

## **PART 6—THE CRIMINAL INVESTIGATION OF POLICE-RELATED DEATHS**

### **F. Developing a New System for the Criminal Investigation of Police-Related Deaths**

#### **1. Essential elements**

Having concluded that the current practice of a home police department conducting criminal investigations of police-related deaths is fundamentally flawed due to conflict of interest, it follows that no amount of tinkering with the current practice can eliminate that underlying conflict of interest. The challenge lies in developing a new system for the investigation of police-related deaths.

In considering what recommendations to make, I found it helpful to conceptualize the issue in terms of a spectrum. At one end of the spectrum we have the current practice, in which a home police department conducts criminal investigations of police-related deaths. At the other end of the spectrum we have a totally independent and impartial civilian body established to conduct such sensitive investigations. Ontario's SIU is an example of this type of civilian body.

Between the two ends of this spectrum are any number of intermediate options, such as: another police department; an ad hoc team of investigators drawn from other police forces on an as-needed basis; a dedicated team of investigators (such as the RCMP Integrated Homicide Investigation Team); or some combination of police and civilian investigators.

Many factors need to be considered before deciding on the most appropriate option for British Columbia. It is important that those factors be clearly articulated, so that there is transparency to the process. At the end of the day, the litmus test of success will be public support.

I have identified several essential elements that, in my view, should shape a new system for the investigation of police-related deaths. I will discuss them in turn.

##### **a. Independence**

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If conflict of interest is the Achilles heel of the current system, then any new regime must move the criminal investigation of police-related deaths outside the home police department. Those who investigate such deaths must be independent from the home department so that the concern about divided loyalties does not arise. Indeed, I would go further. Those investigating such deaths must be so far removed from the home department that reasonable members of the public would not even perceive a conflict.

Returning to the spectrum analogy, it is probably accurate to say that the farther away one moves from the home police department end of the spectrum, the less concern one has about divided loyalties, and the more confidence the public can have that investigations will be independent.

Opinions will differ whether the necessary degree of independence will be achieved by assigning criminal investigations of police-related deaths to another police force or to an ad hoc or dedicated team of police officers. Some may say that it is still the police investigating themselves, that thin blue line loyalties may undermine a separate department's impartiality. Others may respond that the PCC's experience in relying on outside police departments to conduct some professional standards investigations (which I will discuss in Part 7) demonstrates that they can act independently and impartially.

In my judgment, once it is decided that criminal investigations of police-related deaths must be removed from the home police department, we should choose an alternative that offers the greatest distance from conflict of interest and affords the highest degree of independence. While reliance on another police force or officers from ad hoc or dedicated teams to conduct these investigations *may* be adequate, it is equally true that they *may not*. All things considered (especially the issue of competence, to be discussed next), I favour moving these types of sensitive investigations as far away from the home police department as feasible, to achieve the greatest degree of independence and to address concerns about perceptions.

**b. Competence**

One of the arguments that has been advanced historically to justify keeping the investigation of police-related deaths in-house (or at least within a neighbouring police department) is that they can be complex, requiring the special training and skills that only experienced police officers possess. For example, evidence must be collected and preserved, and statements from suspects must be taken, in a manner that will render them admissible at trial.

While I agree that competence is crucial and that using currently serving, experienced homicide investigators would promote competency, other jurisdictions have found other ways to address this concern; for example, through specialized training programs and the employment of former or retired police officers for some purposes.

**c. Capacity to respond immediately**

Experienced police officers know the crucial importance of responding immediately to a suspicious death, identifying and questioning suspects, sealing off the incident scene, separating suspects and witnesses, conducting a thorough forensic investigation, and preserving evidence.

Whatever system is developed to replace the current practice, the capacity to respond immediately will be essential.

**d. Access to specialized services**

Whoever investigates police-related deaths must be able to provide complete forensic identification services at the scene and have full access to other specialized services as needed (e.g., ballistics, hair and fibre analysis, toxicology, DNA analysis), as well as the ability to provide sufficient personnel resources to undertake neighbourhood searches or door-to-door canvasses.

**e. Ability of smaller police departments to participate**

In deciding which organizational structure would be most appropriate, consideration must be given to the geographical configuration of municipal police departments in British Columbia, and their relative

sizes. There are currently 11 municipal police departments in the province—four in Greater Victoria, six in the Lower Mainland and one in the Kootenays. Significantly, Vancouver (pop. 578,041) accounts for almost half the population of these 11 municipalities.<sup>1</sup>

If a home police department is disqualified from conducting criminal investigations of police-related deaths arising in its own municipality, then British Columbia's largest municipal police department (City of Vancouver) will be precluded from conducting, or contributing officers to, approximately half of all such investigations. This necessitates an examination of the human resources capacity, financial ability, and expertise of other police departments to conduct such investigations.

f. Cost

Currently, a home police department bears the cost of conducting a criminal investigation into a police-related death arising in its own municipality. If such investigations will in the future be done by another police department, or by some form of police-based or civilian-based investigative body, then it will be important to consider the cost and who should pay.

g. Accountability

Whatever new system for the criminal investigation of police-related deaths is implemented, it must ensure that there is an appropriate level of accountability, with respect to the substantive decisions made and the processes followed.

## **2. Alternative organizational approaches**

I now turn to a consideration of the various organizational options for the criminal investigation of police-related deaths in the British Columbia municipalities policed by the 11 municipal police departments. Since the geographical configuration and relative sizes of the municipal forces bears on several of these options, it will be useful to set out that information here (Table 1):

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<sup>1</sup> Statistics Canada 2006 Census; see <http://www12.statcan.ca/english/census06/data/popdwell/Table.cfm?T=302&SR=1&S=1&O=A&RPP=25&PR=59&CMA=0>.

**Table 1: Population and police strength of municipal police departments<sup>2</sup>**

<b>Region</b>	<b>Municipality</b>	<b>Population</b>	<b>Police strength</b>
Greater Victoria	Victoria (including Esquimalt)	96,066	221
	Saanich	110,737	147
	Oak Bay	18,059	22
	Central Saanich	16,768	21
Lower Mainland	Vancouver	589,352	1,214
	Abbotsford	129,685	195
	Delta	102,945	151
	New Westminister	57,645	107
	West Vancouver	46,764	79
	Port Moody	30,120	40
	Nelson	9,923	17

a. Another municipal police department

If the home police department is disqualified from conducting a criminal investigation of a police-related death in its own municipality, then some would argue that such investigations should be assigned to either another municipal police department or to the RCMP (for my deliberations concerning the RCMP, see section f., “The RCMP as an alternative to municipal police investigations”), arguing that this would ensure prompt response, professional policing expertise, and access to specialized services.

Other than concerns respecting lack of independence, the ability of smaller police departments to participate in such investigations is brought

<sup>2</sup> Police Services Branch, Ministry of Public Safety and Solicitor General. See [http://www.pssg.gov.bc.ca/police\\_services/publications/statistics/1997-2006-policerresources.pdf](http://www.pssg.gov.bc.ca/police_services/publications/statistics/1997-2006-policerresources.pdf).

into question, given the unique sizes and the configuration of municipal policing departments in British Columbia.

With respect to independence, reliance on another municipal police department is only one step removed from the home department, and would rely on serving police officers to conduct the investigation. This alternative does not eliminate concerns about the police investigating themselves. I am not satisfied that allowing another municipal police department to conduct these serious, and sensitive, investigations would achieve public confidence, which is an essential requirement of any new system.

With respect to capacity, this issue must be examined with an understanding of how municipal police departments are configured in the province, and the wide disparity in their sizes and, hence, their expertise to conduct homicide investigations.

In the Greater Victoria area, 86 percent of the population of the four municipalities with municipal police departments live in Victoria (including Esquimalt) and Saanich, so one would expect that almost all police-related deaths will occur in those two jurisdictions. The other two municipalities have such small police departments (each has only two detectives) that it is unrealistic to expect them (for reasons of human resources and expertise) to assume responsibility for a criminal investigation of a police-related death that occurred in either of the two larger jurisdictions. That means that every case arising in Victoria will have to be investigated by the Saanich Police Department, and vice versa. I am not satisfied that such a reciprocal arrangement would provide the necessary degree of independence.

In the Lower Mainland, there are similar concerns. The city of Vancouver's population accounts for 62 percent of the total population of all six Lower Mainland municipalities that have municipal police departments. This means that nearly two-thirds of all police-related deaths would likely arise in Vancouver, which means that they would need to be investigated by one of the five other police departments. It is doubtful whether the three smaller departments have the human

resources capacity, or the expertise, to conduct such investigations. If that is so, then all Vancouver-based police-related deaths would need to be investigated by the Delta or Abbotsford police departments. Assuming that they have the necessary expertise, this would place a heavy burden on those two departments. It would also raise concerns about their ability to respond promptly to a death, especially in the case of Abbotsford, which is approximately an hour east of Vancouver.

One additional concern about expertise arises from the fact that four Lower Mainland municipalities with municipal police departments (West Vancouver, Port Moody, New Westminster and Abbotsford) no longer conduct their own police shooting or in-custody death investigations, or any other homicide investigations. Rather, they contribute officers to the RCMP's Integrated Homicide Investigation Team.

In the case of Nelson, if a police-related death were to occur in that municipality, the resulting criminal investigation would need to be assigned to one of the Lower Mainland or Greater Victoria police departments, which would occasion considerable delay in arriving at the incident scene. It is probably fair to say that there would be logistical problems in responding to a police-related death in Nelson, whatever organizational alternative were adopted.

Based on this analysis, I am not in favour of assigning the criminal investigation of police-related deaths to another municipal police department. I am not satisfied that it would bring a necessary degree of independence and, given the disparate sizes and geographical configuration of municipal policing departments in British Columbia, I am not satisfied that an adequate level of expertise would be available in many cases.

**b. A police-based investigatory team**

The next step further removed from a home police department conducting criminal investigations of police-related deaths would be for the six municipal police departments in the Lower Mainland, and the four municipal police departments in Greater Victoria, to contribute officers to

joint task forces, which would conduct such investigations. This would be a variation on the RCMP's Integrated Homicide Investigation Team in the Lower Mainland, discussed earlier.

This alternative would likely be able to respond promptly to police-related deaths, and would have access to specialized services. However, it would also suffer from several deficiencies.

First, with respect to independence, it would still involve the police investigating themselves, which in my view would not instil a sufficient degree of public confidence.

Second, in terms of staffing and expertise, it would not be a significant improvement over the option of assigning such investigations to another municipal police department. In the case of Greater Victoria, neither the Oak Bay nor Central Saanich police departments have the staffing capacity to contribute a senior detective to such a joint task force, which means that the task force would consist exclusively of officers seconded from the Victoria and Saanich police departments. Since almost all police-related deaths will arise in those two municipalities, and since seconded officers from one of those municipalities would be disqualified from participating in an investigation arising within that municipality, it would result in officers from Saanich conducting investigations arising in Victoria, and vice versa. For all practical purposes, this alternative would look no different from the option discussed earlier, of police-related death investigations being assigned to another municipal police department.

In the case of the Lower Mainland, we can expect nearly two-thirds of all police-related deaths to arise within the city of Vancouver, which means that Vancouver police officers seconded to the task force would be disqualified from participation in all such cases. Consequently, we face the same dilemma of the three smaller municipal police departments (Port Moody, West Vancouver and New Westminster) having only limited capacity to contribute experienced serious crime investigators to the task force, which means that officers seconded from Delta and Abbotsford would bear most of the responsibility for such investigations. As with Greater Victoria, a Lower Mainland joint task force would not be a

significant improvement over the option discussed earlier of assigning such cases to another municipal police department.

Based on this analysis, I am unable to recommend this type of police-based investigatory team, for the investigation of police-related deaths.

c. A civilian-based investigatory team

Given the problems occasioned by assigning police-related death investigations to another municipal police department or to a police-based investigation team, some jurisdictions, such as Ontario, have established civilian-based investigation teams.

This approach eliminates concerns about independence and conflict of interest, because the police are no longer investigating themselves. However, concerns have been expressed about several other important issues, such as competence, ability to respond immediately and access to specialized services. In Ontario, this has led to police resistance to the Special Investigations Unit (SIU).

In considering whether to recommend a civilian-based investigation team model for British Columbia's 11 municipally-policed jurisdictions, I have reviewed the experience in Ontario. I will briefly review the SIU, because it will inform the discussion that must take place in British Columbia before final decisions are made respecting the criminal investigation of police-related deaths.

d. Ontario's Special Investigations Unit

In Ontario, home police departments have not investigated police-related deaths for 50 years—such investigations were assigned to other police departments. However, in 1988, after two black men were fatally shot by police, the provincial government appointed a Task Force on Race Relations and Policing, chaired by Clare Lewis. In 1989 Mr. Lewis recommended creation of an independent agency to investigate police shootings and to determine whether charges should be laid. This investigative team, which would operate throughout Ontario, would be composed of homicide investigators chosen from various police forces

other than the force involved in the shooting, together with at least two civilian members drawn from government investigative agencies independent of the Ministry of the Solicitor General. This recommendation was implemented through enactment of the 1990 *Police Services Act*. It established the SIU, for the investigation of deaths and serious injuries arising in the course of policing.

In 1992, after a riot on Yonge Street in Toronto, the government appointed Stephen Lewis as its advisor on race relations. He made recommendations on policing that included dealing specifically with the SIU. After noting concerns about the SIU's credibility, he rejected the suggestion from some communities that the unit should be composed only of persons with no past or present relationship with policing. He recommended additional funding, and that SIU should report to the Attorney General, not the Solicitor General. Although the government adopted the latter reporting recommendation, adequate resourcing of the SIU remained a persistent problem.

In 1995, the Commission on Systemic Racism in the Ontario Criminal Justice System concluded that the establishment of the SIU had not improved police accountability in the use of force. Three problems were identified: inadequate funding, lack of cooperation from police forces, and refusal of individual police officers to be interviewed. None of its recommendations were implemented.

In 1997, after SIU's investigations of a series of shootings of members of the public by the police, the Attorney General and the Solicitor General appointed the Honourable George W. Adams, Q.C., to consult with community and police organizations on ways to improve the relationship between the SIU and the police in three areas:

- timely notification of incidents to the SIU by the police,
- control of the incident scene pending arrival and investigation by the SIU, and
- timely cooperation of police officers involved in the incidents being investigated.

Mr. Adams released his *Consultation Report* on May 14, 1998, in which he made 25 consensus-based recommendations.<sup>3</sup>

The Attorney General appointed Mr. Adams again in 2003, to conduct a consultative review aimed at evaluating the implementation of the 1999 SIU reforms. In his resulting report<sup>4</sup> Mr. Adams did not make any additional recommendations, but his report offers a revealing window into SIU's growing pains since its inception in 1990, the policing community's initial resistance to this form of civilian oversight, and how improved funding has addressed concerns about SIU's competence, its ability to respond immediately to police-related deaths and its access to specialized services. Significantly, Mr. Adams reported that there now appears to be general acceptance by policing and community representatives of the civilian-based investigation team model:

But I would be even more remiss not to emphasize at the outset that all stakeholder groups acknowledged that the reforms under review had achieved or were in the process of achieving their intended purpose and that there had been a vast improvement in the SIU's performance under the guidance of its current Director, Peter Tinsley. The increased public funding has provided the SIU with the resources necessary to carry out its important work in a manner in which police and community groups now have confidence. The regulatory changes have provided an effective regime for SIU investigations reinforcing that essential confidence. In short, real progress has been achieved due to the 1999 reforms.

As important, all police and community representatives framed their proposals as intended to improve the SIU, not to replace it.<sup>5</sup>

In September 2008 the Ontario Ombudsman published the report of his Office's 15-month investigation into the operation of the Special Investigations Unit.<sup>6</sup> The Ombudsman, who had served as director of the SIU between 1996 and 1998, expressed the view that the SIU "is a significant and unique institution in Canadian society. It is an excellent

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<sup>3</sup> See <http://www.siu.on.ca/adams.html>.

<sup>4</sup> *Review Report on the Special Investigations Unit Reforms*. See <http://www.siu.on.ca/adamsreview2003.pdf>.

<sup>5</sup> *Ibid.*, p. 12.

<sup>6</sup> *Oversight Unseen: Investigation into the Special Investigations Unit's Operational Effectiveness and Credibility*, available at <http://www.ombudsman.on.ca/media/30776/siureporteng.pdf>.

model for criminal investigation of police” (p. 106). However, he was strongly critical of SIU’s underperformance, the policing community’s resistance to SIU authority and the provincial government’s trenching on SIU’s independence.

The Ombudsman found that the SIU, which he characterized as a fledgling organization, “continues to struggle to assert its authority, maintain its balance against powerful police interests, and carry out its mandate effectively” (p. 4). He said that delays in police providing notice of incidents, in disclosing notes and in submitting to interviews were endemic. Not only was the SIU complacent in ensuring that police officials follow the rules, but it had bought into the fallacious argument that SIU investigations were not like other criminal cases, and that it was acceptable to treat police witnesses differently from civilians. Police interviews were often postponed for weeks, and the SIU would not inconvenience officers or police forces by interviewing officers off-duty.

He reported that all of the SIU’s investigative managers and most of its investigative staff were former police officials and that it was so steeped in police culture that it had, at times, even tolerated the blatant display of police insignia and police affiliation. He stated:

The SIU was borne out of public distrust of police investigating their own. It is critical that the organization move swiftly away from the police ties that continue to hold it back from being a truly *civilian* oversight body (p. 106, emphasis in original).

The Ombudsman was also critical of the SIU’s substantial reliance on the Ministry of the Attorney General for administrative and technical support, which was an impediment to its evolution as an oversight body. In his view,

[T]he SIU and the Ministry . . . will have to change their practices, and the government will have to implement legislative reform if the SIU is to achieve its full potential. I believe that government has, at the very least, a moral obligation, to ensure that the institutions it creates are imbued with the structure, resources and tools necessary to fulfill their mandates (p. 107).

The Ombudsman's 46 recommendations were directed at the SIU, the Ministry of the Attorney General and the Province of Ontario. He called for new legislation dealing specifically with SIU's mandate and investigative authority, which should include a specific duty on police to cooperate—failure to cooperate would be made an offence punishable by fine or imprisonment. The director of the SIU should be appointed on a five-year renewable term, with compensation established objectively, and the director should not be subject to a Ministry performance assessment.

From my review of these reports, there appears to be a consensus that Ontario's SIU model is sound, but that its effectiveness and credibility are dependent on unequivocal provincial government support and resourcing, operational independence, police "buy-in," and competent civilian leadership and operational control. We can learn much from the SIU's growing pains.

During our policy roundtable discussions, Ontario's current Ombudsman made an informative presentation about the SIU. I can summarize the SIU's current mandate and activities as follows:

- Its mandate is to investigate the circumstances of serious injuries and deaths that may have resulted from criminal offences committed by police officers.
- It has jurisdiction throughout Ontario, which has a population of 12,160,282 (i.e., all municipal police departments and the Ontario Provincial Police).
- The director of SIU, who is an order-in-council appointee with a five-year term, cannot be a current or former police officer.
- SIU investigators cannot be currently serving police officers.
- Former police officers may be hired as investigators, but they cannot investigate officers from their former police force.
- When a police-related death or serious injury occurs, the chief of police must immediately advise SIU and, until SIU arrives at the incident scene, must ensure that the scene is secured and all officers involved in the incident are segregated from each other.
- SIU becomes the lead investigator, and has priority over any police force in the investigation.

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- SIU currently has three investigative supervisors (currently all are former police officers) and 12 full-time investigators (just under half are former police officers) working out of its Mississauga office, and 27 part-time investigators (a majority are former police officers) located around the province who are deployed on an as-needed basis.
- SIU investigators have peace officer status.
- SIU has its own in-house Forensic Identification Section and laboratory, with a full-time supervisor and nine part-time technicians.
- SIU relies on the Centre of Forensic Sciences of Ontario for more sophisticated tests, such as DNA and ballistics analysis.
- SIU's annual budget is approximately \$5.5 million.
- SIU investigates approximately 200 incidents each year. In 2006, it investigated 226 incidents and laid two criminal charges.
- The director decides whether criminal charges will be laid against a police officer.
- When the director approves charges, the prosecutions are conducted by a Crown attorney in the Justice Prosecutions section of the Ministry of the Attorney General, which is responsible for prosecuting those in the justice system who are charged by any authority.

### e. Recent experience in other provinces

#### **Alberta**

In Alberta, the Department of Solicitor General and Public Security recently established the Alberta Serious Incident Response Team (ASIRT).<sup>7</sup> Its mandate is to investigate incidents or complaints involving serious injury or death of any person, and matters of a serious or sensitive nature, that may have resulted from the actions of a police officer. ASIRT, which is governed by section 46.1 of the *Police Act*, has jurisdiction over all sworn police officers in the province of Alberta.

It has offices in Edmonton and Calgary, and is led by a civilian director, who is a lawyer and Crown prosecutor. Reporting to the director are a

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<sup>7</sup> See [http://www.solgps.alberta.ca/programs\\_and\\_services/public\\_security/policing/policing\\_Oversight\\_complaints/Pages/asirt.aspx](http://www.solgps.alberta.ca/programs_and_services/public_security/policing/policing_Oversight_complaints/Pages/asirt.aspx).

civilian assistant director, two civilian criminal analysts, four civilian investigators and 10 sworn police officers (from the Calgary Police Service, Edmonton Police Service, and the RCMP). The director may engage public overseers from the community to ensure independence in the investigative process.

Once an investigation has been completed, the director reviews the results of the investigation to ensure completeness and fairness. A report is then forwarded to the office of the Crown prosecutor, requesting an opinion on charges. The director will, after reviewing the opinion, decide what charges if any will result from the investigation.

### **Manitoba**

In Manitoba, Attorney General David Chomiak announced on October 6, 2008, that he would implement all 14 recommendations of a public inquiry that called for the province to create an independent special investigations unit to probe police officers accused of criminal wrongdoing.<sup>8</sup> The inquiry, led by retired Justice Roger Salhany, Q.C., inquired into the death of a mother of three, who was killed when a truck driven by a Winnipeg police officer smashed into the rear of her car while she was stopped at a red light. The commissioner was strongly critical of the criminal investigation conducted by the East St. Paul police force, a small force for a community of 8,000 at Winnipeg's edge, which he described as "riddled with incompetence" and that was, in parts, "conducted in bad faith." He recommended:

That the Minister of Justice give consideration to creating a provincial special investigative unit independent of all police enforcement agencies in Manitoba for the purpose of investigating any alleged criminal activity of a member of a police service.<sup>9</sup>

He also observed that whatever form the independent investigative agency takes, "it should avoid adopting any procedures that would involve

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<sup>8</sup> The province would "put in place an Independent Investigations Unit to investigate alleged criminal activity of a member of a police service. The new unit will be established in a new *Provincial Police Act* to be introduced in the spring." See <http://news.gov.mb.ca/news/index.html?archive=2008-10-01&item=4565>.

<sup>9</sup> *Taman Inquiry into the Investigation and Prosecution of Derek Harvey-Zenk*, p. 139, available at [http://www.tamaninquiry.ca/pdf/taman\\_inquiry\\_B.pdf](http://www.tamaninquiry.ca/pdf/taman_inquiry_B.pdf).

treating police witnesses any differently from the way lay witnesses are treated in criminal investigations” (p. 83).

f. The RCMP as an alternative to municipal police investigations

Given that the RCMP polices 70 percent of British Columbia’s population and has the largest police force in the province, it would seem to make sense to assign police-related death investigations to that force, as an alternative to using other municipal forces. On the issue of independence, however, I question whether the level of public confidence would increase significantly if the criminal investigation of police-related deaths were assigned to the RCMP rather than to another municipal police department—it is still the police investigating themselves. Though the RCMP has a well-earned reputation for competence in serious crime investigations, and though it has the capacity to respond immediately and has access to specialized services, I have deep reservations about making such a recommendation.

In recommending that such criminal investigations be assigned to the RCMP, I would be recommending a new system in which a major component would be a police force over which the province has no significant supervisory authority. The province has no constitutional jurisdiction over the RCMP’s internal management and administration, because it is regulated federally. When it comes to the professional conduct of RCMP officers, the provincial regime for making complaints (to police chiefs) and for overseeing the complaints process (by the provincial Police Complaint Commissioner) does not apply—professional standards complaints against RCMP officers are handled by the RCMP itself, and by the federal Commission for Public Complaints against the RCMP, based in Ottawa.

In his seminal 1994 report on policing in British Columbia, then-Justice Wally Oppal discussed at length the province’s relationship with the RCMP, the contractual arrangements between them and the relevant court decisions. He concluded at page B-28:

There is, of course, a compelling constitutional reason for the contractual ambiguity in these federal/provincial agreements. A series

of Supreme Court of Canada decisions has seriously undermined the capacity of any provincial government to inquire into policing in areas policed by the RCMP and, by extension, to superintend policing services contracted to the RCMP.

These decisions make it clear that the province has no constitutional authority to interfere with the internal management and administration of the RCMP. This limitation undermines the attorney general's ability to govern policing in areas policed by the RCMP....

Given the sensitive nature of criminal investigations into police-related deaths and the compelling need for accountability of those who conduct them, it would be illogical to recommend that some or all of them be assigned to a policing body over which the province has no supervisory authority.

**3. Proposal for a civilian-based investigation model for British Columbia**

From my review of the various options available, I have reached several conclusions.

First, I am satisfied that a home police department should not conduct criminal investigations of police-related deaths.

Second, I do not think that assigning such investigations to another municipal police department (one step removed) is an adequate response to the public's concern about the police investigating themselves. Given the disparate sizes and geographical configuration of municipal police departments in Greater Victoria and the Lower Mainland, I also have concerns about some departments' capacity and expertise to conduct such investigations. Neither do I support assigning such investigations to the RCMP, given the fact that the provincial government has no supervisory authority over that force.

Third, I do not think that assigning such investigations to a police-based investigation team (two steps removed) would be a significant improvement, because of similar concerns respecting independence, staffing and expertise.

Fourth, I am satisfied that a civilian-based investigation team model eliminates concerns about conflict of interest and, with adequate resourcing, can conduct

competent criminal investigations. Although the situation in British Columbia is significantly different from that in Ontario, we can learn much from SIU's growing pains. I am impressed with Mr. Adams's conclusion in his 2003 report, quoted earlier, that "all police and community representatives framed their proposals as intended to improve the SIU, not to replace it."

Fifth, assigning criminal investigations of police-related deaths to an independent civilian agency serves the long-term interests of police officers. They would no longer be faced with allegations, however unfounded in individual cases, that conflict of interest influenced the investigation.

For all these reasons, I am satisfied that British Columbia should 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. I turn now to a discussion of the essential features of this new model.

a. Mandate

Earlier in this part I discussed whether my recommendations should extend to serious injuries as well as deaths. I stated:

I have decided not to include the investigation of police-related serious injuries in my recommendations for several reasons. First, the fact pattern that was before me involved a police-related death. I concluded that conflict of interest probably contributed to an unsatisfactory criminal investigation in that case, and I am willing to extrapolate from that incident the existence of a risk that conflict of interest will taint other police-related death investigations. However, without a firmer evidentiary basis, it would be imprudent for me to extrapolate any further, to cases of serious injuries.

Second, while I am confident that a new system is required and should be established for all municipal police departments without delay, there is merit in proceeding incrementally when it comes to defining the mandate of this new system. Prudence suggests that we begin with the most serious category of cases first; then, after developing policies and practices, and gaining valuable on the ground experience, decide on whether the mandate should be broadened and, if so, how much.

For these reasons, I am recommending that, at least initially, the mandate extend only to police-related deaths. In my view, the term “police-related death” should be interpreted expansively, to include a wide variety of factual circumstances including (but not limited to) 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 (such as in the Frank Paul case).

Nevertheless, the important question of providing a sufficient volume of work for an organization that would conduct criminal investigations of all police-related deaths should be addressed in detail, and the mandate could be expanded to ensure an efficient and well-motivated office.

**b. The name of the organization**

Every new organization needs a name. While I do not have strong views on what this new organization should be called I will, for convenience, use the name Independent Investigation Office (IIO) in this report.

**c. Accountability to civilian authority**

While the IIO needs to be independent from the 11 municipal police departments, it should be accountable to civilian authority. The two options are to make the IIO an officer of the Legislature (similar to the Ombudsman, the Chief Electoral Officer and the PCC), or make the IIO accountable to a ministry within the Executive Branch, in which case the two most appropriate ministries to consider would be the Ministry of Public Safety and Solicitor General, or the Ministry of Attorney General.

Officers of the Legislature are created when there is a concern that the Executive Branch, by definition partisan, cannot impartially deliver (or oversee) the public service under consideration. The regulation and administration of provincial elections is an example, where the Chief Electoral Officer is accountable to the Legislative Assembly.

I am not persuaded that the IIO would need to be an officer of the Legislature, as the Executive Branch has no obvious partisan interest in the criminal investigation of police-related deaths.

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I would recommend that the Ministry of Attorney General be the overseeing ministry. It would enhance the IIO's independence by being separate from the ministry that is responsible for superintending municipal policing.

d. The director

In my view the IIO director should have a background and experience that will command public respect and support for the office's independence, impartiality and competence. A current or former police officer should not be eligible for appointment. The director should be appointed by order-in-council for a fixed term of five or six years.

e. Statutory authority

To ensure the IIO's unquestioned authority to act, certain powers should be entrenched in legislation, such as:

- the IIO director and investigators have the status of peace officers,
- the chief constable of the jurisdiction in which a police-related death occurs must immediately advise the IIO of the incident,
- pending arrival of the IIO at the incident scene, the chief constable must ensure that the scene is secured, that officers involved in the incident are segregated from each other and that evidence is preserved,
- officers involved in the incident must not communicate with each other about the incident, except as authorized by the IIO,
- the IIO becomes the lead investigative agency, and the home police department has no investigative responsibility or authority, except as granted by IIO,
- a witness officer must promptly make himself or herself available for an interview with the IIO investigator, and must promptly deliver to the IIO all notes, reports and other investigative materials relevant to the incident, and
- a respondent officer may be—but is not compelled to be—interviewed by the IIO, but must in all cases promptly deliver to the IIO all notes, reports and other investigative materials relevant to the incident.

f. Organizational structure and staffing

Decisions about organizational structure will be influenced by the overall number of investigations to be conducted annually, and the municipalities in which the police-related deaths occur.

According to the SIU's *Annual Report 2005–2006*, 39 of the 204 incidents investigated (or about 20 percent) were in relation to deaths rather than serious injuries. Given that Ontario's SIU has province-wide jurisdiction (and a total population of 12 million), but that British Columbia's proposed IIO would operate in only 11 municipalities (with a total population of 1.1 million), we can estimate that the IIO would have approximately 10 percent as many death investigations as the SIU, or about four to five annually.

A comparable number is reached by examining the number of in-custody and police-related deaths reported by the BC Coroners Service. In the seven-year period between 2000 and 2006, the municipalities policed by municipal police departments had the following number of in-custody/police-related deaths (Table 2):

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**Table 2: Number of in-custody/police-involved deaths, 2000–2006<sup>10</sup>**

<b>Region</b>	<b>Municipality</b>	<b>2006</b>	<b>2005</b>	<b>2004</b>	<b>2003</b>	<b>2002</b>	<b>2001</b>	<b>2000</b>	<b>Total</b>
Greater Victoria	Victoria (incl. Esquimalt)	2	0	3	0	1	0	2	<b>8</b>
	Saanich	0	0	0	0	0	0	0	<b>0</b>
	Oak Bay	0	0	0	0	0	0	0	<b>0</b>
	Central Saanich	0	0	0	0	0	0	0	<b>0</b>
Lower Mainland	Vancouver	2	1	5	5	5	2	5	<b>25</b>
	West Vancouver	0	0	0	0	0	0	0	<b>0</b>
	Delta	0	0	0	0	0	1	0	<b>1</b>
	New Westminster	1	0	1	1	0	0	0	<b>3</b>
	Port Moody	0	0	0	1	0	0	0	<b>1</b>
	Abbotsford	1	0	1	0	0	0	0	<b>2</b>
Kootenays	Nelson	0	0	0	0	1	0	0	<b>1</b>
<b>Total</b>		<b>6</b>	<b>1</b>	<b>10</b>	<b>7</b>	<b>7</b>	<b>3</b>	<b>7</b>	<b>41</b>

According to this data, there were 41 in-custody/police-related deaths in municipal police jurisdictions over seven years, for an annual average of six, although the number of incidents varied between one and 10 per year. Eighty percent occurred in the Lower Mainland, with nearly two-thirds occurring in the city of Vancouver.

Based on this analysis, it would be logical to locate the IIO headquarters within or near Vancouver.

<sup>10</sup> Source: Office of the Chief Coroner, BC Coroners Service, as published in <http://www.straight.com/article-119352/nurse-troubled-by-tasers?>

**g. Charge recommendation**

The director will recommend whether criminal charges should be laid. Where charges are recommended, the director should set out which officer or officers should be charged, and give specifics as to the criminal offence and the particulars of the offence.

The question of whether the director should be the one to approve criminal charges—rather than Crown Counsel—is an important one. I understand this to be the practice in Ontario, although I appreciate that in Ontario (as in most provinces), the police determine who is charged criminally—while in BC that determination is left to Crown Counsel. Because I have not had input on this issue from the Criminal Justice Branch, I may reconsider this recommendation if, at the conclusion of the litigation involving the branch, further information persuades me that a different approach is necessary. I reserve the right to consider, for instance, whether the IIO director should approve criminal charges, and also to what extent special prosecutors should be employed in such cases.

**h. Civilian oversight**

In Ontario, the provincial Ombudsman has jurisdiction over the SIU. I recommend a similar provision in British Columbia.

**i. Cost and funding of the IIO**

In Ontario, the annual cost of operating the SIU (which serves a population of 12 million) is approximately \$5.5 million. The proposed IIO will serve a population of approximately 1.1 million, so the annual cost would be a fraction of the Ontario cost. How should it be funded?

One of the most valuable lessons to be learned from the Ontario experience is that the competence and credibility of the IIO will be contingent on adequate funding.

There are two alternatives. Municipal police departments could contribute to the cost of the IIO on a per capita basis, or could be charged back based on the proportion of the IIO's time spent investigating incidents arising within their jurisdictions. Alternatively, the province

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could absorb the cost of the IIO, on the basis that it is removing this responsibility from the police departments and assigning it to a provincially mandated body overseen by the province. There is some precedent for the latter option, in that the province funds the PCC, which oversees the manner in which municipal police departments deal with professional standards complaints. On balance, it would appear preferable that the province assume responsibility for funding the IIO. Given the limited amount of financial and limited information available to me as Commissioner, I do not make this as a formal recommendation.