved;
- (d) law enforcement officers whose conduct is complained of have the right to respond before an impartial tribunal;
- (e) priority must be given to remedial recommendations that follow substantiated complaints;
- (f) a review board must be empowered to conduct systemic studies of police activities, resources and procedures, and to make recommendations toward their improvement.

1

## DEFINITIONS

### Definitions

**3(1)** The following definitions apply to this Act.

"*board*" The Federal Law Enforcement Review Board established by section 5. (« conseil »)

"*Commissioner*" The Commissioner of the Royal Canadian Mounted Police appointed pursuant to section 5 of the *Royal Canadian Mounted Police Act*. (« commissaire »)

"*minister*" Such member of the Queen's Privy Council for Canada as is designated by the Governor in Council as the minister for the purposes of this Act. (« ministre »)

"*law enforcement officer*" Member of a category of law enforcement officers listed in schedule 1 and any person acting under the supervision or direction of such a member. (« agent d'application de la loi »)

### Amending schedule 1

**3(2)** The Governor in Council may, by order, amend schedule 1 by adding or deleting the name of a category of peace officers, within the meaning of the *Criminal Code*, or of a group of members of such a category, for the purposes of this Act.

## MANDATE

### Mandate of the board

**4** The board is responsible for ensuring a better accountability of police activities of law enforcement officers acting under federal authority through an accessible and impartial regime of complaints assessment and through its recommendations flowing from investigations, reviews, inquiries, audits and hearings.

## ESTABLISHMENT OF BOARD

### Board established

**5(1)** There is hereby established a board, to be known as the Federal Law Enforcement Review Board, consisting of a president, a vice-president and three other members, to be appointed by order of the Governor in Council.

**Regional Representation**

5(2) In selecting the members of the board, the Governor in Council shall, as far as possible, have regard to the need for regional representation in the membership of the board.

**Full- or part-time**

5(3) The president and vice-president are full-time members of the board; the other members may be appointed as full-time or part-time members.

**Tenure of office**

5(4) Each member holds office during good behaviour for a term not exceeding five years but may be removed for cause at any time by order of the Governor in Council.

**Re-appointment**

5(5) Members of the board are eligible for re-appointment on the expiration of their term of office.

**Ineligibility**

6(1) Any person who is or has been a law enforcement officer is not eligible to be appointed as a member of the board.

**Salary of full-time members**

6(2) Each full-time member is entitled to be paid such salary in connection with the work of the board as may be fixed by order of the Governor in Council.

**Fees of part-time members**

6(3) Each part-time member is entitled to be paid such fees in connection with the work of the board as may be fixed by order of the Governor in Council.

**Expenses**

6(4) Members are entitled to be paid reasonable travel and living expenses incurred by them while absent from their ordinary place of residence in connection with the work of the board.

**Benefits of full-time members**

6(5) The full-time members are deemed to be employed in the Public Service for the purposes of the *Public Service Superannuation Act* and to be employed in the public service of Canada for the purposes of the *Government Employees Compensation Act* and any regulations made under section 9 of the *Aeronautics Act*.

**Compliance with security requirements**

7 Members and employees of the board and every person acting on behalf of the board shall comply with all security requirements applicable by or under the *Royal Canadian Mounted Police Act* to a member, within the meaning of that Act, or by or under any other Act of Parliament to a law enforcement officer, and shall take the oath of secrecy set out in schedule 2.

**President**

8(1) The president of the board is the chief executive officer of the board and has supervision over and direction of the work and staff of the board.

**Absence or incapacity**

8(2) In the event of the absence or incapacity of the president or if the office of president is vacant, the vice-president may exercise the powers and perform the duties and functions of the president.

**Exercise of powers**

9(1) All powers, duties and obligations of the board are exercised by the president.

**Delegation**

9(2) The president may delegate any of the president's powers, duties or functions to a member, an officer or an employee of the board, or to any person referred to in subsection 10(3) (Contractual assistance), subject to conditions that the president specifies in the delegation and subject to any hearing held by the board being conducted by a panel on which at least one full-time member of the board sits.

**Head Office**

10(1) The head office of the board shall be at such place in Canada as the Governor in Council may, by order, designate.

**Staff**

10(2) Such officers and employees as are necessary for the proper conduct of the work of the board shall be appointed in accordance with the *Public Service Employment Act*.

**Contractual assistance**

10(3) The board may, with the approval of the Treasury Board,

- (a) engage on a temporary basis the services of persons having technical or specialized knowledge of any matter relating to the work of the board to advise and assist the board in the exercise or performance of its powers, duties and functions; and

(b) fix and pay the remuneration and expenses of persons engaged pursuant to paragraph (a).

#### **Duties of the board**

**11** The board shall carry out such functions and duties as are assigned to it under this or any other Act of Parliament and may carry out or engage in such other related assignments or activities as may be authorized by the Governor in Council.

#### **Duties of president**

**12** The president shall carry out such functions and duties as are assigned to the president under this or any other Act.

### **COMPLAINTS**

#### **Complaint concerning the conduct of an officer**

**13(1)** Subject to subsection (2), a person having a complaint concerning the conduct, in the performance of any duty or function under the *Royal Canadian Mounted Police Act* or the *Witness Protection Program Act* of a person who is - or was, at the time the conduct that is the basis of the complaint is alleged to have occurred - a law enforcement officer, may make a complaint to,

- (a) the board;
- (b) a member of the Royal Canadian Mounted Police or a person employed under the authority of the *Royal Canadian Mounted Police Act*;
- (c) the provincial authority in the province in which the subject-matter of the complaint arose that is responsible for the receipt and investigation of complaints by the public against police.

#### **Interest of complainant**

**13(2)** A person may make a complaint if that person,

- (a) has been personally affected by the conduct that is the subject-matter of the complaint;
- (b) has witnessed that conduct;
- (c) has, in the opinion of the board, a substantial and direct interest in the complaint; or
- (d) has been specifically authorized by a person referred to in paragraphs (a), (b) or (c) to make a complaint in the name of that person.

**Limitation period**

**13(3)** A complaint under subsection (1) shall be made within one year after the alleged conduct occurred or within such longer period as the board allows.

**Written complaint**

**13(4)** In accordance with the regulations, complaints are made in writing either by the complainant or by the person receiving the complaint who puts it in written form on the instructions of the complainant.

**Notification to the board**

**14(1)** Whenever a complaint is filed with a person or organisation other than the board, that person or organisation informs the board without delay and in accordance with the regulations of the complaint.

**Notification of Commissioner**

**14(2)** Unless the complaint has been made to a member of the Royal Canadian Mounted Police, the board notifies the Commissioner of the complaint who then investigates the complaint in accordance with this Act and the regulations.

**Notification of member**

**14(3)** Forthwith after being notified of a complaint, the Commissioner, notifies the person whose conduct is the subject-matter of the complaint of the substance of the complaint.

**Complaint concerning policies and procedures**

**15(1)** A person having a complaint concerning the inadequacy or inappropriateness of the policies, the procedures, the guidelines, the ability to respond or provide a service, or the training programs of the law enforcement service to which law enforcement officers belong, may make a complaint to,

- (a) the board;
- (b) a member of the Royal Canadian Mounted Police or a person employed under the authority of the *Royal Canadian Mounted Police Act*;
- (c) the provincial authority in the province in which the subject-matter of the complaint arose that is responsible for the receipt and investigation of complaints by the public against police.

**Written complaint**

**15(2)** In accordance with the regulations, complaints are made in writing either by the complainant or by the person receiving the complaint who puts it in written form on the instructions of the complainant.

**Notification to the board**

**15(3)** Whenever a complaint is filed with a person or organisation other than the board, that person or organisation informs the board without delay and in accordance with the regulations of the complaint.

**Notification of Commissioner**

**15(4)** Unless the complaint has been made to a member of the Royal Canadian Mounted Police, the board shall notify the Commissioner of the complaint.

**Board's responsibility**

**15(5)** A complaint made pursuant to this section is investigated by the board, in accordance with this Act.

**Power to reject complaint**

**16** The board may direct that a complaint be rejected, that no investigation of a complaint be commenced or that such an investigation be terminated if, in its opinion,

- (a) the complaint is one that could more appropriately be dealt with, initially or completely, according to a procedure provided under any other Act of Parliament;
- (b) the complainant does not have a substantial and direct interest in the complaint or has not been authorized under paragraph 13(2)(d);
- (c) the complaint is trivial, frivolous, vexatious or made in bad faith; or
- (d) having regard to all the circumstances, investigation or further investigation is not necessary or reasonably practicable.

**Power to merge complaints**

**17(1)** The board may merge complaints where, in its opinion, to do so would result in a more efficient resolution of complaints.

**Obligation to inform complainants**

**17(2)** The board informs without delay the complainants where their respective complaints have been merged with another complaint or with an investigation or a review.

**Informal disposition**

**18(1)** Subject to subsection (2) and to the regulations, the board and the Commissioner shall consider whether a complaint concerning the conduct of a law enforcement officer can be disposed of informally and, with the consent of the complainant and the person whose conduct is the subject-matter of the complaint, shall, before any investigation is undertaken, attempt to so dispose of the complaint.

**Serious nature**

**18(2)** Informal disposition of a complaint can only be attempted in the case of conduct that was not of a serious nature or of such other conduct prescribed by the regulations.

**Informal disposition at any stage**

**18(3)** Subject to subsection (2) and to the regulations, the board and the Commissioner may try to dispose of a complaint at any stage of the proceedings during an investigation, a review, an inquiry or a hearing.

**Documents to be kept**

**19(1)** Where a complaint is disposed of informally, the following documents are kept by the board or sent to the board without delay by the commissioner, in accordance with the regulations,

- (a) an overview of the facts that gave rise to the complaint;
- (b) the name of the person who conducted the informal disposition
- (c) a statement of the manner in which the complaint was disposed of;
- (d) the agreement to the disposition, signed by the complainant and the person whose conduct was the subject-matter of the complaint.

**Notification to the parties**

**19(2)** The person who conducted the informal disposition sends a copy of the agreement to the disposition to the complainant and to the person whose conduct is the subject-matter of the complaint

**Examination of informal disposition**

**19(3)** Where the board is informed of the informal disposition of a complaint, it may, within 30 days of the receipt of the documents referred to in subsection (1), request supplementary information from the Commissioner.

**Measures ordered by the board**

**19(4)** After receiving any supplementary information it has requested, the board may,

- (a) order that specific measures be taken;
- (b) investigate the complaint;
- (c) confirm the disposition of the complaint.



**No informal disposition**

**20(1)** Where a complaint is not initially disposed of informally, the Commissioner so informs the complainant, the person whose conduct is the subject-matter of the complaint and the board.

**Investigation**

**20(2)** Where a complaint is not initially disposed of informally, the Commissioner investigates the matter in accordance with this Act, the regulations and the rules of the Commissioner made pursuant to section 23 (RCMP rules).

**Power to monitor**

**21(1)** The board may monitor any investigation undertaken with respect to the conduct of a law enforcement officer.

**Referral of criminal investigations to another police force**

**21(2)** The Commissioner shall notify the board whenever a criminal investigation is undertaken with respect to the conduct of a law enforcement officer and shall, if the board so requests, refer the investigation to a police force in Canada other than the Royal Canadian Mounted Police to be continued in accordance with the regulations.

**Right to refuse or terminate investigation**

**22(1)** The Commissioner may direct that no investigation of a complaint made pursuant to section 13 be commenced or that an investigation of such a complaint be terminated if, in the Commissioner's opinion,

- (a) the complaint is one that could more appropriately be dealt with, initially or completely, according to a procedure provided under any other Act of Parliament, other than the *Royal Canadian Mounted Police Act*;
- (b) the complaint is trivial, frivolous, vexatious or made in bad faith; or
- (c) having regard to all the circumstances, investigation or further investigation is not necessary or reasonably practicable.

**Notification of parties**

**22(2)** Where the Commissioner makes a direction in respect of a complaint pursuant to subsection (1), the Commissioner shall give notice of the direction and the reasons therefor to,

- (a) the board;
- (b) the person whose conduct is the subject-matter of the complaint;
- (c) the complainant.

**Supplementary information to the complainant**

**22(3)** The Commissioner also informs the complainant of the right of the complainant to refer the complaint to the board for review, within 60 days of the notice, if the complainant is not satisfied with the direction.

**RCMP rules**

**23** Subject to the approval of the board, the Commissioner may make rules governing the procedures to be followed by the Royal Canadian Mounted Police in investigating, disposing of or otherwise dealing with complaints made pursuant to section 13 (Complaint concerning the conduct of an officer).

**Interim complaint resolution reports**

**24** The Commissioner shall notify the board, the complainant and the person whose conduct is the subject-matter of the complaint of the status of the investigation of the complaint to date not later than 45 days after receiving the complaint under paragraph 13(1)(b) or having been notified of the complaint under subsection 14(2), and monthly thereafter during the course of the investigation.

**Final complaint resolution report**

**25** On completion of the investigation of a complaint, the Commissioner shall send to the board, the complainant and the person whose conduct is the subject-matter of the complaint a report setting out

- (a) a summary of the complaint;
- (b) the results of the investigation;
- (c) a summary of any action that has been or will be taken with respect to resolution of the complaint; and
- (d) in the case of a complaint concerning the conduct of a law enforcement officer, the right of the complainant to refer the complaint to the board for review, within 60 days of the receipt of the final complaint resolution report, if the complainant is not satisfied with the disposition of the complaint by the Commissioner.

**Referral to board**

**26(1)** A complainant who is not satisfied with the disposition of the complaint by the Commissioner or with a direction under subsection 22(1) (Right to refuse or terminate investigation) in respect of the complaint may refer the complaint to the board for review within 60 days after the day the complainant receives the final report or the notice of rejection or within such longer period as the board allows.

**Written referral for review**

**26(2)** In accordance with the regulations, referrals of complaints are made in writing either by the complainant or by the person receiving the referral who puts it in written form on the instructions of the complainant

**Acknowledgement by the board**

**26(3)** The board shall acknowledge receipt of the referral of the complaint and send a copy of the acknowledgement to the Commissioner.

**Materials to be furnished**

**26(4)** Subject to section 35 (Access to information), the Commissioner shall give to the board all documents and materials under their control that relate to the complaint and all supplementary material relating to the complaint that the board requests.

**Review by board**

**27(1)** Subject to sections 16 (Power to reject complaint) and 17 (Power to merge complaints), the board shall review every complaint referred to it pursuant to subsection 26(1) (Referral to board).

**Where board is satisfied**

**27(2)** Where, after reviewing a complaint, the board is satisfied with the disposition of the complaint by the Commissioner or with the decision the Commissioner has taken, the board shall

(a) send a complaint review report to that effect to the minister and the Commissioner, setting out such findings and such recommendations with respect to the complaint as the board sees fit;

(b) send a report of the conclusion of the review to the complainant and the person whose conduct is the subject-matter of the complaint together with, if it thinks fit, any finding or any recommendation referred to in paragraph (a).

**Copy of report to province**

**27(3)** Where the complaint review report deals with conduct related to police activities in a province, the board may report the issue to the minister responsible for police activities in that province, together with, if it thinks fit, any finding, recommendation or conclusion referred to in subsection (2).

**Where board is not satisfied**

**27(4)** Where, after reviewing a complaint, the board is not satisfied with the disposition of the complaint by the Commissioner or with the decision the Commissioner has taken, or considers that further inquiry is warranted, it may take any or all of the following measures

- (a) send a report to the minister and the Commissioner;
- (b) request the Commissioner to conduct a further investigation into the complaint;
- (c) make such inquiries as it deems necessary in the circumstances;
- (d) investigate the complaint further;
- (e) institute a hearing to inquire into the complaint.

### **Role of Commissioner**

**27(5)** Where the board requests the Commissioner to conduct an investigation pursuant to paragraph 27(4)(b), the Commissioner shall conduct the investigation without delay.

### **Findings and recommendations**

**27(6)** The board shall, on completion of any further investigation, inquiry or hearing that it has ordered pursuant to subsection 27(4),

- (a) send a complaint review report to the minister and the Commissioner setting out such findings and such recommendations with respect to the complaint as the board sees fit;
- (b) send a report of the conclusion of the review to the complainant and the person whose conduct is the subject-matter of the complaint together with, if it thinks fit, any finding or any recommendation referred to in paragraph (a).

### **Copy of report to province**

**27(7)** Where the complaint review report deals with conduct related to police activities in a province, the board may report the issue to the minister responsible for police activities in that province, together with if it thinks fit, any finding, recommendation or conclusion referred to in subsection (6).

## **INQUIRIES AND AUDITS**

### **Board inquiries on specific incidents**

**28(1)** The board may, at the request of the minister or where it considers that there are reasonable grounds to do so, inquire into the conduct, in the performance of any duty or function under *the Royal Canadian Mounted Police Act* or the *Witness Protection Program Act*, of a person who is - or was, at the time the relevant conduct is alleged to have occurred - a law enforcement officer, whether or not that conduct has been the subject of a complaint under section 13 (Complaint concerning the conduct of an officer).

### **Board inquiries on policies and procedures**

**28(2)** The board may, at the request of the minister or where it considers that there are reasonable grounds to do so, inquire into the inadequacy or inappropriateness of the policies, the procedures, the guidelines, the ability to respond or provide a service, or the training programs of the law enforcement service to which law enforcement officers belong, whether or not the object of the inquiry has been the subject of a complaint under section 15 (Complaint concerning policies and procedures)

### **Audits**

**29** The board may audit the implementation of any measure that the Commissioner has undertaken to take following an informal disposition of a complaint, a recommendation made by the board or a final complaint resolution report.

### **Precedence**

**30** Any complaint made pursuant to section 13 (Complaint concerning the conduct of an officer) or 15 (Complaint concerning policies and procedures) with respect to the same object that is the subject-matter of an inquiry undertaken by the board pursuant to section 28 or an audit undertaken by the board pursuant to section 29 is merged with that inquiry or audit.

### **Findings and recommendations**

**31(1)** After an inquiry or an audit, the board provides the minister and the Commissioner with a report that contains its findings; it may also attach to the report any recommendations it considers appropriate.

### **Report to other interested persons**

**31(2)** At the same time as or after a report is provided pursuant to subsection (1), the board may send a report of the conclusion of the inquiry or audit to the person whose conduct is the subject-matter of a complaint that was merged with an inquiry or audit and the complainant together with, if it thinks fit, any finding or any recommendation referred to in that subsection.

## **GENERAL**

### **Powers of the board**

**32(1)** The board has, in the exercise of its duties and functions under this or any other Act of Parliament, the power

- (a) to summon and enforce the appearance of persons before it and to compel them to give oral or written evidence on oath and to produce such documents and things as it deems requisite to the full investigation and consideration of the matter in the same manner and to the same extent as a superior court of record;

(b) to administer oaths; and

(c) to receive and accept such evidence and other information, whether on oath or by affidavit or otherwise, as it sees fit, whether or not that evidence or information is or would be admissible in a court of law.

(d) to enter any premises occupied by the law enforcement service to which law enforcement officers belong on satisfying any security requirements relating to the premises;

(e) to converse in private with any person in any premises entered pursuant to paragraph (d) and otherwise carry out therein such inquiries within its authority as it sees fit; and

(f) to examine or obtain copies of or extracts from books or other records found in any premises entered pursuant to paragraph (d) containing any matter that it considers relevant;

(g) to make and retain copies of any document that comes into its possession in the course of an investigation, a review, an inquiry, an audit or a hearing.

**Witness fees**

**32(2)** Any person summoned to appear before the board pursuant to this section is entitled in the discretion of the board to receive the like fees and allowances for so doing as if summoned to attend before the Federal Court.

**Return of documents**

**32(3)** Any document or thing produced pursuant to this section by any person shall be returned by the board within ten days after a request is made to the board by that person, but nothing in this subsection precludes the board from again requiring its production in accordance with this section.

**Hearing**

**33(1)** Where the board has ordered a hearing to be held, pursuant to subsection 27(4) (Where board is not satisfied), it shall serve a notice of the time and place appointed for the hearing on the person whose conduct is the subject of the complaint and the complainant.

**Convenience to be considered**

**33(2)** If a person on whom a notice is served wishes to appear before the board, the board must consider the convenience of that person in fixing the time and the place for the hearing.

**Rights of persons interested**

**34(1)** The board may afford a full and ample opportunity, in person or by counsel, to present evidence, to cross-examine witnesses or to make representations at the hearing to

(a) the complainant and the person whose conduct is the subject of the complaint, if they wish to appear; and

(b) any other person who satisfies the board that the person has a substantial and direct interest in the hearing.

**Right to present written submissions**

**34(2)** The board may authorize a person to present written submissions to the board at any time during or after the hearing.

**Hearing public or private**

**34(3)** Hearings are held in public except that the board may order the hearing or any part of the hearing to be held in private if it is of the opinion that during the course of the hearing sensitive information, within the meaning of subsection 35(7), will likely be disclosed.

**Access to information**

**35(1)** Notwithstanding any other Act of Parliament or any privilege under the law of evidence, but subject to subsection (2), the board is entitled

(a) to have access to any information under the control of a department, within the meaning of *the Financial Administration Act*, that relates to the performance of the duties and functions of the board and to receive from the deputy head of that department such information, reports and explanations as it deems necessary for the performance of its duties and functions; and

(b) during any investigation, review, inquiry, audit or hearing, to have access to any information under the control of a department that it considers relevant.

**No restriction**

**35(2)** No information described in subsection (1), other than a confidence of the Queen's Privy Council for Canada in respect of which subsection 39(1) of the *Canada Evidence Act* applies, may be withheld from the board on any grounds.

**Disclosure not waiver**

**35(3)** The disclosure of information to the board under this Act does not, by itself, constitute a waiver of any privilege that may exist with respect to the information.

**Observations by the deputy head**

**35(4)** The deputy head of a department may, in transferring information to the board, identify the documents, records or particular items as being sensitive information that should be protected.

**Request by the deputy head**

**35(5)** The deputy head of a department who has to provide information during a hearing may request that proceedings continue in camera to enable the deputy head to indicate to the board which documents, records or information are sensitive information.

**Protection of sensitive information**

**35(6)** In preparing any report pursuant to this or any other Act of Parliament, the board shall consult with the responsible deputy head in order to protect sensitive information that that deputy head has forwarded to the board.

**Sensitive information**

**35(7)** For the purposes of this section, "sensitive information" means

(a) information that, if disclosed, could reasonably be expected to be injurious to the defence of Canada or any state allied or associated with Canada or the detection, prevention or suppression of subversive or hostile activities;

(b) information that, if disclosed, could reasonably be expected to be injurious to the administration of justice or could adversely affect or hinder any investigation that is being or may be carried out.

**Findings are binding**

**36(1)** Findings of the board are definitive and binding on the Commissioner and, except for judicial review under the *Federal Courts Act*, are not subject to appeal to or review by any court.

**Role of Commissioner after receiving reports**

**36(2)** After receiving a complaint review report in accordance with subsection 27(6) (Findings and recommendations), an inquiry report or an audit report in accordance with subsection 31(1) (Findings and recommendations), the Commissioner shall take cognizance of the findings of the board and notify the minister and the board of any action that has or that will be taken on the recommendations of the board.

**Reasons**

**36(3)** If the Commissioner decides not to act on a recommendation of the board or to implement a recommendation in a manner substantially different from what is recommended, the Commissioner gives reasons for doing so in the notice.



**Protection of confidential or sensitive information**

**36(4)** Where a finding of the board is the subject of an appeal pursuant to subsection (1), the Federal Court shall take all appropriate measures to insure that any information that is identified in the record as being confidential or sensitive is protected.

**ADDITIONAL POWERS****Joint investigations**

**37** The board may conduct a joint investigation, review, inquiry, audit or hearing with another body in Canada that has powers, duties and functions that are similar to the board's.

**Sharing of information**

**38** The board may share information in its possession with other federal institutions or other persons or institutions in Canada whose mandate is similar to the board's - and may receive information from those persons and institutions - where, in its opinion, such information would assist the board, that institution or that person in the discharge of their mandate.

**Research and information programs**

**39** The board may, either by itself or in cooperation with other organisations in Canada or outside of Canada, implement public education and information programs to make its mandate and activities better known to the public, and engage in research activities in areas related to its powers, duties and functions.

**GENERAL PROVISIONS****Protection of members and staff**

**40** No criminal or civil proceedings lie against any member of the board, or against any person acting on behalf of the board, for anything done, reported or said in good faith in the exercise or purported exercise of a power or in the performance or purported performance of a duty or function of the board.

**Immunity**

**41** No civil, criminal or administrative proceedings lie against any person for anything done, reported or said in good faith in any proceedings before the board.

**Documents and reports in writing**

**42(1)** Any notice, report or acknowledgement that is given or sent pursuant or under this Act shall be in writing.

**Service of documents**

**42(2)** Any document required to be sent to a person under this Act shall be served personally or be sent by certified or registered mail or any other delivery service that provides proof of delivery.

**Non-application of obligation to inform**

**43** Where, pursuant to this Act, notifications or other information are to be given to the person whose conduct is the subject of a complaint or to any other person, this obligation does not apply if, in the opinion of the board, after consultation or at the request of the Commissioner, to do so might compromise or hinder an investigation of an offence under an Act of Parliament that is being or may be carried out.

**RULES OF EVIDENCE**

**Capacity of witness**

**44** Section 16 of the *Canada Evidence Act* applies in respect of any proceedings before a board as though the proceeding were a legal proceeding and the board were a judge, justice or other presiding officer.

**Person not excused from answering**

**45(1)** In any investigation, review, inquiry, audit or hearing under this Act, no person shall be excused from answering any question relating to the matter being investigated when required to do so by the board on the ground that the answer to the question may tend to incriminate the person or subject the person to any proceeding or penalty.

**Answer not receivable**

**45(2)** No answer or statement made in response to a question described in subsection (1) or in the course of attempting to dispose of a complaint informally shall be used or receivable in any criminal, civil or administrative proceedings, other than a prosecution under sections 132 (Perjury) or 136 (Witness giving contradictory evidence) of the *Criminal Code*.

**Evidence not admissible**

**46** No evidence that proceedings under this Act involving a law enforcement officer have been taken shall be used or receivable against that officer in any civil, criminal or administrative proceedings, other than a prosecution under sections 132 (Perjury) or 136 (Witness giving contradictory evidence) of the *Criminal Code*.

**Reports non admissible**

**47** No report or finding of the board is receivable in any civil, criminal or administrative proceedings.

## Regulations

**48(1)** The board may make regulations respecting the performance of its duties and functions, including regulations,

- (a) setting out the manner of dealing with complaints under this Act;
- (b) prescribing categories of complaints that may be dealt with in an informal manner pursuant to section 18;
- (c) determining the procedure to be followed in the investigation of a complaint and a review of a disposition and prescribing what documents and records are to be kept at every stage of the proceedings;
- (d) determining the procedure to be followed in any investigation concerning the conduct of a law enforcement officer;
- (e) determining the manner of dealing with matters and business before the board generally, including the practice and procedure of, and security requirements applicable to, investigations, inquiries, reviews, audits and hearings under this Act.

## Conflict or inconsistency

**48(2)** Regulations made pursuant to this section prevail over rules made pursuant to section 23 and rules and regulations made pursuant to the *Royal Canadian Mounted Police Act* to the extent of any inconsistency or conflict between them.

## ADMINISTRATIVE MATTERS

### Annual Report

**49(1)** The board shall, within three months after the end of each calendar year, submit to the minister a report of the board's activities during that year and its recommendations, if any.

### Tabling in Parliament

**49(2)** The minister shall have a copy of the report laid before each House of Parliament on any of the first 15 days on which that House is sitting after the minister receives it.

### Special reports

**50** The board may, on its own initiative or at the request of the minister, furnish the minister with a special report concerning any matter that relates to the performance of its duties and functions.

**Five-year review**

**51(1)** A review of the provisions and the operation of this Act must be completed by the minister during the fifth year after this section comes into force and every five years after that.

**Tabling of report**

**51(2)** The minister must cause a report of the results of the review to be laid before each House of Parliament on any of the first 15 days on which that House is sitting after the report has been completed.

**OFFENCES**

**Attendance of witnesses, etc.**

**52** Every person who

- (a) on being duly summoned as a witness in any proceeding under this Act, makes default in attending,
- (b) being in attendance as a witness in any proceeding under this Act,
  - (i) refuses to take an oath or solemn affirmation required of that person,
  - (ii) refuses to produce any document or thing under that person's control and required to be produced by that person, or
  - (iii) refuses to answer any question, or
- (c) at any proceeding under this Act, uses insulting or threatening language or causes any interference or disturbance,

is guilty of an offence punishable on summary conviction.

**Harassment**

**53** Any person who harasses or intimidates - or attempts to harass or intimidate - another person in relation to a complaint made under this Act is guilty of an offence punishable on summary conviction.

**Obstruction**

**54** Any person who wilfully obstructs or otherwise interferes with, or knowingly makes a false or misleading statement orally or in writing to, a person carrying out any functions under this Act is guilty of an offence punishable on summary conviction.

**Destroying documents and things, etc**

**55** Any person who, knowing that a document or thing is likely to be relevant to an investigation under this Act

- (a) destroys, mutilates or alters the document or thing;
- (b) falsifies the document or makes a false document;
- (c) conceals the document or thing; or
- (d) directs, counsels or causes in any manner, any person to do anything mentioned in any of paragraphs (a) to (c), or proposes, in any manner, to any person that they do anything mentioned in any of those paragraphs

is guilty of an offence punishable on summary conviction.

#### **Punishment**

**56** Every person who is convicted of an offence under this Act is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months or to both.

#### **Limitation period**

**57** Proceedings in respect of an offence under this Act may be instituted at any time within but not later than two years after the time when the subject-matter of the proceedings arose.

### **TRANSITIONAL PROVISIONS, REPEALS AND CONSEQUENTIAL AMENDMENTS**

#### **Existing complaints**

**58** Any complaint made to the Royal Canadian Mounted Police Public Complaints Commission pursuant to Part VII of the *Royal Canadian Mounted Police Act* and not finally disposed of before the coming into force of this Act shall be dealt with by the board in accordance with the provisions of this Act.

#### **Application of this Act**

**59** A complaint may be made to the board - and the board may launch an investigation, an inquiry, an audit or a hearing - with respect to events that occurred prior to the coming into force of this Act.

#### **Transitional provisions : Chairman, Vice-Chairman and staff**

**60** [*normal provisions for the continuance of the appointments of the Chairman and Vice-Chairman of the Royal Canadian Mounted Police Public Complaints Commission and for status of staff of the Commission who become president and vice-president, and staff of the board will be inserted.*]

## REPEALS AND CONSEQUENTIAL AMENDMENTS

### ***Royal Canadian Mounted Police Act***

61 Parts VI and VII of the *Royal Canadian Mounted Police Act* are repealed.

### **Consequential amendments**

62 [*amendments to the Royal Canadian Mounted Police Act, to the Financial Administration Act and to other federal statutes will be inserted here to provide for the insertion of the board in the federal public administration*]

### **SCHEDULE 1**

*(definition of "law enforcement officer", section 3)*

1. The Commissioner and any member of the Royal Canadian Mounted Police, as defined in the *Royal Canadian Mounted Police Act*.
2. Person appointed or employed under the authority of the *Royal Canadian Mounted Police Act*.

### **SCHEDULE 2**

*(section 7)*

### **OATH OF SECRECY**

I, ....., swear that I will not, without due authority, disclose or make known to any person any information acquired by me by reason of the duties performed by me on behalf of or under the direction of the Federal Law Enforcement Review Board or by reason of any office or employment held by me pursuant to the Federal Law Enforcement Review Board. So help me God.

**British Columbia:  
Police Complaint  
Commissioner (PCC)**

## **British Columbia: Police Complaint Commissioner (PCC)**

### **Mandate**

- The Police Complaint Commissioner is an independent officer of the legislature, assigned to provide civilian oversight of the police complaint process that pertains to members of municipal police force in British Columbia.

### **Background**

- PCC was established in 1998 pursuant to the *Police Act*, following the recommendations of the *Oppal Report (Closing the Gap: Policing the Community)*.
- In 1992, the Attorney General ordered the creation of a Commission of Inquiry Into Policing in British Columbia, led by Mr. Justice Wallace T. Oppal.
- Oppal's Report was issued in 1994. Justice Oppal noted, among other things, widespread concerns on the part of both the public and the police in regard to the complaint procedure and police discipline system.
- According to Oppal's report, the public in British Columbia demanded police accountability whereas the police perceived the complaint system of the time as "unfair."
- Justice Oppal recommended the establishment of a police complaint commissioner "operating at the level of an ombuds person," accountable to the legislature, who would oversee all police investigations and whose office would be completely independent of the police force, the government, and private interests.
- Between 1994 and 1998, the Oppal Report's recommendations were subject to a facilitated process, conducted by Dr. John Hogarth, with the aim of attempting to achieve consensus among stakeholders on a new *Police Act*.
- The consensus document passed effective July 1, 1998 enacted many of Oppal's recommendations, but omitted several important recommendations. For example, the new Police Complaint Commissioner was not given the power to conduct his own independent investigations and had no power to overrule flawed or inadequate decisions by a discipline authority. Oppal's recommendation that police officers be under an express duty to cooperate with an investigation was also left out of the new statute.
- In July 1998, amendments to the *Police Act* established the Police Complaint Commissioner as an independent officer of the legislature.
- In July 2005, the British Columbia Minister of Public Safety and Solicitor General John Les ordered a review of the police complaints process in the province. B.C. Appeal Court Judge Josiah Wood was appointed as the Director of the review.
- Judge Wood's final report, entitled *Report on the Review of the Police Complaints Process in British Columbia*, was released on February 7, 2007.
- The report contained 91 recommendations to improve the complaints system in B.C.
- Following the release of the report, the B.C. government announced changes to the province's *Police Act* to implement the report's recommendations.



- On March 4, 2009 the provincial government introduced amendments to the *Police Act*:
  - Bill 6 – 2009 *Police (Misconduct, Complaints, Investigations, Discipline and Proceedings) Amendment Act, 2009* and
  - Bill 7 – 2009 *Police (Police Complaint Commissioner) Amendment Act, 2009*.
- B.C. Solicitor General John van Dongen stated that the proposed legislative changes address “virtually all” of Wood's recommendations.
- NDP public safety critic Mike Farnworth emphasized that the changes are insufficient because the RCMP, which constitutes the majority of patrol outside greater Vancouver and southern Vancouver Island, remains excluded from the Act's jurisdiction.
- There has been some criticism that the amendments fail to provide adequate civilian oversight since investigations into police misconduct remain largely in the hands of police officers. To that B.C. Solicitor General van Dongen replied that the creation of an entirely civilian investigator team is not practicable and implied that police investigators are sufficiently experienced for the task. The B.C. Solicitor General is confident that the province can strike a good balance of public and police involvement in the police complaints process.

### Jurisdiction

- PCC has jurisdiction over municipal police officers within the province of British Columbia, with the exclusion of the RCMP.
- The following departments are within OPCC's jurisdiction:
  - Abbotsford Police Department
  - Central Saanich Police Service
  - BC Combined Forces Special Enforcement Unit
  - Delta Police Department
  - South Coast British Columbia Transportation Authority Police Service
  - Nelson City Police Department
  - New Westminster Police Service
  - Oak bay Police Service
  - Port Moody Police Department
  - Saanich Police Department
  - Stl'atl'imx Tribal Police Service
  - Vancouver Police Department
  - Victoria Police Department
  - West Vancouver Police Department
- The new legislation applies to municipal police officers, including those who are no longer part of the police force. Thus, all throughout the Act, reference is consistently made to “chief constable or former chief constable” and “member or former member.” ‘Former member’ is defined as “a person who, at the time of the conduct of concern, was a member of a municipal police department but who after that time has retired or resigned and is no longer a member of any municipal police department” (76 (1)).
- Section 82 (4) specifically stipulates that complaints against former members or those that have retired or resigned, are still admissible.

- This was done mainly to remedy cases in the past when police officers retired or resigned to avoid suspension or other disciplinary actions

### Legislative basis

- The powers and obligations of the Commissioner are outlined throughout Part 9 of the *Police Act*.
- Section 50 of the Act requires the Commissioner to prepare reports of complaint dispositions.
- Pursuant to section 55(3) of the Act, the Commissioner can order an investigation to be initiated.
- A key feature of the new legislation is section 89: "Mandatory external investigation of death and serious harm," which mandates that the PCC must be 'immediately' notified by a chief constable when a person "suffers serious harm" or dies while in police custody or as a result of police actions (89 (1)a), as well as when the serious injury or death of a person *could be seen* as the result of the conduct of a municipal police department or police operations (89 (1)b). This feature seemingly addresses the issue of public perception regarding police officer conduct—the very appearance of causality between a person's death and police operation dictates the involvement of the PCC.
- In such cases, the PCC must refer the investigation to a constable from an external police agency (89 (2)a) who: 1) has "no connection" with the matter (89 (4)a i) and 2) has a rank of equivalent or higher than the rank of the subject officer (89 (4)a ii).
- The PCC may also delegate a special provincial constable,<sup>1</sup> appointed by the Minister, to handle the investigation (89 (2)b).
- In addition, the PCC is obligated to direct an external investigation if a complaint against the chief constable or former chief constable is not resolved informally (91 (1)), if the PCC believes such investigation is in the public interest (92 (1)), or, regardless of whether a complaint was filed, "at any time information comes to the attention of the PCC concerning the conduct [of a police officer, which] would, if substantiated, constitute misconduct" (93 (1)).
- Should it consider necessary in the public interest, the PCC may observe the investigation (96 (a)) or designate an employee to observe it (96 (b)), "at any time before an investigation is initiated ...or during the investigation."
- As part of this monitoring duty, the PCC may require from the investigating officer to be informed of the progress of the investigation (in addition to the investigator's duty to file reports with the PCC within 30 business days following the beginning of the investigation), require copy of "any information or record related to the investigation (Section 97 (1) a and b), provide advice to the investigative officer or the discipline authority regarding further investigative steps (97 (1)c)and, upon consultation with the investigator and the discipline authority concerned, direct that further investigation be taken (97 (1)d).
- Pursuant to section 97 (3), the investigative officer must comply with the requirements under subsection 1 (a) and (b) (be informed of progress and copies of any information/record).

<sup>1</sup> *Provincial constable* is defined as 'a constable who is a member of the provincial police force continued under section 5, or who is pointed a constable under section 6' in the previous *Police Act*. 'Special provincial constables' are referred to in section 9 of the previous Act as the following: 'The minister may appoint persons the minister considers suitable as special provincial constables.' These constables have all the powers, duties and immunities of the provincial constable.

## Handling of complaint process

- The *Police Act* recognizes that investigations can arise in one of two ways: Form 1 complaint Investigations and Ordered Investigations.
  - Complaint Investigations arise when a member of the public lodges with a police department or the PCC a "Form 1" complaint alleging police misconduct. Any person may file a Form 1 complaint, whether or not they are personally affected by the conduct alleged. When a Form 1 is filed, the *Police Act* requires the allegation to be investigated by the police unless it is summarily dismissed, informally resolved or withdrawn.
  - Ordered Investigations are investigations initiated by Commissioner's Order for Investigation. Pursuant to section 55(3) of the *Police Act*, the Commissioner has the authority, whether or not a record of complaint has been lodged, to order an investigation into the conduct of a municipal constable, chief constable or deputy chief constable. An ordered investigation may arise from information received from a police department, or information received from a member of the public, even if that person has not formally lodged a complaint.
- In addition to the statutory routes to formal investigation mentioned above, the PCC has also developed administrative practices pertaining to what are known as "monitor files" and "non-lodged complaints". The "monitor file" process is an administrative understanding with police departments whereby the PCC is promptly notified in the event of a serious police-involved incident which has the potential for a *Police Act* investigation and public interest.
- The *Police Act* recognizes three types of complaints: Service or Policy Complaints, Internal Discipline Complaints and Public Trust Complaints.
  - Service or Policy Complaints involve the police department's policies, procedures and services.
  - Public Trust Complaints are complaints about individual police misconduct which would constitute a breach of the Code of Professional Conduct and which satisfy any of the following: (a) causes or has the potential to cause physical or emotional harm or financial loss to any person; (b) violates any person's dignity, privacy or other rights recognized by law; (c) is likely to undermine public confidence in the police. In 2007, approx. 90% of all allegations were characterized as Public Trust Complaints.
  - Internal Discipline Complaints are complaints about individual police misconduct which do not satisfy the definition of public trust complaint.
- Public trust complaints are processed pursuant to a detailed statutory code set out in Part 9, Division 4 of the *Police Act*. Internal discipline complaints are addressed in Part 9, Division 6 of the *Police Act*. Service or policy complaints are addressed in Part 9, Division 5. The Police Complaint Commissioner has differing oversight mandates respecting each Division.
- A public trust complaint may be resolved informally with the help of a professional mediator or with the assistance of the Investigator. When the complainant and the respondent sign a letter of agreement, the complaint is considered successfully resolved.
- A public trust complaint may also be summarily dismissed by a discipline authority if it is frivolous or vexatious, if there is no reasonable likelihood that further investigation

would produce evidence of a public trust default, or if the alleged incident took place more than 12 months prior to filing a complaint. The PCC must review all summary dismissal decisions, and may order a complaint investigated despite summary dismissal.

- If it is not informally resolved or summarily dismissed, the complaint is investigated. The investigation must be completed within six months from the receipt of the complaint.
- The complaint procedure begins when a complainant must complete and lodge a "Form 1" Record of Complaint.
- If it is received by the PCC, a copy of the complaint is forwarded to the Chief Constable of the affected department; if the complaint is received by the police department, a copy of the complaint is sent to the PCC.
- The complaint is assigned to the police department's Professional Standards Section for investigation.
- The investigator must periodically update the complainant, the respondent and the PCC regarding the progress of the investigation.
- In exceptional cases, the PCC or the Discipline Authority (the Chief Constable of the respondent's department) may delegate the complaint to be investigated by an external agency, including the RCMP in its capacity as the provincial police force.
- A Public Hearing may be arranged in the following circumstances:
  - Upon a request from a complainant dissatisfied with the outcome of the investigation;
  - Upon a request of the respondent police officer who, as a result of the investigation, has received a disciplinary measure more severe than verbal reprimand;
  - If the PCC believes that a hearing is necessary in the public interest.
- When a public hearing is called, an Adjudicator is appointed to preside over the hearing, and Commission Counsel are appointed to lead evidence and present the case relative to the default. The complainant's role at a public hearing is limited to making argument after all the evidence has been called.
- An adjudicator's decision is subject to appeal to the British Columbia Court of Appeal on a question of law.
- Section 178 of the new proposed legislation further ensures that police officers shall cooperate with the PCC in the latter's exercise of powers or performance of duties. In addition, Section 101 (4) dictates that the member must comply with any request made by the investigating officer within five days of its receipt.
- Police officers' suspension without pay has been increased to 30 days without pay (126 (c)).
- The police officer subject to a public hearing or review on the record is not compellable to testify as a witness. However, "an adverse inference" may be drawn from the officer's failure to testify (151 (1)).
- To ensure that the PCC is able to monitor investigations in real time as opposed to *ex post facto*, the new legislation introduces "contemporaneous file monitoring system" which would allow the PCC to securely access and electronically monitor records of investigations and proceedings (182 (1)). The board of a municipal police department is ordered to ensure that this software is implemented, used

and upgraded (182 (3)) and the PCC and the Minister are tasked with adoption of a set of standards regarding the rules of information exchange and maintenance of data integrity among all users (182 (4)).

### Statistical analysis

- In 2007 the OPCC opened 476 individual complaint files.
- 493 individual complaint files were closed.
- 70 files were initiated by the Commissioner's Order for Investigation. 68 of those were made following the request of the originating police department.
- Among all opened files, 26 were Monitor Files and 28 Non-Lodged Files.
- 11 *Police Act* files were investigated by an external agency.

### Structure

- The office is composed of eleven full-time employees. Until February 2009, it was led by the Police Complaint Commissioner, Dirk Ryneveld, Q.C. Mr. Ryneveld was replaced by Mr. Stan Lowe.
- PCC is assisted in his duties by the Deputy Commissioner, Commission Counsel, Senior Executive Assistant and Coordinator, Intake Services.
- There are also six Investigative Analysts.
- The length of the PCC's tenure was amended in the new proposed legislation. In contrast to the previous *Police Act* which dictated that the PCC holds office for 6 years and is not eligible for reappointment (Section 47), according to Bill 7, the PCC shall hold office for a period of five years and may be reappointed for another term of up to five years (47 (3)).

### Budget/financing

- In the fiscal year ending March 31, 2008, the OPCC's budget was \$1,557,000 with eight full-time or equivalent employees.
- The total operating budget consisted of \$1,532,000 and the capital budget was \$25,000.

### Investigative analyst credentials/training

- To review police complaint investigations by municipal police departments and designated tribal police services, to review internal and external police complaint investigations, and to assist with Public Hearings. The position also provides educational seminars on complaint investigations and the application of Part 9 of the *Police Act*.
- University degree or diploma in a relevant discipline is required and several years of practical experience or an equivalent combination of education/training/experience in a related field (for example conflict resolution or mediation).
- In addition, knowledge of legal cases relating to police complaints and civilian oversight of law enforcement is required.
- Finally, important is a thorough and detailed knowledge of the principles/techniques of investigation.

### Policies and procedures

- The PCC's website includes a link that takes the reader to the "guidelines, practice directives and policies." The "Guidelines" are entitled "Extension of Investigation" (process where a party applies to extend an investigation), "Procedural Fairness" (full disclosure at discipline hearings and public hearings) and "Suspension of Proceedings" (procedure where *Police Act* proceedings are suspended). The sole "Policy" is entitled "Exercising of Discretion of the Police Complaint Commissioner." This Policy deals with the discretion whether to order a public hearing.
- "Practice Directives" were prepared in the following areas: (i) discipline hearings; (ii) informal resolution; (iii) Internal discipline; (iv) Service and Policy Complaints; (v) Service of Notices; (vi) Summary Dismissals; (vii) Withdrawn Complaints; (viii) Procedural Fairness; (ix) Statements by Police Officers; (x) Off-duty conduct; (xi) Mediation.
- The PCC has also issued several policy documents to municipal police departments addressing aspects of the complaint process pertaining to (i) suspensions of *Police Act* proceedings during criminal investigations; (ii) the standard of proof in *Police Act* proceedings; (iii) Pre-hearing conferences; and (iv) the imposition of discipline.
- The OPCC has a detailed policy and procedure manual dealing with all aspects of their duties and responsibilities.

### Additional observations

- Former PCC, Mr. Dirk Ryneveld, stated that in order to be truly effective, a police oversight agency needs to combine "the best of both worlds: totally civilian body with former police officers [which would] bring police experience to [ensure] informed decision-making."
- Mr. Ryneveld has been requesting legislative changes for several years, in annual reports as well as in several publications such as the 2005 *White Paper*.
- In an interview conducted with the Commissioner and the Deputy Commissioner of the PCC, Mr. Bruce Brown, on November 21, 2008, Mr. Ryneveld summed up his recommendations into four major issues:
  - Contemporary oversight ability instead of *ex post facto*;
  - Public review ability;
  - Compellability of police officers (with respect to disciplinary proceedings);
  - Wider range of penalties or disciplinary measures.
- It appears that the proposed legislation does address most of these concerns.

**British Columbia:  
Independent Observer  
Program (IOP)**

## British Columbia: Independent Observer Program (IOP)

### Mandate

- The mandate of the Independent Observer Program (commonly referred to as IOP) is to provide “competent, professional and timely observations” regarding the impartiality of RCMP investigations of their own members in cases involving serious injury or death, as well as other cases that are “high profile and sensitive in nature.”

### Background

- Increasing public concern regarding the accountability and impartiality of police members investigating other police members. A demand for a transparent and credible investigative process in cases involving serious injury or death led to the proposal that the RCMP combine with the capabilities of the Commission for Public Complaints Against the RCMP (CPC).
- As a result, the Independent Observer Pilot Project (IOPP) became operational in British Columbia on April 1, 2007, an initiative that would assess the impartiality of RCMP investigations when the actions of one of its members resulted in serious injury or death, and in other cases that are “high profile or sensitive in nature.”
- Today a fully established program, as of January 2009, the Independent Observer Program (IOP) has been deployed 10 times.

### Jurisdiction

- The RCMP's “E” Division in British Columbia is under the jurisdiction of the IOP. This includes approx. 5,900 regular and 1,700 civilian members and public service employees.
- In addition, pursuant to the 2005 Public Safety Cooperation Protocol signed between the RCMP and the Assembly of First Nations, the IOP commits the Aboriginal population.
- The IOP was established in conjunction with the RCMP's Office of Investigative Standards and Practices (OISP).

### Legislative basis

- Section 37 of the *Royal Canadian Mounted Police Act* outlines standards against which the conduct of the members of RCMP is examined. These include:
  - Line management
  - Appropriate level of response
  - Timeliness of the response
  - Conduct (discipline standard set by section 37 of the Act)



## Handling of incident

- The investigation of the incident is initiated by the RCMP Major Crime Unit.
- The RCMP member in charge of the OISP is responsible for notifying the CPC Independent Observer. Together, they attend briefings offered by the Major Crimes Unit's Team Leader within the first 24 hours, and thereafter as needed.
- The OISP member oversees the competency of the RCMP investigation. The Independent Observer can make recommendations to the OISP member and observe and assess the impartiality of the investigation. The Observer, however, does not participate directly in any phase of the investigation process.
- The Independent Observer assesses the impartiality of the investigation against the agreed upon criteria, which include the following:
  - Line management
    - Were there any perceived conflicts of interest between the investigators and those subject to the investigation?
  - Appropriate level of response
    - Was the response of the investigators proportionate to the gravity of the incident?
    - Were the investigators appropriately qualified?
  - Timeliness of the response
    - Was the response of the investigative team done in a timely fashion to the incident?
  - Conduct
    - Was the conduct of the investigators in pursuance of section 37 of the Act? Section 37 sets out discipline standards of RCMP employees, which include such provisions as respect (section 37 a), integrity of the law (section 37 b), incorruptibility (section 37 f), and courtesy (section 37 g of the Act).
- The Independent Observer provides the findings and the Chair of the Commission reports those to the RCMP.

## Statistical analysis

- In its first year of operation, the Independent Observer was involved in six investigations. In all of them, the Observer had no concerns regarding their impartiality.
- There were 15 internal "E" Division investigations that did not involve the Observer.
- In December 2008, the Observer was deployed outside British Columbia for the first time at the request of Yukon's "M" Division to investigate an in-custody death of an individual in Whitehorse.
- As of January 2009, the Observer was deployed 10 times and found no concerns with the RCMP impartiality.

## Structure

- The Deputy Commissioner of "E" Division and the Chair of the CPC are in charge of a continuous review of the IOP, and shall meet on an as-needed basis.
- The Senior Director, Operations and the RCMP person in charge of the OISP manage the daily operations of the IOP.

### **Budget/financing**

- No data is available as to the financing and budget of the IOP.

### **Investigator credentials/training**

- According to the CPC, the background of a CPC Independent Observer should include:
  - Legal training, or
  - University degree in criminology or policing in addition to experience in policing practices, and
  - Significant experience in the area of public complaints relating to the police,
  - Experience in the RCMP or other police investigative courses, such as Major Case Management, is an asset.

### **Policies and procedures**

- The Observer reports directly to the Senior Director, Operations.
- The CPC Chair, Vice-Chair, the Executive Director and the Communications Manager also see the report. The latter keeps the media updated as appropriate.

### **Additional observations**

- In June 2008, a review of the IOP following one year of its operation was completed.
- It determined that the IOP is effectively fulfilling its mandate and advised the CPC to explore the possibility of establishing the IOP in other RCMP divisions "on a pilot project basis."

**Alberta:  
Alberta Serious  
Incident Response  
Team (ASIRT)**

## Alberta: Alberta Serious Incident Response Team (ASIRT)

### Mandate

- ASIRT's mandate is to investigate incidents of complaints involving serious injury or death of any person, and matters that are serious or sensitive in nature, that resulted or may have resulted from the actions of a police officer.

### Background

- The establishment of ASIRT was part of Alberta's Premier Ed Stelmach's plan to provide safe and secure communities. In the spring of 2007, the Department of the Solicitor General and Public Security created ASIRT in order to "ensure excellence and independence in the investigation of matters referred by the Director of Law Enforcement."
- The model became another option for the Director to use with a view to independent investigations of serious and potentially criminal conduct of police. The agency became operational in January 2008.

### Jurisdiction

- ASIRT has jurisdiction over all sworn police officers and police services in Alberta. Pursuant to section 45 of the *Police Act*, "police service" includes the Royal Canadian Mounted Police and a regional, provincial or municipal police service established under an enactment of another province or territory.
- It is made up of two operational units. One is based in Edmonton to cover northern Alberta; the other is in Calgary to investigate incidents in the southern part of the province.
- ASIRT is not a review mechanism. As its Director Clifton G. Purvis points out, "our business is not to review policy." Police policies and procedures may be assessed only in conjunction with a police investigation.

### Legislative basis

- ASIRT was established by Section 46.1 of the *Police Act*. This section also provides for other options, such as requesting that an officer from an outside police agency to assist in the investigation (Section 46.1 (2) a), requesting that an outside police agency conduct the investigation (Section 46.1 (2) b), or establishing a civilian panel to observe, monitor or review the investigation (Section 46.1 (2) c).

### Handling of complaint process

- Once an investigation has been completed, the ASIRT director reviews the results of investigations to ensure completeness and fairness. A report is then forwarded to the office of the Crown prosecutor requesting an opinion on charges. After the director receives the opinion, he decides what charges if any will result from the investigation.

- According to section 45 of the Act, "If, after causing the complaint to be investigated, the chief of police is of the opinion that the actions of a police officer may constitute an offence under an Act of the Parliament of Canada or the Legislature of Alberta, the chief shall refer the matter to the Minister of Justice and Attorney General." If the chief determines that the actions constitute a contravention of the regulations governing the discipline or the performance of duty of police officers, the chief shall conduct a hearing into the matter.
- Section 46.1(4) of the Act dictates that "if the chief of police or police officer in charge of the police service conducting an investigation under subsection (2) (b) or (d) is of the opinion that the actions of the police officer are the subject of the investigation constitute a) and offence under an Act of Parliament of Canada or the legislature of Alberta, the chief or police officer shall i) refer the matter to the Minister of Justice and Attorney General, and ii) advise the commission and the chief of police of the police service under investigation of the chief's or police officer's findings, unless the Minister of Justice and Attorney General otherwise directs."
- Any contravention of regulations on police performance or service policies will be referred to the chief of the police service under investigation or the commission.

### **Statistical analysis**

- In 2008, 21 files were opened and four concluded.
- In November 2008, ASIRT has officially completed its first investigation.
- On January 6, 2009, ASIRT has laid criminal charges for the first time. An RCMP officer was charged with sexual assault. The ASIRT investigator was not an RCMP member.

### **Structure**

- ASIRT is led by a civilian director, Clifton G. Purvis, a seconded Crown prosecutor from Alberta Justice. Reporting to him are: a civilian assistant director, two civilian criminal intelligence analysts, four civilian investigators, ten sworn police officers (from the Calgary Police Service, Edmonton Police Service, and the RCMP).
- The director may also engage public overseers from the community to ensure independence in the investigative process.

### **Budget/financing**

- In the most recent fiscal year, ASIRT's one-time start up costs totalled \$3,930,560.
- Its annual operating costs are \$2,973,280.

### **Investigator credentials/training**

- ASIRT is a body composed of police officers and civilians which "requires expertise valuable to the spirit and intent of the unit." It is headed by a civilian director that is legally trained with significant experience in the area of criminal prosecutions. This director oversees an elite team of civilian and sworn professionals.

### **Policies and procedures**

- ASIRT is currently developing a policy and procedure manual.

**Additional observations**

- In the words of Clifton G. Purvis,
  - *It's really important to strike a balance between investigative expertise and independence. A truly integrative unit reporting to a civilian ensures independence. It's unrealistic for our community to assure the cost and timeliness of investigations [that a separate, independent agency composed entirely of civilians would entail].*
- The advantage of a body like ASIRT is that its integrated approach gives it "immense strength." It can utilize existing RCMP resources and immediately engage expertise and timely arrival of investigators.

# Saskatchewan: Public Complaints Commission

## Saskatchewan: Public Complaints Commission

### Mandate

- Saskatchewan's Public Complaints Commission (commonly referred to as PCC) was established to "ensure that both the public and the police receive a fair and thorough investigation" of a complaint made against the municipal police in Saskatchewan.
- The PCC is also responsible for conducting criminal investigations which originate from public complaints.

### Background

- The creation of PCC was the Saskatchewan government's response to the Stonechild Inquiry as well as the Commission on First Nations and Métis Peoples and Justice Reform.
- The Commission on First Nations and Métis Peoples and Justice Reform was established in November of 2002 with a mandate to examine the relationship between the Aboriginal population and Saskatchewan's justice system, including such areas as policing, prosecutions, access to legal counsel and community justice processes.
- In its report released in June 2004, the Commission determined that the negative relationship between the Aboriginal population and the justice system was unacceptable and recommended reforms in the areas of restorative justice, education and economic development.
- The Commission of Inquiry Into Matters Relating to the Death of Neil Stonechild was established in February 2003 to examine the circumstances that led to the 1990 death of a 17-year old young man of Aboriginal origin, as well as the nature of contact between the deceased and members of the Saskatoon Police Service. In addition, the Commission was asked to examine the quality of investigation conducted by the police following Stonechild's death.
- The Commission's report, released in October 2004, determined that the police investigation was "superficial at best" and lamented the existence of a wide gulf between the Aboriginal and non-Aboriginal population, including a long-standing distrust of non-Aboriginal institutions (such as the police service).
- The recommendations of the Stonechild Inquiry and the Commission on First Nations and Métis people led to the implementation of several amendments to Saskatchewan's justice system exemplified in the *Police Amendment Act, 2005*.
- PCC was created as a result of consultations of a joint steering committee comprised of the Police Services of Regina, Saskatoon and Prince Albert, the Saskatchewan Association of Chiefs of Police, the Saskatchewan Federation of Police Officers, Saskatchewan Justice, the Federation of Saskatchewan Indian Nations, and Métis Family and Community Justice Services.
- On April 1, 2006, the Public Complaints Commission replaced the office of the Saskatchewan Police Complaints Investigator.



**Jurisdiction**

- PCC has jurisdiction over all municipal police officers in the province. Complaints can be filed to the PCC, to the police service, to the Board of Police Commissioners, to Saskatchewan Justice, to the Special Investigations Unit of the Federation of Saskatchewan Indian Nations, to the board office of the affected police service, or to the detachment of the RCMP (Section 38 (2) of the Act).
- The PCC has no authority to investigate members of the RCMP. Members of the population may file complaints against municipal police officers with a given RCMP detachment, which shall refer them to the PCC. The geographical nature of the province dictates that some inhabitants live in remote locations. They may therefore file complaints against municipal police officers at the remote RCMP detachment locations.

**Legislative basis**

- PCC was created pursuant to Section 16 of the *Police Act, 1990*. The amendments adopted on April 1, 2006 increased the scope of review and the range of powers of PCC.
- Section 16 (3) demands that one of the members of the board shall be of Métis origin, one must be a person of the First Nations ancestry, and one must be a lawyer.
- The duties and powers of PCC are outlined in sections 38 and 39 of the Act and include recording and monitoring the handling of the complaint, requesting access to files and interviews of the affected police officers and complainants.
- Section 45 (6) specifies that PCC has the authority to assume responsibility of the police investigation at any point it feels necessary to do so and in that instance the police service in questions must desist its investigation and provide all required assistance to the members of the PCC.
- Section 91.1(1) dictates that in cases of serious injury or death, the RCMP providing policing services within a municipality must request that the Deputy Minister of Justice appoint an observer "from another police service or detachment of the RCMP" to oversee the investigation. This observer shall be given "full access" to the investigation and report on all aspects of the investigation.

### **Handling of complaint process**

- Upon the receipt of the complaint, the PCC records the complaint, decides upon the form of investigation, and continues to keep the complainant(s) and the police officer(s) affected regularly informed.
- PCC decides who conducts the investigation. According to section 45 (3), it can be conducted:
  - by the PCC;
  - by the police service whose member is the subject of the complaint;
  - by the police service whose member is the subject of the complaint with the assistance of PCC observer who monitors the investigation; or
  - by a police service other than the one whose member is the subject of the complaint.
- Pending the resolution of the complaint, the PCC shall provide within 30 days a report to the Saskatchewan Police Commission regarding the resolution of the complaint.
- The complaint shall be made within 12 months of the incident. However, if the chairperson of PCC is under belief that it is in the public interest to do so, the time allotted to the complaint can be extended.
- PCC inspects annually all records, operations and systems of administration for the handling of complaints by police services.

### **Statistical analysis**

- In the year 2007/08, PCC received 135 complaints. 23 of those are pending and 24 were concluded as "Other" and 5 were withdrawn.
- Out of 135 complaints in 2007/08, PCC determined that 10 complaints were substantiated (supported by evidence), six were unsubstantiated and 75 were unfounded (unsupported by evidence).

### **Structure**

- PCC is composed of five civilians. Pursuant to the *Police Amendment Act 2005*, the members are appointed by the Lieutenant Governor in Council for a three-year term with a possibility of one renewal. In addition, the legislation (Section 16 (3) of the Act) requires that at least one of the members be of Métis origin, at least one must be of First Nations ancestry, and at least one member must be a lawyer.
- PCC is led by the Chair, Robert W. Mitchell, Q.C. The Director, John A. Clarke, is responsible for the daily operation of the PCC.

### **Budget/financing**

- In the fiscal year 2007/08, the allocated budget was \$598,900.
- The Special Investigations Unit's budget consisted of \$150,000.

### **Investigator credentials/training**

- There are three investigators in the PCC team. PCC members meet bimonthly to review new complaints, brief each other on the ongoing investigations and reach consensus on the determination of completed investigations.

**Policies and procedures**

- The PCC members meet twice a month at a minimum.

**Additional observations**

- PCC Director, Mr. John Clarke, emphasizes that his agency enjoys a very positive working relationship with the police service: "level of cooperation with the policing community is quite high."
- One of the key achievements of the amended PCC was the level of involvement by the First Nations groups, which were "very vocal about the lack of trust in the police justice system," in its creation.
- As Clarke puts it, "spirit of cooperation is vital to good civilian oversight."
- Policing is a service; if you want a quality service you are willing to pay the price – Clarke makes an analogy to high-priced restaurants and the price customers are willing to pay for quality service.
- Speaking about the credentials of his investigators, Clarke states:
  - *There is a point to be made that a good investigator has to have good knowledge [of] what he investigates.*



**Manitoba:  
Law Enforcement  
Review Agency (LERA)**

## Manitoba: Law Enforcement Review Agency (LERA)

### Mandate

- The mandate of the Law Enforcement Review Agency (commonly referred to as LERA) is to investigate public complaints about the on duty conduct of local or municipal police.
- LERA's mission is "to deliver a judicious, timely, impartial, client-oriented service to the public and to the police services and police officers within its jurisdiction."
- LERA does not handle criminal investigations or complaints regarding police services.

### Background

- A 1976 incident that involved an alleged beating of a rape suspect by the Winnipeg police officers (Frampton case) prompted an investigation on the part of the Manitoba Police Commission (MPC).
- Following the investigation, the MPC recommended that changes need to be incorporated into the citizen complaint procedure.
- Legislation was proposed in 1981 and the new legislation was proclaimed in December 1984. LERA became operational in 1985 pursuant to *The Law Enforcement Review Act*.
- The new legislation required that all citizens' complaints regarding the actions of on duty police officers be referred to the Commissioner who shall then determine whether a disciplinary default has been identified and an investigation warranted.
- In 1992 the Law Enforcement Review Board and the MPC were dissolved. Hearings are referred to the Chief Provincial Judge to ensure independence and objectivity from an expert source.

### Jurisdiction

- Any peace officer employed by the provincial or local police service, including police chief, fall under LERA's scope of jurisdiction.
- The Act also applies to the conduct of officers from other provinces appointed as police officers in Manitoba, as well as Manitoba police officers appointed in other provinces.
- LERA's jurisdiction extends to 13 police services involving approximately 1,480 police officers.
- Members of the RCMP are excluded from LERA's jurisdiction.
- The Commissioner files an annual report with the Minister of Justice.

### Legislative basis

- *The Law Enforcement Review Act* outlines LERA's powers and obligations.
- Section 12(5) of the Act allows the LERA Commissioner to conduct a search and seizure if necessary.
- The Commissioner has all powers of a commissioner as set out in Part V of *The Manitoba Evidence Act*.

### Handling of complaint process

- LERA investigates allegations that municipal police officers have committed any of the following:
  - abuse of authority, such as:
    - making an arrest without reasonable or probable grounds,
    - using unnecessary violence or excessive force,
    - using oppressive or abusive conduct or language,
    - being discourteous or uncivil,
    - seeking improper monetary or personal advantage,
    - serving or executing documents in civil proceedings without authorizations,
    - differential treatment without reasonable cause on the basis of any characteristics described in *The Human Rights Code* (Subsection 9(2)).
  - making a false statement, or destroying, concealing or altering any official document or record;
  - improperly disclosing any information acquired as a member of the police service;
  - failing to exercise discretion or restraint in the use and care of firearms;
  - damaging property or failing to report the damage;
  - failing to help where there is a clear danger to the safety of a person or property;
  - violating the privacy of any person under *The Privacy Act*;
  - breaching any part of *The Law Enforcement Review Act* that does not already specify a penalty for the violation;
  - helping, counseling or causing any police officer to commit officer misconduct.
- Pursuant to Section 6(3) of the Act, a complaint must be made within 30 days of the alleged disciplinary incident.
- Any person who feels wronged by the conduct of a municipal police officer can file a complaint. The complaint may also be filed by another person providing there is a written consent from the alleged victim.
- All complaints must be made in writing, dated and signed.
- Complaints may be sent directly to LERA or made to the police who shall then send it to LERA.
- LERA's investigators interview witnesses, take statements and review reports such as medical and police records. They are authorized to make any inquiry necessary to obtain the required evidence.
- Following the investigation, the Commissioner screens the complaint. He may decide to take no action under the following circumstances:
  - the complaint is frivolous or vexatious;
  - the complaint has been abandoned by the complainant;
  - the alleged conduct falls outside of LERA's jurisdiction;
  - there is not enough evidence to send the complaints to the provincial judge for a public hearing.
- The complainant is notified in writing and then has 30 days to request a review from a provincial judge.

## Appendix 8e

- LERA Commissioner has a duty to attempt to resolve a complaint by way of informal resolution.
- If it cannot be so resolved and the officer in question fails to make admission of guilt, the Commissioner shall refer the case to the provincial judge for a public hearing.
- Penalties that a provincial judge may impose vary among the following:
  - dismissal;
  - permission to resign or summary dismissal if resignation not received within seven days;
  - reduction in rank;
  - suspension without pay for up to 30 days;
  - loss of pay for up to 10 days;
  - loss of leave of days off for up to 10 days;
  - written or verbal reprimand;
  - admonition or warning.
- Where the incident reported involves a possible criminal offence, the commissioner or the provincial judge shall report it to the attorney general.

### Statistical analysis

- Winnipeg Police Service typically accounts for 86% of all complaints. Brandon Police Service represents 7%.
- In 2007, 308 files were opened. The five-year average is 367 complaints.
- The year 2007 marked a decrease in the number of allegations of disciplinary default in the following categories: abuse of authority, arrest without reasonable or probable grounds, using unnecessary or excessive force, and being discourteous or uncivil.
- 49% of all complaints involved allegations of injuries from the use of force.

### Structure

- LERA is headed by a Commissioner, Mr. George V. Wright, who is appointed by the Lieutenant-Governor in Council.
- In addition, LERA is composed of a Registrar of Complaints, a clerk and four full-time professional investigators who have extensive law enforcement experience.
- For the fiscal year ending March 2008, LERA staffed seven employees.

### Budget/financing

- Ending March 2008, the budget totaled \$654,800.

### Investigative analyst credentials/training

- The investigators working currently at LERA are former police officers. Because LERA does not have the jurisdiction over the RCMP, its investigators have no authority to handle cases involving their former unit.



**Policies and procedures**

- LERA's procedures in dealing with public complaints are described in the section on the handling of complaint.
- The Commissioner carries out the investigations in compliance with *The Law Enforcement Review Act* and has all the powers of a commissioner under Part V of *The Manitoba Evidence Act*.

**Additional observations**

- LERA can be described as "an administrative law agency."



**Ontario: Office of the  
Independent Police  
Review Director (IPRD)**

## Ontario: Office of the Independent Police Review Director (IPRD)

### Mandate

- The office of the Independent Police Review Director (commonly referred to as IPRD) is a brand new oversight body created in May 2007 by Bill 103: the *Independent Police Review Act*.
- It is an independent civilian body which shall administer the public complaints process in Ontario.
- IPRD is required to review every complaint made to him by a member of the public and to ensure that every complaint is referred, retained or dealt with.
- IPRD is responsible for the initial screening of public complaints.
- In addition, IPRD may establish "procedural rules and guidelines for the handling by chiefs of police and boards" of complaints made by the public (Section 56 (b)).

### Background

- The creation of the IPRD was brought about by the recommendation made by Justice Patrick LeSage, whose 2005 report called for a new independent civilian body to administer the police review system.

### Jurisdiction

- IPRD is required to review every complaint made to him by a member of the public and to ensure that every complaint is referred, retained or dealt with.
- IPRD acquired the interlocutory powers of review previously held by the Ontario Civilian Commission on Police Services (OCCPS).

### Legislative basis

- IPRD was established pursuant to the Bill 103 – *the Independent Police Review Act*, which received Royal Assent on May 17, 2007.
- Its powers are outlined in Part V of the Act.
- The establishment of the IPRD is also referred to in Ontario's *Police Services Act* Part II.1 Section 26.1 and Section 56.

### Handling of Complaint Process

- Each complaint needs to be filed within six months of the incident in question. The IPRD can allow complaints made outside of that limitation under exceptional circumstances (such as when the complainant is suffering from a disability).
- IPRD may decide not to handle a complaint if:
  - the complaint falls outside of the limit period;
  - the complaint is frivolous, vexatious or made in bad faith;
  - the complaint should be dealt with under another legislation;
  - it is not in the public interest to deal with the complaint;
  - in the case of a complaint involving a policy or service, if the policy or service in question did not directly affect the complainant.
- IPRD must refer complaints about policies or services to the municipal chief of police.

- The chief of police must submit a report to the IPRD regarding the disposition of the complaints.
- The complainant may request that the police board review the complaint. The board, in turn, may order a public meeting.
- IPRD has the power to determine whether to retain a complaint for internal investigation by the IPRD, to refer a complaint about conduct for investigation to another police service or to refer a complaint about conduct for investigation to the chief of police in the service where the complaint originated. At any time following the referral (but before the hearing), the IPRD has the authority to decide upon the manner in which the complaint is handled. IPRD may also take over the investigation or refer it to another police force.
- Where the IPRD retains the investigation of the complaint, once the investigation is completed, the IPRD refers the matter to the chief of police with a written report stating either that the complaint is not substantiated, is substantiated or is substantiated but constitutes misconduct that is not serious. The Chief of Police may decide to refer the matter to a disciplinary hearing or where the misconduct is less serious may resolve the complaint informally.
- Where the complaint has been referred to the Chief of Police for investigation and the Chief of Police decides either that the complaint is unsubstantiated or that the complaint is substantiated but that the conduct is not of a serious nature, the complainant may ask the IPRD to review the decision made by the police chief within 30 days.
- If the complaint is substantiated, the chief of police must order a disciplinary hearing unless the complaint is referred for informal resolution (for less serious matters only).
- A copy of decisions made at the hearing is made available to the IPRD and the general public.
- The officer involved and the complainant can appeal the decision to the Ontario Civilian Police Commission.
- IPRD has standing at any hearing of the Ontario Civilian Police Commission to present argument and make submissions.

### Structure

- The team of the IPRD is in the process of construction. The first Independent Police Review Director, Gerry McNeilly, was named in May 2008.



**Ontario:  
Ontario Civilian  
Commission on Police  
Services (OCCPS)**

## Ontario: Ontario Civilian Commission on Police Services (OCCPS)

### Mandate

- The Ontario Civilian Commission on Police Services (commonly referred to as OCCPS) is an independent, civilian, quasi-judicial agency reporting to the Minister of Community Safety and Correctional Services.
- The mandate of the OCCPS is to ensure that policing services in Ontario are effective and adequate.
- OCCPS seeks to fulfill the following roles:
  - Hearing appeals of police disciplinary decisions;
  - Adjudicating disputes between municipal councils and police services boards involving budget matters;
  - Considering requests for the reduction, abolition, creation or amalgamation of police services;
  - Conducting investigations and inquiries into the conduct of chiefs or police, police officers and members of police services boards;
  - Determining the status of police service members;
  - Hearing disputes relating to the accommodation of disabled police service members;
  - Conducting reviews of local decisions relating to public complaints at the request of complainants; and
  - General enforcement relating to the adequacy and effectiveness of policing services.

### Background

- Pursuant to the 1997 amendment of the *Police Services Act*, the mandate of the OCCPS was broadened to include oversight of the streamlined system for the handling of public complaints about the policies, services or conduct of police officers. The system allows complainants to request a review by the OCCPS of local decisions about police conduct. Changes to the current system are anticipated sometime in 2009.
- Bill 103, the *Independent Police Review Act*, received Royal Assent in May of 2007. The Bill establishes a new Independent Police Review Director that would operate under the ministry of the Attorney General. Upon proclamation of Bill 103, the Commission will lose oversight of public complaints against the police and its interlocutory powers of review. The Commission will, however, remain the final appellate authority with respect to public complaints and the remainder of its mandate will continue.
- In addition, Bill 103 renames the Ontario Civilian Commission on Police Services to the Ontario Civilian Police Commission.



### Jurisdiction

- All municipal police services and police services boards are under OCCPS's scope of review.
- Chiefs of police, members of police services and police services boards are accountable to the public through the OCCPS.
- OCCPS reports to the Minister of Community Safety and Correctional Services.

### Legislative basis

- The mandate and duties of OCCPS are set out in Part II the *Police Services Act*.
- Section 25 of the Act mandates indicates that OCCPS has the authority to initiate, investigate, inquire into and report on "the conduct or the performance of duties of a police officer, a municipal chief of police, a special constable, a municipal law enforcement officer or a member of the police board," as well as the quality of service provision by the police services.
- Pursuant to Part V of the Act, OCCPS is the review body for public complaint decisions made by chiefs of police and the Commissioner of the Ontario Provincial Police.

### Handling of complaint process

- There are three types of complaints:
  - Complaints relating to police services;
  - Complaints about the policies of a police service;
  - Complaints in relation to conduct of a police officer.
- Each complaint must be made within six months of the alleged incident.
- Only the person "directly affected" by the alleged incident may file a complaint.
- The complaint may be filed at the police station named in the complaint or it may be taken directly to the OCCPS office.
- Upon the receipt of the complaint, the police chief/Commissioner classifies the complaint into one of the three types. Should the complainant disagree with the classification, he/she may request a review with the OCCPS within 30 days.
- The chief/Commissioner is obligated to conduct an investigation into every complaint regarding police conduct. It may be determined that there is misconduct of varying degrees of gravity, or that the complaint is unsubstantiated.
- Within 30 days of the receipt of the outcome of the investigation, the complainant may request the OCCPS to conduct a review of the chief/Commissioner's decision.
- The OCCPS Case Manager reviews the file and consults with the Commission Advisor, investigators or legal advisors if necessary.
- The decision reached by OCCPS is not subject to appeal. OCCPS may:
  - Uphold the decision of the chief/Commissioner;
  - Refer it back for investigation;
  - Assign the investigation to another police service;
  - Find evidence of misconduct;
  - Order a disciplinary hearing in the case of misconduct of a serious nature.
- Should a disciplinary hearing be conducted, the complainant has 30 days to appeal to the OCCPS the outcome of the hearing.
- The complaints can be also resolved through informal resolution. Such resolutions are dependent upon the consent on the part of the complainant and the officer,

as well as approval on the part of the chief/Commissioner. Complaints resolved by informal resolution are less serious in nature.

- The complaint can be rejected when it is determined that:
  - It is filed six months after the alleged incident;
  - It is vexatious or made in bad faith;
  - The complainant was not directly affected by the incident.
- Should the chief/Commissioner reject the complaint, the complainant shall be notified in writing within 30 days.

**Statistical analysis**

- In 2007, OCCPS conducted two investigations under Section 25 out of ten requested.
- There were 2,623 complaints made against 23,383 police officers or police services.
- The following table depicts the number of public complaints filed against police officers in Ontario since 2003:

**Review of public complaints against police officers in Ontario**

2003	2,845
2004	3,110
2005	2,868
2006	2,613
2007	2,623

**Structure**

- OCCPS is led by the Chair, Mr. Murray W. Chitra, who is appointed by Order-in-Council.
- In 2007 the OCCPS had 7 part-time members, staff composed of the Senior Advisor, two investigators, Registrar & general manager, and four Case Managers.
- The members are representative of Ontario's Northern, Southern, Eastern and Western regions.
- There are currently 13 employees at OCCPS.
- The Commission meets in Toronto monthly. In addition, the members are regular participants in review panels regarding local police decisions on the classification and investigation of public complaints against police officers.

**Budget/financing**

- In 2007/08, the total budget consisted of \$1,684,200.

**Investigator credentials/training**

- There are two investigators: Senior Investigator and Complaints Investigator.

### Policies and procedures

- OCCPS policies and procedures are set out in the *Rules of Practice*, which define various steps of the complaint process and the participants involved, as well as the powers of the OCCPS. In addition, the following rules are applied:
  - *Procedures Before Hearing* determine that the Notice of Appeal filed with the OCCPS must be done within 30 days of the chief/Commissioner's decision;
  - Conditions that allow the OCCPS to provide information are outlined in the *Disclosure* provision;
  - The proper format of the supporting documentation used in the appeal hearings is described in the *Appeal Factums* policy;
  - *Service of Documents Upon Parties* sets out the proper method of sending documents;
  - *Motions* policy emphasizes that the notice of motion must be delivered at least 14 days in advance of motion proceedings;
  - Rules 21 and 22 set out the conditions necessary for the proper conduct of hearings, which may be conducted in an electronic format;
  - *Order of Presentation* determines that the appellant shall be the first party to present its case;
  - In addition, templates samples are provided for Notice of Appeal, Notice of Motion and Summons to a Witness;
  - The *Public Inquiries Act* applies to all Commission-initiated investigations and hearings.

### Additional observations

- OCCPS Chair, Mr. Murray Chitra, admits that there is value in independent police oversight. At the same time, though, this does not mean that civilian oversight removes all responsibility from the police to address criminal wrongdoing on their own.
- The difficulty, says Mr. Chitra, lies in “where you draw the line,” how much authority should such external body have.
- In the end, Mr. Chitra believes that a hybrid model combining civilian independence and police expertise is the most effective for an adequate police oversight:
  - *For any oversight agency to be effective, it requires a range of capacities and people with a range of skills. It's helpful to have both perspectives—you need a combination of individuals with practical police knowledge to bring both perspectives so that you can make balanced decisions.*



**Ontario:  
Special Investigations  
Unit (SIU)**

## Ontario: Special Investigations Unit (SIU)

### Mandate

- SIU's mandate is to investigate the circumstances of serious injuries and deaths (and allegations of sexual assault) that may have resulted from criminal offences committed by police officers.
- SIU has full powers to investigate and charge officers with a criminal offence.

### Background

- During hearings at the Task Force on Race Relations and Policing in 1988, many participants expressed their concern regarding the integrity of the process in which police conducted investigations involving other police officers, especially in regard to shootings of criminal suspects. As a result of the recommendations made by the Task Force, a new *Police Services Act* established the Special Investigations Unit in force as of August 8, 1990 as an independent arms-length investigative branch of the government.

### Jurisdiction

- SIU has jurisdiction over all municipal, regional and provincial police officers across Ontario, which represents 65 police services and approx. 21,600 officers. This excludes RCMP and Aboriginal police working in Ontario.
- In 2005-2006, SIU received 118 non-jurisdictional complaints. Areas that fall outside SIU scope of review include a lack of a serious injury.
- The definition of "serious injury" was created by SIU's first Director, the Hon John Osler. It refers to
  - *Those [injuries] that are likely to interfere with the health or comfort of the victim and are more than merely transient or trifling in nature and will include serious injury resulting from sexual assault. "Serious injury" shall initially be presumed when the victim is admitted to hospital, suffers a fracture to a limb, rib or vertebrae or to the skull, suffers burns to a major portion of the body or loses any portion of the body or suffers loss of vision or hearing, or alleges sexual assault.*

### Legislative basis

- SIU was established by Part VII, Section 113 of the *Police Services Act (PSA)*, which provides the legislative framework for policing in Ontario. The new PSA received Royal Assent on June 28, 1990 and SIU came into force on August 8, 1990. It is an independent civilian agency that has full powers and authority to investigate and to charge police officers with a criminal offence.
- The legislation was too broad in scope. It states that the SIU and the police would cooperate but failed to specify how.
- As a result, in 1998, Regulation 673 *Conduct and Duties of Police Officers Respecting Investigations by the Special Investigations Unit*, was introduced in order to alleviate lack of clarity.

### Handling of complaint process

- The goal of SIU is to complete 65% of all cases within 30 days. Depending on a case, the thoroughness of the investigation takes precedence over the length of time.
- According to SIU, every investigation typically involves the following:
  - "examining the scene and securing all physical evidence, monitoring the medical condition of anyone who has been injured,
  - seeking out and securing the cooperation of witnesses, seizing police equipment for forensic examination,
  - consulting with the coroner if there has been a death,
  - notifying the next of kin and keeping the family of the deceased or injured parties informed,
  - and keeping the Investigative Supervisor, Executive Officer and Director fully informed of developments on the case."
- Once that all the facts are gathered, the Director decides whether there are reasonable grounds to charge an officer with a criminal offence. The Attorney General of Ontario, the Chief of the involved police service or the Commissioner of the Ontario Provincial Police, are informed of the Director's decision.
- The Lead Investigator plays a critical role in the process. The lead investigator manages investigative resources, coordinates the gathering of evidence, assesses the importance of evidence gathered, secures cooperation from involved parties, and prepares an investigative brief at the conclusion of the cases, on the basis of which the Director makes his decision.

### Statistical analysis

- The following illustrates SIU investigations throughout the years. In 2006-07, there were 238 occurrences, the most the SIU has ever had. According to SIU, custody deaths and injuries are largely responsible for this increase.
- There were two cases in which charges were laid against two police officers.
- 68% of the Unit's cases were closed within 30 business days in 2006-07.
- Since 2000, there were 24 cases in which charges were laid.

### SIU Occurrence Chart

	Firearm Deaths	Firearm Injuries	Custody Deaths	Custody Injuries	Other Injuries / Deaths	Vehicle Deaths	Vehicle Injuries	Sexual Assaults	Total
2000-2001	5	8	18	85	2	8	36	15	177
2001-2002	4	5	19	75	1	12	31	15	162
2002-2003	1	9	17	86	1	7	21	9	151
2003-2004	2	8	26	90	0	9	41	16	192
2004-2005	8	4	15	58	2	9	30	11	137
2005-2006	8	10	22	107	0	9	25	23	204
2006-2007	6	11	35	129	0	5	28	24	238

## SIU Cases in which charges were laid

2000-2001	5(9)
2001-2002	4(5)
2002-2003	4(4)
2003-2004	2(2)
2004-2005	3(4)
2005-2006	4(4)
2006-2007	2(2)

### Structure

- SIU is led by the Director and as of 2006-07 composed of approx. 60 employees. These include three (3) Investigative Supervisors and 31 Investigators. In addition, the Forensic Identification Section team is composed of two (2) full-time Forensic Identification Supervisors and nine (9) Forensic Identification Technicians on an as-needed basis. The staff is completed by an Executive Officer, Legal Counsel, Administrative Manager, Communications Manager, Affected Persons Coordinator, Training Coordinator, and administrative staff.

### Budget/financing

- For the year that ended March 2007, the total amount of expenditures was \$5,689,745.

### Investigator credentials/training

- The average investigative experience among the SIU investigators is 31 years. The composition of the full-time investigative team is balanced between five former police officers and seven investigators with no prior police experience.
- The investigative staff also includes experts in traffic collision investigations and collision reconstruction. In addition, SIU has a Forensic Identification Section which assists in all aspects of forensic identification work.
- All new investigators receive a five-day orientation session organized by the internal staff and the external subject matter experts.
- In addition, all investigative and forensic employees receive in-house training on a quarterly basis. Topics covered in the past included "Shooting reconstruction," "Interviewing vs. Interrogation," "Firearms trajectory and collision analysis," and "Role of team leads and team communication."
- External subject matter experts are also invited on a quarterly basis to present on current topical issues. Training sessions in the past covered such themes as "A Survivor's Perspective on Prostitution," "DNA Primer," and "Gunshot Residue."
- Moreover, SIU employees receive training offered by external service providers such as the Ontario Police College and the Canadian Police College, as well as other institutes and associations, such as the Centre of Forensic Sciences and the Criminal Lawyers' Association.
- External courses seminars and conferences provide SIU members with the additional information on a particular subject matter. In the past, the employees



attended such events as the "Aboriginal and Diversity Policing Forum," "Disaster Planning: Major Event," the "Annual International Sex Crimes Conference," the International Association of Blood Pattern Associates Annual Conference," and the "Kinesic Interview Technique" session.

- Finally, SIU staff receive Health and Wellness training and Cultural Diversity Training.
- In the year 2006-07, expenditure on training comprised 4.8% of SIU's total budget, or \$273,422.

### **Policies and procedures**

- The SIU employees are guided by the following principles:
  - They are led by *Operations Order 002 – The Investigative Process*, which describes the procedures to be undertaken by the investigative staff members in their response to reports of incidents.
  - In addition, these principles are directly applicable in cases of serious injury or death:
    - The *Firearms Related Investigations* policy dictates that investigators must respond as quickly as possible in the cases of police-involved shooting incidents.
    - The *Custody Related Investigations* policy provides guidelines for an appropriate response in the case of incidents involving a serious injury or death of a person in police custody. The policy differentiates between two types of custody related incidents: those in which serious injury or death occurred as a result of a direct application of force by a police officer, and those in which the force was applied by the deceased/injured party to him/herself.
    - The *Motor Vehicle Accident Incident Investigations* policy states that "when the police vehicle is physically involved in the collision [that results in serious injury or death], the SIU will be the lead investigative agency."
    - The *Communication and Liaison with Victim – Complainant and/ or Next of Kin* policy emphasizes that in the case of death and certain cases of serious injury (such as when the victim is unable to communicate), the SIU investigators must ensure a timely notification of the victim's next of kin.
    - The *Action Required when Charges Are Laid* policy describes the procedures to be adopted when the SIU Director determines that charges shall be laid against a police officer.
    - The *Preparation of the Prosecution Brief* policy lays out the proper format and contents of a Prosecution Brief.
    - The *Pre-trial Disclosure* policy defines the process and the responsibilities of the Lead Investigator in the case when criminal charges have been laid.
    - The *Firearms Discharge for Examination* policy sets out the safety procedures for a discharge of firearms for the purpose of collection of bullet projectiles.

- The SIU is further guided by the following procedures:
  - The *Investigative Priority* policy
  - The *SIU Cooperation Under Section 11 of Ontario Regulation 873/98* policy
  - The *Sexual Assault Investigations* policy
  - The *Security and Continuity of Physical Evidence* policy
  - *Search Warrants (Obtaining for Investigative Purpose)*
  - *Release of Materials Seized Without Warrant During SIU Investigations*
  - *Seizure of Police Equipment*
  - *Case Reviews with Police Services*
  - *Media Relations*
  - *Use of Official Memo Books*
  - *Investigative Response when Aboriginal People are Involved*
  - *Use of Occurrence and Follow-up Reports*
  - *Requesting Documentation Regarding Reported Incidents*
  - *Preparation of the Prosecution Brief*
  - *Notification of Director's Decision*
  - *SIU Investigations in Co-operation with Child Welfare Authorities*
  - *Violent Crime Linkage Analysis System (VICLAS) Submissions*
  - *SIU Response to Search Warrants, Subpoenas, etc.*
  - *Recorded Interviews*
  - *Infectious Disease/Needle Disposal Policy and Program*
  - *Photographic Lineups*
  - *Calculating the Length of SIU Cases*
  - *Retention/Disposition of Identification of Criminals Act Records*
  - *Definition of "Participate"*

**Quebec: Police  
Ethics Commissioner  
(Commissaire à la  
déontologie policière)  
& Police Ethics  
Committee (Comité  
de déontologie  
policière)**

## Quebec: Police Ethics Commissioner (*Commissaire à la déontologie policière*) & Police Ethics Committee (*Comité de déontologie policière*)

### Mandate

- The mandate of the Police Ethics Commissioner (*Commissaire à la déontologie policière*) is to receive and examine the complaints made against police officers, special constables and highway controllers in relation to the alleged violation of the *Code of ethics of Quebec police officers*.
- The Police Ethics Committee (*Comité de déontologie policière*) is a specialized administrative tribunal that offers the citizens an opportunity to assert their rights, and police officers, special constables and highway controllers a defense before an authority that is "accessible, independent, impartial and specialized in matters of police ethics."
- The Police Ethics Committee ensures that the *Code of ethics of Quebec police officers* is enforced and respected.

### Background

- The evolution of the Quebec society into an increasingly multicultural entity has contributed to tensions between members of visible minority groups and police officers.
- The powers that police officers enjoy in order to fully exercise their duty necessitates a presence of a civilian oversight body.

### Jurisdiction

- In accordance with the *Code of ethics of Quebec police officers*, the jurisdiction of the Police Ethics Commissioner extends over "every police officer, every special constable, every highway controller and every person having authority over highway controllers."
- The Commissioner is an independent institution whose staff is composed exclusively of civilians. In addition, should one of the investigators be a former police officer, that investigator cannot participate in a case involving his/her former police department.
- The Commissioner does not have the authority to submit a case on his own. The following factors are needed for the initiation of investigation:
  - A person files a complaint, or
  - The Minister of Public Security makes a request for investigation, or
  - A Canadian Court declares a police officer guilty of a criminal offence, which also constitutes a breach of the *Code of ethics of Quebec police officers*.
- The Commissioner does not have the authority to conduct criminal investigations. If the case involves an alleged criminal offence, the Commissioner refers it to the appropriate police force for a criminal investigation.

### Legislative basis

- On June 16, 2000, the *Police Act* came into force incorporating all provisions in relation to police ethics.
- The *Code of ethics of Quebec police officers* is outlined in Division I, Section 127 of the *Police Act*. It establishes the duties and standards of conduct of police officers, special constables and highway controllers "in their relations with the public in the performance of their duties."

### Handling of complaint process

- In order to be admissible, a complaint must be:
  - in writing,
  - filed no later than a year from when the alleged event took place,
  - aimed at a police officer, special constable or highway controller in the performance of their duties,
  - a breach of the *Code of ethics of Quebec police officers*.
- The Commissioner must acknowledge the receipt of the complaint within five days and send a copy of the complaint and relevant evidence to the complainant and the director of the police service involved.
- In order to properly process the complaint, the Commissioner undertakes a preliminary examination of the complaint. This phase lasts a maximum of 40 days.
- The Commissioner has several options. He may:
  - refer it to conciliation,
  - order an investigation,
  - dismiss the file, or
  - if a criminal offence may have been committed, submit the file to the police service involved for criminal investigation.
- Should the Commissioner dismiss the file, the complainant has a right of review, which must be submitted within 15 days of the Commissioner's decision.
- All complaints must be submitted for conciliation. In that case, the Commissioner appoints a conciliator who is in charge of the conciliation session, which occurs within 45 days of the Commissioner's decision.
- In exceptional circumstances, the file is not referred to conciliation when the Commissioner chooses to dismiss the file or he feels that an investigation is necessary for public interest. The latter usually involves:
  - death or serious injury,
  - criminal offence, or
  - repeated offence.
- The file is referred to investigation when the conciliation fails, when the Commissioner believes it is in the public interest, or upon the request of the Minister of Public Security.
- By law, everyone but the subject of the complaint must cooperate with the investigation.
- The investigator must submit his report within three months. Upon the receipt of the report, the Commissioner may dismiss the case, propose conciliation or cite the police officer to appear before the Police ethics committee.
- Should the Commissioner decide to dismiss the case, the complainant has 30 days to appeal for review to the Police Ethics committee.

- The Commissioner may dismiss the complaint under the following circumstances:
  - The complaint was not filed within the required time period,
  - The complainant failed to cooperate,
  - The complaint is frivolous, vexatious, or made in bad faith,
  - The examination of the evidence revealed that there is no reason to set the ethical process in motion.
- Should the Commissioner recommend a citation, the subject officer appears at a public hearing before the Police ethics committee. At the hearing, the Commissioner must prove the alleged misconduct based on the rule of preponderance.
- The Committee decides whether the conduct of the subject officer constitutes a breach of the code of ethics, forwards its decision to the complainant, the subject officer and his director. The decision is also released to the public.
- The Committee may, at the complainant's request, review a Commissioner's decision dismissing a complaint following investigation.
- The Committee's decision may involve one of the following options:
  - It may uphold the Commissioner's decision to dismiss the complaint, or
  - It may quash the Commissioner's decision and order that he continue the investigation, conduct a new investigation, or issue a citation.
- The Committee's decision is not subject to appeal by the complainant. Within 20 days of the receipt of the Committee's decision, however, the complainant can submit to the Commissioner a document outlining the reasons justifying the appeal of the decision.

### **Statistical analysis**

- In 2006-2007, the Commissioner received 1,371 complaints, comparable to 1,381 in 2005-2006 and 1,296 in 2004-2005.
- 59 citations were filed, involving 88 police officers. That included 17 members of the Sûreté du Québec, 33 officers from Service de police de la Ville de Montréal (SPVM), 37 municipal police officers and one highway controller.
- 505 conciliations occurred in 2006-2007, in comparison to 429 in 2005-2006.
- 114 investigations were conducted, comparable to 174 in 2005-2006.

### **Structure**

- The Commissioner, M<sup>e</sup> Claude Simard, and the Deputy Commissioner, Me Réjean Gauthier, are appointed by the government for a five-year term with the possibility of renewal.
- The Commissioner is supported by a staff of 35 regular (and one casual) employees located in two branches, one in Quebec (19 employees), the other in Montreal (16 employees).
- The Committee is composed of 18 employees. Full-time members must have been called to the bar at least 10 years prior to their appointment to the Committee. Part-time members must have been called to the bar at least five years prior to their appointment.
- The president of the Committee, M<sup>e</sup> Mario Bilodeau, and the vice-president, M<sup>e</sup> Jean-Pierre Bédard, are also appointed by the government.

**Budget/financing**

- For the fiscal year ending March 31, 2007, the total expenditure was \$2,718,644.
- The cost of investigations and conciliations totaled \$784,913. This is subject to refund by the police service involved.

**Investigator credentials/training**

- Members of the Police Ethics Committee have to possess extensive legal experience.
- Investigators who are former police officers cannot investigate cases that involve their former units.





**Chicago: Independent  
Police Review  
Authority (IPRA)**

## Chicago: Independent Police Review Authority (IPRA)

### Mandate

- The mandate of Chicago's Independent Police Review Authority (commonly referred to as IPRA), is to investigate complaints against members of the Chicago Police Department (CPD) concerning domestic violence, excessive force, coercion and verbal abuse based on bias.
- IPRA must undertake investigations into all cases where a firearm or a taser was discharged in a manner that could potentially injure an individual, as well as all Extraordinary Occurrences (any death or injury to a person while in police custody, any suicide or attempted suicide), regardless of whether there is alleged misconduct.
- IPRA has the responsibility to intake all allegations of police misconduct.

### Background

- In 1974, the Chicago Police Department created a new unit, the Office of Professional Standards.
- In 2007, the Office of Professional Standards became separated from the CPD.
- In response to concerns about how allegations of police misconduct were being investigated by the CPD, Mayor Richard M. Daley created IPRA by City Ordinance in the summer of 2007. IPRA replaced the Office of Professional Standards.
- On September 5, 2007, IPRA became operational as an independent department of the City of Chicago.

### Jurisdiction

- IPRA has jurisdiction over all CPD officers.
- It is an independent department reporting directly to the Mayor.
- IPRA has the responsibility to intake all allegations of police misconduct.
- IPRA must investigate all discharges of a firearm or uses of a taser *regardless of whether there is any alleged misconduct*.
- Complaints that do not involve excessive or deadly force, domestic violence, verbal abuse based on bias, or coercion by a CPD member, fall outside IPRA's jurisdiction. These can include allegations of drug use, theft and procedural violations. They are forwarded to the Internal Affairs Division of the Chicago Police Department for resolution.

### Legislative basis

- IPRA was established by City Ordinance Chapter 2-57.

### Handling of complaint process

- If the complainant signed an affidavit or is a member of CPD, IPRA classifies the Log Number as a Complaint Register Number for the remainder of the investigation.
- If the complaint is external and the complainant has not signed an affidavit, IPRA initiates a pre-affidavit Investigation.
- Any complainant making an allegation against a CPD member must sign a sworn affidavit certifying that the allegation is true, or certifying that the complainant believes the allegation to be true.

- IPRA acknowledges the complaint within five to seven working days.
- Following the notification of an event involving the discharge of a firearm or taser, as well as in the case of Extraordinary Occurrences, IPRA issues a Log Number. In the absence of the allegation of misconduct, IPRA undertakes the investigation and classifies it as a Complaint Register Number only if the investigation reveals alleged misconduct.
- A lawsuit against the city alleging misconduct by a CPD member is treated like any other allegation of misconduct. If there is an affidavit, a Log Number is issued and the case is classified as a Complaint Register Number.
- The pre-affidavit investigation can contain all investigative tasks except the accused officer, who cannot be interviewed until IPRA receives a complaint or gets an exception to the affidavit requirement, which can come from the state law or the union contract.
- IPRA's final report makes one of the following findings:
  - the allegation is sustained: there is sufficient evidence to justify disciplinary action;
  - the allegation is not sustained because there is not enough evidence to either prove or disprove the allegation;
  - the allegation is unfounded (it is false or not factual);
  - the officer is exonerated: the actions of the accused were lawful and proper; or
  - there is no affidavit—no witness provided a sworn statement and no exception to the affidavit requirement was applicable.
- For any sustained case, IPRA may recommend discipline of violation noted or written reprimand, suspensions of 1 to 365 days, or termination.

### **Statistical analysis**

- In the year 2007-2008, IPRA received 9,578 allegations and notifications regarding members of the CPD.
- IPRA closed 2,158 investigations. 46 cases were declared "sustained."
- From April 2008 to June 2008, IPRA retained 640 matters for investigation and closed 672 pending investigations.
- 16 cases were closed as "sustained". IPRA recommended that 203 investigations were "not sustained".

### **Structure**

- IPRA is led by a chief administrator, appointed for a term of four years by the mayor subject to approval by the city council.
- The chief administrator must issue an official report to the mayor's office on a quarterly basis regarding the activities and accomplishments of IPRA for the period in question.
- All members of IPRA are civilians.

### **Budget/financing**

- For the fiscal year 2008, the budget recommendation for IPRA totaled US\$5,758,479.
- US\$5,060,407 were relegated to investigations.

### Investigator credentials/training

- IPRA investigators receive a curriculum of training on an annual basis.
  - The investigators receive training from the Chicago Police Department on CPD policies and procedures.
  - They also receive training from the Illinois State Police Forensic Science Center, which includes fingerprint analysis, DNA analysis, toxicology, firearms testing and other areas of forensic testing on an as-needed basis.
  - IPRA is currently in the process of designing additional investigative skills training.

### Policies and procedures

- IPRA has a Standard Operating Procedure manual which has not been updated for several years. It contains, among others, policies on how to conduct investigations and procedures for shooting investigations.
- There is also a manual for the Major Incident Response Team.
- In addition, IPRA's Chief Administrator addresses each class of new police officer recruits during their recruit training, explaining the role and functions of IPRA. The Chief Administrator also addresses classes of promoted detectives, sergeants and lieutenants.
- IPRA assesses officer conduct against CPD policies (indicated in the list below), led by the CPD General Order 02-08 on the use of force. Added in August 2003 to its *Force Options* policy, Section III B 2.d (2) stipulates that when dealing with an 'active resister', deploying a taser is one of the response options; however, "only [CPD] issued tasers may be used and only after the member has received Department-authorized training in their safe handling and deployment."
- The following policies apply within the department's use of force:
  - *Incidents Requiring the Completion of a Tactical Response Report*. Such incidents include an assault against a CPD officer.
  - *Canines as a Force Option* which dictates that CPD-trained dogs can be used as a force response to an active resister.
  - *Deadly Force*, which includes the firing of a firearm in direction of a person or vehicle.
  - *Force Options* identifies possible levels of response options when dealing with different types of detainees.
  - *Use of Force Guidelines*, and
  - *Use of Force Model*, a graphic representation for the appropriate use of force in relation to the actions of a subject.
- In its investigations, IPRA assesses officer conduct against CPD policies, led by the broad policy on the *Use of Force*. The following policies apply within the department's use of force:
  - *Incidents Requiring the Completion of a Tactical Response Report*
  - *Canines as a Force Option*
  - *Deadly Force*
  - *Force Options*
  - *Use of Force Guidelines*
  - *Use of Force Model*

**United Kingdom:  
Independent  
Police Complaints  
Commission (IPCC)**

## United Kingdom: Independent Police Complaints Commission (IPCC)

### Mandate

- United Kingdom's Independent Police Complaints Commission (IPCC) has been in operation since April 1, 2004. Its mandate is to deal with complaints and allegations of misconduct against the police in England and Wales.
- In addition, its role is to promote confidence in the police complaints system; to ensure that the police complaints system is accessible to all; to set, monitor, inspect and review standards for the operation of the police complaints system; and to promote policing excellence by drawing lessons learned.

### Background

- In 1981, an arrest of a black man led to three days of rioting in Brixton in south London. An inquiry into the Brixton Disturbances headed by Lord Scarman brought to light the problematic state of police/community relations, led by a widespread belief that police targeted civilians based on racial prejudice.
- As a result of concerns brought about by Lord Scarman's report, and pressures from the Board and the Royal Commission on Criminal Justice, major changes were introduced. On April 29, 1985, the Police Complaints Authority (PCA) replaced the Police Complaints Board.
- *The Stephen Lawrence Inquiry 1999*, which analysed the police investigation of a 1993 murder of a young black man, reignited the debate about racism and policing and called for the establishment of an independent oversight body.
- On April 1, 2004, the PCA was replaced by the Independent Police Complaints Commission, which was given wider powers, including the ability to undertake independent investigation of police misconduct. In addition, the IPCC is tasked with "recording of matters from which it appears that there may have been conduct by such persons which constitutes or involves the commission of a criminal offence or behaviour justifying disciplinary proceedings" (section 10 (2) b of the *Police Reform Act*).

### Jurisdiction

- The IPCC has jurisdiction over the police in England and Wales. In addition, since April 2006, its authority extends to handle complaints against the staff of the Serious Organised Crime Agency (SOCA) and Her Majesty's Revenue and Customs (HMRC). As of February 2008, IPCC's jurisdiction extends further to investigate matters pertaining to officers and officials of the UK Border Agency (UKBA).
- In addition to complaints, certain types of incidents, such as serious injury following from direct or indirect contact with the staff of either the police, HMRC, SOCA or UKBA, must be reported to the IPCC.
- Serious allegations also include allegations of serious or organised corruption, allegations against senior police officers, allegations of racism, and allegations of perverting the course of justice.
- IPCC is fully independent of the police, government and interest groups.

### Legislative basis

- IPCC was created by the *Police Reform Act 2002*, which sets out statutory powers and responsibilities of the Commission, Chief Police Officers and police authorities. The police forces, among others, have the statutory duty to refer to the IPCC any incident involving a death that has arisen from police contact.
- The legislative changes introduced by the 2002 Act introduced the complainant's ability to make direct complaints to the IPCC and widened the types of people who can make a complaint about the police and be the subject of a complaint. As such, anyone can make a complaint on behalf of someone else, "providing that the complainant gives written permission for the other person to act on their behalf."

### Handling of complaint process

- There are three types of investigation:
  1. IPCC supervised investigation
    - investigation supervised by the IPCC but conducted under the direction and control of either the police, HMRC, SOCA or UKBA
  2. managed investigation
    - conducted by the police, HMRC, SOCA or UKBA but under the direction and supervision of IPCC
  3. independent investigation
    - conducted by IPCC.
- There is no right to appeal to the IPCC against the outcome of the two latter types of investigation.
- Once the IPCC is notified of the fatality (which includes road traffic fatalities, fatal shootings, deaths in or following police custody, and deaths during or following other police contact), it decides whether to manage or supervise a police investigation or whether to independently investigate the case. In 2007/08, the IPCC was involved (through independent investigations or through investigations that it managed or supervised) in 69% of all fatalities, and left 31% of cases to be dealt with by the local police force.
- IPCC's Statutory Guidance for police officers about the complaints system sets out the standards for the handling of complaints.
- In the case of other than serious complaints, the police, within 10 working days from its receipt, decide whether to record the complaint under the *Police Reform Act 2002*.
- The IPCC forwards the complaint received from a member of the public to the relevant police force within two (2) working days of its receipt.
- Police force is obliged to refer all serious complaints to the IPCC.
- The IPCC offers a 24 hour on-call service for serious incidents such as allegations of serious or organised corruption, allegations against senior officers, allegations of racism or allegations of perverting the course of justice. It acknowledges the referral of the complaint by the end of the next working day, as well as decides upon the form of investigation within two working days from reception of the referral.
- If the investigation is of local nature or IPCC-supervised, the complainant has 29 days to appeal its outcome. By the end of the next working day, IPCC must

acknowledge the receipt of the appeal and notify the police force, as well as make the final decision and notify the complainant and the police within 28 days.

- In the case of independent or managed investigation, the IPCC communicates with the complainant or other interested parties, with the police officer(s) involved and with the police force.
- The IPCC has an obligation to keep both the complainant and the police force (including the police officers involved) informed and updated every 28 days regarding any eventual liaison arrangements.
- In the case of a local or supervised investigation, the police communicate with the complainant or other interested parties, and with the police officer(s) involved.
- The police must keep the complainant informed every 28 days regarding any specific arrangements made.
- The complainant has 28 days to appeal in the following cases:
  - the non-recording of a complaint;
  - the local resolution process;
  - the outcome of a local or supervised investigation.
- In the case of an appeal, the IPCC must acknowledge its receipt and communicate it to the force within the next working day, as well as make both the complainant and the police of its decision within 28 days.
- Decisions made in the case of a managed or independent investigation are not subject to appeal.

### **Investigator credentials/training**

- The IPCC has a team of more than 100 investigators headed by Regional Directors in each of its regions, to assist with supervision and management of some police investigations. They also carry out independent investigations into serious incidents or allegations of misconduct by persons serving with the police.

### **Statistical analysis**

- In the year 2007/08, the IPCC was involved in 69% of all cases investigating fatalities, leaving 31 of them to be handled by the local police.
- In incidents involving fatalities, the IPCC was involved in 37 independent investigations, 14 managed investigations, and supervised one investigation.
- Between 2004/05 and 2007/08, the number of incidents with fatalities decreased by 14.
- In 2007/08, the IPCC carried out 100 independent investigations and completed 82.
- It completed 147 managed investigations.



## Investigation involvement by IPCC, 2007/08

Type of investigation	Road traffic fatalities		Fatal shootings		Death in or following police custody		Death during or following other police contact		TOTAL	
	#	%	#	%	#	%	#	%	#	%
Independent	6	26	5	100	11	52	15	58	37	49
Managed	6	26	0	-	2	10	6	23	14	19
Supervised	1	4	0	-	0	-	0	-	1	1
<b>TOTAL IPCC INVOLVEMENT</b>	<b>13</b>	<b>57</b>	<b>5</b>	<b>100</b>	<b>13</b>	<b>62</b>	<b>21</b>	<b>81</b>	<b>52</b>	<b>69</b>
Local	10	43	0	-	8	38	5	19	23	31
<b>TOTAL DEATHS</b>	<b>23</b>	<b>100</b>	<b>5</b>	<b>100</b>	<b>21</b>	<b>100</b>	<b>26</b>	<b>100</b>	<b>75</b>	<b>100</b>

## The number of referrals received by the IPCC, 2004/05 to 2007/08

2004/05	2005/06	2006/07	2007/08
1,531	1,699	2,049	2,208

## The number of independent investigations started and completed by the IPCC, 2004/05 to 2007/08

2004/05		2005/06		2006/07		2007/08	
Started	Completed	Started	Completed	Started	Completed	Started	Completed
31	8	52	32	64	50	100	82

## Fatalities by type of death and financial year, 2004/05 to 2007/08

	FATALITIES				
	2004/05	2005/06	2006/07	2007/08	Change in fatalities 06/07 to 07/08
Road traffic fatalities	44	48	36	23	-13
Fatal shootings	3	5	1	5	4
Deaths in or following police custody	36	28	27	21	-6
Deaths during or following other police contact	24	39	20	26	6
<b>TOTAL DEATHS</b>	<b>107</b>	<b>120</b>	<b>84</b>	<b>75</b>	<b>-9</b>

## Incidents by type of death and financial year, 2004/05 to 2007/08

	INCIDENTS				
	2004/05	2005/06	2006/07	2007/08	Change in incidents 06/07 to 07/08
Road traffic fatalities	43	42	35	17	-18
Fatal shootings	3	5	1	4	3
Deaths in or following police custody	36	28	27	21	-6
Deaths during or following other police contact	23	37	19	26	7
<b>TOTAL DEATHS</b>	<b>105</b>	<b>112</b>	<b>82</b>	<b>68</b>	<b>-14</b>

### Structure

- There are four regional offices: central and eastern England, London and the south east, the north of England, and Wales and the south west.
- IPCC is led by the Chair, Nick Hardwick and the team is directed by the Chief Executive, Jane Furniss. The Chair is appointed by the Crown for a period of five years with a possibility of renewal (Chairman Hardwick's appointment was renewed in March 2008), and the Chief Executive is appointed by the Commission with the approval of the Secretary of State, and is accountable to the Commissioners.
- IPCC Commissioners are appointed by the Home Secretary for a term not exceeding five years and are responsible for the governance of the IPCC, guardianship of the complaints system, and the final determination of individual cases. By law, none of the 15 Commissioners can have worked for the police service, HMRC or SOCA in any capacity.
- IPCC staff also includes five Functional Directors, who are responsible for corporate and strategic functions in support of IPCC's operations, and four Regional Directors, responsible for the operations of the Commission's regional offices. Reporting to the Commission are also the Audit Committee, the Diversity Committee and the Health and Safety Committee.
- In addition, there are more than 100 independent investigators plus casework managers and other specialists.

### Budget/financing

- IPCC is sponsored by the Policing Powers and Protection Unit and funded by grant in aid from the Home Office.
- In 2007/08, the Home Office allocated £32,273,000 to the IPCC.
- In 2007/08, the IPCC also received funding of £1,920,000 from HMRC (and some additional funding for work to establish an infrastructure for investigating of complaints from UKBA). That year, the IPCC total expenditure totalled £34,278,000 compared to a budget of £34,193,000.

## IPCC financial trends, 2004/05 to 2007/08

□ millions	2004/05	2005/06	2006/07	2007/08
Income	22.506	29.932	34.598	34.193
Expenditure	21.755	30.070	34.533	34.278
Outturn (over) spend	0.751	(0.138)	0.065	(0.085)

### Policies and Procedures

- IPCC policies are currently in the course of "drastic revision."
- IPCC used to operate with three procedural manuals, one on investigation, one on casework, and one belonging to the commissioners. IPCC is currently restructuring those into one integrated manual. The final product is expected for spring 2009.

### Additional observations

- With regard to the credentials of its investigators, IPCC Commissioner Nicholas Long admitted that the expertise required need not be obtained solely from experience as a police officer: "You do not need in itself to have a former police officer—what you have to be is qualified and experienced." The Commissioner acknowledges that some investigators have "exceptional" expertise with no prior experience in law enforcement. At the heart of the matter perceptions of investigator qualifications often overshadow the reality.
- The IPCC model is often perceived as the best suited for Canada, one that constitutes a good blend of civilian oversight, independence and investigator expertise. Commissioner Long admits that while it applies well to the United Kingdom, the realities have to be taken into consideration. Canada's federal system and the sheer size of its territory and scope of review dictate the need for a model that factors in Canada's particular characteristics:
  - *I am very conscious our form is appropriate to England and Wales [but] we cannot export it anywhere else without appropriate adaptation.*
  - *Achieving a single system would be difficult indeed because of autonomy of each province.*



**Northern Ireland:  
Office of the Police  
Ombudsman for  
Northern Ireland**

## Northern Ireland: Office of the Police Ombudsman for Northern Ireland

### Mandate

- The Ombudsman's mission is to "provide an independent, impartial police complaints system for the people and police under the *Police (Northern Ireland) Act 1998* and 2000; to ensure maximum awareness of the Police Ombudsman complaints service and that it is fully accessible and responsive to the community; to provide a robust and effective investigation process leading to evidence based recommendations; and to analyse and research the outcomes of complaints so as to inform and improve the policy and practice of policing."

### Background

- Since the Belfast Agreement of 1998, a number of developments in the area of policing occurred in Northern Ireland. An Independent Commission on Policing for Northern Ireland, better known as the Patten Commission, was created in order to address the public distrust and discontent with the widely unpopular Royal Ulster Constabulary. The Commission made several recommendations for change related to the country's police service. These included a suggestion to rename it the Police Service of Northern Ireland (PSNI) in addition to several measures that would improve police accountability at the local level.
- In 2000, the Office of the Police Ombudsman for Northern Ireland was established under the *Police (Northern Ireland) Act 1998*.
- It is accountable to the Parliament through the Secretary of State for Northern Ireland and is required to have regard to any guidance given by the Secretary of State.

### Jurisdiction

- The police under the *Police (Northern Ireland) Act 1998* falls under the Ombudsman's jurisdiction. In addition, the Belfast Harbour Police, the Larne Harbour Police, the Belfast International Airport Police and Ministry of Defence Police in Northern Ireland, as well as the Serious Organised Crime Agency, can be investigated by the Ombudsman when their staff operates in this jurisdiction.
- Police Ombudsman's jurisdiction is set to be extended shortly to the UK Borders Agency.
- The Office is constituted and operated independently of the Northern Ireland Office, the Northern Ireland Policing Board and the Chief Constable of the Police Service of Northern Ireland.

### Legislative basis

- The Ombudsman's Office was established by virtue of Statutory Rule 2000 No. 399, *Police (Northern Ireland) Act 1998 (Commencement) Order (Northern Ireland) 2000*.
- The relevant operating authority is found in the *Police (Northern Ireland) Act 1998*, the *Police (Northern Ireland) Act 2000*, and the *Police (Northern Ireland) Act 2003*.

### Handling of complaint process

- All complaints about police misconduct are handled by the Police Ombudsman's Office. The complaints must be made within one year of the incident (although in special circumstances and when the Ombudsman considers the complaint grave and exceptional, complaints surrounding events that happened more than a year later may be accepted).
- Upon the receipt of the complaint, the Police Ombudsman decides how to deal with the complaint and assigns a person responsible for dealing with the complaint. The Ombudsman aims to reply to the complainant within four working days.
- Should the matter be suitable for Informal Resolution, the complainant shall be consulted and the matter is referred to the police. Otherwise, it is referred to the Ombudsman's investigators (or to the police for investigation).
- Mediation is being added at the beginning of the process to supplement informal resolution, and is currently being tested in a pilot process.
- Upon the completion of the investigation, the Ombudsman may decide to adopt the following actions: it may recommend to the Director of Public Prosecutions that the police officer should be prosecuted; it may recommend that the Chief Constable should bring disciplinary proceedings against the officer (or, in the case of a complaint against the Chief Constable or his assistant or deputy, recommend disciplinary proceedings to the Policing Board); it may recommend compensation; or it can reject the complaint and offer explanations for this decision.
- The Police Ombudsman's decision is final unless new information is brought to light which the complainant was unaware of at the time of the complaint.
- At the conclusion of any investigation of a non-complaint matter (investigated under section 55 of the 1998 Act), the Ombudsman is required to send a copy of the investigation report to the Chief Constable, the Secretary of State and the Northern Ireland Policing Board.
- Anyone who is not satisfied with any aspect of the Ombudsman's service or actions can make a complaint verbally or in writing. Complaints are registered and acknowledged within three days and a response given in 20 days.

### Statistical analysis

- During the year 2007/08, the Ombudsman's Office registered 2,970 complaints and non-complaint matters. Non-complaint matters included referrals from the Chief Constable, referrals from the Director of Public Prosecutions and four were matters which the Police Ombudsman decided to investigate in the public interest.
- Of all 2,970 complaints and matters, 1,332 (45%) were referred for formal investigation. 851 investigations were completed and closed during the year.
- In 2007/08, 27 non-complaint matters were registered by the Office and 20 reports were issued to the Chief Constable, the Secretary of State and the Northern Ireland Policing Board.
- The Ombudsman made recommendations to the Chief Constable in 158 cases involving 200 officers, over half of which (54%) suggested advice and guidance.
- A total of 241 cases were referred to the Public Prosecution Service (PPS). PPS recommended that 11 of these be prosecuted (these involved 12 police officers and 19 charges).

### Structure

- The Office is a Non Departmental Public Body (NDPB) which is headed by the Police Ombudsman as a Corporation Sole who is appointed by Royal Warrant for a period of seven years. The Ombudsman, Mr. Al Hutchinson, is supported by the Chief Executive, Mr. Samuel Pollock, and a Senior Management Team composed of six Directors.
- In the year 2007/08, the office was composed of 143 employees, with approx. 100 involved in complaints, investigations and historical enquiry investigations into complaints of police wrongdoing.
- None of the staff of the police Ombudsman's Office are members of the police force of Northern Ireland. The staff also comprises several police officers seconded from police services other than the service of Northern Ireland.

### Budget/financing

- The Ombudsman is funded by a Grant in Aid from the Northern Ireland Office. For the year 2007/08, it incurred a net operating cost of  $\pounds 8,533,972$ .

### Investigator credentials/training

- There are three categories of Investigative Officers (IOs): directly recruited, seconded police investigators, and investigators on temporary contracts.
- Direct entrants for Police Ombudsman investigators are selected through open, advertised competition. They need to pass a competency-based interview.
- Candidates would have demonstrated an investigative background from the private or public sector, and some would have been police officers.
- Selected candidates who are offered a position enter a two-year probationary period and need to complete accredited training through Portsmouth University, UK, coupled with on-the-job mentored training.
- Training for Senior Investigating Officers (SIOs) is delivered through the Association of Chief Police Officers (ACPO) accredited training.
- Numerous leadership and specialty investigator courses are contracted externally.

### Policies and procedures

- The Police Ombudsman is directed by the *Police (Northern Ireland) Act 2003* to investigate current practice or policy of the police if:
  - it comes to his attention, or
  - he believes it is in the public interest to do so.
- Studies have been done in areas such as: police use of handcuffs, police searches of residences, policing of minority communities, and the use of CS spray.



**Additional observations**

- The Police Ombudsman, Mr. Al Hutchinson, admits that the Northern Ireland model cannot be simply exported anywhere and operate just as effectively; factors such as the size of the territory and population under jurisdiction, as well as the history of people's dealings with the police (possible history of distrust), need to be taken into consideration.
- There are advantages and disadvantages to Northern Ireland's model.
- The key advantage, Mr. Hutchinson points out, is that in cases of complaints, an independent civilian body "takes the heat out of the situation" and the public can trust that the findings are impartial and unbiased.
- There are some disadvantages, however:
  - The Police Ombudsman model is not "importable everywhere." There is a cost to such an agency and for a country the size of Canada, such a model may be too costly.
  - Leaving the judgment to an outside agency might translate into police officers' reluctance to do their duty because they fear they might become subject to a complaint.
- In addition, "totally civilian" body might be impractical. It takes a great degree of sophistication and time to properly train investigators. That is why introducing seconded police officers may be preferable.
- Retired police officers might possess all the necessary experience, but their skills might become dated.
- According to Mr. Hutchinson,
  - *To investigate properly, we have to be just as good if not better [than police officers in question].*
  - *If you build a mix of seconded and retired police officers as well as civilians, you will build a body that is competent, professional, fair and accountable.*



# **South Australia: Police Complaints Authority (PCA)**

## South Australia: Police Complaints Authority (PCA)

### Mandate

- The Police Complaints Authority (commonly referred to as the PCA) was created to receive complaints about the conduct of police officers; maintain a register of complaints filed with the PCA and with the police; oversee complaint investigations conducted by South Australia Police (SAPOL); assess the merits of complaints; resolve complaints by conciliation where possible; recommend disciplinary or other action, and report to Parliament on the handling of complaints about police.
- It can also investigate certain complaints itself in exceptional cases. PCA can conduct primary investigations of complaints related to:
  - the most senior police officers;
  - members of the Internal Investigations Branch;
  - public servants employed by SAPOL;
  - policies, practices or procedures of the police force;
  - other exceptional circumstances.

### Background

- Unlike the circumstances surrounding the creation of police oversight body in other states, in South Australia it does not appear as though public pressure or discontent demanded for the creation of the office. The impetus came from a growing consensus that such oversight was desirable, first expressed in a report of the Australian Law Reform Commission, and in the measures taken in other states.
- The Police Complaints Authority was established by the *Police (Complaints and Disciplinary Proceedings) Act* of South Australian Parliament on September 1, 1985, introducing a system of external monitoring of internal investigation.

### Jurisdiction

- PCA is an independent statutory body which answers directly to Parliament. The 1985 Act follows a model of "External Monitoring of Internal Investigation," that delegates the primary investigation of complaints to SAPOL's Internal Investigation Branch. These investigations are subject to oversight by the PCA, although it can conduct primary investigations of complaints in exceptional cases defined above.
- Pursuant to Section 46 (1) b of the *Australian Federal Police Act*, members of the IIB cannot investigate the actions of an AFP appointee serving in the investigation division.
- Section 23 of South Australia's *Police (Complaints and Disciplinary Proceedings) Act* gives the PCA authority to investigate the officers of the IIB.
- Excluded from PCA's jurisdiction are complaints relating to purely private conduct of off-duty police officers or events that occurred before September 1, 1985.
- With the passing of the 2007 *Criminal Law (Forensic Procedures) Act*, the PCA has the authority to audit SAPOL's compliance with its requirements.

### Legislative basis

- The 1985 *Police (Complaints and Disciplinary Proceedings) Act* sets out the provisions for the Police Complaints Authority as well as the Internal Investigations Branch.

- There are four other pieces of legislation that apply to the PCA, which set out specific obligations and require the Authority to report the results to the Attorney-General: the *Criminal Law (Forensic Procedures) Act*, the *Freedom of Information Act*, the *Telecommunications (Interception) Act*, and the *Listening and Surveillance Devices Act*.
- The recently adopted *Criminal Law (Forensic Procedures) Act* of May 2007 requires PCA to conduct annual compliance audit.
- In the *Freedom of Information Act* of 1991, PCA is responsible for carrying out External Reviews at the request of applicants who are dissatisfied with the results of their application to SAPOL.
- The 1988 *Telecommunications (Interception) Act* requires PCA to audit the records of SAPOL pertaining to telephone interceptions.
- Finally, the 1972 *Listening and Surveillance Devices Act* obliges PCA to audit the SAPOL records pertaining to operations under that Act.

### Handling of complaint process

- Complaints can be resolved through conciliation or may require full investigation. The alleged conduct that would not ordinarily justify a criminal or disciplinary charge, such as shoving in a crowded situation, is suitable for conciliation. Conciliation provides a flexible and simple alternative to a formal and lengthy process of investigation. The process, moreover, provides the participants an opportunity to have their grievances heard.
- A report is forwarded to SAPOL's Internal Investigations Branch and to the Authority which review the matter and decide whether it has been successfully conciliated.
- The process begins when a complainant gives the details of the complaint to either a member of the police force or an officer of the Police Complaints Authority. The complainant is then contacted by a Resolving Officer to discuss the case. The police officer subject of the complaint is in turn contacted by either his/her supervisor or the Resolving Officer and asked to provide an explanation. The Resolving Officer returns to the complainant who at that time decides whether to accept that the matter is resolved or to continue with the complaint. The whole process ideally is completed within 14 days.
- Investigation is usually conducted by the Internal Investigation Branch, a team of experienced police officers, and involves communication with the complainant, police officers involved and any other person who could help with the investigation. PCA monitors the investigation through regular communication with IIB officers and inspection of any relevant documents and contact persons involved about the complaint. In exceptional cases, PCA may decide to investigate the complaint on its own.
- The Commissioner of Police sends a copy of the investigation report to the PCA and the latter may recommend that action be taken if the conduct of the police officer involved was: against the law or in breach of discipline; unreasonable, unjust or improperly discriminatory; based on unreasonable law or practice; based on an error in law; or based on a misuse of a discretionary power.
- PCA may then recommend to the Commissioner that: the police officer should be charged with an offence or in breach of discipline; a decision should be reconsidered or reasons should be given for a decision; a law, policy or procedure

should be changed; or that no action should be taken.

- Should PCA recommend disciplinary charges against the officer, these are heard by a magistrate sitting as the Police Disciplinary Tribunal and the penalty is assessed by the Commissioner of Police or the Deputy.

**Investigator credentials/training**

- According to the PCA, "the investigation of complaints requires skilled investigators familiar with the subject matter and areas covered by the investigations." Investigations are conducted by experienced officers from an independent area.
- There is one full-time investigator who is a former police officer with 18 years of experience in General Duties and Major Crash Investigation and Road Traffic Enforcement.
- In principle, the investigator can investigate his former unit. The investigator cannot be involved in cases where the subject of the investigation or a key witness or witnesses are persons the investigator had worked closely with or maintained a personal relationship with. In such cases, to avoid giving rise to the appearance of bias, the PCA Chair investigates the case himself or delegates one of the lawyers in his staff to undertake the investigation.
- All lawyers on the PCA team have had some criminal law exposure either prosecuting or defending or both.

**Statistical analysis**

- In the year ending June 30 2007, PCA received 1,133 new complaints and finalized 1,181. 430 (37%) of complaints were resolved by conciliation.
- During that year, it also received 21 new requests for External Reviews of determinations made by SAPOL under the *Freedom of Information Act*; 20 of these were finalized and one returned to SAPOL to attempt conciliation.
- PCA Chair, Mr. Anthony Wainwright, estimates that about six primary investigations were finalized in the last financial year. These investigations were not necessarily criminal in nature and some revolved around police practices and procedures.
- Two of the primary investigations involved complaints about officers in the Ethical and Professional Standards Branch (EPSB) which is the Branch within which the Internal Investigations is situated.
- One primary investigation was initiated by the Chair (no complaint was made) and involved direct oversight of a police investigation into the use of sound and vision recording within police Anti-Corruption Branch.

**Complaints received and finalized, 2004/05 to 2006/07**

	Complaints received	Complaints finalized
2004/05	1,170	1,137
2005/06	1,223	1,219
2006/07	1,133	1,181

### Structure

- The Police Complaints Authority is led by an individual who, in pursuance with the 1985 Act, must be enrolled as a barrister, solicitor or legal practitioner of the High Court or the Supreme Court, and is appointed by the Governor. The current Authority is Mr. Anthony D. Wainwright.
- Because PCA is entirely independent of SAPOL, none of the staff are police officers.
- There are currently 13 people working the equivalent of 11 full-time hours. 5.6 FTE comprise the PCA Chair and case officers all legally qualified, 0.8 FTE comprise a conciliation officer, 0.8 FTE an investigator, and 3.8 FTE clerical/administrative support.

### Budget/financing

- According to the latest Annual Report, the PCA staff achieved their budget, "markedly smaller than that of comparable agencies."
- PCA budget is currently AU\$1,130,000 per year.

### Policies and Procedures

- PCA policies are generally not written. The only written policy is the minor misconduct agreement between the PCA Chair and the Commissioner of Police made under Section 3(3) of the Act.
- According to the PCA Chair, there are few written policies because the Act prescribes in minute detail the formal way in which PCA interacts with SAPOL. In the words of Mr. Wainwright, PCA and SAPOL "have tried to keep things as informal and flexible as possible in order to best achieve our common objective, the best possible police service for South Australia."
- PCA and the IIB meet fortnightly to review investigation work in progress and discuss any emerging issues.
- In addition, PCA meets monthly with the Commissioner's delegate to discuss points of disagreement and to confer, pursuant to Section 34 of the Act, on matters of disagreement with PCA assessments and recommendations.

### Additional observations

- There are key advantages to an oversight body model like South Australia's. Anthony Wainwright points out that this model "creates a system in which the police are very much part of the solution to whatever problems they may have." Mr. Wainwright emphasizes:
  - *If you want your jurisdiction to have a good police force, the force has to be a part of the solution.*
  - *I am perfectly happy to hold them [to their obligations as part of the model], to criticize them if they do not play their part actively and responsibly and to affirm them if they do live up to their responsibility.*
- A second advantage lies in the fact that if the police force play a role in the complaint process, complaints and non-complaints are dealt with consistently. All investigations are conducted (for the most part) in the same fashion by a united entity.





**New Zealand:  
Independent Police  
Conduct Authority  
(IPCA)**

## New Zealand: Independent Police Conduct Authority (IPCA)

### Mandate

- New Zealand's Independent Police Conduct Authority (in this report referred to as IPCA), previously known as the Police Complaints Authority, was established in 1989. Its chief functions are:
  - to investigate complaints alleging misconduct or neglect of duty by the police or concerning any practice, policy or procedure of the police affecting the complainant in a personal capacity;
  - to investigate incidents involving death or serious bodily harm arising as a result of police actions; and
  - to investigate matters referred to the IPCA by the Commissioner of Police, pursuant to a Memorandum of Understanding entered into with the IPCA, of serious misconduct or neglect of duty and which are treated by the IPCA as if they were complaints.

### Background

- IPCA was created in 1989 following the enactment of the *Police Complaints Authority Act 1988*. It is an independent Crown Entity subject to the *Crown Entities Act 2004*. It is independently governed and operated, and funded through Vote: Justice under Non-Departmental Output Class Agreements.
- In November 2007, the Police Complaints Authority became the Independent Police Conduct Authority, a body with wider powers which include the ability to investigate historic complaints and to refer less serious complaints to the police. Since November 2007, the number of investigators has also increased from five to nine.

### Jurisdiction

- There are 13 Police Districts in addition to Police National Headquarters from which the Authority can receive and accept complaints for investigation.
- The Authority has the ability to oversee a police investigation and to give directions to the police in that respect. It cannot remove the investigation from police's control, but it can carry out its own separate investigation of the complaint in question. Only the police have the resources to handle major investigations in their early stages, and, in addition, the evidence collected by the police in the course of investigation can be used for the purposes of further proceedings whereas the evidence collected by the Authority cannot. IPCA investigators LARGELY use the work done by the police as the foundation upon which to develop their own further investigation.
- In 2005, the Authority and the Commissioner of Police entered a Protocol for Cooperation to ensure collaboration between the two entities' investigators.
- There is also a Memorandum of Understanding between the IPCA and the Police which provides that matters of serious misconduct or neglect of duty internally reported within the Police are to be notified to, and be dealt with by, the IPCA.
- The Minister of Justice and the IPCA have a Memorandum of Understanding, agreed upon prior to each financial year. IPCA points out that its activities are reported against the ultimate Justice sector outcome of "A Safe and Just Society."

### Legislative basis

- IPCA derives its powers from the *Police Complaints Authority Act 1988*, which is "an Act to make better provision for the investigation and resolution of complaints against the Police by establishing an Independent Police Conduct Authority."
- Under Section 12 of the Act, the role of the IPCA is to receive complaints of alleged misconduct or neglect of duty by the police or concerning practices or procedures of the police. Under Section 13, incidents involving death or serious bodily harm in the execution of police duty, such as shootings and fatal vehicle pursuits, must be notified to the IPCA.
- IPCA is currently experiencing a restructuring process and an Amendment Bill is set to be introduced to New Zealand's parliament. In a 2007 Cabinet paper *Review of the Independent Police Conduct Authority*, the effectiveness and independence of the IPCA were examined and several proposals were recommended in order to respond to two main challenges encountered by the IPCA:
  - the lack of independent investigative capacity;
  - the constraints posed by the secrecy and privilege provisions in the *Independent Police Conduct Authority Act* which prevent information obtained by the IPCA being used in other proceedings.
- As a result, six proposals were recommended to meet these issues. These were, among others, that amendments need to be made to Section 17 of the *Independent Police Conduct Authority Act* in order to clarify the responsibilities of the IPCA to undertake its own investigations, and the application of the *Official Information Act* to the IPCA.

### Handling of complaint process

- Complaints are classified in 35 categories and IPCA reports on each category by each of the 14 districts. A complaint is received when an individual lodges a complaint, either directly to the IPCA or to the police who refer it to the IPCA. A complaint must affect the person, or body of persons making it, in a personal capacity.
- The police have a duty to investigate all serious matters and incidents. Since 2003, IPCA has had its own investigators to investigate complaints of a serious nature or in respect of death or serious bodily harm. However, because the evidence collected by the police can be used in a criminal prosecution or disciplinary proceedings and the evidence collected by the Authority's investigators cannot be so used, the approach to investigations is almost always a parallel approach, guided by a protocol of cooperation between the two organizations.
- Upon the receipt of a complaint, the Authority has several options:
  - it can investigate the complaint (section 17 (1) (a) of the Act);
  - it can refer it to the police for investigation (section 17 (1) (a,b));
  - it can defer action pending a police investigation undertaken on the behalf of the Authority (section 17 (1) (b));
  - it can defer action pending a criminal or disciplinary investigation undertaken by the police (section 17 (1) (c,a));
  - it can oversee a police investigation (section 17 (1) (c));
  - or it can decide to take no action (section 18 of the Act).

### Statistical analysis

- In the year ending June 30, 2008, a total of 2,073 new complaints were accepted for investigation. This was an increase over 2,016 in 2006-2007 and 1,741 in 2005-2006.
- The majority of complaints in 2007-2008 were in the categories of Neglect of Duty (for example, failure to investigate), Practice and Procedure (including breach of complainant's rights), Attitude/Language, and Use of Force.
- Under Section 13 of the Act, police are required to notify the IPCA of incidents of death and serious bodily harm associated with police actions. During 2007-2008, IPCA was notified of 11 deaths (one suicide and 10 others) and 48 incidents of serious bodily harm.
- During 2007-2008 IPCA made considerable progress in reducing a 'backlog' of complaints that had been outstanding for 12 months or more. The 'backlog' was reduced from 1,611 files at 30 June 2007 to 211 files at 30 June 2008.
- The IPCA investigators conducted 351 independent investigations during 2007-2008. Of those, 251 had been opened during previous years, and 100 were new investigations. The investigators closed 203 investigations during the year, leaving 148 open at 30 June 2008.
- In its *Statement of Intent 2008/09*, IPCA sets targets for the timeliness of: scene examination, liaison with police investigators and contact with the next of kin for major incidents involving death or serious bodily harm; completion of investigations; response to enquiries; and assignment of complaints for investigation. IPCA also sets targets for further reduction of the 'backlog' of complaints outstanding for 12 months or more.

### Structure

- IPCA is chaired by a High Court judge, appointed by the Governor-General on the recommendation of the House of Representatives. The current Chair is the Hon Justice Lowell Goddard.
- IPCA also has a board of up to five (including the Chair). Currently two full-time board members have been appointed, both of whom also have operational responsibilities, for investigations and services respectively.
- Since 2003, IPCA has increased its investigative team to a manager and eight investigators, and is in the process of establishing a Service Centre which will take initial action on complaints, whilst retaining a team of Reviewing Officers who assess the adequacy of police investigation before a final report is produced.

### Budget/financing

- The Authority is funded by Vote: Justice and administered by the Ministry of Justice in accordance with the *Crown Entities Act 2004*.
- In 2008-2009, IPCA's total expenditure was forecast at NZ\$3,900,468 (audited expenditure for the year will be available in its *Annual Report 2008/09* to be published in November 2008).
- In 2006-2007, actual expenditure totalled NZ\$1,981,964.

**Investigator credentials/training**

- All of the Authority's investigators are former senior police officers with many years of experience in criminal investigations. Five investigators are former members of the New Zealand Police and two from overseas police services.

**Policies and procedures**

- IPCA is currently working on developing a working definition of "serious injury." For now, it relies on a broad understanding of "injuries that result from police force."
- There is a Protocol for Cooperation between the IPCA and the Commissioner of Police to ensure collaboration between the two entities' investigators.
- In addition, there exists a Memorandum of Understanding between the IPCA and the police service which provides that matters of serious misconduct or neglect of duty internally reported within the police are to be notified to, and dealt with, by the IPCA.
- The IPCA and the Minister of Justice have a Memorandum of Understanding, agreed upon prior to each financial year. IPCA activities are reported against the ultimate Justice sector outcome of "A Safe and Just Society."



## OVERSIGHT MODELS &amp; THEIR REPRESENTATIONS

1. Dependent Model		2. Interdependent Model		3. Independent Model
1.1 Police Investigating Police	1.2 Police Investigating Another Police Force	2.1 Civilian Observation	2.2 Hybrid Investigation	3. Independent Investigation
1. Police Complaint Commissioner (B.C.)	1. RCMP (H Division) & Halifax Regional Police agreement (Integrated Critical Incident Team)	1. CPC Independent Observer Pilot Program (B.C. E Division and Yukon M Division)	1. Alberta Serious Incident Response Team	1. Special Investigations Unit (ON)
2. Law Enforcement Review Agency (Manitoba)			2. Public Complaints Commission (Saskatchewan)	2. Police Ombudsman for Northern Ireland
3. Ontario Civilian Commission on Police Services	2. RCMP (B Division) & Newfoundland and Labrador police agreement		3. Independent Police Complaints Commission (United Kingdom)	3. Independent Police Review Authority (Chicago)
4. Independent Police Review Director (ON)			4. Police Complaints Authority (South Australia)	
5. Police Ethics Commissioner, Police Ethics Committee (QC)	3. RCMP (J Division) & New Brunswick police services agreement (Use of Force Investigation Team)		5. Independent Police Conduct Authority (New Zealand)	





## OFFENCE GRID

This grid covers offences under the **Criminal Code**. It shows:

- whether an offence is indictable, summary, or hybrid,
- whether an offence is absolute jurisdiction,
- the maximum and minimum sentence,
- available sentencing options,
- illegal sentences,
- orders that you may wish to consider or that are mandatory,
- and more.

**CAUTION:** The applicability of remarks in the comments column depends upon the circumstances of a particular case. Thus, for example, where the comment "S. 491 mandatory weapon forfeiture order" appears, the order is mandatory only if the requirements of s. 491 are met. Likewise, where the comment "S. 109 mandatory firearms order" appears, the order is mandatory only if the requirements of s. 109 are met. Further, even where it is indicated that the prohibition is discretionary under s. 110, it should be noted that pursuant to s. 109(1)(d), where the offence is one that involves, or the subject-matter of which is, a firearm, a cross-bow, a prohibited weapon, a restricted weapon, a prohibited device, any ammunition, any prohibited ammunition or an explosive substance and, at the time of the offence, the person was prohibited by any order made under the *Criminal Code* or any other Act of Parliament from possessing any such thing, the offender is liable to the mandatory firearms prohibition in s. 109. Although referred to as a "firearms order", the order prohibits the person from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition and explosive substance, unless an order is made under s. 113 allowing the lifting of a prohibition order for certain specified reasons.

**NOTE:** A court may impose, in addition to any other measure, a restitution order in the following circumstances:

- (1) damage to, or loss or destruction of, property as a result of the commission of an offence, or the arrest or the attempted arrest of the offender (s. 738(1)(a));
- (2) bodily harm resulting from the commission of an offence, or the arrest or attempted arrest of the offender (s. 738(1)(b));
- (3) in cases of bodily harm or threat of bodily harm, expenses that are incurred in order to move out of the offender's household (s. 738(1)(c));
- (4) a person acting in good faith and without notice purchased any property obtained as a result of the commission of an offence, or loaned money to an offender on the security of such property (s. 739).

Further, even where a type of sentence is marked as an option, it may only be available in some circumstances. In particular, a conditional sentence of imprisonment is available only if the sentence imposed is less than two years

- (c) section 151 (sexual interference);
- (d) section 152 (invitation to sexual touching);
- (e) section 153 (sexual exploitation);
- (f) section 155 (incest);
- (g) section 159 (anal intercourse);
- (h) section 170 (parent or guardian procuring sexual activity by child);
- (i) subsection 212(2) (living off the avails of prostitution by a child);
- (j) subsection 212(4) (obtaining sexual services of a child);
- (k) section 231 or 235 (first degree murder or second degree murder within the meaning of section 231);
- (l) section 232, 234 or 236 (manslaughter);
- (m) section 239 (attempt to commit murder);
- (n) section 267 (assault with a weapon or causing bodily harm);
- (o) section 268 (aggravated assault);
- (p) section 269 (unlawfully causing bodily harm);
- (q) section 271 (sexual assault);
- (r) section 272 (sexual assault with a weapon, threats to a third party or causing bodily harm);
- (s) section 273 (aggravated sexual assault);
- (t) section 279 (kidnapping);
- (u) section 344 (robbery);
- (v) section 433 (arson — disregard for human life);
- (w) section 434.1 (arson — own property);
- (x) section 436 (arson by negligence); and
- (y) paragraph 465(1)(a) (conspiracy to commit murder).

2. An offence under any of the following provisions of the *Criminal Code*, as they read immediately before July 1, 1990:

- (a) section 433 (arson);
- (b) section 434 (setting fire to other substance); and
- (c) section 436 (setting fire by negligence).

3. An offence under any of the following provisions of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as they read immediately before January 4, 1983:

- (a) section 144 (rape);
- (b) section 145 (attempt to commit rape);
- (c) section 149 (indecent assault on female);
- (d) section 156 (indecent assault on male); and
- (e) section 246 (assault with intent).

4. An offence under any of the following provisions of the *Controlled Drugs and Substances Act*:

- (a) section 5 (trafficking);
- (b) section 6 (importing and exporting); and
- (c) section 7 (production of substance).

(s. 742.1(a)) and an intermittent sentence of imprisonment is available only if the sentence is 90 days or less (s. 732). Sections 487.051 and 487.052 provide that the court may make an order authorizing the taking of samples for forensic DNA analysis if the offender is convicted, discharged or, in the case of a young offender, found guilty of certain offences. The test to be applied depends on whether the offence is a primary or secondary designated offence as defined in s. 487.04. In the "comments" section the application of these provisions is indicated by the letter "P" (primary designated offence) or "S" (secondary designated offence).

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SECTION	TYPE	MAX/MIN SENTENCE	DISCHARGES s. 730											S. 110 DISCRETIONARY FIREARMS ORDER	
			DISCHARGES s. 730	SUSPENDED SENTENCE s. 731(1)(a)	FINE ALONE s. 734	FINE + PROBATION s. 731(1)(b)	PRISON s. 733	PRISON + PROBATION s. 731(1)(b)	INTERMITTENT s. 734	FINE, PROB. & INTERMITTENT s. 733	WCTM SURCHARGE s. 732	CONDITIONAL SENTENCE s. 732.1	COMMENTS (applicability depends on circumstances of case)		
<b>57(1)</b>	Forge passport or use forged passport	Indictable 14 yrs	x	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>57(2)</b>	Passport, false statement	Hyb-Ind.	2 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
		Hyb-Sum.	6 mth/2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>57(3)</b>	Possession, forged passport	Indictable 5 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>58</b>	Fraud, use of citizenship certificate	Indictable 2 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>65</b>	Riot	Indictable 2 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>66</b>	Unlawful assembly	Summary 6 mth/2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>72, 73</b>	Forcible entry	Hyb-Ind.	2 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
		Hyb-Sum.	6 mth/2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 110 discretionary firearms order.
<b>76</b>	Hijacking	Indictable Life	x	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	P S. 109 mandatory firearms order.
<b>77</b>	Endanger aircraft	Indictable Life	x	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	P S. 109 mandatory firearms order.
<b>78</b>	Take weapon or explosive on board	Indictable 14 yrs	x	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 109 mandatory firearms order. S. 491 mandatory weapon forfeiture order.
<b>80(a)</b>	Breach of duty of care, explosives, causing death	Indictable Life	x	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 109 mandatory firearms order.
<b>80(b)</b>	Breach of duty of care, explosives, causing harm	Indictable 14 yrs	x	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 109 mandatory firearms order.
<b>81(1)(a) &amp; (b)</b>	Explosives, intent to cause death or harm	Indictable Life	x	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	P S. 109 mandatory firearms order.
<b>81(1)(c) &amp; (d)</b>	Explosives, placing or making	Indictable 14 yrs	x	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	P S. 109 mandatory firearms order.
<b>82(1)</b>	Explosives, possession w/o lawful excuse	Indictable 5 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>82(2)</b>	Explosives, for benefit of criminal organization	Indictable 14 yrs	x	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	s. 82.1 requires sentence to be consecutive to any other sentence.
<b>83</b>	Prize fight	Summary 6 mth/2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 110 discretionary firearms order.

SECTION	TYPE	MAX/MIN SENTENCE	DISCHARGE/SUSPENDED SENTENCE/S. 730											COMMENTS (applicability depends on circumstances of case)	
			DISCHARGE s. 730	SUSPENDED SENTENCE s. 730	FINE ALONE s. 734	FINE & PROBATION s. 734(1)(a)	PRISON s. 734(1)(b)	PRISON & PROBATION s. 734(1)(b)	INTERMITTENT s. 734	FINE, PROB. & INTERMITTENT s. 732	VECTIC/SURVIVAL s. 737	CONDITIONAL SENTENCE s. 742.1	VECTIC/SURVIVAL s. 734		VECTIC/SURVIVAL s. 734
<b>85</b> Use of firearm or imitation, commission of offence	Indictable	14 yrs max. Minimums: 1 yr-1st 3 yrs-2nd	x	x	x	x	✓	**	✓	x	✓	x	✓	x	S. 109 mandatory firearms order. S. 491 mandatory weapon forfeiture order. Sentence must be consecutive to any other imposed. **Not a possible sentence for a second offence because there is a minimum sentence of three years. Higher penalty for second or subsequent offence requires compliance with s. 727.
<b>86</b> Firearm, careless use or storage, breach of regulations	Hyb-Ind.	Maximums: 2 yrs-1st 5 yrs-2nd	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 110 discretionary firearms order. S. 491 mandatory weapon forfeiture order. Higher penalty for second or subsequent offence requires compliance with s. 665.
	Hyb-Sum.	6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>87</b> Firearm, pointing	Hyb-Ind.	5 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 110 discretionary firearms order. S. 491 mandatory weapon forfeiture order.
	Hyb-Sum.	6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>88</b> Possession for purpose dangerous to the public	Hyb-Ind.	10 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 109 mandatory firearms order. S. 491 mandatory weapon forfeiture order.
	Hyb-Sum.	6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 110 discretionary firearms order. S. 491 mandatory weapon forfeiture order.
<b>89</b> Weapon at public meeting	Summary	6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 110 discretionary firearms order. S. 491 mandatory weapon forfeiture order.
<b>90</b> Weapon, concealed	Hyb-Ind.	5 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 110 discretionary firearms order. S. 491 mandatory weapon forfeiture order.
	Hyb-Sum.	6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>91</b> Unauthorized possession of firearm	Hyb-Ind.	5 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 110 discretionary firearms order. S. 491 mandatory weapon forfeiture order.
	Hyb-Sum.	6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	

\* \$100,000 for organizations for summary conviction offence s. 735.

✓ Sentence Option    x Illegal Sentence

P = Primary designated offence  
S = Secondary designated offence  
[see note on p. OG/2]

SECTION	TYPE	MAX/MIN SENTENCE	DISCHARGE/SUSPENDED SENTENCE/S. 730											COMMENTS (applicability depends on circumstances of case)	
			DISCHARGE s. 730	SUSPENDED SENTENCE s. 730	FINE ALONE s. 734	FINE & PROBATION s. 734(1)(a)	PRISON s. 734(1)(b)	PRISON & PROBATION s. 734(1)(b)	INTERMITTENT s. 734	FINE, PROB. & INTERMITTENT s. 732	VECTIC/SURVIVAL s. 737	CONDITIONAL SENTENCE s. 742.1	VECTIC/SURVIVAL s. 734		VECTIC/SURVIVAL s. 734
<b>92</b> Possession of firearm knowing possession unauthorized	Indictable	10 yrs max	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 109 mandatory firearms order. S. 491 mandatory weapon forfeiture order.
		minimums 1 yr-2nd	x	x	x	x	✓	✓	✓	✓	x	x	✓	x	S. 109 mandatory firearms order. S. 491 mandatory weapon forfeiture order.
		2 yr-3rd	x	x	x	x	✓	✓	✓	✓	x	x	✓	x	Higher penalty for second or subsequent offence requires compliance with s. 727.
<b>93</b> Possession of weapon at unauthorized place	Hyb-Ind.	5 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 110 discretionary firearms order. S. 491 mandatory weapon forfeiture order.
	Hyb-Sum.	6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>94</b> Possession of weapon in motor vehicle	Hyb-Ind.	10 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 109 mandatory firearms order. S. 491 mandatory weapon forfeiture order.
	Hyb-Sum.	6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>95</b> Possession of restricted or prohibited firearm with ammunition	Hyb-Ind.	10 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 109 mandatory firearms order. S. 491 mandatory weapon forfeiture order.
	Hyb-Sum.	1 yr	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>96</b> Possession of weapon obtained by crime	Hyb-Ind.	10 yrs max 1 yr min	x	x	x	x	✓	✓	✓	x	x	✓	x	S. 109 mandatory firearms order. S. 491 mandatory weapon forfeiture order.	
	Hyb-Sum.	1 yr	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>97</b> Transfer of cross-bow	Hyb-Ind.	2 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 110 discretionary firearms order. S. 491 mandatory weapon forfeiture order.
	Hyb-Sum.	6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>99</b> Weapons trafficking	Indictable	10 yrs max 1 yr min Minimums where firearm, prohibited device, ammunition: 3 yrs-1st 5 yrs-2nd	x	x	x	x	✓	✓	✓	x	x	✓	x	S. 109 mandatory firearms order. S. 491 mandatory weapon forfeiture order.	
<b>100</b> Possession of weapons for purpose of trafficking	Indictable	10 yrs max 1 yr min Minimums where firearm, prohibited device, ammunition: 3 yrs-1st 5 yrs-2nd	x	x	x	x	✓	✓	✓	x	x	✓	x	S. 109 mandatory firearms order. S. 491 mandatory weapon forfeiture order.	

\* \$100,000 for organizations for summary conviction offence s. 735.

✓ Sentence Option    x Illegal Sentence

P = Primary designated offence  
S = Secondary designated offence  
[see note on p. OG/2]

SECTION	TYPE	MAX/MIN SENTENCE	DISCHARGE s. 730	SUSPENDED SENTENCE s. 734	FINE ALONE s. 734	FINE & PROBATION s. 731(1)(a)	PRISON s. 731(1)(b)	PRISON & PROBATION s. 731(1)(b)	PRISON & FINE s. 734	INTERMITTENT s. 732	FINE PROB. & INTERMITTENT s. 732	VIOLATION s. 732	CONDITIONAL SENTENCE s. 742.1	COMMENTS (applicability depends on circumstances of case)
<b>101</b> Transfer without authority	Hyb-Ind.	5 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 110 discretionary firearms order. S. 491 mandatory weapon forfeiture order.
	Hyb-Sum.	6 mth/2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>102</b> Making automatic firearm	Hyb-Ind.	10 yrs max 1 yr min	✗	✗	✗	✓	✓	✓	✗	✗	✗	✓	✓	S. 109 mandatory firearms order. S. 491 mandatory weapon forfeiture order.
	Hyb-Sum.	1 yr	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>103</b> Importing or exporting knowing it is unauthorized	Indictable	10 yrs max 1 yr min Minimums where firearm, prohibited device, ammunition: 3 yrs-1st 5 yrs-2nd	✗	✗	✗	✓	✓	✓	✗	✗	✗	✓	✓	S. 109 mandatory firearms order. S. 491 mandatory weapon forfeiture order.
	Hyb-Sum.	6 mth/2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>104</b> Unauthorized importing or exporting	Hyb-Ind.	5 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 110 discretionary firearms order. S. 491 mandatory weapon forfeiture order.
	Hyb-Sum.	6 mth/2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>105</b> Failing to report lost or stolen weapon or documents or found weapons	Hyb-Ind.	5 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 110 discretionary firearms order. S. 491 mandatory weapon forfeiture order.
	Hyb-Sum.	6 mth/2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>106</b> Failing to report destroyed weapons	Hyb-Ind.	5 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 110 discretionary firearms order. S. 491 mandatory weapon forfeiture order.
	Hyb-Sum.	6 mth/2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>107</b> Making false statement about loss, theft or destruction	Hyb-Ind.	5 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
	Hyb-Sum.	6 mth/2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>108</b> Altering, defacing or removing serial number of firearm	Hyb-Ind.	5 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 110 discretionary firearms order. S. 491 mandatory weapon forfeiture order.
	Hyb-Sum.	6 mth/2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	

SECTION	TYPE	MAX/MIN SENTENCE	DISCHARGE s. 730	SUSPENDED SENTENCE s. 734	FINE ALONE s. 734	FINE & PROBATION s. 731(1)(a)	PRISON s. 731(1)(b)	PRISON & PROBATION s. 731(1)(b)	PRISON & FINE s. 734	INTERMITTENT s. 732	FINE PROB. & INTERMITTENT s. 732	VIOLATION s. 732	CONDITIONAL SENTENCE s. 742.1	COMMENTS (applicability depends on circumstances of case)
<b>117.01</b> Possession contrary to order; failure to surrender documents	Hyb-Ind.	10 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 109 mandatory firearms order. S. 491 mandatory weapon forfeiture order.
	Hyb-Sum.	6 mth/2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>119</b> Bribery of judicial officers	Indictable	14 yrs	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	Written consent of A.G. Canada required to prosecute judge. S. 522 release by superior court judge only where accused is a judge. S. 462.37 proceeds of crime for forfeiture order on Crown application. S. 750(1), (2) conviction may result in loss of office and other disabilities.
	Hyb-Sum.	6 mth/2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>120</b> Bribery of officers	Indictable	14 yrs	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 462.37 proceeds of crime for forfeiture order on Crown application. S. 750(1), (2) conviction may result in loss of office and other disabilities.
	Hyb-Sum.	6 mth/2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>121</b> Frauds on the government	Indictable	5 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 462.37 proceeds of crime for forfeiture order on Crown application. S. 750(3) conviction bars accused from contracting with Crown or benefiting from contract with Crown unless capacity restored under s. 750(4) and (5).
	Hyb-Sum.	6 mth/2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>122</b> Breach of trust by public officer	Indictable	5 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 462.37 proceeds of crime for forfeiture order on Crown application. S. 750(1), (2) conviction may result in loss of office and other disabilities.
	Hyb-Sum.	6 mth/2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>123</b> Municipal corruption	Indictable	5 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 750(1), (2) conviction may result in loss of office and other disabilities.
	Hyb-Sum.	6 mth/2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>125</b> Influencing or negotiating appointments	Indictable	5 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 750(1), (2) conviction may result in loss of office and other disabilities.
	Hyb-Sum.	6 mth/2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>126</b> Disobeying a statute	Indictable	2 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
	Hyb-Sum.	6 mth/2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>127</b> Disobeying an order of court	Indictable	2 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
	Hyb-Sum.	6 mth/2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	

SECTION	TYPE	MAX/MINSSENTENCE	DISPOSITIONS										COMMENTS (applicability depends on circumstances of case)		
			DISCHARGE s. 730	SUSPENDED SENTENCE s. 731(1)(a)	FINE ALONE s. 734	PRISON s. 734	PRISON & PROBATION s. 731(1)(b)	PRISON s. 734 & 737	PRISON & FINE s. 734	INTERMITTENT s. 732	FINE PROB. & INTERMITTENT s. 732	VICTIM SURCHARGE s. 737		CONDITIONAL SENTENCE s. 732.1	
<b>129</b> Obstructing or resisting peace officer	Hyb-Ind.	2 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 110 discretionary firearms order. S. 491 mandatory weapon forfeiture order.
	Hyb-Sum.	6 mth/2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>130</b> Personating peace officer	Summary	6 mth/2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>131, 132</b> Perjury	Indictable	14 yrs	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	Max. sentence is life where perjury relates to offence punishable by death.
<b>134</b> False statement where not required	Summary	6 mth/2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>136</b> Contradictory evidence with intent to mislead	Indictable	14 yrs	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	Attorney General's consent required.
<b>137</b> Fabricating evidence	Indictable	14 yrs	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>138</b> Offences relating to affidavits	Indictable	2 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>139(1)</b> Obstructing justice	Hyb-Ind.	2 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
	Hyb-Sum.	6 mth/2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>139(2)</b> Obstructing justice	Indictable	10 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>140</b> Public mischief	Hyb-Ind.	5 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
	Hyb-Sum.	6 mth/2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>141</b> Compounding indictable offence	Indictable	2 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>144</b> Prison breach	Indictable	10 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 109 mandatory firearms order. S. 491 mandatory weapon forfeiture order.
<b>145(1) to (6)</b> Escape, failure to appear, etc.	Hyb-Ind.	2 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 110 discretionary firearms order. S. 491 mandatory weapon forfeiture order.
	Hyb-Sum.	6 mth/2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>146</b> Permit or assist escape	Indictable	2 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 110 discretionary firearms order. S. 491 mandatory weapon forfeiture order.

SECTION	TYPE	MAX/MINSSENTENCE	DISPOSITIONS										COMMENTS (applicability depends on circumstances of case)		
			DISCHARGE s. 730	SUSPENDED SENTENCE s. 731(1)(a)	FINE ALONE s. 734	PRISON s. 734	PRISON & PROBATION s. 731(1)(b)	PRISON s. 734 & 737	PRISON & FINE s. 734	INTERMITTENT s. 732	FINE PROB. & INTERMITTENT s. 732	VICTIM SURCHARGE s. 737		CONDITIONAL SENTENCE s. 732.1	
<b>147</b> Rescue or permit escape	Indictable	5 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 110 discretionary firearms order. S. 491 mandatory weapon forfeiture order.
<b>151</b> Sexual interference	Hyb-Ind.	10 yrs max 45 days min	✗	✗	✗	✗	✓	✓	✓	✓	✓	✓	✓	✗	Indictable, s. 109 mandatory firearms order. Summary conviction, s. 109 discretionary firearms order. S. 491 mandatory weapon forfeiture order. S. 161 discretionary prohibition from attending certain public places or taking certain employment where complainant under 14 years.
	Hyb-Sum.	18 mth/2000* 14 days min	✗	✗	✗	✗	✓	✓	✓	✓	✓	✓	✓	✗	P
<b>152</b> Injurious sexual touching, under 14	Hyb-Ind.	10 yrs max 45 days min	✗	✗	✗	✗	✓	✓	✓	✓	✓	✓	✓	✗	Indictable, s. 109 mandatory firearms order. Summary conviction, s. 110 discretionary firearms order. S. 491 mandatory weapon forfeiture order. S. 161 discretionary prohibition from attending certain public places or taking certain employment where complainant under 14 years.
	Hyb-Sum.	18 mth/2000* 14 days min	✗	✗	✗	✗	✓	✓	✓	✓	✓	✓	✓	✗	P
<b>153</b> Sexual exploitation, age 14 to 18	Hyb-Ind.	10 yrs max 45 days min	✗	✗	✗	✗	✓	✓	✓	✓	✓	✓	✓	✗	S. 110 discretionary firearms order. S. 491 mandatory weapons forfeiture order.
	Hyb-Sum.	18 mth/2000* 14 days min	✗	✗	✗	✗	✓	✓	✓	✓	✓	✓	✓	✗	P
<b>153.1</b> Sexual exploitation of person with disability	Hyb-Ind.	5 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 110 discretionary firearms order. S. 491 mandatory weapons forfeiture order.
	Hyb-Sum.	18 mth/2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	P

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✓ Sentence Option ✗ Illegal Sentence

P = Primary designated offence  
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See note on n. OG/21

SECTION	TYPE	MAX/MIN SENTENCE	DISCHARGE s. 730	SUSPENDED SENTENCE s. 731(a)	FINE ALONE s. 734	PRISON s. 731(b)	PRISON & PROBATION s. 731(b)	PRISON s. 731(b)	PRISON & PROBATION s. 731(b)	INTERMITTENT s. 734	FINE PROB. & INTERM s. 732	VICTIM SURCHARGE s. 737	CONDITIONAL SENTENCE s. 732.1	COMMENTS (applicability depends on circumstances of case)
<b>155</b>	Incest	14 yrs	x	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 110 mandatory firearms order. S. 491 mandatory weapon forfeiture order. S. 161 discretionary prohibition from attending certain public places or taking certain employment where complainant under 14 years. P
<b>159</b>	Anal intercourse	Hyb-Ind. 10 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	Indictable, s. 109 mandatory firearms order; summary conviction, s. 110 discretionary firearms order. S. 491 mandatory weapon forfeiture order. S. 161 discretionary prohibition from attending certain public places or taking certain employment where complainant under 14 years.
		Hyb-Sum. 6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>160</b>	Bestiality	Hyb-Ind. 10 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	Indictable, s. 109 mandatory firearms order; summary conviction, s. 110 discretionary firearms order. S. 491 mandatory weapon forfeiture order.
		Hyb-Sum. 6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S (s. 160(3) only)
<b>163, 169</b>	Corrupting morals	Hyb-Ind. 2 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 462.37 proceeds of crime forfeiture order on Crown application.
		Hyb-Sum. 6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>163.1(2), (3)</b>	Child pornography	Hyb-Ind. 10 yrs max 1 yr min	x	x	x	x	✓	✓	✓	✓	x	✓	x	S. 462.37 proceeds of crime forfeiture order on Crown application.
		Hyb-Sum. 18 mth/ 2000* 90 days min	x	x	x	x	✓	✓	✓	✓	✓	✓	✓	S
<b>163.1(4), (4.1)</b>	Possession of or accessing child pornography	Hyb-Ind. 5 yrs max 45 days min	x	x	x	x	✓	✓	✓	✓	✓	✓	x	S. 462.37 proceeds of crime forfeiture order on Crown application.
		Hyb-Sum. 18 mth/ 2000* 14 days min	x	x	x	x	✓	✓	✓	✓	✓	✓	x	S
<b>168</b>	Mailing obscene material	Hyb-Ind. 2 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
		Hyb-Sum. 6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	

SECTION	TYPE	MAX/MIN SENTENCE	DISCHARGE s. 730	SUSPENDED SENTENCE s. 731(a)	FINE ALONE s. 734	PRISON s. 731(b)	PRISON & PROBATION s. 731(b)	PRISON s. 731(b)	PRISON & PROBATION s. 731(b)	INTERMITTENT s. 734	FINE PROB. & INTERM s. 732	VICTIM SURCHARGE s. 737	CONDITIONAL SENTENCE s. 732.1	COMMENTS (applicability depends on circumstances of case)
<b>170</b>	Parent or guardian procuring sexual activity	Indictable person under 14: 5yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 161 discretionary prohibition from attending certain public places or taking certain employment where complainant under 14 years.
		person 14-18: 2 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S
<b>171</b>	Householder permitting sexual activity	Indictable person under 14: 5yrs max 6 mth min	x	x	x	x	✓	✓	✓	✓	x	✓	x	S. 161 discretionary prohibition from attending certain public places or taking certain employment where complainant under 14 years.
		person 14-18: 2 yrs 45 days min	x	x	x	x	✓	✓	✓	✓	✓	✓	x	
<b>172</b>	Corrupting children	Indictable 2 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	Attorney General's consent may be required, see s. 172(4).
<b>172.1</b>	Child luring	Hyb-Ind. 5 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
		Hyb-Sum. 6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>173</b>	Indecent acts	Summary 6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S
<b>174</b>	Nudity	Summary 6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 174(3) Attorney General's consent required.
<b>175</b>	Disturbance, indecent exhibition, loitering	Summary 6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 110 discretionary firearms order. S. 491 mandatory weapon forfeiture order.
<b>176(1)</b>	Obstructing or violence to clergy	Indictable 2 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 110 discretionary firearms order. S. 491 mandatory weapon forfeiture order.
<b>176(2) &amp; (3)</b>	Disturbing religious worship, etc.	Summary 6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>177</b>	Trespassing at night	Summary 6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>178</b>	Offensive volatile substance	Summary 6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>179</b>	Vagrancy	Summary 6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>180</b>	Common nuisance	Indictable 2 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 110 discretionary firearms order. S. 491 mandatory weapon forfeiture order.







SECTION	TYPE	MAX/MIN SENTENCE	DISCHARGE s. 70	SUSPENDED SENTENCE s. 73A	FINE ALONE s. 73A	FINE & PROBATION s. 73(1)(b)	PRISON s. 73(1)(c)	PRISON & PROBATION s. 73(1)(d)	INTERMITTENT s. 732	FINE, PROP. & INTERM s. 732	VICTIM SURCHARGE s. 732	CONDITIONAL SENTENCE s. 742.1	COMMENTS (applicability depends on circumstances of case)
<b>252(1.3)</b>	Indictable	Life	x										S. 259(2) discretionary driving prohibition (up to life).
<b>253, 255(1)</b>	Hyb-Ind.	5 yrs max. Minimums: \$1000-1st	x	x									S. 259(1) mandatory driving prohibition (maximum 3 years plus any period to which offender sentenced to imprisonment, minimum 1 year for first offence; maximum 5 years plus any period to which offender sentenced to imprisonment, minimum 2 years for second offence; for each subsequent offence, minimum 3 years plus any period to which offender sentenced to imprisonment; note: court may authorize offender to operate vehicle with alcohol ignition interlock device during prohibition). Discharge available in some jurisdictions for s. 253 offence, s. 255(5). Higher penalty for second or subsequent offence requires compliance with s. 727.
		30 days-2nd	x	x	x	x							
		120 days-3rd	x	x	x	x							
	Hyb-Sum.	6 mth max. Minimums: \$1000-1st	x	x									
		30 days-2nd	x	x	x	x							
		120 days-3rd	x	x	x	x							

SECTION	TYPE	MAX/MIN SENTENCE	DISCHARGE s. 70	SUSPENDED SENTENCE s. 73A	FINE ALONE s. 73A	FINE & PROBATION s. 73(1)(b)	PRISON s. 73(1)(c)	PRISON & PROBATION s. 73(1)(d)	INTERMITTENT s. 732	FINE, PROP. & INTERM s. 732	VICTIM SURCHARGE s. 732	CONDITIONAL SENTENCE s. 742.1	COMMENTS (applicability depends on circumstances of case)
<b>254(5), 255(1)</b>	Hyb-Ind.	5 yrs max. Minimums: \$1000-1st	x	x									S. 259(1) mandatory driving prohibition (maximum 3 years plus any period to which offender sentenced to imprisonment, minimum 1 year for first offence; maximum 5 years plus any period to which offender sentenced to imprisonment, minimum 2 years for second offence; for each subsequent offence, minimum 3 years plus any period to which offender sentenced to imprisonment; note: court may authorize offender to operate vehicle with alcohol ignition interlock device during prohibition). Higher penalty for second or subsequent offence requires compliance with s. 727.
		30 days-2nd	x	x	x	x							
		120 days-3rd	x	x	x	x							
	Hyb-Sum.	6 mth max. Minimums: \$600-1st	x	x									
		14 days-2nd	x	x	x	x							
		90 days-3rd	x	x	x	x							
<b>253(1), 255(2), (2.1), (2.2)</b>	Indictable	10 yrs max. Minimums: \$1000-1st	x	x									S. 109 mandatory firearms order. S. 259(1) mandatory driving prohibition (maximum 3 years plus any period to which offender sentenced to imprisonment, minimum 1 year for first offence; maximum 5 years plus any period to which offender sentenced to imprisonment, minimum 2 years for second offence; for each subsequent offence, minimum 3 years plus any period to which offender sentenced to imprisonment; note: court may authorize offender to operate vehicle with alcohol ignition interlock device during prohibition). S. 259(2) discretionary driving prohibition up to 10 years (no minimum). Higher penalty for second or subsequent offences requires compliance with s. 727.
		30 days-2nd	x	x	x	x							
		120 days-3rd	x	x	x	x							

\* \$100,000 for organizations for summary conviction offence s. 735.

✓ Sentence Option    x Illegal Sentence

P = Primary designated offence  
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(see note on c. OG/2)

\* \$100,000 for organizations for summary conviction offence s. 735.

✓ Sentence Option    x Illegal Sentence

P = Primary designated offence  
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(see note on p. OG/2)

SECTION	TYPE	MAX./MIN. SENTENCE	DISCHARGE s. 730	SUPERNOB SENTENCE s. 734	FINE ALONE s. 734	PRISON s. 734	PRISON & PROBATION s. 731(1)(a)	PRISON s. 734 & 731(1)(b)	PRISON & PROBATION s. 731(1)(b)	INTERMITTENT s. 734	FINE, PROB. & INTENT s. 734	VIC. PROB. s. 732	VIC. MIN. SURCHARGE s. 732	CONDONATIONAL SENTENCE s. 732	COMMENTS (applicability depends on circumstances of case)
<b>253, 255(3), (3.1), (3.2)</b>	Indictable	Life max. Minimums: \$1000-1st	x	x	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 109 mandatory firearms order. S. 259(1) mandatory driving prohibition (maximum 3 years plus any period to which offender sentenced to imprisonment, minimum 1 year for first offence; maximum 5 years plus any period to which offender sentenced to imprisonment, minimum 2 years for second offence; for each subsequent offence, minimum 3 years plus any period to which offender sentenced to imprisonment; note: court may authorize offender to operate vehicle with alcohol ignition interlock device during prohibition). S. 259(2) discretionary driving prohibition up to 10 years (no minimum). Higher penalty for second or subsequent offences requires compliance with s. 727. S
		30 days-2nd	x	x	x	x	✓	✓	✓	✓	✓	✓	✓	✓	
		120 days-3rd	x	x	x	x	✓	✓	✓	✓	✓	✓	✓	✓	
<b>259(4)</b>	Hyb-Ind.	5 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 109 mandatory firearms order. S. 259(1) mandatory driving prohibition (maximum 3 years plus any period to which offender sentenced to imprisonment, minimum 1 year for first offence; maximum 5 years plus any period to which offender sentenced to imprisonment, minimum 2 years for second offence; for each subsequent offence, minimum 3 years plus any period to which offender sentenced to imprisonment; note: court may authorize offender to operate vehicle with alcohol ignition interlock device during prohibition). S. 259(2) discretionary driving prohibition up to 10 years (no minimum). Higher penalty for second or subsequent offences requires compliance with s. 727. S
	Hyb-Sum.	6 mth/2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>264</b>	Hyb-Ind.	10 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	Aggravating factors, s. 264(4). S. 109 mandatory firearms prohibition.
	Hyb-Sum.	6 mth/2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	

\* \$100,000 for organizations for summary conviction offence s. 735. ✓ Sentence Option ✗ Illegal Sentence P = Primary designated offence S = Secondary designated offence (see note on p. OG/2)

SECTION	TYPE	MAX./MIN. SENTENCE	DISCHARGE s. 730	SUPERNOB SENTENCE s. 734	FINE ALONE s. 734	PRISON s. 734	PRISON & PROBATION s. 731(1)(a)	PRISON s. 734 & 731(1)(b)	PRISON & PROBATION s. 731(1)(b)	INTERMITTENT s. 734	FINE, PROB. & INTENT s. 734	VIC. PROB. s. 732	VIC. MIN. SURCHARGE s. 732	CONDONATIONAL SENTENCE s. 732	COMMENTS (applicability depends on circumstances of case)
<b>264.1(1)(a)</b>	Hyb-Ind.	5 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 110 discretionary firearms order. S. 491 mandatory weapon forfeiture order.
	Hyb-Sum.	18 mth/2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>264.1(1)(b) or (c)</b>	Hyb-Ind.	2 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 110 discretionary firearms order. S. 491 mandatory weapon forfeiture order.
	Hyb-Sum.	6 mth/2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>265, 266</b>	Hyb-Ind.	5 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 110 discretionary firearms order. S. 491 mandatory weapon forfeiture order.
	Hyb-Sum.	6 mth/2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S
<b>267</b>	Hyb-Ind.	10 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✗	Indictable, s. 109 mandatory firearms order. Summary conviction, s. 110 discretionary firearms order. S. 491 mandatory weapon forfeiture order.
	Hyb-Sum.	18 mth/2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	P
<b>268</b>	Indictable	14 yrs	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✗	S. 109 mandatory firearms order. S. 491 mandatory weapon forfeiture order. P
<b>269</b>	Hyb-Ind.	10 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✗	Indictable, s. 109 mandatory firearms order. Summary conviction, s. 110 discretionary firearms order. S. 491 mandatory weapon forfeiture order. May be convicted notwithstanding that charge.
	Hyb-Sum.	18 mth/2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	P
<b>269.1</b>	Indictable	14 yrs	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✗	S. 109 mandatory firearms order. S. 491 mandatory weapon forfeiture order. S
<b>270</b>	Hyb-Ind.	5 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 110 discretionary firearms order. S. 491 mandatory weapon forfeiture order.
	Hyb-Sum.	6 mth/2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S (s. 270(1)(e) only)

\* \$100,000 for organizations for summary conviction offence s. 735. ✓ Sentence Option ✗ Illegal Sentence P = Primary designated offence S = Secondary designated offence (see note on p. OG/2)

SECTION	TYPE	MAX/MIN SENTENCE	DISCHARGE s. 709	SUSPENDED SENTENCE s. 734	FINE ALONE s. 734	PRISON s. 734	PRISON & PROBATION s. 731(1)(a)	PRISON s. 731(1)(b)	PRISON & PROBATION s. 731(1)(b)	INTERMITTENT s. 737	FINE, PROB. & INTERMITTENT s. 734	VICTIM SURCHARGE s. 732	CONDITIONAL SENTENCE s. 742.1	COMMENTS (applicability depends on circumstances of case)
<b>271</b>														
Sexual assault	Hyb-Ind.	10 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	Indictable, s. 109 mandatory firearms order; summary conviction, s. 110 discretionary firearms order. S. 486(2.1) private testimony order. S. 486(3) discretionary publication ban. S. 491 mandatory weapon forfeiture order. S. 161 Discretionary prohibition from attending certain public places or taking certain employment where complainant under 14 years. P
	Hyb-Sum.	18 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>272(2)(a)</b>														
Sexual assault with weapon, threats or causing bodily harm, use of restricted or prohibited firearm, or any firearm, in committing for criminal organization	Indictable	14 yrs Minimum: 5 yrs-1st 7 yrs-2nd	✗	✗	✗	✗	✓	✗	✓	✗	✗	✓	✗	S. 109 mandatory firearms order. S. 486(2.1) private testimony order. S. 486(3) discretionary publication ban. S. 491 mandatory weapon forfeiture order. S. 161 Discretionary prohibition from attending certain public places or taking certain employment where complainant under 14 years. P
<b>272(2)(a.1)</b>														
Sexual assault with weapon, threats or causing harm, use of firearm (other)	Indictable	14 yrs Min: 4 yrs	✗	✗	✗	✗	✓	✗	✓	✗	✗	✓	✗	S. 109 mandatory firearms order. S. 486(2.1) private testimony order. S. 486(3) discretionary publication ban. S. 491 mandatory weapon forfeiture order. S. 161 Discretionary prohibition from attending certain public places or taking certain employment where complainant under 14 years. P
<b>272(2)(b)</b>														
Sexual assault with weapon, threats or causing harm (other)	Indictable	14 yrs	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓	✗	S. 109 mandatory firearms order. S. 491 mandatory weapon forfeiture order. S. 161 Discretionary prohibition from attending certain public places or taking certain employment where complainant under 14 years. P

SECTION	TYPE	MAX/MIN SENTENCE	DISCHARGE s. 709	SUSPENDED SENTENCE s. 734	FINE ALONE s. 734	PRISON s. 734	PRISON & PROBATION s. 731(1)(a)	PRISON s. 731(1)(b)	PRISON & PROBATION s. 731(1)(b)	INTERMITTENT s. 737	FINE, PROB. & INTERMITTENT s. 734	VICTIM SURCHARGE s. 732	CONDITIONAL SENTENCE s. 742.1	COMMENTS (applicability depends on circumstances of case)
<b>273(2)(a)</b>														
Aggravated sexual assault, use restricted or prohibited weapon, or any firearm, in committing for criminal organization	Indictable	Life Minimum: 5 yrs-1st 7 yrs-2nd	✗	✗	✗	✗	✓	✗	✓	✗	✗	✓	✗	S. 109 mandatory firearms order. S. 491 mandatory weapon forfeiture order. S. 161 Discretionary prohibition from attending certain public places or taking certain employment where complainant under 14 years. P
<b>273(2)(a.1)</b>														
Aggravated sexual assault, use of firearm (other)	Indictable	Life Min: 4 yrs	✗	✗	✗	✗	✓	✗	✓	✗	✗	✓	✗	S. 109 mandatory firearms order. S. 491 mandatory weapon forfeiture order. S. 161 Discretionary prohibition from attending certain public places or taking certain employment where complainant under 14 years. P
<b>273(2)(b)</b>														
Aggravated sexual assault (other)	Indictable	Life	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓	✗	S. 109 mandatory firearms order. S. 491 mandatory weapon forfeiture order. S. 161 Discretionary prohibition from attending certain public places or taking certain employment where complainant under 14 years. P
<b>279(1),(1.1)(a)</b>														
Kidnapping, use restricted or prohibited firearm, or any firearm, in committing for criminal organization	Indictable	Life Minimum: 5 yrs-1st 7 yrs-2nd	✗	✗	✗	✗	✓	✗	✓	✗	✗	✓	✗	S. 109 mandatory firearms order. S. 491 mandatory weapon forfeiture order. S. 462.37 proceeds of crime forfeiture order on Crown application. P
<b>279(1),(1.1)(a.1)</b>														
Kidnapping, use of firearm	Indictable	Life Min: 4 yrs	✗	✗	✗	✗	✓	✗	✓	✗	✗	✓	✗	S. 109 mandatory firearms order. S. 491 mandatory weapon forfeiture order. S. 462.37 proceeds of crime forfeiture order on Crown application. P
<b>279(1),(1.1)(b)</b>														
Kidnapping (other)	Indictable	Life	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓	✗	S. 109 mandatory firearms order. S. 491 mandatory weapon forfeiture order. P
<b>279(2)</b>														
Forcible confinement	Hyb-Ind.	10 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 109 mandatory firearms order. S. 491 mandatory weapon forfeiture order. P
	Hyb-Sum.	18 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	Aggravating circumstance, s. 348.1.

\* \$100,000 for organizations for summary conviction offence s. 735.

✓ Sentence Option ✗ Illegal Sentence

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S = Secondary designated offence  
See table on s. 735

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See table on s. 735

SECTION	TYPE	MAX/MIN SENTENCE	DISCHARGE s. 730	SUSPENDED SENTENCE s. 731(1)(a)	FINE ALONE s. 734	PRISON s. 735	PRISON & PROBATION s. 731(1)(b)	PRISON s. 735 & 737	PRISON & PROBATION s. 731(1)(b)	INTERMITTENT s. 732	FINE + PROB. & INTERMITTENT s. 737	CONDITIONAL SENTENCE s. 732	COMMENTS (applicability depends on circumstances of case)
<b>279.01(1)(a)</b> Trafficking in persons, aggravating circumstances	Indictable	14 yrs	x	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 109 mandatory firearms prohibition. S. 491 mandatory weapon forfeiture.
<b>279.01(1)(b)</b> Trafficking in persons, other	Indictable	10 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 109 mandatory firearms prohibition. S. 491 mandatory weapon forfeiture.
<b>279.1(2)(a)</b> Hostage taking, use restricted or prohibited firearm, or any firearm, in committing for criminal organization	Indictable	Life Minimum: 5 yrs-1st 7 yrs-2nd	x	x	✓	x	✓	x	✓	x	x	✓	S. 109 mandatory firearms order. S. 491 mandatory weapon forfeiture order.
<b>279.1(2)(a.1)</b> Hostage taking, use of firearm (other)	Indictable	Life Min: 4 yrs	x	x	✓	x	✓	x	✓	x	x	✓	S. 109 mandatory firearms order. S. 491 mandatory weapon forfeiture order.
<b>279.1(2)(b)</b> Hostage taking (other)	Indictable	Life	x	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 109 mandatory firearms order. S. 491 mandatory weapon forfeiture order. P
<b>280</b> Abduction of person under 16	Indictable	5 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 110 discretionary firearms prohibition.
<b>281</b> Abduction of person under 14	Indictable	10 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 110 discretionary firearms prohibition.
<b>282</b> Abduction contravening custody order	Hyb-Ind.  Hyb-Sum.	10 yrs  6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	Indictable, s. 109 mandatory firearms order; summary conviction, s. 110 discretionary firearms order. S. 491 mandatory weapon forfeiture order.
<b>283</b> Abduction where no custody order	Hyb-Ind.  Hyb-Sum.	10 yrs  6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	Indictable, s. 109 mandatory firearms order; summary conviction, s. 110 discretionary firearms order. S. 491 mandatory weapon forfeiture order. Needs consent of A.G. or counsel (s.283(2)).
<b>300</b> Defamatory libel known to be false	Indictable	5 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>318</b> Advocating genocide	Indictable	5 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	Attorney General's consent required.

\* \$100,000 for organizations for summary conviction offence s.735.

✓ Sentence Option    x Illegal Sentence

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(see note on s. 732)

SECTION	TYPE	MAX/MIN SENTENCE	DISCHARGE s. 730	SUSPENDED SENTENCE s. 731(1)(a)	FINE ALONE s. 734	PRISON s. 735	PRISON & PROBATION s. 731(1)(b)	PRISON s. 735 & 737	PRISON & PROBATION s. 731(1)(b)	INTERMITTENT s. 732	FINE + PROB. & INTERMITTENT s. 737	CONDITIONAL SENTENCE s. 732	COMMENTS (applicability depends on circumstances of case)
<b>319(1), (2)</b> Incite or promote hatred	Hyb-Ind.  Hyb-Sum.	2 yrs  6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	Attorney General's consent required for s. 319(2) offence.
<b>322-332, 334(a)</b> Theft over \$5,000	Indictable	10 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 462.37 proceeds of crime forfeiture order on Crown application.
<b>322-332, 334(b)</b> Theft \$5,000 or less	Hyb-Ind. Absolute PCJ  Hyb-Sum.	2 yrs    6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 462.37 proceeds of crime forfeiture order on Crown application.
<b>335</b> Take motor vehicle without consent	Summary	6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>336</b> Criminal breach of trust	Indictable	14 yrs	x	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>337</b> Public servant, refuse to deliver property	Indictable	14 yrs	x	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>338(1)</b> Fraudulently take cattle or deface brand, etc.	Indictable	5 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>338(2)</b> Cattle theft	Indictable	10 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>339(1)</b> Take poss'n of drift timber, etc.	Indictable	5 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>339(2)</b> Dealer in second hand goods	Summary	6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>342</b> Theft or forgery of credit card	Hyb-Ind.  Hyb-Sum.	10 yrs  6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>342.1</b> Unauthorized use of computer	Hyb-Ind.  Hyb-Sum.	10 yrs  6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>342.2</b> Unlawful possession of device for committing s. 342.1 offence	Hyb-Ind.  Hyb-Sum.	2 yrs  6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	Court may also make forfeiture order.

\* \$100,000 for organizations for summary conviction offence s. 735.

✓ Sentence Option    x Illegal Sentence

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SECTION	TYPE	MAX/MIN SENTENCE	DISCHARGE s. 730											COMMENT'S (applicability depends on circumstances of case)
			SUSPENDED SENTENCE s. 734	FINE ALONE s. 734	PRISON s. 731(1)(a)	PRISON & PROBATION s. 731(1)(b)	PRISON s. 731(1)(b)	PRISON & PROBATION s. 731(1)(b)	INTERMITTENT s. 732	FINE, PROB. & INTERMITTENT s. 732	VICTIM SURCHARGE s. 737	CONDITIONAL SENTENCE s. 742.1		
<b>362(2)(a)</b> False pretence, property over \$5,000	Indictable	10 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>362(2)(b)</b> False pretence, property \$5,000 or less	Hyb-Ind. Absolute PCJ	2 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
	Hyb-Sum.	6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>362(3)</b> Obtain credit, etc. by false pretence	Indictable	10 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>363</b> Obtain execution of security by fraud	Indictable	5 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>364</b> Obtain food or lodging by fraud	Summary	6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>365</b> Pretend to practise witchcraft	Summary	6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>366, 367(1)</b> Forgery	Hyb-Ind.	10 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 462.37 proceeds of crime forfeiture order on Crown application.
	Hyb-Sum.	6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>368</b> Utter forged document	Hyb-Ind.	10 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 462.37 proceeds of crime forfeiture order on Crown application.
	Hyb-Sum.	6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>372(1)</b> False Message	Indictable	2 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 110 discretionary firearms order.
<b>372(2)</b> Indecent telephona calls	Summary	6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 110 discretionary firearms order.
<b>372(3)</b> Harassing telephone calls	Summary	6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 110 discretionary firearms order.
<b>374</b> Draw document without authority	Indictable	14 yrs	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>375</b> Obtaining, etc., based on forged document	Indictable	14 yrs	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>380(1)(a)</b> Fraud over \$5,000 or re: testamentary Instrument	Indictable	14 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 462.37 proceeds of crime forfeiture order on Crown application. Aggravating circumstance, s. 380.1.

\* \$100,000 for organizations for summary conviction offence s. 735.

✓ Sentença Option ✗ Illegal Sentence

P = Primary designated offence  
S = Secondary designated offence

SECTION	TYPE	MAX/MIN SENTENCE	DISCHARGE s. 730											COMMENT'S (applicability depends on circumstances of case)
			SUSPENDED SENTENCE s. 734	FINE ALONE s. 734	PRISON s. 731(1)(a)	PRISON & PROBATION s. 731(1)(b)	PRISON s. 731(1)(b)	PRISON & PROBATION s. 731(1)(b)	INTERMITTENT s. 732	FINE, PROB. & INTERMITTENT s. 732	VICTIM SURCHARGE s. 737	CONDITIONAL SENTENCE s. 742.1		
<b>380(1)(b)</b> Fraud; \$5,000 or less	Hyb-Ind. Absolute PCJ	2 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 462.37 proceeds of crime forfeiture order on Crown application. Aggravating circumstance, s. 380.1.
	Hyb-Sum.	6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>381</b> Using mails to defraud	Indictable	2 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>382</b> Manipulation of stock exchange	Indictable	10 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 380.1 aggravating circumstances on sentence.
<b>382.1</b> Insider trading	Hyb-Ind.	5 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 380.1 aggravating circumstances on sentence
	Hyb-Sum.	6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>393(1), (2)</b> Fraud in relation to fares	Indictable Absolute PCJ	2 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>393(3)</b> Obtain transportation by fraud	Summary	6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>394</b> Fraud in relation to minerals	Indictable	5 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 394(6) discretionary forfeiture order.
<b>394.1</b> Possession of stolen minerals	Indictable	5 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 394.1(4) discretionary forfeiture order.
<b>400</b> False prospectus	Indictable	10 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	Aggravating circumstance, s. 380.1.
<b>403</b> Personation with intent	Hyb-Ind.	10 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
	Hyb-Sum.	6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>423</b> Intimidation	Hyb-Ind.	5 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 110 discretionary firearms order. S. 491 mandatory weapon forfeiture order.
	Hyb-Sum.	6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>423.1</b> Intimidation of justice system participant	Indictable	14 yrs	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 109 or s. 110 firearms prohibition depending on circumstances. S. 491 mandatory weapon forfeiture.
<b>426</b> Secret commissions	Indictable	5 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 462.37 proceeds of crime forfeiture order on Crown application.

\* \$100,000 for organizations for summary conviction offence s. 735.

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SECTION	TYPE	MAX/MIN SENTENCE	DISCHARGE s. 730	SUSPENDED SENTENCE s. 731(1)(a)	FINE ALONE s. 734	FINE & PROBATION s. 731(1)(b)	PRISON s. 736.3 (7)	PRISON & PROBATION s. 731(1)(b)	INTERMITTENT s. 734	FINES, PROB. & INTERMITTENT s. 732	VEHICLE SURCHARGE s. 737	CONDITIONAL SENTENCE s. 742.1	COMMENTS (applicability depends on circumstances of case)
<b>430(2)</b> Willful mischief endangering life	Indictable	Life	x										S. 109 mandatory firearms order. S. 491 mandatory weapon forfeiture order. S
<b>430(3)</b> Willful mischief, testamentary instrument or property over \$5,000	Hyb-Ind.	10 yrs											Indictable, s. 109 mandatory firearms order. Summary conviction, s. 110 discretionary firearms order. S. 491 mandatory weapon forfeiture order.
	Hyb-Sum.	6 mth/ 2000*											
<b>430(4)</b> Willful mischief, other property	Hyb-Ind. Absolute PCJ	2 yrs											S. 110 discretionary firearms order. S. 491 mandatory weapon forfeiture order. S. 553 absolute PCJ only if \$5,000 or less.
	Hyb-Sum.	6 mth/ 2000*											
<b>430(4.1)</b> Mischief relating to religious property	Hyb-Ind.	10 yrs											
	Hyb-Sum.	18 mth/ 2000*											
<b>430(4.2)</b> Mischief relating to cultural property	Hyb-Ind.	10 yrs											
	Hyb-Sum.	6 mth/ 2000*											
<b>430(5)</b> Willful mischief, data	Hyb-Ind.	10 yrs											
	Hyb-Sum.	6 mth/ 2000*											
<b>430(5.1)</b> Willful act or omission, cause danger to life or mischief to property	Hyb-Ind.	5 yrs											S. 110 discretionary firearms order. S. 491 mandatory weapon forfeiture order.
	Hyb-Sum.	6 mth/ 2000*											
<b>433</b> Arson, disregard for human life	Indictable	Life	x										S. 109 mandatory firearms order. S. 491 mandatory weapon forfeiture order. S. 462.37 proceeds of crime forfeiture order on Crown application. S
<b>434</b> Arson, damage to property of others	Indictable	14 yrs	x										S. 109 mandatory firearms order. S. 491 mandatory weapon forfeiture order. S
<b>434.1</b> Arson, damage to own property, threat to safety of others	Indictable	14 yrs	x										

\* \$100,000 for organizations for summary  
conviction offence s. 735.

✓ Sentence Option    x Illegal Sentence

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[see note on p. 0G/2]

SECTION	TYPE	MAX/MIN SENTENCE	DISCHARGE s. 730	SUSPENDED SENTENCE s. 731(1)(a)	FINE ALONE s. 734	FINE & PROBATION s. 731(1)(b)	PRISON s. 736.3 (7)	PRISON & PROBATION s. 731(1)(b)	INTERMITTENT s. 734	FINES, PROB. & INTERMITTENT s. 732	VEHICLE SURCHARGE s. 737	CONDITIONAL SENTENCE s. 742.1	COMMENTS (applicability depends on circumstances of case)
<b>435</b> Arson for fraudulent purpose	Indictable	10 yrs											
<b>436</b> Arson by negligence	Indictable	5 yrs											
<b>436.1</b> Poss'n incendiary material	Indictable	5 yrs											
<b>437</b> False alarm of fire	Hyb-Ind.	2 yrs											
	Hyb-Sum.	6 mth/ 2000*											
<b>444</b> Injure or endanger cattle	Hyb-Ind.	5 yrs											S. 447.1 discretionary prohibition order
	Hyb-Sum.	18 mths/ 10,000											
<b>445</b> Injure or endanger other animals	Hyb-Ind.	5 yrs											S. 447.1 discretionary prohibition order
	Hyb-Sum.	18 mths/ 10,000											
<b>445.1</b> Cause unnecessary suffering to animals or birds	Hyb-Ind.	5 yrs											S. 447.1 discretionary prohibition order
	Hyb-Sum.	18 mths/ 10,000											
<b>446</b> Neglect animal or bird	Hyb-Ind.	2 yrs											S. 447.1 discretionary prohibition order
	Hyb-Sum.	6 mths/ 5000											
<b>447</b> Keeping cockpit	Hyb-Ind.	5 yrs											S. 447.1 discretionary prohibition order
	Hyb-Sum.	18 mths/ 10,000											
<b>449</b> Make counterfeit money	Indictable	14 yrs	x										S. 462.37 proceeds of crime forfeiture order on Crown application.
<b>450</b> Possession, etc., of counterfeit money	Indictable	14 yrs	x										S. 462.37 proceeds of crime forfeiture order on Crown application.
<b>452</b> Uttering, etc., counterfeit money	Indictable	14 yrs	x										S. 462.37 proceeds of crime forfeiture order on Crown application.
<b>460</b> Advertising & dealing in counterfeit money	Indictable	5 yrs											
<b>462.31</b> Laundering proceeds of crime	Hyb-Ind.	10 yrs											S. 462.37 proceeds of crime forfeiture order on Crown application.
	Hyb-Sum.	6 mth/ 2000*											

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conviction offence s. 735.

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[see note on p. 0G/2]

SECTION	TYPE	MAX/MIN SENTENCE	DISCHARGE s. 730	SUSPENDED SENTENCE s. 731(1)(a)	FINE ALONE s. 734	FINE & PROBATION s. 731(1)(b)	PRISON s. 71 & s. 731(1)(b)	PRISON & PROBATION s. 731(1)(b)	INTERMITTENT s. 732	FINE, PROB. & INTERMITTENT s. 732	VICTIMS SURCHARGE s. 737	CONDITIONAL SENTENCE s. 762.1	COMMENTS (Applicability depends on circumstances of case)
<b>463(a)</b> Attempts & accessories, indictable, punishment by death or life	Indictable	14 yrs	✘	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 109 mandatory firearms order. S. 462.37 proceeds of crime forfeiture order on Crown application where applicable. S. 491 mandatory weapon forfeiture order. S. 522, release by Superior Court Judge only for offences listed in s. 469. May be designated offence for purpose of forensic DNA analysis; see the substantive offence. Note: A conditional sentence may be unavailable if offence falls within definition of serious personal injury offence in s. 752.
<b>463(b)</b> Attempts & accessories, indictable, punished by 14 yrs or less	Indictable Absolute PCJ if principal offence absolute PCJ S.553	1/2 max. for principal offence	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 110 discretionary firearms order. S. 462.37 proceeds of crime forfeiture order on Crown application. S. 491 mandatory weapon forfeiture order. May be designated offence for purpose of forensic DNA analysis; see the substantive offence.
<b>463(c)</b> Attempts & accessories, summary conviction	Summary	6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>463(d)</b> Attempts & accessories, hybrid offences	Hyb-Ind. Absolute PCJ if principal offence absolute PCJ S.553	1/2 max. for principal offence	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 110 discretionary firearms order. S. 462.37 proceeds of crime forfeiture order on Crown application where applicable. S. 491 mandatory weapon forfeiture order. For indictable, max. sentence is half of the maximum (indictable) for the principal offence.
	Hyb-Sum.	6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	May be designated offence for purpose of forensic DNA analysis; see the substantive offence.
<b>464(a)</b> Counsel indictable offence, offence not committed	Indictable Absolute PCJ if principal offence absolute PCJ S.553	Same as for attempts	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 462.37 proceeds of crime forfeiture order on Crown application where applicable. Max. sentence is same as for attempt.
<b>464(b)</b> Counsel s/c offence, offence not committed	Summary	6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 462.37 proceeds of crime forfeiture order on Crown application where applicable.

\* \$100,000 for organizations for summary conviction offence s. 735.

✓ Sentence Option ✘ Illegal Sentence

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(see note on p. OG/2)

SECTION	TYPE	MAX/MIN SENTENCE	DISCHARGE s. 730	SUSPENDED SENTENCE s. 731(1)(a)	FINE ALONE s. 734	FINE & PROBATION s. 731(1)(b)	PRISON s. 71 & s. 731(1)(b)	PRISON & PROBATION s. 731(1)(b)	INTERMITTENT s. 732	FINE, PROB. & INTERMITTENT s. 732	VICTIMS SURCHARGE s. 737	CONDITIONAL SENTENCE s. 762.1	COMMENTS (Applicability depends on circumstances of case)
<b>465(1)(a)</b> Conspiracy, murder	Indictable	Life	✘	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 109 mandatory firearms order. S. 462.37 proceeds of crime forfeiture order on Crown application where applicable. S. 491 mandatory weapon forfeiture order. S. 522, release by Superior Court Judge only. P
<b>465(1)(b)(i)</b> Conspiracy to prosecute, sentence 14 yrs or more	Indictable	10 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>465(1)(b)(ii)</b> Conspiracy to prosecute, sentence under 14 yrs	Indictable	5 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>465(1)(c)</b> Conspiracy to commit other indictable offence	Indictable Absolute PCJ if principal offence absolute PCJ S. 553	Same as for principal offence	**	✓	†	†	✓	✓	†	✓	†	†	Max. sentence is same as for principal offence. S. 109 mandatory firearms order if punishment for principal offence is 10 yrs or more; otherwise, s. 110 discretionary firearms order. S. 462.37 proceeds of crime forfeiture order on Crown application where applicable. S. 491 mandatory weapon forfeiture order. S. 522, release by Superior Court Judge only for offences listed in s. 469(a). **Discharge only if principal offence is less than 14 yrs. †Fine or conditional sentence only if no minimum imprisonment for principal offence. May be designated offence for purpose of forensic DNA analysis; see the substantive offence.
<b>465(1)(d)</b> Conspiracy to commit summary conviction offence	Summary	6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>467.11</b> Participating in criminal organization	Indictable	5 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	S. 467.14, sentence to be served consecutive to sentence imposed for offence arising out of same event.
<b>467.12</b> Commission of offence for criminal organization	Indictable	14 yrs	✘	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>467.13</b> Instructing offence for criminal organization	Indictable	Life	✘	✓	✓	✓	✓	✓	✓	✓	✓	✓	

\* \$100,000 for organizations for summary conviction offence s. 735.

✓ Sentence Option ✘ Illegal Sentence

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(see note on p. OG/2)



SECTION	TYPE	MAX/MIN SENTENCE	DISCHARGES s. 730	SUSPENDED SENTENCE s. 734	FINE s. 734	FINE & PROBATION s. 731(1)(b)	PRISON s. 733, 737	PRISON & PROBATION s. 731(1)(b)	INTERMITTENT s. 734	FINE, PROB. & INTERMITTENT s. 732	VICTIM SURCHARGE s. 737	CONDITIONAL SENTENCE s. 732.1	COMMENTS (applicability depends on circumstances of case)
<b>708</b>	Contempt of court witness fail to attend	90 days/ 100	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	May be ordered to pay costs incident to service and detention: s. 708(2). See s. 605(2) for contempt relating to exhibits.
<b>733.1</b>	Fail to comply with probation order	Hyb-Ind. Absolute PCJ 2 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
		Hyd-Sum. 18 mth/ 2000	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>811</b>	Breach of recognizance	Hyb-Ind. Absolute PCJ 2 yrs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
		Summary 6 mth/ 2000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	

\* \$100,000 for organizations for summary: ✓ Sentence Option ✗ Illegal Sentence: P = Primary designated offence  
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Legislation: 2019/191

## INDEX

NOTE: All references are to sections of the *Criminal Code* unless preceded by the following abbreviations:

CD = Controlled Drugs and Substances Act  
CE = Canada Evidence Act  
CH = Canadian Charter of Rights and Freedoms  
WC = Crimes Against Humanity and War Crimes Act  
YC = Youth Criminal Justice Act

NOTE: *Italicized* section numbers in bold face type refer to section numbers that were not yet or no longer in effect when this index was published.

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## Operational Manual

Part.25 -- Table of Contents

Amended: 2009-01-20

Bulletin

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10. Intelligence Processing/Analysis
11. Reporting
12. Independent Review
13. Critical Debriefs
14. Canada Labour Code

Related Links

(For information regarding this policy, contact National Criminal Operations, Community, Contract and Aboriginal Policing Services Dir. at GroupWise address OPS POLICY HQ.)

#### 1. General

- 1.1. Major cases are cases/investigations that are serious in nature and because of their complexity, risk, and resources require the application of the principles of Major Case Management (MCM).
- 1.2. Major case management is a methodology for managing major cases that provides accountability, clear goals and objectives, planning, allocation of resources and control over the direction, speed and flow of the investigation.
- 1.3. Major case management is not a computer software operating system (electronic data processing system) however MCM may use an RCMP-approved database management system, such as PROS, SUPertext, or E&R.
- 1.4. Major case management is used to conduct significant investigations regardless of business lines (Contract or Federal). Major RCMP cases will be conducted in accordance with the principles of MCM. The methodology of MCM encompasses nine essential elements:

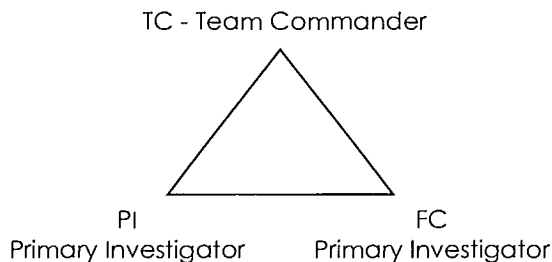
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- 1.4.4. leadership and team-building,
- 1.4.5. legal implications,
- 1.4.6. ethics,
- 1.4.7. accountability,
- 1.4.8. communication, and
- 1.4.9. partnerships.

NOTE: Guiding principles, additional duties, qualifications and accountability frameworks for all aspects of MCM are outlined in the *Major Case Management Manual*.

## 2. Team Roles/Functions

### 2. 1. Major Case Management Team

- 2.1. 1. Major case management is managed by the Major Case Management Team (MCMT). The MCMT is illustrated by the command triangle. The key roles in this model are the Team Commander, Primary Investigator and the File Coordinator. Although each role has clear accountability paths they maintain a collaborative relationship while maintaining independence in their respective roles.



### 2. 2. Team Commander

- 2.2. 1. The Team Commander (TC) is an accredited individual who has ultimate authority, responsibility/ accountability for the MCMT, its resources (human and physical) and its mandate. Accreditation includes successful completion of the Canadian Police College sponsored Major Case Management: Team Commander course.
- 2. 2. 2. Divisions must maintain pools of accredited TCs with current CVs outlining their experience and training in major cases focussing on leadership/managerial accomplishments.
- 2.2.3. The TC will ensure qualified File Coordinators (FC) and Primary Investigators (PI) are selected. Although the TC assumes overall control, responsibility and accountability for the direction, speed and flow of the case, he/she may perform other roles subject to the risk and nature of the investigation.

### 2.3. **Primary Investigator**

- 2.3.1. The Primary Investigator (PI) controls the direction, speed and flow of the overall investigative process.
- 2.3.2. A key role of the PI is to macro-manage, not perform, all aspects related to the investigation and the PI must be prepared to restrict personal participation to the extent necessary to command the overall operation.
- 2.3.3. The PI is accountable to the TC and must work in collaboration with the File Coordinator (FC).
- 2.3.4. The PI will be an experienced investigator with proven ability to coordinate, organize and control a complex, multi-faceted investigation.

### 2.4. **File Coordinator**

- 2.4.1. The FC is responsible for the control, supervision, organization and disclosure of the file documentation. See sec. 8.1.
- 2.4.2. The FC must identify human and physical resources required to fulfill the role of file coordination. The FC is accountable to the TC and must work in collaboration with the PI.
- 2.4.3. The FC will be a capable, competent investigator with familiarity in the use of both electronically and manually coordinated, organized and controlled data.

### 2.5. **Major Case Investigative Team**

- 2.5.1. The Major Case Investigative Team (MCIT) is formed with the exclusive purpose of investigating a major case.
- 2.5.2. The MCIT is comprised of investigators (who may be seconded from their primary duties), support staff, and other employees attached to but not part of the MCMT. The MCIT may be comprised of multi-agency personnel.

### 2.6. **Exhibit Custodian**

- 2.6.1. The Exhibit Custodian will be selected by and report directly to the PI.
- 2.6.2. The Exhibit Custodian must coordinate and track the movement of each piece of evidence as prescribed by law.

2. 7. **Interviewer**

- 2. 7. 1. The PI will select the interviewer or interview team based on the investigative and evidentiary requirements of the case and the individual to be interviewed. The interviewer or interview team reports directly to the PI.
- 2. 7. 2. An interviewer must have the necessary knowledge, skill and ability to perform the required interviewing functions.

3. **Division Responsibility**

- 3. 1. The Cr. Ops. Officer is responsible to ensure that all of the principles of MCM are used in the conduct of major cases in their divisions.

4. **Front-End Loading**

- 4. 1. The initial phase of a major case investigation (usually the first 72 hours) is critical.
- 4. 2. Limiting human or material resources in the early stages of a major case investigation may jeopardize the case so every consideration must be given to the front-end loading, i.e. committing the maximum of available resources to a major case investigation.

5. **MCM Software**

- 5. 1. Using a database management system is critical to major case management.
- 5.2. A database management system ensures the basic objectives of major case investigations (documentation and preservation) are met. A system enhances managerial accountability, proper delegation of responsibilities, efficient/effective use of resources, auditable/consistent standards, efficient disclosure and current procedure in the seizure and preservation of evidence.
- 5.3. Once an investigation is identified as a major case, an RCMP-approved database management system will be adopted where applicable and available. See sec. 1.3.

## 6. Critical Incident

- 6.1. A critical incident is an event or series of events that by its scope and nature requires a specialized and coordinated response. Critical incidents include, but are not limited to civil unrest, disasters, hostage/barricaded persons, terrorist attacks.
- 6.2. During a critical incident, the incident commander has overall responsibility for the critical incident.
- 6.3. The MCMT must be involved as soon as possible and consulted during the decision-making processes. The Incident Commander and the MCMT must work together while the incident is ongoing, including sharing all information and intelligence.
- 6.4. An Incident Commander should be trained in both incident command and MCM.
- 6.5. The CO or Cr. Ops. Officer will determine when a critical incident is concluded and the MCM TC will then assume responsibility. A documented "hand over" of command must be prepared.

## 7. Media

- 7.1. Media Liaison will report directly to the TC and liaise directly with the TC on media enquiries, problems involving media personnel or procedures and developing an evolving media strategy. See OM Part 27.
- 7.2. All media releases must be approved by the MCMT prior to release.
- 7.3. The Media Liaison will ensure a Briefing Note is submitted to National Headquarters before issuing any significant media release.

## 8. Disclosure

- 8.1. Organization of the file must be implemented early to ensure a thorough and efficient disclosure process. The disclosure process is a critical task and Crown Counsel should be consulted during its preparation.
- 8.2. The management of disclosure is the responsibility of the FC. Crown Counsel has the responsibility to ensure proper disclosure to both the Court and Defence Counsel.
- 8.3. The FC must ensure the appropriate number of resources are assigned to disclosure. When appropriate, the FC will appoint dedicated disclosure officers or disclosure teams. A disclosure officer or disclosure team will report directly to the FC.

9. **Decision-Making Process**

- 9.1. Increasingly, lines of authority are being compelled to account for the management process of the investigation of major cases, in both court and/or other judicial hearings.
- 9.2. The decision-making processes within MCM must be preserved. Individual managers, supervisors and investigators must make complete notes documenting their participation, rationale, time, direction and decisions.

10. **Intelligence Processing/Analysis**

- 10.1. MCMT should ensure that early consideration is given to intelligence processing and analysis during the course of a major case investigation, in accordance with the Ops. Model.
- 10.2. MCMT should consider early assignment of the required resources, in support of the intelligence process.

11. **Reporting**

- 11.1. Regular reporting is a critical component of MCM.
- 11.2. The development and monitoring of a reporting system is a division responsibility. Divisions must establish an acceptable reporting structure and frequency schedule.
- 11.3. The MCMT must submit timely, regular and comprehensive Briefing Notes to National Headquarters in significant/high profile or high-risk incidents.
- 11.4. In a JFO, the participating agencies must be included in the reporting structure.

12. **Independent Review**

- 12.1. For quality control purposes divisions must submit major cases to an independent review if an investigation is prolonged, difficult or stalled.
- 12.2. An independent review should be conducted by an experienced and accredited major case investigator not involved in the investigation. The results of the review will be documented and reported to the Cr. Ops. Officer.
- 12.3. An independent review will examine:
  - 12.3.1. implementation of the MCM principles;
  - 12.3.2. viability of investigative strategy/original operational plan;



- 12.3.3. availability of alternative investigative avenues;
- 12.3.4. thoroughness of elimination strategy;
- 12.3.5. compliance with reporting requirements; and,
- 12.3.6. observations and concerns of Critical Incident team members.
- 12.4. An MCMT will cooperate with and assist in the independent review process.

### 13. **Critical Debriefs**

- 13.1. All Major Cases should be critically debriefed at the conclusion of the case. NOTE: If a critical debriefing is conducted while the investigation is ongoing, disclosure must be considered.
- 13.2. The resulting analysis of "best practices" and "lessons learned" should be preserved and made available.

### 14. **Canada Labour Code**

- 14.1. The TC, PI and the FC must be familiar with and comply with their duties as prescribed by Part II of the *Canada Labour Code (CLC)*.
- 14.2. The TC must successfully complete the Occupational Health and Safety Course "Managing Safely" available on the Human Resources Sector website or on CD.
- 14.3. Work-related injuries must be reported immediately. Form 3414 will be completed by the individual and submitted to the respective supervisor. The supervisor will complete the form and forward it according to the distribution list. Depending on the severity of the injuries this report must be submitted to Human Resources Development Canada within regulated time limits. Refer to *Canada Occupational Health and Safety Regulations, Part XV*.

### References

- Canadian Police College, Major Case Management Manual, 6th ed.

**Amended:** 2009-01-20





# COMMISSIONER'S NOTICE

*Schedule 2*

Royal Canadian Mounted Police  
Commissioner



Gendarmerie royale du Canada  
Commissaire

Guided by Integrity, Honesty, Professionalism, Compassion, Respect and Accountability

Les valeurs de la GRC reposent sur l'intégrité, l'honnêteté,  
le professionnalisme, la compassion, le respect et la responsabilisation

July 29, 2009

Mr. Paul E. Kennedy  
Chair  
Commission for Public Complaints  
Against the RCMP  
P.O. Box 1722, Station "B"  
Ottawa, Ontario  
K1P 0B3

Dear Mr. Kennedy:

Thank you for your interim report dated May 15, 2009, entitled "Police Investigating the Police: A Chair-initiated complaint and public interest investigation into public concerns as to the impartiality of RCMP members conducting criminal investigations of other RCMP members, in cases that involve serious injury or death".

We have completed a preliminary review of this report, and are encouraged by your conclusion that RCMP members' conduct was appropriate, that members were professional and free of bias, that they complied with the applicable policies and that they completed the investigations that were the subject of your review in a timely manner. We also note your indication that the CPC's concerns relate to RCMP processes, and not to individual members' actions.

Although we welcome the draft report, we do have a number of concerns. First, although the report will no doubt prove useful in guiding and evaluating future investigations and in our ongoing policy development, the language used in the report is, in our view, unduly negative and in some instances quite misleading. We do not believe it is reasonable to make judgments about past investigations based on newly proposed criteria.

1200 Vanier Parkway  
Ottawa, Ontario  
K1A 0R2

1200, promenade Vanier  
Ottawa (Ontario)  
K1A 0R2

2009-07-29 10:00

More specifically, we are concerned with your choice of the word "inappropriate" in relation to the manner in which investigations were carried out. The conclusion of "inappropriateness" is unwarranted as this assessment is based on new criteria which you are proposing that were not in place, or even proposed, when the investigations were carried out.

This creates an inordinately negative and inaccurate picture. In fact, the findings referenced relate to structure, reporting relationships and level of response, not to the thoroughness or quality of investigations or our members' handling of investigations.

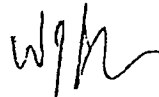
Although the RCMP requires more time to conduct a thorough analysis of the legal, policy, operational and resource implications of the recommendations made in the interim report, we can confirm that we agree in principle with your assertion that although all Canadians, including RCMP members, are entitled under the *Canadian Charter of Rights and Freedoms* to be treated equally under the law, criminal investigations of RCMP members may necessitate different treatment from a procedural point of view.

We anticipate that new RCMP policy, expected to be finalized in the very near future, will address a number of the concerns you have identified. Those concerns and your recommendations will be considered as we finalize our policy.

With respect to your recommendations for legislative changes, we are not in a position to provide comments. However, we would suggest that notwithstanding your considerable research into review and oversight models, a complete overhaul and expansion of the existing investigative model, as proposed in the interim report, may not be warranted. Furthermore, some of your proposals may be impractical in some instances. As I have stated elsewhere, my personal preference would be for the RCMP never to investigate our members and for such investigations to be carried out by another agency. However, at times no other agency is in a position to do so, including at the outset of some investigations where immediate action may be required.

The RCMP is constantly striving to improve, to build on our strengths and to address our weaknesses, so that we may live up to the highest standards that Canadians rightly expect of us. We look forward to receiving your final report which, as referenced earlier in this letter, will assist us to respond to future situations and in our ongoing policy development.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'WJSE', written over a vertical line that extends downwards through the printed name.

William J.S. Elliott

SOL. GEN. CANADA LIB/BIBLIO



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Police investigating police : final public  
report.