



Investigation of Officer-Involved Serious Incidents in Newfoundland and Labrador

Serious Incident Response Team

Background

There is significant public discussion throughout Newfoundland and Labrador regarding the ability of one police service to conduct objective investigations of another police service. A number of high profile matters, including the Commission of Inquiry into the Death of Donald Dunphy, give rise to that discussion. In order for policing to be effective, the public needs to have confidence in the integrity of the investigations of police officers. Investigations need to be seen as transparent and unbiased. The importance of public confidence cannot be understated as there is a detrimental impact on the community and the administration of justice if public confidence is eroded.

The Royal Newfoundland Constabulary (RNC) acknowledges the need of a mechanism for the independent investigation of serious incidents involving police. The establishment of a Serious Incident Response Team (SIRT) would enhance public trust in both the RNC and RCMP in Newfoundland and Labrador. A SIRT would protect the perception of transparency and the ideal that everyone is treated equal. While the RNC and RCMP have confidence in their ability to conduct fair, thorough and objective investigations for other agencies, there is a fine line between perceived independence and investigative excellence.

Several jurisdictions in Canada have adopted various SIRT models and provide criminal investigative oversight of police. Such units are generally viewed as a necessary and valuable part of policing in Canada. SIRTs operate independently of law enforcement agencies to ensure a more transparent and unbiased investigative service. While they all have a Civilian Director, the human resource component varies throughout, for example:

- **British Columbia – Independent Investigations Office of BC (IIO)**
Investigators are former police officers and civilians. Those without policing backgrounds have significant experience in other investigative agencies. No IIO investigator has been a police officer in BC within five years of their appointment.
- **Alberta – Albert Serious Incident Response Team (ASIRT)**
ASIRT has a blend of civilian investigators and investigators seconded from various Alberta police agencies.

- **Manitoba – Independent Investigation Unit (IIU)**
Manitoba’s IIU consists of civilian investigators and seconded police officers. Investigators must have experience in major crime investigations or experience conducting and managing a wide range of complex investigations.
- **Ontario – Special Investigations Unit (SIU)**
SIU is comprised of all civilian investigators with a variety of backgrounds ranging from policing, workplace health and safety, national security and intelligence, immigration, corrections and the legal profession. They do not avail of secondment opportunities from police agencies.
- **Quebec – Bureau Des Enquetes Independantes (BEI)**
BEI investigators are a combination of civilians and former police officers.
- **Nova Scotia – Serious Incident Response Team (SIRT)**
SIRT investigators are a combination of civilian (former police) and seconded police officers.

Investigators must have the skill set to conduct a criminal investigation which will stand up to the scrutiny of the courts in relation judicial authorizations, and the interviewing of witnesses, victims and suspects. The courts have high standards as to how these activities are conducted. Investigators will also need to be aware of the most up to date techniques in the science and technology of evidence gathering.

Although investigative team structures vary, they are similar in mandate in that they independently and objectively investigate incidents that involve:

- death or serious injury
- sexual assault; and
- serious and sensitive allegations of police misconduct that are of significant public interest (e.g. corruption, breach of trust, trafficking in controlled substances, etc.).

These investigations can include allegations that involve conduct both on and off-duty.

The RNC has a Memorandum of Understanding (MOU) with the Ontario Provincial Police (OPP) since October 1, 2002, to investigate serious incidents involving the actions of members of the RNC. While the MOU has been in place for almost 15 years, there are occasions where other police organizations have been requested to conduct investigations on our behalf such as matters in which there is a conflict of interest or matters which would overburden the resources of the OPP. In the past three years the number of RNC files investigated by outside agencies is as follows:

- 2014 – 3
- 2015 – 8
- 2016 – 7

The RNC has adopted a formalized process to determine the investigative path such files will take. A Criminal Complaint Advisory Board (CCAB) was established with the following members:

- Chief of Police
- Deputy Chiefs of Police (2)
- Officer in Charge of Criminal Investigation Division
- Officer in Charge of Professional Standards Section; and
- RNC Legal Counsel

Upon notification of a serious file/ incident, the Chief or his designate, will convene the CCAB for discussion and assignment of the investigation. These incidents are treated as criminal until determined to be otherwise and in keeping with the MOU with the OPP, and considering the other factors mentioned, the decision is then made to:

- investigate the matter internally
- request an investigation by outside agency; or
- investigate the matter internally and have it reviewed by an outside agency.

Although the CCAB has worked well, the establishment of a SIRT in Newfoundland and Labrador would take internal decision making from RNC hands. SIRT would automatically be tasked with the investigation of serious incidents arising from the actions of RNC and RCMP in the province. The civilian oversight and the summaries published at the conclusion of investigations ensure the public understands the decisions made.

“As Inquiry Commissioner, Justice Leo Barry, has made clear, justice in these circumstances must not only be done, it must also be seen to be done, as the maxim goes. Any whiff of favoritism or lax treatment of a police officer at the heart of an investigation undermines public confidence in the process” (Telegram column: Pam Frampton, February 6, 2017)

Recommendation

- Newfoundland and Labrador should establish a Serious Incident Response Team, comprised a Civilian Director and Investigators with significant experience in complex investigations.