

*For a Credible, Transparent, and Impartial Process
That Inspires Confidence and Respect*
QUÉBEC OMBUDSMAN'S REPORT ON
The Québec Investigative Procedure for
Incidents Involving Police Officers



**THE QUÉBEC INVESTIGATIVE PROCEDURE FOR
INCIDENTS INVOLVING POLICE OFFICERS
(Ministerial policy of Ministère de la Sécurité publique)**

**FOR A CREDIBLE, TRANSPARENT, AND IMPARTIAL PROCESS THAT INSPIRES
CONFIDENCE AND RESPECT**

**Under the direction of Jean Maurice Paradis
Director of Public Service Investigations**

**Marie-Claude Ladouceur and Hélène Vallières
Delegates responsible for the investigation**

With the collaboration of Maryse Alcindor

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Monsieur Yvon Vallières
Président
Assemblée nationale du Québec
Hôtel du Parlement, 1^{er} étage
1045, rue des Parlementaires, bureau 1.30
Québec (Québec) G1A 1A4

Monsieur le Président,

Je vous transmets, en vertu de l'article 27.3 de la *Loi sur le Protecteur du citoyen* (L.R.Q., c. P-32), le rapport spécial du Protecteur du citoyen sur la procédure d'enquête appliquée au Québec lors d'incidents impliquant des policiers (politique ministérielle du ministère de la Sécurité publique). Je vous demande respectueusement d'en faire le dépôt à l'Assemblée nationale lors de sa séance du mardi 16 février 2010.

Veuillez agréer, Monsieur le Président, l'expression de ma très haute considération.

La protectrice du citoyen,


Raymonde Saint-Germain

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1 Overview

The vast majority of Quebecers express confidence in the work of the police. According to *Profession Barometer*¹, a study conducted by the firm Léger Marketing in 2007, 84% of the population reported trusting police officers, ranking them as the 6th most trusted group of professionals. However, the 2009 edition of *Profession Barometer* showed a decline in this level of confidence to 72%, ranking them 10th.

This overall public confidence in police officers is invaluable to their everyday work and to the integrity of our public security and criminal justice system. A high level of trust in the police is crucial to a healthy democracy. Such trust means the population is confident that order and security will be upheld with professionalism and under conditions that respect the rights and liberties of all. This trust also guarantees greater police efficacy, as it is the basis for public collaboration and essential to both crime prevention and law enforcement.

A high level of trust in police work must be maintained to ensure a healthy democracy.

The Québec Ombudsman's examination of the investigative procedure for incidents involving police officers is in keeping with the objective of maintaining and strengthening Quebecer's high level of trust in police officers.

In general, Quebecer's express confidence in police work. However, when officers are involved in incidents resulting in serious injury or death, this confidence can be severely tested. Such events raise questions, in particular with regard to the procedure for investigating such incidents. For example, the results of a survey of Montréal residents in August 2008 by Léger Marketing revealed mixed opinions with regard to the objectivity and transparency of the Sûreté du Québec investigation into the Villanueva affair. Fully 42% of respondents believed that the Sûreté du Québec investigation would be objective and transparent, while 41% had the opposite opinion.²

Given these results, the investigative procedure merits examination with a view to suggesting certain improvements that could be beneficial for police work, victims and witnesses, and Quebecer's perception of police actions.

1.1 **Controversial Incidents Involving Police Officers in Recent Years**³

Certain incidents during police operations have caught the public's attention in recent years. Fortunately, not all serious incidents involving police officers are

¹ LÉGER MARKETING (2007), *Profession Barometer: OmniCan Report*, May 15, 2007.

² LÉGER MARKETING (2008), *L'émeute de Montréal-Nord : rapport d'étude*. Léger Marketing Survey, August 13, 2008.

³ For more details on the cases cited in this section, see Appendix I: History of Serious Incidents Involving Police Officers in Québec.

controversial. However, a number of them have raised questions, notably with respect to how investigations are conducted in such cases.

In November 1987, **Anthony Griffin**⁴, a young black man of 19, was killed by an officer of Service de police de la Communauté urbaine de Montréal (SPCUM). This affair resulted in a long legal saga and the publication of the 1988 report of the Committee of Inquiry into Relations Between Police Forces and Visible and Other Ethnic Minorities, headed by Jacques Bellemare, which is at the origin of the creation of today's police ethics system.⁵

In July 1991, **Marcellus François**⁶, a young black man of 24, was killed by an SPCUM officer who believed he was armed. The coroner investigating the affair, Harvey Yarowsky, criticized the SPCUM's actions and recommended the creation of a task force. In 1992, the Minister of Public Security created the Task Force on Relations Between the Black Communities and the SPCUM, headed by Claude Corbo, which put forward many recommendations.⁷

In addition to these prominent cases, other incidents resulting in civilian deaths during police operations have received considerable attention in recent years. Some of these cases illustrate the unwieldiness and at times slowness of the investigation and review mechanisms in place to examine police actions. The following are examples⁸ of cases that have sparked legal debate, coroner's inquests, and complaints to the Police Ethics Committee:

- **The Barnabé affair** in 1993 engendered a long legal saga and resulted in a criminal conviction and a summons before the Police Ethics Committee for four officers involved in the events.
- The 1995 **Suazo affair** did not lead to any criminal charges against the police officer involved, but did result in a coroner's inquest and disciplinary action by the police ethics committee.
- **The Lizotte affair** in 1999 resulted in one charge against one of the police officers involved, who was exonerated in court. The two officers were summoned before the Police Ethics Committee, but did not face disciplinary action until 2009.
- In the 2005 **Bennis affair**, no criminal charges were laid against the police officer involved. However, the coroner's office ordered an inquest that is currently being challenged in court by Fraternité des policiers et des policières de Montréal.
- The 2007 **Castagnetta affair** did not lead to any criminal charges or an inquest. However, in May 2009 Claudio Castagnetta's family filed a civil

⁴ *Ibid.*

⁵ For more details on the Bellemare report (1988), see Section 5.1 and appendices I and II.

⁶ For more details on this case, see Appendix I.

⁷ For more details on the Corbo report (1992), see Section 5.1 and appendices I and II.

⁸ For more details on these incidents, see Appendix I.

lawsuit against Québec City and the Attorney General of Québec, which was settled out of court in November 2009.

1.2 The Villanueva Affair

On August 9, 2008, Fredy Villanueva died following a Service de police de la Ville de Montréal (SPVM) operation during which an officer fired at him. The investigation into the SPVM's actions was entrusted to Sûreté du Québec, in accordance with the Ministerial Policy Regarding Death in the Event of a Police Intervention or Detention. Sûreté du Québec investigators were tasked with determining whether the police officers involved were responsible for the incident, known as the Villanueva affair.

Sûreté du Québec submitted its report to the Director of Criminal and Penal Prosecutions on September 30, 2008. On November 5, 2008, additional investigations were requested of Sûreté du Québec. Finally, on December 2, 2008, after having read the complete investigation report, the Director of Criminal and Penal Prosecutions concluded that there were no grounds for bringing criminal charges against the two police officers involved in the incident. That same day, the Minister of Justice and the Minister of Public Security announced the launch of a coroner's inquest to shed light on the circumstances surrounding the events of August 9, 2008. The inquiry was entrusted to Court of Québec Judge Robert Sansfaçon, who retired for health reasons in fall 2009 and was replaced by Judge André Perreault. Criminal law specialist François Daviault was appointed to assist the coroner on an ad hoc basis as independent legal counsel.

The coroner's inquest into the circumstances surrounding Fredy Villanueva's death was scheduled to start May 25, 2009. From the outset, various parties, including Mr. Daviault, had drawn attention to the inequity between the parties given the fact that all the police officers were represented by lawyers while some key witnesses were not, including the young people injured during these events. Accordingly, on May 26, 2009, Judge Sansfaçon decided to suspend the inquiry indefinitely, stating that "the procedural inequity is glaring and we must deal with it responsibly or we will jeopardize the credibility [of the inquest]."⁹

In summer 2009, Ministère de la Sécurité publique and the representatives of the families concerned reached an agreement to ensure that the legal expenses of the Villanueva family and other witnesses named as persons of interest would be paid. The inquest finally got underway on October 26, 2009, and will continue until spring 2010.

⁹ MYLES, Brian (2009), "Enquête suspendue dans l'affaire Villanueva : Le coroner reconnaît l'iniquité des procédures," *Le Devoir*, May 17, p. A-1.

1.3 Questions Raised

The death of Mr. Villanueva is one of a number of tragic events that have occurred in Québec in the course of police operations. It is not the first incident to draw public scrutiny and criticism. Serious and unfortunate incidents involving police officers, notably those that lead to civilian death, can raise questions about the rules applied to the investigations into these events. The incident in Montreal North in the summer of 2008 raised other issues, notably regarding police relations with members of cultural communities and visible minority groups, the protection police provide to members of socially and economically disadvantaged communities, strategies to fight street gangs, and the treatment of complaints against police officers.

Although each of these issues certainly merits in-depth analysis, the Québec Ombudsman, by virtue of the mandate entrusted to it by the legislature, decided to analyze the Ministerial Policy Regarding Death in the Event of a Police Intervention or Detention as well as the policy framework. The purpose of the investigation was to verify whether the existing process meets certain criteria inherent to any investigative procedure and, should this not be the case, to identify possible improvements.

2 Québec Ombudsman's Intervention

2.1 Mission and Role

The Québec Ombudsman is responsible for protecting citizen's rights by intervening with ministries and agencies of the Government of Québec, as well as the various establishments that make up the health and social services network, with a view to remedying situations that are detrimental to a citizen or group of citizens.

To fulfill its mandate, the Québec Ombudsman fields, studies, and processes complaints from natural or legal persons and groups or associations who feel they have been wronged by an act or omission of a government ministry or agency that is under the Québec Ombudsman's jurisdiction.

The Québec Ombudsman can also intervene of its own initiative if it has reason to believe that a citizen or group of citizens has been wronged by an act or omission of a government ministry or agency, or a recognized body associated with the health and social services network.

The Québec Ombudsman has closely monitored the Villanueva case and is aware of the significance of the questions raised with regard to the investigation. However, it is important to specify that although the Villanueva affair—the most

recent case to raise these questions—is mentioned here and did inform our reflection, this report does not in any way aim to analyze or criticize this case. Despite the gravity of the circumstances, we instead set the objective of ensuring that the Québec government implement or improve, as warranted, mechanisms to ensure that citizens rights are respected in their relations with departments and agencies and, more specifically in this case, in the investigative process for incidents involving police officers.

In fall 2008, Ministère de la Sécurité publique invited the Québec Ombudsman to comment on this ministerial policy.

2.2 Basis of the Québec Ombudsman’s Reflection

The Québec Ombudsman’s reflection is based on the premise that in incidents involving police officers, the process must guarantee the rights of both the officers and citizens concerned. The process must also ensure the “appearance of justice” and true justice that takes into account the realities of police work and the circumstances of the event being investigated.

The Québec Ombudsman has already commented on similar issues, notably in 1997 with regard to the police ethics system on the occasion of the passage of the *Act to amend the Act respecting police organization and the Police Act as regards police ethics*. In his analysis of Bill 136, the Ombudsman noted his “close interest in the professional code of ethics, i.e., the rules and obligations governing the conduct of professionals, civil servants, police officers...”¹⁰ The Québec Ombudsman believes that because police officers have a critical role in the government apparatus, oversight of their actions is crucial to the exercise of democracy.

“Considering the special authority and powers democratically conferred on police officers, a police ethics system and the control of its implementation with regard to citizens are essential to maintaining a well-functioning social structure. It is therefore important that all possible steps be taken...to establish mechanisms governing police conduct that are credible, effective, and capable of helping foster the complete trust that all citizens should be able to feel with regard to those responsible for their safety...”¹¹

On this occasion, the Québec Ombudsman made a number of recommendations with a view to promoting the independence, transparency, impartiality, credibility, and efficacy of the police ethics system. However, some of the

The investigative process must ensure the “appearance of justice” and true justice that takes into account police work and the circumstances of the event being investigated.

¹⁰ QUÉBEC OMBUDSMAN (1997), Commentaires sur le projet de loi 136 : Loi modifiant la Loi sur l’organisation policière et la Loi de police en matière de déontologie policière, June 13, p. 1. (translation)

¹¹ *Ibid.* (translation)

recommendations made by the Québec Ombudsman in 1997 were not integrated into the bill adopted at the time.¹²

2.3 The Québec Ombudsman's Approach

In light of the above, and as part of its analysis of the application of the ministerial policy of Ministère de la Sécurité publique for incidents involving police officers, the Québec Ombudsman

1. Analyzed and commented on the investigative process applied in Québec for incidents involving police officers (ministerial policy of Ministère de la Sécurité publique)
2. Identified, analyzed, and commented on the practices applied elsewhere in Canada and in the U.K.
3. Discussed the content of this report with decision-makers at Ministère de la Sécurité publique and with the Director of Criminal and Penal Prosecutions

Therefore, as a first step, we analyzed the process applied in Québec. To this end, we obtained information from officials at Ministère de la Sécurité publique responsible for its application and communicated with them a number of times.

We also distinguished between investigations conducted in accordance with the ministerial policy and other mechanisms set in motion in the event of incidents involving police officers (coroner's inquests, police ethics committee proceedings, public inquiries). In addition, we studied various reports and inquiry commission documents that addressed these questions.

Lastly, we examined the practices in effect in four Canadian provinces (Alberta, British Columbia, Manitoba, and Ontario) and in the U.K. To do this, we communicated with colleagues and officials from governments where the investigative procedure for incidents involving police officers has been called into question.

¹² The Québec Ombudsman notably recommended the withdrawal of one section of the bill stipulating that police officers subject to an ethics complaint not be obligated to collaborate with the Commissioner's investigation, provide information, or make a statement. This article also exempted these officers from the obligation under the bill to not hinder the Commissioner's investigation. This section remains in force (Section 192 of The Police Act, R.S.Q., c. P-13).

3 Description of the Ministerial Policy Regarding Death in the Event of a Police Intervention or Detention

3.1 Legal Basis: the *Police Act*

Under the *Police Act*¹³, the Minister of Public Security is responsible for setting policy directions in matters of police organization and crime prevention. To this end, the Act stipulates that he is in charge of developing strategic plans and policies as well as *Guide des pratiques policières* [Guide to Police Practices], which he makes available to police organizations.

The *Police Act* also gives¹⁴ the Minister of Public Security the authority to designate a police force to conduct or redo investigations into crimes allegedly committed by police officers.

3.2 Status: Extract from an Administrative Reference Guide

The investigative procedure used in Québec for incidents involving police officers is set out in a ministerial policy that is the responsibility of Direction de l'organisation et des pratiques policières at Ministère de la Sécurité publique. The Ministerial Policy Regarding Death in the Event of a Police Intervention or Detention is officially entitled "Pratique policière : 2.3.12 – Décès ou blessures graves laissant craindre pour la vie à l'occasion d'une intervention policière ou durant la détention" [Police Practice: 2.3.12 – Death or Serious, Life Threatening Injury in Event of a Police Intervention or Detention]. The policy is drawn from "section 2.0 Opérations, sous-section 2.3 Arrestation et détention" [Section 2.0 Operations, Subsection 2.3 Arrest and Detention] of *Guide des pratiques policières*.¹⁵

As the name indicates, *Guide des pratiques policières* is a "guide." Police organizations are autonomous and free to determine different directives. Some police forces have adopted the guide in full, while others have adapted it to better correspond to their reality.¹⁶

¹³ *Police Act*, R.S.Q., c. P-13.1, section 304.

¹⁴ *Ibid.*, section 289.

¹⁵ To consult the full text of "Pratique policière 2.3.12," see Appendix III (French).

¹⁶ The introduction to the Guide specifies that it "sets forth the guiding principles for police action and emphasizes the practical application of these principles. It is an operational philosophy. It indicates the standards that should be met. It suggests a method of action. In using the guide, police forces can adopt directives that reflect the thrust of the guide while at the same time respecting their own reality. The guide provides a framework for formulating directives while helping standardize police practices." (translation)

The ministerial policy has been in effect since November 25, 1996. Its most recent official update was on March 3, 2003. The policy has since been modified several times through communiqués sent exclusively to police chiefs and partner organizations. The official document is therefore no longer up to date. One must consult all the official statements to know the rules currently in effect.

According to officials at Ministère de la Sécurité publique, the policy is currently under review. Among the modifications made to date, it is noted that since December 2008, each application of the ministerial policy has been announced via press release, at first as a “ministerial policy of independent investigation,” and since January 2009, as an “independent investigation.”¹⁷

3.3 Application

The ministerial policy is applied when, in the course of a police intervention or during temporary detention in a police station,¹⁸ a person

- Dies
- Receives a serious, life-threatening injury
- Receives an injury resulting from the use of a firearm

Initially, the investigative procedure provided for under the ministerial policy was applied to cases of serious, life-threatening injury or death in the course of a police intervention.

In August 2004, Ministère de la Sécurité publique expanded the ministerial policy’s scope of application to include cases in which a person is injured by a bullet when a firearm is discharged in the course of a police intervention.

It should be noted, however, that the ministerial policy does not define what constitutes “serious, life-threatening injury.” This notion is therefore assessed on a case-by-case basis by the police chiefs responsible for notifying Ministère de la Sécurité publique when an incident occurs that, in their estimation, warrants application of the ministerial policy.

The main difference between investigations conducted under the ministerial policy and other criminal investigations is the fact that the main people involved are police officers.

¹⁷ MINISTÈRE DE LA SÉCURITÉ PUBLIQUE, “Politique ministérielle d’enquête indépendante.” Press release, December 22, 2008. Available online at <http://www.msp.gouv.qc.ca/msp/communiqués/communiqués.asp?c=1580&theme=police>, retrieved July 23, 2009, and MINISTÈRE DE LA SÉCURITÉ PUBLIQUE, “Enquête indépendante relative à une intervention policière.” Press release, January 11, 2009. Available online at <http://www.msp.gouv.qc.ca/msp/communiqués/communiqués.asp?c=1582&theme=police>, retrieved July 23, 2009.

¹⁸ This policy does not apply to deaths occurring in provincial detention centers. These investigations are currently conducted by Sûreté du Québec.

When an incident occurs that gives rise to application of the ministerial policy, Ministère de la Sécurité publique designates a police force other than the one whose officers were involved in the incident and entrusts it with investigating the actions of the officers involved.

The ministerial policy's definition of "designated police force" makes reference to Appendix A of Subject 2.3.12 in *Guide des pratiques policières*. This appendix establishes which police force will be designated to conduct the investigation, based on which police force was involved in the incident.¹⁹

As a general rule, Sûreté du Québec is designated to investigate incidents involving police officers from forces other than Sûreté du Québec. When a Sûreté du Québec officer is involved, either the Québec City or Montréal police department is designated, depending on the region. This rule also applies to incidents that involve both municipal force and Sûreté du Québec officers.

In implementing the ministerial policy, there are three distinct levels of intervention.²⁰ Specific responsibilities are entrusted to the police force involved in the event, to the chief of this police force, and to the police force designated by Ministère de la Sécurité publique to conduct the investigation. This designated police force submits its report to the Director of Criminal and Penal Prosecutions.²¹

We can summarize the main steps in implementing the ministerial policy as follows:

First, when a death, life-threatening injury, or injury resulting from the use of a firearm occurs in the course of a police intervention, **the police officers involved** must contact medical services and notify their police chief. They must protect the incident scene and, if necessary, leave the deceased person there until the arrival of the police force designated by Ministère de la Sécurité publique. They must

¹⁹ On occasion, Ministère de la Sécurité publique derogates from the designations in Appendix A and entrusts the investigation to a different police force. Such exceptions are usually due to reasons relating to the availability and proximity of the chosen police force.

²⁰ To better visualize the responsibilities of each party involved, we have prepared a diagram illustrating the procedure followed in implementing the Ministerial Policy Regarding Death in the Event of a Police Intervention or Detention. See Appendix IV.

²¹ Section 1 of the *Act respecting the director of Criminal and Penal Prosecutions*, R.S.Q. c. D-9.1.1 stipulates that "Under the general authority of the Minister of Justice and Attorney General, the Director directs all criminal and penal prosecutions in Québec on behalf of the State. The Director exercises the functions conferred on the Director of Criminal and Penal Prosecutions by this Act, with the independence provided for in this Act. The Director is by virtue of office "Deputy Attorney General" for criminal and penal prosecutions. The Director is also the lawful deputy of the Attorney General of Québec within the meaning of the Criminal Code, as are the prosecutors under the Director's authority." In addition, the Director advises the police forces in charge of applying the laws of Québec relating to all aspects of an investigation or a criminal or penal prosecution. For further details, consult Appendix VIII.

also locate civilian and police witnesses and remain available for purposes of the investigation.

Once informed, **the chief of the police force involved** must notify Ministère de la Sécurité publique within one hour of the incident and notify the designated police force so that the investigation may be launched without delay.²² The first person to be notified of application of the ministerial policy is the Assistant Deputy Minister for Direction générale des affaires policières at Ministère de la Sécurité publique.

Lastly, **the police force designated** as per Appendix A of the ministerial policy²³ proceeds with the investigation in accordance with the investigative procedures and methods in effect for each police force.

3.4 Completion of the Investigation: Investigation Report and Role of the Director of Criminal and Penal Prosecutions

After the designated police force completes its investigation, it submits its report to the Director of Criminal and Penal Prosecutions. The Director then decides whether or not criminal prosecution is warranted. The police force also submits its report to the coroner's office.

More specifically, the Director to whom the results of an investigation are submitted under the ministerial policy reviews the reported facts to determine whether a criminal offence appears to have been committed. It is in the course of this analysis that section 25 of the Criminal Code²⁴ is considered. In general, this

²² In the official text, this responsibility is among those entrusted to the chief of the police force involved. Ministère de la Sécurité publique confirmed that in practice it assumes this responsibility. The Ministry also explained that its policy would soon be modified to reflect current practices.

²³ For the complete text of the ministerial policy, see Appendix III.

²⁴ Criminal Code (R.S., 1985, c. C-46), "[25](#). (1) Every one who is required or authorized by law to do anything in the administration or enforcement of the law:

[...] *b*) as a peace officer or public officer;

[...] is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

[...]

(3) Subject to subsections (4) and (5), a person is not justified for the purposes of subsection (1) in using force that is intended or is likely to cause death or grievous bodily harm unless the person believes on reasonable grounds that it is necessary for the self-preservation of the person or the preservation of any one under that person's protection from death or grievous bodily harm.

[...]

(4) A peace officer, and every person lawfully assisting the peace officer, is justified in using force that is intended or is likely to cause death or grievous bodily harm to a person to be arrested, if

(a) the peace officer is proceeding lawfully to arrest, with or without warrant, the person to be arrested;

(b) the offence for which the person is to be arrested is one for which that person may be arrested without warrant;

(c) the person to be arrested takes flight to avoid arrest;

(d) the peace officer or other person using the force believes on reasonable grounds that the force is necessary for the purpose of protecting the peace officer, the person lawfully assisting the peace officer or any other person from imminent or future death or grievous bodily harm; and

section stipulates that necessary force may be employed by peace officers in order to accomplish what they are required or authorized to do, on the condition that they act on reasonable grounds.

If the Director believes that the facts of the case show that a criminal offence has been committed, the next step consists of examining the sufficiency of evidence and the appropriateness of prosecution. The criminal charges that could then be laid vary according to the circumstances of the affair. They could, for example, have to do with negligent use of a firearm.

The Director informed us that the review of sufficiency of evidence and appropriateness of prosecution is based on criteria defined in an internal directive.²⁵ This directive and the other directives governing the Director of Criminal and Penal Prosecution's exercise of powers are publicly available and can be consulted on the Director's website.²⁶

The investigation report of the designated police force is not made public. Only the Director's decision as to whether or not to bring criminal charges is announced. In the case of the Villanueva affair, the Director adopted a more transparent approach, publicly revealing numerous details about the evidence collected and the reasons leading to the decision not to lay charges. This was, however, an exception to the usual approach and remains a discretionary decision.

3.5 Implementation of the Policy: Some Statistics and the Difficulty in Ascertaining the Costs

As part of our inquiry, we asked Ministère de la Sécurité publique to provide an estimate of the costs associated with investigations conducted under the ministerial policy. The Ministry did not provide specific and documented budgetary data with regard to the current costs of these investigations. The Ministry also informed us that the designated police forces do not itemize the specific costs associated with conducting such investigations and that, because the police forces alternate in exercising the role, the costs are considered similar from force to force. The only figure put forward by the Ministry is \$50,000 per investigation, which it justifies as follows: "This amount covers the operational aspects of investigations (essentially human resources²⁷), but not costs

The Ministry did not provide specific and, documented budgetary data on the current costs of these investigations.

(e) the flight cannot be prevented by reasonable means in a less violent manner."

²⁵ Directive ACC-3.

²⁶ <http://www.dpcp.gouv.qc.ca/dpcp/directives-directeurs.aspx>.

²⁷ Ministère de la Sécurité publique unofficially estimates that there are 90 officers from different police forces assigned to this type of investigation, either part time or full time.

associated with infrastructure, training, or services to support these investigations (notably legal services)."²⁸

An average of 26.5 investigations are conducted annually under Ministère de la Sécurité publique's ministerial policy,²⁹ 37% of which concern Sûreté du Québec officers, 24% officers of Service de police de la Ville de Montréal, 8% officers of Service de police de la Ville de Québec, and 31% other municipal police forces.

In practice, this means that if the ministerial policy was closely followed from 2000 to 2007, Sûreté du Québec led approximately 63% of the investigations conducted under the policy.

According to the information obtained, investigations conducted under the ministerial policy are led by investigators with the major crime (homicide) unit at the designated police force.

3.6 Other Mechanisms³⁰

Investigations conducted under the ministerial policy are essentially of a criminal nature. However, when a serious incident occurs in the course of a police intervention, other mechanisms may be implemented that address the same events from a different angle.

A coroner's investigation is systematically launched, which can at times lead to an inquest.

In addition, incidents may result in a police ethics complaint against the officers involved, which can lead to an investigation by the Police Ethics Commissioner and a citation before the Police Ethics Committee.

Lastly, civilians affected by these incidents or the families of those who have died often initiate civil proceedings against the officers involved and their employers with a view to obtaining compensation for the damages suffered.

In these cases, it is important to specify that the burden of proof is different than in a criminal proceeding. It is therefore possible for officers involved in an incident to be held civilly or professionally liable, even though no criminal prosecution is undertaken and there is no conviction.

²⁸ Extract from an email from Ministère de la Sécurité publique to the Québec Ombudsman on January 25, 2010, in response to requests for details on the costs of investigations conducted under the ministerial policy.

²⁹ For investigations conducted between 2000 and 2007.

³⁰ For a detailed explanation of the various mechanisms, see Appendix V.

4 Assessment of Ministerial Policy

4.1 Selected Analytical Framework

We began our analysis of the ministerial policy by defining an analytical framework in order to determine the policy's strengths and weaknesses. The framework established certain criteria essential to the credibility and integrity of any investigative process. We saw it as fundamental that our analysis take into account the importance and specificity of the police mission in our society, particularly the maintenance of the rule of law.

4.1.1 The Role of the Police and the Conditions for Fulfilling It

The police provide the community with one of the most important public services. Police officers play an essential role in maintaining public order and are therefore vested with exceptional powers in a democratic society. However, police officers cannot carry out their mission without the trust of the public, which is required for every aspect of their mandate. This trust primarily depends on the credibility and effectiveness of the system in place.

4.1.2 A Long-Standing Debate in Québec

Over the years, a number of inquiry committees, commissions, and task forces have looked at police force operations from various angles. Each time, questions of public trust, credibility, and the effectiveness of the system have been central to their deliberations.

Among the documents issued, the following reports have contributed significantly to our reflections on relations between the police and the public, as well as on oversight mechanisms for police officers³¹:

- 1987: Comité d'enquête sur les relations entre les services policiers et les minorités ethniques et visibles (first Bellemare Report)
- 1992: Groupe de travail du ministre de la Sécurité publique du Québec sur les relations entre les communautés noires et le Service de police de la Communauté urbaine de Montréal (first Corbo Report);
- 1995: Groupe de travail chargé d'examiner les pratiques en matière d'enquêtes criminelles au sein des services de police du Québec (second Bellemare Report)

³¹ Appendix II gives a table summing up the mandates of these studies and their main recommendations. Please note that this listing is not intended as an exhaustive list of works on the subject.

- 1996: Rapport de l'examen des mécanismes et du fonctionnement du système de déontologie policière (second Corbo Report)
- 1999: Public Inquiry Commission appointed to inquire into the Sûreté du Québec (the Poitras Report)

Our work joins a long line of reflection in Québec regarding the conditions under which police powers are exercised.

We drew on these reports before undertaking our own analysis. Some of them led to major changes in the system for overseeing police activity, notably the creation of the current system of police ethics. We see our work as part of a longstanding and ongoing reflection on the conditions under which police powers are exercised.

4.1.3 Criteria for Maintaining the Necessary Conditions for Police to Carry Out Their Mission

We base our analysis of the ministerial policy on certain criteria, which, in our opinion, should constitute the basis for all investigation processes, whatever their type. To establish specific criteria for the investigation of serious incidents involving police officers, the Ombudsman compared its criteria to those proposed by the Corbo Report in 1996. This report examining the mechanisms and function of the police ethics system posited certain criteria on which any mechanism for dealing with citizen complaints regarding police work must be based.³²

To be satisfactory, such a system (of ethics) must manifest the following characteristics:

1. *Complaints must be treated by an **organization separate and independent of the police department***
2. *Such an organization must be **staffed mainly by non-police officers***
3. *[...]*
4. *The system must be **transparent** overall and in particular when functioning as a tribunal, **must allow for public hearings***
5. *[...]*

³² These criteria also mirror those recommended by the International Association for Civilian Oversight of Law Enforcement (IACOLE). IACOLE also has its Canadian equivalent, the Canadian Association for Civilian Oversight of Law Enforcement (CACOLE). It is interesting to note that bodies such as Québec's Commissaire à la déontologie policière and Ontario's Special Investigations Unit are members of this organization.

6. *Those persons responsible for treatment of complaints must be appointed by an independent public authority*³³

If such criteria are recommended as part of an ethics process, it seems difficult to ignore them when investigating serious incidents in which civilians are seriously injured or killed as a result of police intervention or detention.

Of course, these criteria need to be adapted for use in criminal investigations. We note incidentally that the criteria chosen by the International Association for Civilian Oversight of Law Enforcement (IACOLE), match those defined and defended by the Ombudsman in the past..

The following are the criteria we have selected: **consistent application of the formal rules, transparency of the process and its results, impartiality, independence, oversight, and accountability.** These criteria will serve as reference points in evaluating Québec's ministerial policy and comparing it to the best practices of other provinces and countries.

4.1.4 A Broader Perspective: A Look at Some Investigation Procedures

To get a more comprehensive view of processes for investigating incidents involving police officers, we looked at practices in certain other provinces and countries in order to establish benchmarks and base our work on what appear to be the best practices in the field.

Examples were selected mainly for their capacity to satisfy the criteria set out above. In analyzing the ministerial policy, we will refer to these practices for comparison purposes. For more details, readers may consult the descriptions in **Appendix VI** of this report.

4.2 Analysis of the Ministerial Policy, Findings, and Recommendations

Based on what we found in our analysis, we will try, through recommendations, to suggest possible ways of dealing with each finding.

³³ CORBO, Claude, Chair (1996), *À la recherche d'un système de déontologie policière juste, efficient et frugal*. Rapport de l'examen des mécanismes et du fonctionnement du système de déontologie policière.: Ministère de la Sécurité publique du Québec, pp. 18–19.

4.2.1 Absence of Formal Rules and Ineffective Oversight

A formal legal framework implies an investigation process governed by defined, stable rules applied consistently to the individuals being investigated and from one investigation to another. It does not imply a straitjacket, but rather clear guidelines to ensure that the same process will be followed regardless of who is being investigated, or the identity of witnesses and victims. A formal framework for the process provides a set of specific benchmarks for assessing an investigation conducted in a particular situation. Formal rules matched to effective oversight measures can help reassure the public regarding the investigation methods and enhance the credibility of the agency investigating incidents involving police officers.

What happens in Québec in such cases?

The main purpose of the ministerial policy is to entrust a designated police force with responsibility for investigating the actions of police officers involved in an incident resulting in civilian death or life-threatening injury. Under this policy, the designated force must be different than the one to which the police officers involved are attached.

From the moment it is assigned to investigate, the designated police force has full discretion to conduct the investigation according to its usual practices. In principle, the investigation method is the same under the ministerial policy as for any other criminal investigation. The investigating force assigns the file to one or more of the criminal investigators that normally handle major criminal or homicide investigations.

Some police forces have adopted special directives or procedures for investigations conducted under the ministerial policy. However, Ministère de la Sécurité publique confirmed to us that there are no specific procedures or directives governing or formalizing investigation methods under Québec's ministerial policy. The method of investigation is left entirely to the police force assigned to this task.

Guide des pratiques policières (Guide to Police Practices) contains no instructions for conducting major criminal investigations or on how to apply the ministerial policy. Ministère de la Sécurité publique explained to us that the same methods and procedures for investigating major crimes are taught to all future investigators in special courses for police officers.

Ministère de la Sécurité publique has no regulation, directive, or policy setting procedures specific to such inquiries either. The few instructions or guidelines that Ministère de la Sécurité publique does give to police officers are found in the ministerial policy and include the requirement that the police force preserve the crime scene and notify Ministère de la Sécurité publique.

The investigation method is left entirely to the police department assigned to this task.

4.2.1.1 Illustration of Problems Arising from the Absence of a Prescribed Structure for Ministerial Policy Investigations

Because Ministère de la Sécurité publique provides no oversight of investigations conducted under the ministerial policy, methods and procedures may vary from police force to police force and between ordinary criminal investigations and those under the ministerial policy. It is therefore possible that investigators treat the civilians and police officers involved in an incident differently.

The Villanueva affair provides a significant illustration of the problems that arise when civilian and police witnesses are treated differently. In this case, civilian witnesses on the scene were kept separate, and several of them were questioned that very night. Most eyewitnesses were questioned within a few days of the incident, some even in their hospital beds.

The Sûreté du Québec investigators in charge of the investigation did not attempt to question the police officers involved in events before receiving written reports from them. The officer-witness filed her report six days after the events and the officer directly involved, thirty days after.³⁴ After receiving the written reports, investigators chose not to question the officer-witness, and met with the officer directly involved, who exercised his right to silence.

The Ombudsman is concerned that, unlike other witnesses, the officers involved were not separated from each other and questioned directly. Furthermore, the amount of time given the officers to provide their own versions of the facts remains unexplained.

This difference in treatment, which appears incompatible with the proper conduct of an investigation, undermines the investigators' credibility, although they may well have conducted their investigation in good faith.

Our concern is to ensure that the public knows and understands what procedures and rules are applied in an investigation of police officers involved in a serious incident. Formalizing the procedure and making it available to the public would reassure the population and help overcome the current perception that investigations of police officers are not sufficiently impartial. Better oversight would benefit the officers involved in incidents by allowing people to see that decisions made regarding their involvement—i.e., the decision whether or not to bring charges—were the result of a formal, transparent, and impartial process.

Formalizing the procedure and making it available to the public would reassure the population.

³⁴ Stéphanie Pilote submitted her report on August 15, 2008, and Jean-Loup Lapointe on September 9, 2008. This information was supplied to us in a conversation with François Brière, criminal and penal prosecuting attorney designated December 18, 2008, by the Director of criminal and penal prosecutions to advise Sûreté du Québec agents on all aspects of their investigation. The information was later confirmed by Sûreté du Québec investigator Bruno Duchesne at coroner's inquest hearings between October 26 and 30, 2009.

4.2.1.2 Findings and Practices in Other Jurisdictions

Québec is not the only province facing doubts about the way serious incidents involving police officers are investigated. A number of commissions of inquiry investigating such incidents in other Canadian provinces have found, for example, that officers under investigation are often given extra time before being questioned by investigators.³⁵ These commissions of inquiry have also denounced the fact that police officers involved have been treated with more consideration than ordinary civilian witnesses.

Concerning investigator treatment of police witnesses and suspects, Gareth Jones, a former investigator for Ontario's Special Investigations Unit (SIU)³⁶ and the current director of Ontario's Special Ombudsman Response Team had this to say after recently conducting a broad investigation into the SIU³⁷:

Some say that it is best to wait and gather evidence of witnesses, wait for notes or other documents, even the analysis of physical evidence, before interviewing involved officers. [...] Most people of my acquaintance who advocate this approach would never dream of postponing the interviews of key players in any non-police involved investigation, particularly a possible homicide. Any competent investigator will try to get evidence before it perishes or becomes tainted, especially when the key question is why the officers did what they did or did not do, as it is in this case³⁸.

Jones notes as well that meetings with officers involved in the events immediately after they occur can result in observations beyond just the collection of an officer's version of what happened. Such face-to-face meetings allow investigators to assess officers' physical and mental state, note any injuries, and ensure that any material evidence they may possess can be collected. The meeting also affords an opportunity to explain the investigation procedure to the officers and to ask or even order them not to discuss the events among themselves.³⁹

³⁵ Similar events have recently been pointed out by the Davies Commission (British Columbia) and the Salhany Commission (Manitoba). For more details on these commissions' findings, see Appendix VI.

³⁶ For more information on the origins and operations of Ontario's Special Investigations Unit, see Appendix VI.

³⁷ See Appendix VI for more on the conclusions and recommendations from this investigation's report: MARIN, André, Ombudsman Ontario (2008), *Oversight Unseen: Investigation into the Special Investigations Unit's Operational Effectiveness and Credibility*.

³⁸ JONES, Gareth (2009), *Conducting Administrative Oversight & Ombudsman Investigations*. Aurora: Canada Law Book, p. 387, note on page 72.

³⁹ *Ibid.*, p. 391.

The Ontario Special Investigations Unit (SIU) has its own regulation⁴⁰ strictly governing the investigation of police officers. The regulation spells out the rights and obligations of all parties, including the officers involved, witnessing officers, SIU investigators, and police chiefs. It also states that failure to comply with any of these obligations may be considered an ethics violation. The regulation ensures that certain principles and procedures essential to this type of investigation are formalized. Providing a legal framework for the investigation process ensures the process is known to all and provides the public with an additional guarantee of impartiality.

This legal framework prescribes notably that police officers involved in the events be separated in order to prevent them from adjusting their versions of the facts to each others. The justification given for this measure strikes us particularly a propos:

Segregating an officer is done for his or her own benefit though, in my experience, not many of them actually see it that way. The point is, if it can be shown conclusively that there was absolutely no opportunity for an officer to discuss what happened directly or indirectly with colleagues who were involved, their evidence has great weight. On the other hand, there are problems if all four officers were allowed to sit down and talk amongst themselves about what happened before they were interviewed, however well intentioned and innocent it may have been. It is difficult imagining that happening in any sudden death case that did not involve police officers⁴¹.

This Ontario agency offers an original and unique example of a legal framework for investigating police officers.

Indeed, the Ontario regulation is expected to serve as an example for the new Alberta agency created to conduct such investigations.⁴²

We note as well that the Police Ombudsman for Northern Ireland (PONI) has adopted a code of ethics that sets out staff responsibilities for investigations as ethical requirements.⁴³

⁴⁰ Regulation 673/98, adopted under the *Police Services Act*, L.R.O. 1990, chap. P.15 (for the complete text, see Appendix VII).

⁴¹ JONES, Gareth (2009), *Conducting Administrative Oversight & Ombudsman Investigations*. Aurora: Canada Law Book, p. 386.

⁴² For more information on the Alberta Serious Incident Response Team (ASIRT), see Appendix VI.

⁴³ For more details regarding the origin and operation of Northern Ireland's PONI, see Appendix IV.

4.2.1.3 Conclusion and Recommendations

The current system does not ensure that investigations of police officers involved in serious incidents is impartial.

Our analysis shows that the investigative process applied under Ministère de la Sécurité publique's current ministerial policy provides no framework guaranteeing that the rules for criminal investigations will be applied consistently to all. Without such guarantees, the current system cannot guarantee the impartiality of investigations of police officers involved in serious incidents. The public is asked to trust the investigating police force without being provided any of the guarantees required to concretely show the impartiality of the procedure.

This absence of guarantees does not in itself mean that investigations of police officers are flawed or biased. However, the negative perceptions that these conditions create prejudice the investigations in the eyes of the public. If certain suspects or witnesses were treated differently from others in an ordinary investigation, the same questions would arise. The system's lack of credibility hurts the officers under investigation: in the eyes of many, they will never truly be free of suspicion since an objective and independent investigation has not taken place.

Legislative and regulatory measures are needed that set out specific standards for response times, evidence preservation, and witness and officer treatment.

Legislative and regulatory measures are needed that set out specific standards for response times, evidence preservation, and witness and officer treatment. It must also be possible to verify whether the investigators in charge of the investigation are meeting these standards.

Based on solutions developed in other jurisdictions facing similar problems, the Québec Ombudsman maintains that the process of conducting investigations of serious incidents involving police officers requires better formal oversight in order to guarantee its impartiality.

RECOMMENDATION 1 - STRENGTHENING AND OVERSIGHT OF THE INVESTIGATION PROCESS

Whereas the Minister of Public Security is responsible under the *Police Act* for determining policy directions in matters of police organization and crime prevention;

Whereas Ministère de la Sécurité publique's current ministerial policy⁴⁴ does not guarantee that the rules of criminal investigation are consistently applied when officers are subject to investigation;

⁴⁴ The exact title of the policy is "Pratique policière 2.3.12 – Décès à l'occasion d'une intervention policière ou durant la détention" (available in French only). The full text is included in **Annex III** of this report.

Whereas, without this guarantee, the current system cannot ensure that the rules are uniformly applied to all investigations of officers involved in serious incidents;

Whereas the important role and responsibilities that police officers have in society entail risks that put them in a unique situation requiring a specific and adapted framework;

Whereas other administrations have developed a formal oversight model for the investigation of serious incidents involving police officers;

THE QUÉBEC OMBUDSMAN RECOMMENDS

That the *Police Act* (R.S.Q. c. P-13) be amended to provide for regulatory oversight of the investigation process for incidents involving police officers that lead to death, serious injury⁴⁵, or injury resulting from the use of a firearm or conducted energy device during a police intervention or detention. These new legislative and regulatory provisions should include

- i. A definition of “serious injury”**
- ii. A definition of “witness officer” and “subject or involved officer”**
- iii. The requirement that the police force involved in the events immediately report the incident to the appropriate body, which will take charge of conducting an investigation of the events**
- iv. The obligation on the part of the police force involved to preserve the integrity of the evidence and scene pending the arrival of the investigators designated to conduct the investigation**
- v. The granting of priority at the scene to the investigators responsible for investigating the involved officers**
- vi. A prohibition against communication between officers involved in the incident and the obligation on the part of the police chief to ensure that officers involved are segregated until they can be interviewed by the investigators in charge of the investigation**
- vii. An obligation on the part of investigators to interview the officers involved (witnesses or subjects) as quickly as possible and within a maximum of 24 hours after the incident, unless there are exceptional and justifiable circumstances**
- viii. The obligation on the part of witness officers to fully cooperate with the investigation and provide all relevant documents, including notes on the events**

⁴⁵ For details on the notion of “serious injury”, see Section 4.2.1.4.

- ix. **The establishment of an ethics violation for any officer who breaches or fails to comply with the regulatory requirements set forth, with investigators having the option of filing a complaint in this regard with the Police Ethics Commissioner**

RECOMMENDATION 2 - TRAINING OF POLICE OFFICERS IN THEIR DUTIES AND OBLIGATIONS

Whereas any member of a police force in Québec may be called upon to cooperate in the investigation of a serious incident involving police officers;

Whereas any member of a police force in Québec may, in the performance of his or her duties, be involved to various degrees and in various ways in an event where someone is injured or killed by an officer;

Whereas the support and cooperation of all police force members in Québec are crucial and in the interest of all;

THE QUÉBEC OMBUDSMAN RECOMMENDS

That Ministère de la Sécurité publique mandate École nationale de police to ensure that future officers are properly trained with regard to the duties and requirements to be set out in the new investigation process rules for incidents involving police officers that lead to death, serious injury⁴⁶, or injury resulting from the use of a firearm or conducted energy device during a police intervention or detention.

4.2.1.4 Clarifications about the Notion of “Serious Injury”

The ministerial policy in force is applied when a person

- dies;
- receives a life-threatening injury; or
- receives an injury resulting from the use of a firearm

in the course of a police intervention or during temporary detention in a police station.

The Ombudsman maintains that the notion of “life-threatening injury” places an unjustifiable limit on the scope of the ministerial policy. We believe that the broader notion of “serious injury” should be preferred, since such incidents are just as important and dramatic, both for civilians and for the police officers involved.

⁴⁶ For details on the notion of “serious injury”, see Section 4.2.1.4.

It is however essential that the notion of “serious injury” be clearly defined in order to avoid inconsistencies in interpretation. The notion should be spelled out in new legislative provisions. It should encompass all injuries likely to affect the health and wellbeing of the victim and which are neither temporary nor insignificant. It should include injury resulting from sexual assault.

In our opinion, the notion of “injury resulting from the use of a firearm” is valid. We would also add the notion of injury resulting from the use of a conducted energy device (TASER), since the use of this weapon is normally limited to serious and exceptional situations in which the life or physical safety of police officers or other persons is threatened. Furthermore, the use of this weapon can lead to serious health consequences and may also cause death.

4.2.2 A Process and Results that Lack Transparency

Transparency relates to the information available to the public. This information may concern the methods of investigation, procedures used, rules applied, results of the investigation, decisions based on such results, and the grounds for such decisions. Transparency also implies an attitude of openness on the part of those in charge of investigations regarding the way they do things, so that the public and experts can evaluate the integrity and effectiveness of the investigative process.

To ensure that the process of investigating serious incidents involving police officers is transparent, two conditions must be met: the applicable rules must be permanent and public, and the decisions and results must be justified and explained.

4.2.2.1 Illustration of Problems Arising from the Nontransparency of the Process and Results of Investigations Conducted under the Ministerial Policy

According to the procedure currently applied in Québec, very little information is made public on investigations conducted under the ministerial policy. Essentially, the only information provided to the public is as follows:

- Announcement by the Minister for Public Security that an investigation is being opened
- Announcement by the same minister of the police force assigned to conduct the investigation
- Announcement by the designated police force that the investigation has been concluded and a report submitted to the Director of Criminal and Penal Prosecutions

- Announcement by the Director of Criminal and Penal Prosecutions as to whether charges will or will not be laid.

Ministère de la Sécurité publique and the Director of Criminal and Penal Prosecutions justify their discretion on the grounds of protecting the confidentiality of the information collected in the course of the investigation.

Generally, few details are given regarding the grounds for a decision not to file criminal charges. However, the Director of Criminal and Penal Prosecutions may, at its discretion and if circumstances warrant, explain the grounds for such a decision. In the Villanueva affair, Director of Criminal or Penal Prosecutions prosecutors provided some of the particulars regarding the accepted testimony and the grounds for the decision not to lay charges against the police officers under investigation.

The greater transparency during the Villanueva affair shows that once an investigation is completed, it is in the public interest and in the interest of the police officer being investigated that the grounds for the decision not to file charges be sufficiently explained in order to reassure the public regarding the thoroughness and impartiality of the investigation. In cases where criminal charges are filed, public access to information is ensured since court proceedings are generally open to the public.

4.2.2.2 Findings and Practices from Other Jurisdictions

In its recent report on Ontario's Special Investigations Unit, the Ontario Ombudsman brought to light certain things which that organization should look at if it is to play its oversight role effectively and ensure its credibility in the eyes of the public:

[The SIU] must not only ensure accountability of police conduct, but be perceived by the public as doing so. At present, the public is expected to trust that the SIU conducts thorough and objective investigations and accept that its decisions are well founded when it decides, for example, not to charge officers. But much remains hidden from public view, including Director's reports and significant policy issues. In order to properly serve the function it was created to fulfill, greater transparency is required with regard to the SIU's investigative outcomes...⁴⁷

⁴⁷ MARIN, André, Ombudsman Ontario (2008), *Oversight Unseen: Investigation into the Special Investigations Unit's Operational Effectiveness and Credibility.*, p. 5.

British agencies are in the forefront in this respect, releasing detailed reports of investigations to the public while at the same time safeguarding the confidentiality of third parties involved.⁴⁸ Their reports are published, which allows the public to learn the facts about the police operation under scrutiny, understand police practices in such circumstances, and take the measure of the thoroughness and quality of the agency's investigation of such events. They can thus understand decisions not to file charges when this occurs.

4.2.2.3 Conclusion and Recommendation

Based on our analysis, we conclude that the public has very little information on the process or results of investigations under the ministerial policy. Only through other mechanisms⁴⁹ is the public able find out the facts and circumstances surrounding police interventions and perhaps better understand the Director of Criminal or Penal Prosecutions' decision to file or not file criminal charges against the police officers involved.

The public has very little information regarding the process or results of investigations under the ministerial policy.

The Ombudsman understands that police forces must safeguard confidentiality during an ongoing criminal investigation. However, it is both possible and appropriate to provide information on the general procedures applied during an investigation, the steps involved, and the results.

Transparency in the investigation process is essential if the public and those directly involved are to trust the final results. The lack of transparency undermines public understanding of the process and the credibility of investigations of police officers.

RECOMMENDATION 3 - TRANSPARENCY OF THE INVESTIGATION PROCESS AND ITS RESULTS

Whereas citizens currently receive very little information at the conclusion of investigations into serious incidents involving officers that are conducted under Ministère de la Sécurité publique's ministerial policy;

Whereas greater transparency in the investigation of such incidents promotes better understanding of the process and the conclusions of such investigations

⁴⁸ The Independent Police Complaints Commission (IPCC), for example, releases complete reports of investigations while blocking out confidential information. For more details, see Appendix VI.

⁴⁹ These include principally the coroner's inquest, police ethics committee proceedings, and legal recourse under common law. For more details, see Appendix V.

and helps to allay citizens' concerns and improve credibility and public trust in investigations of serious incidents involving officers and the results;

Whereas the reasons justifying the Director of Criminal and Penal Prosecutions decisions whether or not to undertake criminal proceedings are generally kept confidential;

Whereas the Director of Criminal and Penal Prosecutions may, at his or her discretion, decide to publicly release the reasons justifying a decision to not undertake criminal proceedings, when he or she deems it appropriate under the circumstances;

Whereas the Director of Criminal and Penal Prosecutions has previously, in exceptional circumstances, notably with regard to an investigation concerning a serious incident involving an officer, decided to make public a detailed justification of his or her decision;

THE QUÉBEC OMBUDSMAN RECOMMENDS

- a) **That the government of Québec adopt guidelines to ensure greater transparency in the investigation process for incidents involving police officers that lead to death, serious injury⁵⁰, or injury resulting from the use of a firearm or conducted energy device during a police intervention or detention**
- b) **That the Director of Criminal and Penal Prosecution consider investigations into incidents involving police officers that lead to death, serious injury, or injury resulting from the use of a firearm or conducted energy device during a police intervention or detention as exceptional circumstances justifying the release of detailed reasoning in support of his or her decision to not undertake criminal proceedings**

4.2.3 An Appearance of Bias in Peer-Conducted Investigations

Impartiality relates to the absence of prejudice, whether favorable or unfavorable, toward either of the parties involved in events, and particularly to the actual influence of such prejudices on decisions affecting those parties' rights. Rooted in perception, impartiality is a more subjective notion than independence, which refers more to the tangible and objective aspects of organization and structure. The notion of impartiality is applied to an individual rather than to an organization. Although the impartiality of an investigation is

⁵⁰ For details on the notion of "serious injury", see Section 4.2.1.4.

fostered by greater independence from the administrative structure underlying it, independence alone does not guarantee of impartiality.

Since prejudices are rarely expressed publicly, mechanisms must be put in place to fight their possible effects on the rights of all interested parties. A number of elements can contribute to this. In investigations, impartiality can be seen in the methodological rigor of the procedure and the thoroughness of the intellectual examination of the various aspects of and perspectives on an event.

Prejudices rarely being expressed publicly, mechanisms must be put in place to fight their possible effects on the rights of all interested parties.

The impartiality of an investigation depends in part on the existence of a clearly defined process that is applied consistently to all involved, regardless of the circumstances or persons under investigation. Concrete measures must be put in place to assure the public that the investigative process is impartial, notably by adopting formal rules and procedures that guarantee the consistency and thoroughness of the process. Providing formal rules for the investigation process is a first step towards ensuring that impartiality. This aspect of the issue was previously discussed in paragraph 4.2.1 of this report.

Transparent conclusions and reasoning also help attest to the impartiality of the investigative process. Transparency makes it possible to examine and evaluate the investigative team's reasoning. As is the case with the courts, which provide grounds for their decisions, a transparent process affords an opportunity to follow the grounds and reasoning for a decision and to understand the facts. In the United Kingdom, for example, the release of comprehensive reports assures people of investigation impartiality because it enables them to examine the reasoning process and follow the steps the investigators took.⁵¹ This aspect of transparency was also discussed in the preceding section.

Transparency makes it possible to examine and evaluate the investigative team's reasoning.

Another element is now worth considering, that of real or perceived conflicts of interest between investigators and police officers due to professional or personal connections.

4.2.3.1 Doubts about the Impartiality of Investigations Conducted under the Ministerial Policy

Public inquests have brought to light on a few occasions certain issues related to the conduct of investigations under the ministerial policy. Doubts expressed about the impartiality of investigators center on the influence of police solidarity.

Long before the Villanueva affair, doubts were being raised about the impartiality of police investigators who investigate other police officers. Various reports and task forces⁵² have examined an aspect of police culture sometimes described as a

⁵¹ For an example of an IPCC report, see: http://www.ipcc.gov.uk/adamson_redacted_19june-2.pdf, retrieved July 28, 2009.

⁵² See, among others, the following reports:

strong bond of solidarity joining fellow police officers. This leads us to question whether it is possible to guarantee the impartiality of investigations of police officers when they are conducted by fellow police officers. The public seems uncertain about the real impartiality of such investigations.

This perception applies both to active officers and former officers. The Ombudsman of Ontario's report on the Special Investigations Unit (SIU) notes that the large number of former police officers on the investigative team and among management poses a problem of perception that undermines the integrity of the entire organization.

The fact that all of the SIU's investigative managers are white male retired police officers leads to substantial imbalance in the SIU's structure that should be redressed as soon as possible. A number of SIU staff told us they felt this management composition contributed to the perpetuation of police/paramilitary customs at the SIU. The SIU must outgrow this police-based heritage if it is to evolve and achieve its full potential as a civilian oversight body.⁵³

4.2.3.2 Findings and Practices in Other Jurisdictions

The police themselves would be the first to benefit from greater public trust in the impartiality of the investigators assigned to investigate their actions.

The police themselves would be the first to benefit from greater public trust in the impartiality of the investigators assigned to investigate their actions. Carried out as required, a credible and impartial investigation could truly shed light on the involvement of police officers in a given incident and clear away any lingering doubts in the public mind.

One solution adopted in other jurisdictions in dealing with public suspicions that investigator impartiality is compromised by solidarity between police officers and ex-police officers is to ensure greater participation by competent and qualified

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- CORBO, Claude, Chair (1996), *À la recherche d'un système de déontologie policière juste, efficient et frugal*. Rapport de l'examen des mécanismes et du fonctionnement du système de déontologie policière. Québec: Ministère de la Sécurité publique du Québec.
 - MARIN, André, Ombudsman of Ontario (2008), *Oversight Unseen*. Ombudsman Report: Investigation into the Special Investigation Unit's operational effectiveness and credibility.
 - POITRAS, Lawrence, Chair (1999), *Pour une police au service de l'intégrité et de la justice*. Rapport de la Commission d'enquête chargée de faire enquête sur la Sûreté du Québec. Québec : Ministère de la Sécurité publique du Québec.
 - RACE RELATIONS AND POLICING TASK FORCE (1989), *The Report of the Race Relations and Policing Task Force*. Ontario: Race Relations and Policing Task Force.
 - SALHANY, Roger, Q.C., Commissioner (2008), *Report of the Taman Inquiry*. Taman Inquiry into the Investigation and Prosecution of Derek Harvey-Zenk. Winnipeg: Minister of Justice and Attorney General.
 - DAVIES, William H., Q.C. (2009), *Alone and Cold*. The Davies Commission Inquiry into the Death of Frank Paul. Interim Report. February 12' 2009. Vancouver: British Columbia. Online at: <http://www.frankpaulinquiry.ca/report/>.

⁵³ MARIN, André, Ombudsman of Ontario (2008), *Oversight Unseen*. Ombudsman Report: Investigation into the Special Investigation Unit's operational effectiveness and credibility, p. 100.

civilians in the investigative process. The idea behind this solution is that non-police perspectives could protect investigators from a biased view of a given situation.

Competent and qualified civilians can be involved in investigations at various levels. They can act as civilian observers, after the model recommended by the Royal Canadian Mounted Police (RCMP) Public Complaints Commission in its most recent report on the question.⁵⁴ Civilians can also take a more active role in investigations, or be part of a supervisory body overseeing the investigators' work.

Experiments in various other jurisdictions illustrate different ways of involving civilians in investigations of incidents involving police officers.

Civilian Observers: The Royal Canadian Mounted Police (RCMP) Public Complaints Commission has launched a pilot project under which independent civilian observers are assigned to RCMP investigations into events involving other RCMP officers. The observer's task is to monitor the investigation and raise any concerns about the impartiality of the investigative process. Currently, in certain Canadian provinces, independent observers are assigned to investigations into deaths resulting from police interventions involving RCMP officers. The project was recently evaluated and remains for the RCMP the preferred way to monitor the impartiality of its investigations.⁵⁵

Civilian Investigators: Some jurisdictions have chosen to integrate civilians right into investigative teams. *Civilians* in this case refers to investigators who are not active police officers, although they may be former police officers or investigators from other fields. In Ontario, for example, all Special Investigations Unit (SIU) investigators are civilians, although most are former police officers. Police Ombudsman for Northern Ireland (PONI) staff comprises 50% "civilian" investigators (without police training or experience) and 50% former police officers. PONI has partnered with a university institution under a strategy to increase the proportion of civilians in criminal investigations to develop a certification program to train civilians as criminal investigators.

Civilian Commissioners: In the United Kingdom, the body responsible for investigating public complaints against the police and overseeing the treatment of such complaints also conducts some criminal investigations into police conduct. The Independent Police Complaints Commission (IPCC) may choose to

⁵⁴ The Commission report recommends that serious incidents involving RCMP officers be investigated by a different police force and that civilian observers be used on such investigations. COMMISSION FOR PUBLIC COMPLAINTS AGAINST THE RCMP (2009), *Police Investigating Police: Final Public Report*. Paul E. Kennedy, Chair of the Commission for Public Complaints Against the RCMP. Ottawa: August 11, 2009, p. XV et XVI. [Note du traducteur : La version en ligne n'a pas de pagination.]

⁵⁵ COMMISSION FOR PUBLIC COMPLAINTS AGAINST THE RCMP, *Final Report – Review of the Independent Observer Pilot Project*, April 20, 2009. Online at <http://www.cpc-cpp.gc.ca/prr/rep/opp/review-examen08-eng.aspx>.

monitor or supervise investigations conducted by police departments or to conduct an independent investigation if circumstances warrant. Cases leading to death or serious injury during a police intervention are normally investigated independently. The IPCC is overseen by 15 commissioners appointed for a term of five years, and who by law may not previously have served as police officers. Commissioners are responsible for investigations and make decisions on individual cases.

An examination of the methods used elsewhere for investigating police officers reveals that there are few places where investigations are conducted exclusively by civilians with no police background. Most such bodies recruit a significant proportion of their investigators from the ranks of former police officers. This practice does present certain problems, as pointed out by the Ombudsman of Ontario in his report on the Special Investigations Unit.⁵⁶ In Ontario and Northern Ireland, however, efforts are made to foster the participation of civilian investigators without previous police experience in investigative teams in order to ensure greater impartiality.

4.2.3.3 Conclusion and Recommendation

Teams investigating incidents involving police officers should include qualified civilian investigators.

It is not easy to assure the public that investigators dealing with incidents involving police officers are impartial when these investigators are active or even former police officers. To ensure greater impartiality, the Québec Ombudsman believes that teams investigating incidents involving police officers should include qualified civilian investigators, rather than being composed exclusively of active and former police officers.

The Ombudsman is of the opinion that qualified civilian investigators should be active as part of investigations and not merely as outside observers. By participating in all stages of an investigation, they would ensure greater impartiality throughout the investigative process rather than exercising a limited supervisory role. Indeed, the role of observers, and to a certain point civilian commissioners, is more about evaluating investigations after the fact and provides little opportunity to actively intervene, where necessary, during an ongoing investigation.

The dearth of training programs open to civilians for acquiring the requisite investigative skills is one of the obstacles that limits the number of civilian investigators currently qualified to conduct investigations into serious incidents involving police officers. Criminal investigative training is already provided jointly by École nationale de police du Québec and a number of Québec universities.

⁵⁶ Marin, André, Ombudsman of Ontario (2008), *Oversight Unseen*. Ombudsman Report: Investigation into the Special Investigation Unit's operational effectiveness and credibility

École nationale and these universities could help train civilian investigators so that they could acquire the same knowledge as police investigators. The investigative standards, criteria, and methods should be the same as those taught to police officers in order to ensure that investigations conducted by qualified civilians meet the same standards as those of police investigators.

At the same time, it is clear that the skills of police investigators remain indispensable to investigations of serious incidents involving police officers. The expertise of former police officers is essential to maintaining the highest standards of major criminal investigations and ensuring that non-police civilian investigators are appropriately trained. Civilian investigators also need the experience of working with seasoned officers. Civilian investigators will need to be brought on board gradually and their full training will take some time. Achieving a majority of civilian investigators should however remain the long-term goal.

RECOMMENDATION 4 - IMPARTIALITY: PRESENCE OF CIVILIAN AND POLICE INVESTIGATORS

Whereas under Ministère de la Sécurité's current policy, investigations into serious incidents involving a police force are conducted exclusively by other police forces;

Whereas it is difficult to maintain the appearance of impartiality when on-duty officers investigate other officers;

Whereas civilian participation within the teams in charge of conducting investigations reassures the public with regard to the impartiality of the entire investigative process;

Whereas the experience acquired in other jurisdictions shows that it is possible to have qualified civilian investigators conduct investigations into serious incidents involving officers;

Whereas public confidence is essential to ensure credibility and efficacy in these investigations;

THE QUÉBEC OMBUDSMAN RECOMMENDS

That the government of Québec gradually take steps to integrate qualified civilian investigators⁵⁷ into the teams in charge of conducting investigations into incidents involving police officers that lead to death, serious injury⁵⁸, or

⁵⁷ By "civilian investigators," we mean people who have no police training or experience.

⁵⁸ For details on the notion of "serious injury", see Section 4.2.1.4.

injury resulting from the use of a firearm or conducted energy device during a police intervention or detention, and that to this end it mandate École nationale de police to implement training programs on criminal investigation techniques for designated civilians.

We are aware that this recommendation cannot be readily implemented under the current system of police organization. It requires major changes to the process set out in the ministerial policy. We will address this issue in chapter 5 of this report.

4.2.3.4 Representativeness: Civilian Oversight That Reflects Diversity

The presence within police forces of women and persons who reflect society's ethnocultural diversity is bound to enhance public trust and strengthen the critical partnership between civilians and police officers.

The committee of investigation into relations between police forces, visible and other ethnic minorities⁵⁹ looked into the presence of minority police officers within Service de police de la Ville de Montréal. It came to the conclusion that the number of police officers from ethnic and visible minorities was insufficient relative to the proportion of such minorities in the Montréal population⁶⁰. The Bellemare report therefore recommended that "the number of police officers of ethnic and visible minority origin be increased to make the police force representative of Québec's population, so that it can provide more effective services adapted to the needs of the various communities comprising the population."⁶¹

Service de police de la Ville de Montréal (SPVM) currently employs close to 4,600 police officers serving a population of 1.8 million. Men make up 74.3% of officers and women 25.7%. Of these officers, 186 are members of ethnic minorities and 276 belong to a visible minority group.⁶² Police officers from these groups thus currently make up a little over 10% of SPVM's total strength.

In Sûreté du Québec, women represent 16.1% of total police strength and cultural communities 1.2%.⁶³

⁵⁹ BELLEMARE, Jacques, Chair (1988), *Enquête sur les relations entre les corps policiers et les minorités visibles et ethniques*. Final report of Comité d'enquête sur les relations entre les corps policiers et les minorités visibles et ethniques. Québec: Commission des droits de la personne du Québec, p. 139.

⁶⁰ *Ibid.*, p. 151. At the time, ethnic and visible minorities represented 21.11% of the total population and 4.62% of total staff at Service de police de la Communauté urbaine de Montréal.

⁶¹ *Ibid.*, p. 139.

⁶² From the Service de police de la Ville de Montréal website: http://www.spvm.qc.ca/fr/profil/4_1_aproposspvm.asp, as of July 31, 2009.

⁶³ From the Sûreté du Québec website: <http://www.suretequebec.gouv.qc.ca/mission-et-services/organisation/effectifs-ressources-sq.jsp>, as of July 31, 2009.

Thus although progress has been made in the twenty years since the Bellemare Report, its recommendation remains current. Efforts to foster a more diverse police force must continue, to help the police develop closer relationships with communities and further efforts to gain the public's trust.

4.2.3.5 Conclusion and Recommendation

To provide an additional guarantee that investigations of serious incidents involving police officers are impartial, the Québec Ombudsman is of the opinion that civilians should be put in charge of overseeing investigations and ensuring their accountability. The use of civilian commissioners would provide an additional guarantee of impartiality. The scope of such an oversight mechanism involving civilian commissioners could vary depending on whether civilians oversee police forces, as we find to some extent in the RCMP model of civilian observers, or an independent investigating body. We will present a recommendation on this issue in chapter 5 of this report.

Should an oversight mechanism based on civilian commissioners be chosen, representativeness should be encouraged both in terms of gender and of ethnocultural diversity, particularly given that in the most controversial incidents involving police officers in recent years, victims have tended to be members of ethnocultural communities.

Representativeness should be encouraged both in terms of gender and of ethnocultural diversity.

RECOMMENDATION 5 - IMPARTIALITY: BALANCED REPRESENTATION OF CULTURAL COMMUNITIES

Considering the topical and relevant nature of the recommendations previously formulated with regard to the representation of cultural communities and visible minorities within police organizations;

THE QUÉBEC OMBUDSMAN RECOMMENDS

That the government of Québec promote gender balance and the representation of Québec's ethnocultural diversity among the civilians in charge of conducting, monitoring, and overseeing the investigations into incidents involving police officers that lead to death, serious injury⁶⁴, or injury resulting from the use of a firearm or conducted energy device during a police intervention or detention

⁶⁴ For details on the notion of "serious injury", see Section 4.2.1.4.

4.2.4 Questionable Independence

4.2.4.1 One Criterion: Ensuring the Independence of the Investigation Process

The notion of independence in the investigative process is rooted in the organizational structure of the agency responsible for conducting investigations. It is distinct from the notion of impartiality, which speaks more to a given investigator's approach. Independence is more about the organizational mechanisms that encourage an arm's length relationship to and independence from the subject under investigation.

Independence is mainly a question of ensuring that the persons conducting an investigation and those deciding whether charges should be filed are not connected to the police force under investigation. The goal of this criterion is to ensure that the investigating organization and, consequently, those who play deciding roles in the investigation, have the required distance and freedom to accomplish their tasks. In the final analysis, the independence of ministerial policy investigations can be guaranteed by ensuring their complete organizational independence from the police department involved.

In considering this criterion, we examined Québec's ministerial policy for provisions that guarantee the independence of those responsible for conducting investigations and of the agency responsible for analyzing the findings of these investigations.⁶⁵

4.2.4.2 Indicators of Independence in the Procedures for Investigating Incidents Involving Police Officers

Affiliation of Those Conducting Investigations

The first aspect of the independence criterion we will consider concerns the identity of those conducting investigations. The criterion of independence requires a certain distance from the matter being investigated and not merely from the persons involved.

At hearings of the Ontario Task Force on Race Relations and Policing in April 1988, a number of participants expressed concerns about the integrity of a process in which one police department would be assigned to investigate police officers from another department implicated in the death of a civilian during a

⁶⁵ For a detailed description of the powers and function of the Director of Criminal and Penal Prosecutions, see Appendix VII.

police intervention. The task force quickly rejected the option of entrusting such investigations to a different police force because such a force would lack independence. The public perception in Ontario at the time was that investigations conducted by police officers would not be enough to ensure the independence required to make them credible.

Unlike the British and Ontarian systems in which civilians—often former police officers—conduct such investigations, the ministerial policy entrusts investigations to active police officers. In Québec, the persons investigating incidents involving police officers are thus active police officers from another police force. They might be called on to work, under other circumstances and in the course of their ordinary assignments, with police officers from the departments they are investigating.

Québec’s ministerial policy is based essentially on the premise that, provided an investigation is conducted by a different police force than the one involved in the events under investigation, the conditions for an independent investigation are fulfilled. Despite a new “independent investigation” heading in the ministerial policy that is meant to sound reassuring, there is nothing in the current system except ethical obligations⁶⁶ guaranteeing that investigators have no professional, family, or personal links to the officers being investigated. Furthermore, the principle of alternation implied by the ministerial policy means that Sûreté du Québec might be investigating actions by the SPVM one day and the SPVM investigating Sûreté du Québec the next, undermines the independence of such investigations from the outset.

We also note that according to the definitions and criteria in the report of the Commission for Public Complaints Against the RCMP (the Kennedy Report), the current ministerial policy does not meet the criteria for an “independent” investigative system. The Kennedy Report defines independence according to the relationship between the body responsible for conducting the investigation and the police department involved in the events. The most dependent model is the one relying on investigations conducted by the same police department as that to which the police officers involved in the events are attached. The most independent model is that in which the investigation is conducted entirely by civilians belonging to an agency unaffiliated with any police department.

In light of the criteria selected by the Québec Ombudsman and the conclusions of the Poitras, Corbo, and Bellemare commissions,⁶⁷ an administrative organization that allows such investigations to be conducted by fellow police officers does not

An administrative organization that allows investigations to be conducted by fellow police officers does not safeguard the principles of independence.

⁶⁶ Code de déontologie des policiers du Québec, chap. P-13.1, r. 1, paragraph 9.

⁶⁷ For a table summing up the main findings and recommendations of these reports, see Appendix II.

safeguard the principles of independence necessary to assure citizens that investigations of serious incidents involving police officers are being properly conducted. The Davies Inquiry in British Columbia and Salhany Inquiry in Manitoba⁶⁸ also concluded that assigning criminal investigations of serious incidents involving police officers to another police force would be unwise. They found that this practice failed to safeguard the independence of investigations.

It is clear for the Québec Ombudsman that investigative proceedings, particularly where doubts are raised concerning the independence of the process, must establish objective and verifiable conditions to address this perception.

The Agency Responsible for Deciding Whether to File Criminal Charges Is Independent of Police Departments

The second aspect of the independence criterion we will consider is the situation of the person or agency responsible for deciding whether to file charges against the police officers under investigation. This person or agency must be independent of police departments.

In Québec, as in most systems, the decision whether or not to file charges is made by a criminal and penal prosecuting attorney. In our system, the attorney is under the authority of the Director of Criminal and Penal Prosecutions (DCPP), an independent agency answerable to the Minister of Justice and Attorney General. This individual is therefore independent from police departments. The prosecuting attorney's decision is based on the investigation report written by the police department designated to investigate. It is not the prosecuting attorney's role to call the investigation into question, but simply to determine whether the evidence collected is sufficient to show that the police officer in question committed a criminal offence. It should however be pointed out that at its discretion, the Director of Criminal and Penal Prosecutions can order further investigation.⁶⁹ This is in fact quite common, occurring in over 50% of cases. Although the criminal and penal prosecuting attorney's assessment must be impartial, the attorney's independence is not in itself sufficient to guarantee the independence of the investigative process. The prosecuting attorney does not enter the process until after the investigation is completed and does not assess the quality of the investigation.

In most organizations we compared in our study, the decision whether to lay charges is left to the criminal and penal prosecuting attorney. Without casting

⁶⁸ For more details on these commissions of inquiry, see Appendix VI.

⁶⁹ *Act Respecting the Director of Criminal and Penal Prosecutions* L.R.Q., chapter D-9.1.1, Section 20.

doubt on this approach used in Québec, we consider it interesting to point out that in Ontario, for example, the Special Investigations Unit has its own team of prosecutors to make this decision. We note, however, as the Ombudsman of Ontario stresses in his report on the SIU, that under such a system it is necessary to ensure consistency between the prosecutors who decide whether to bring charges and those who try the case in court.

4.2.4.3 Assessment of the Current Process According to the Criterion of Independence

In light of the above, the Québec Ombudsman finds that the Québec Ministerial Policy in force fails to provide the guarantees of independence necessary to assure the public that criminal investigations of police officers involved in serious incidents are independent. The persons conducting these investigations are not independent of police forces. There is no authority independent of police forces or Ministère de la Sécurité publique to oversee how such investigations are conducted or the methods applied.

The Ombudsman presents a recommendation concerning this aspect of the Ministerial Policy in chapter 5 of this report.

4.2.5 Oversight and Accountability in Investigations into Incidents Involving Police Officers

Oversight refers to the mechanisms put in place to verify the quality and impartiality of investigations. Accountability refers to the question of whether the agency and ministry responsible for investigations of police officers are answerable for the way such investigations are conducted and the results obtained. The goal is to enable both the public and elected officials to assess the credibility and effectiveness of such investigations, to understand the overall procedure applied, and to make or suggest corrective measures as required.

4.2.5.1 Oversight and Reporting Mechanisms for Investigations under the Ministerial Policy

The *Police Act* mandates Ministère de la Sécurité publique to establish the broad orientations for the organization of police departments and for the prevention of crime. Doing so involves the development and proposal of strategic plans and policies. The Ministry is also responsible for advising and monitoring local and regional authorities in their implementation of measures under the *Police Act* and verifying the effectiveness of police departments.⁷⁰

⁷⁰ *Police Act*, L.R.Q., chap. P-13.1, paragraphs 304 and 307.

There is no special mechanism in place for monitoring the quality or effectiveness of such investigations.

Currently in Québec, the Ministerial Policy Regarding Death in the Event of an Intervention or Detention is implemented in such a way that the designated police department conducts its investigation independently according to its own procedures. There is no special mechanism in place for monitoring the quality or effectiveness of such investigations. Ministère de la sécurité publique collects information about each investigation, but we observed that this information is not subject to any particular analysis or treatment. In order to answer our investigation's simple questions on the application of the ministerial policy (i.e., the number of cases, regions or police forces involved and the types of situations triggering policy application), statistics had to be compiled and collated before our questions could be answered. The Ministry also does not collect the information on costs, fees, or processing times that would be necessary in order to assess the effectiveness of investigations or the resources required to implement the ministerial policy.

In fact, the only oversight that takes place is a case assessment conducted by the Director of Criminal and Penal Prosecutions once the investigation is completed. The Director's review of the case does not principally address police methods and practices, and does not question them. This is not the Director's responsibility. The Director merely determines whether evidence is sufficient to justify filing criminal charges, without addressing the process through which such evidence was obtained.

4.2.5.2 Possible Ways to Improve Oversight and Accountability Mechanisms

The minister responsible for applying the Ministerial Policy should be answerable for the procedure followed in this type of investigation.

The Ombudsman holds that the minister responsible for applying the ministerial policy should be answerable for the procedure followed in this type of investigation. In order to do so, it must first collect information on the implementation of existing procedures.

The minister responsible should also oversee the way the process is applied and the results obtained. The minister should produce a report to inform the public regarding actions taken and results obtained.

Proposals relating to the oversight and accountability of the agencies and the individuals responsible for such investigations will be presented in the following chapter, which details the model the Ombudsman recommends.

5 Proposed Model

The Québec Ombudsman applied a variety of criteria in analyzing the Ministerial Policy Regarding Death in the Event of an Intervention or Detention. The results of this analysis have led us to a number of findings.

We suggested earlier that the formal framework for the investigation process under the ministerial policy is inadequate and has led to a situation in which rules can differ from one investigation to another. This lack of formal rules combined with the fact that such investigations are conducted by active police officers, does little to reassure the public as to the impartiality and integrity of the process. We have further shown how current mechanisms under the ministerial policy fail to guarantee independence, given that responsibility for investigations mainly falls to police forces.

The Québec Ombudsman has therefore formulated a set of recommendations to address these problems. Furthermore, in looking at the feasibility of Ministère de la Sécurité publique implementing the proposed recommendations under the current organizational framework, we concluded that **recommendations 1 to 5** would be compromised unless changes were made to the existing administrative structures.

The findings we presented in assessing the ministerial policy lead us to the conclusion that the various failings we have pointed out have a cumulative effect far beyond the sum of their individual consequences. It will be necessary to go beyond the current system in seeking a solution. The Québec Ombudsman explored a variety of options before settling on the solution proposed.

The various failings we pointed out have a cumulative effect and a systemic impact that go far beyond the sum of their individual consequences.

5.1 The Options

There are a variety of entities capable of conducting investigations into serious incidents involving police officers. The Kennedy Report,⁷¹ released last August, categorized various existing models according to their degree of independence from the police. The report posits a “dependent” model, where “police depend on police to undertake investigations...of their own members.”⁷² Another model is described as “interdependent” in which police and civilians “work together to varying degrees.”⁷³ Lastly, there exists an “independent” model in which criminal investigations of the police are conducted by civilians without police participation.

The best examples of the dependent model are the internal affairs branches of police forces, such as Direction des affaires internes at Sûreté du Québec, which conducts investigations of the force’s own staff. The current ministerial policy also follows the dependent model because investigations are conducted

⁷¹ COMMISSION FOR PUBLIC COMPLAINTS AGAINST THE RCMP, *Police Investigating Police-Final Public Report*. Paul E. Kennedy, Chair of the Commission of Public Complaints Against the RCMP. Ottawa, August 11, 2009.

⁷² *Ibid.*, p. 93.

⁷³ *Ibid.*, p. 94.

exclusively by police officers, although the investigators are from another police force. No civilians are involved.

There are various examples of the interdependent model. One of them is the Alberta Serious Incident Response Team (ASIRT) recently created by the Alberta government.⁷⁴ This agency uses police and former police officers as investigators, but is headed by a civilian director who is also a Crown prosecutor. Another example of the interdependent model is the use of civilian observers, and to some extent also civilian commissioners, to monitor police force investigations from the outside after the fact.

The independent model is characterized by a body of civilian investigators, either former police officers or investigators with other training and experience. The main examples of this model are Ontario's Special Investigation Unit (SIU), the Police Ombudsman for Northern Ireland (PONI), and the United Kingdom's Independent Police Complaints Commission (IPCC) when it conducts independent investigations of serious incidents.⁷⁵

None of these models is perfect and each presents advantages and disadvantages. For example, certain aspects of SIU operations have been criticized in an investigation by the Ombudsman of Ontario, although the rationale and principles underpinning its existence have never been questioned.

5.2 The Québec Ombudsman's Recommendation

5.2.1 Creation of a Special Investigations Bureau Independent of the Police Forces

Over the years, a number of independent inquiry commissions in various Canadian provinces have come to the same conclusion: it is not a good idea to assign criminal investigations of serious incidents involving police officers to other police officers, whether from the same or a different police force, as this approach does not guarantee the independence of the investigations.

The Québec Ombudsman's reflections and findings are no different for Québec. The idea of an independent entity had already been proposed in Québec in 1992 by Claude Corbo, although no Québec government has taken it up.

For the reasons given in Paragraph 4.2.4 of this report on the need for stronger guarantees that investigations of serious incidents involving police officers are independent, and in the interest of the impartiality of such investigations as

⁷⁴ For more on ASIRT, see Appendix VI.

⁷⁵ For more on these three institutions, see Appendix VI.

discussed in paragraph 4.2.3, the Québec Ombudsman is of the opinion that the independent model is the most appropriate under the circumstances.

We also believe that the establishment of such an entity, independent of the police, is the only way to implement **recommendations 1 to 5** of this report.

We wish to clarify from the outset that funding for such an entity would come mainly from the reallocation of already-existing funds and resources, as we will see in paragraph 5.4.2 of this report.

We suggest that this entity be called the Special Investigations Bureau, although the name is less important than the powers, attributes, and limits conferred on it.

RECOMMENDATION 6 - CREATION OF A SPECIAL INVESTIGATIONS BUREAU

Whereas Ministère de la Sécurité publique's current ministerial policy does not guarantee consistent application of the formal rules, nor the impartiality or transparency of the process and its results, nor independence, oversight, and accountability with regard to investigations conducted on police officers involved in serious incidents;

Whereas Recommendations 1 to 5 in this report propose measures to improve the consistency, formal oversight, impartiality, and transparency of the investigation process with regard to serious incidents involving police officers;

Whereas the implementation of **Recommendations 1 to 5** is currently unfeasible without changes to existing administrative structures;

Whereas of all the models developed by other jurisdictions for conducting investigations into serious incidents involving police officers, an independent body based, among other things, on the active participation of civilians best meets the criteria identified by the Québec Ombudsman;

Whereas experiences in other jurisdictions demonstrate the feasibility and effectiveness of such an independent body;

THE QUÉBEC OMBUDSMAN RECOMMENDS

That the *Police Act* (R.S.Q., c. P-13.1) be amended to create a Special Investigations Bureau, an independent body with the mandate to investigate incidents involving police officers that lead to death, serious injury⁷⁶, or injury resulting from the use of a firearm or conducted energy device during a police intervention or detention

⁷⁶ For details on the notion of "serious injury", see Section 4.2.1.4.

In the next section, we will examine the proposed features of the Special Investigations Bureau and its budgetary implications.

5.2.2 The Link to the Police Ethics Commissioner

The Québec Ombudsman has examined certain existing Québec agencies to assess whether they might be able to shoulder responsibility for conducting such investigations. Among those considered, the office of the Police Ethics Commissioner is the body whose functions most closely resemble those of monitoring police actions. We therefore considered the possibility of expanding the Police Ethics Commissioner's mandate. This option was eventually rejected, however, for the following reasons:

Investigations conducted by the Police Ethics Commissioner are very different in nature from criminal investigations. Investigations into complaints are less urgent and serious than criminal investigations into incidents involving police officers that resulted in civilian deaths or life-threatening injuries. Such investigations are much closer to major crime investigations than those that address police conduct.

Secondly, the Commissioner maintains close ties with police force management in order to prevent Code of Ethics violations and recurrence. The Commissioner also trains future police officers regarding their ethical obligations. Working together in this way is certainly useful and important for raising police awareness of ethical rules, but leaves the impression that the Commissioner is very close to police officers.

Thirdly, the Police Ethics Commissioner recognizes that it has work to do to "strengthen the bonds of trust, particularly among minorities."⁷⁷ The lack of trust in the Police Ethics Commissioner evinced by certain members of the public does not make it an ideal candidate, at least in the immediate future, for conducting large-scale and often controversial investigations.

It is preferable at this time to assign investigations of serious incidents involving police officers to a distinct entity

Based on to the criteria selected by the Québec Ombudsman and the analysis contained in the preceding chapter, the Ombudsman believes that it is preferable at this time to assign investigations of serious incidents involving police officers to a distinct entity.

However, we do not rule out the possibility of combining the mandate of this independent entity with police ethics at a later date to create a single agency. A model similar to that of the IPCC in the United Kingdom or PONI in Northern

⁷⁷ COMMISSAIRE À LA DÉONTOLOGIE POLICIÈRE (2008), *Rapport annuel de gestion 2007-2008*. Commissaire à la déontologie policière, p. 13. (translation)

Ireland might be considered for Québec once the independent criminal investigation agency is well established, which will take several years.

5.3 Main Features of the Proposed Model

Recommendation 6 of this report, proposing the establishment of an independent Special Investigations Bureau, requires substantive changes to current practices for investigating incidents causing serious injuries that involve police officers. The Québec Ombudsman has given considerable thought to the legislative and regulatory changes needed in making this new independent entity a reality.

Constituting a Special Investigations Bureau will require substantive changes to the current practices.

The creation and establishment of the Bureau would require a series of changes to legislation, regulations, ministerial and police forces policies and directives. Its setup would require an orderly series of steps to achieve the desired result. We are aware that an administrative and structural transition period will be necessary to get the Bureau on its feet. We are of the view that an implementation plan and schedule need to be prepared to make this independent entity a reality. The Québec Ombudsman will closely monitor the process as the case may be.

We have provided a flow chart illustrating the proposed administrative structure and its relationship to existing bodies in order to facilitate understanding of the model we are recommending (figure 1).

5.3.1 Who the Special Investigations Bureau Will Report To

The first question is to which authority the new entity will report. Which ministry should be accountable for the Bureau before the National Assembly?

In some jurisdictions, investigations into serious incidents involving police officers are the responsibility of the ministry of justice or its equivalent. Having the agency in charge of such investigations report to a different minister than the one responsible for police forces provides a further guarantee of independence that reassures the public as to its investigative impartiality.

This model does present certain benefits, which the Québec Ombudsman took into consideration. Reporting to a different ministry also gives investigators free rein to report collaboration problems of police forces implicated in such incidents.

On the other hand, this model may hinder police forces collaboration to the investigations and fuel police mistrust of the process. Furthermore, since investigations of serious incidents involving police officers are similar to other

major criminal investigations, they require access to certain specialized technical and scientific services.

The Québec Ombudsman believes that the responsibility for investigations into serious incidents involving police officers should remain under the aegis of Ministère de la Sécurité publique. The main benefits of this situation are as follows:

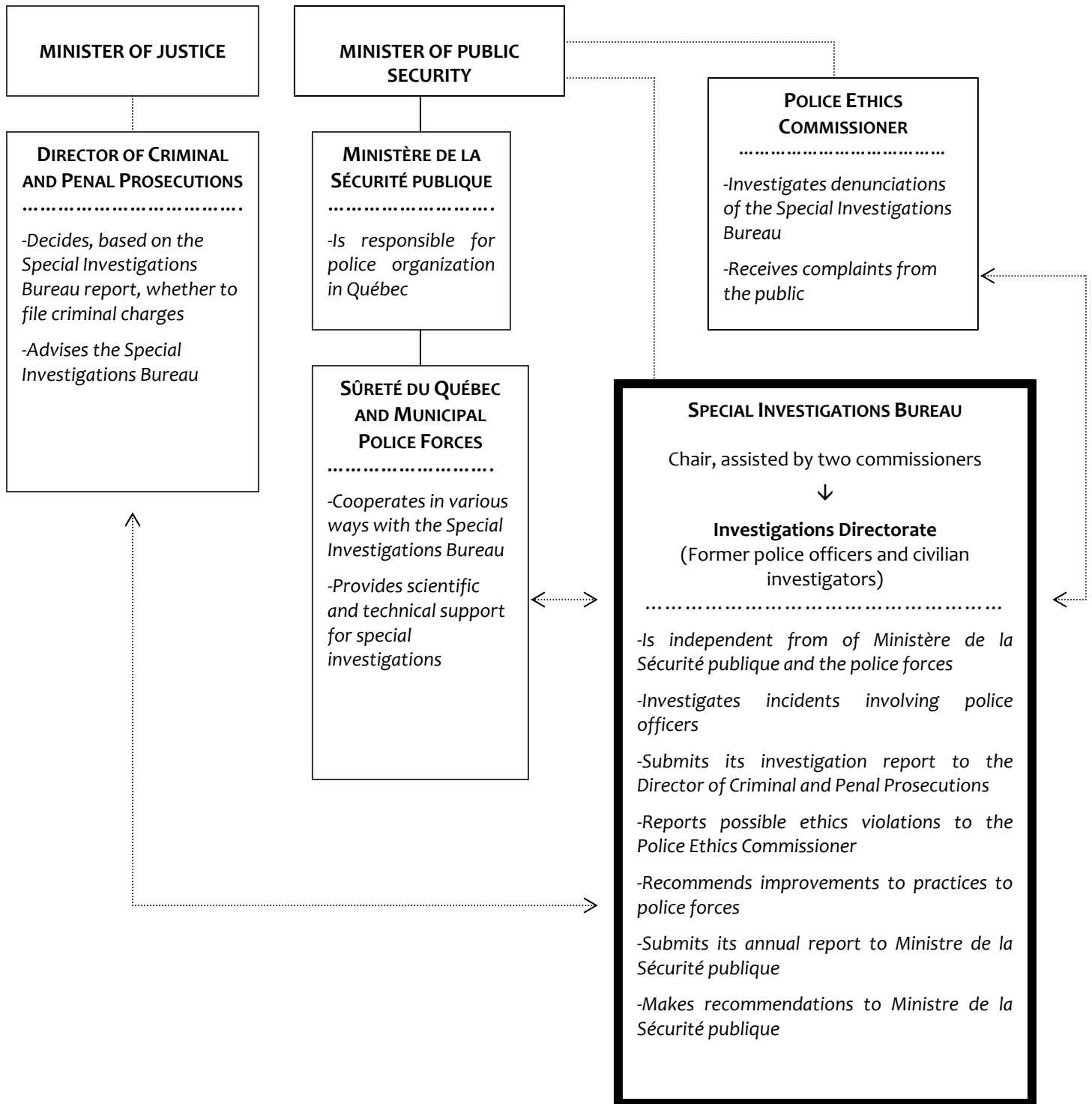
1. It ensures access to and coordination of specialized investigative resources.
2. It ensures that the police forces involved cooperate fully in the investigative process.
3. It allows for arbitration of possible conflicts between police forces and the investigating agency.
4. It reduces costs.

Certain guarantees must be included in the legislative amendments brought in, to ensure that the Bureau is able to meet the independence and impartiality requirements of its mandate.

The Special Investigations Bureau would therefore be under the authority of Ministère de la Sécurité publique, which would be answerable for the Bureau's actions before the National Assembly and responsible for submitting its annual report to that assembly.

However, certain guarantees must be included in the legislative amendments brought in so as to ensure that the Bureau is able to meet the independence and impartiality requirements of its mandate. Accountability mechanisms must also be established to allow for investigative processes to be reviewed after the fact.

Figure 1: Proposed Bureau of Special Investigations Organizational Structure



5.3.2 Chair and Commissioners

The Québec Ombudsman recommends that the legislative amendments establishing the Special Investigations Bureau include provisions to ensure that the Bureau be headed by civilian commissioners.

The Québec Ombudsman recommends that the legislative amendments establishing the Special Investigations Bureau include provisions to ensure that the Bureau be headed by civilian commissioners, and that these commissioners not be former police officers. They would be appointed by the government on recommendation by a selection committee made up of an equal number of member from at least two political parties represented in the National Assembly. We believe that this selection and appointment method would ensure the legitimacy and credibility of the commissioners chosen. We suggest that a chair and two other commissioners be appointed for renewable terms of five years.

The chair, who would serve full time, at least for the first year of implementation, would manage day-to-day operations and be accountable for activities. The appointee should be a jurist with extensive criminal law experience and an excellent knowledge of police investigative methods. The government would determine, according to need and the available resources, whether the other two commissioners discharge their duties of managing and overseeing the independent entity on a full-time or part-time basis.

The second stage in setting up the Special Investigations Bureau, once necessary legislative and regulatory changes are enacted, would be its operational implementation.

5.3.3 Investigative Team

The Bureau's investigative team could eventually be made up of former police officers with experience in criminal investigations as well as appropriately trained civilian investigators from other fields partnered with these experienced investigators.

The most common objection to the creation of an independent agency staffed by civilian investigators is that such investigators lack the requisite experience and skills.

Commissioner Davies comments on this issue are particularly instructive:

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 a suspect 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.⁷⁸

We share Davies' opinion, adding that the experience and expertise developed in Ontario and the United Kingdom in civilian investigator training can be drawn on to facilitate our task here.

The experience of Ontario's SIU, Northern Ireland's PONI, and the United Kingdom's IPCC shows that it is not only realistic, but effective and consistent to train civilian investigators to conduct credible and rigorous criminal investigations.

Furthermore, according to the Police Ombudsman for Northern Ireland (PONI), it costs that organization less to hire civilian investigators it trains itself than to hire police investigators. PONI's experience also shows that the presence of experienced criminal investigators is necessary in providing the training and support civilian investigators need. It takes many years for civilian investigators to gain senior status, but, from an economic perspective, it is more efficient to do so.

It is clear that investigators with extensive experience in major criminal investigations, whether police officers or not, will be required during the implementation phase of the Special Investigations Bureau in order to provide the necessary training to civilians. Independent entities in other jurisdictions have managed to recruit high-quality, experienced staff from the ranks of retired police officers, sometimes under difficult social conditions, as in Northern Ireland. There is no reason to suppose that the recruitment of former criminal investigators in Québec should be more difficult than elsewhere. The experience of other jurisdictions also shows that retired police investigators can be contracted in various regions and called on as needed.

Experiences elsewhere have further shown that, since investigators are called on to work daily on the same type of investigation, they acquire solid experience in investigating serious incidents involving police officers more quickly. Such investigations are no more complex than other similar investigations, because the identity of the persons involved and the weapon used are already known. Investigators are mainly interested in finding out why police officers acted as they did, which they do by evaluating accounts by witnesses.

⁷⁸ DAVIES, William H. Davies, Q.C. (2009), *Alone and Cold*. The Davies Commission Inquiry into the Death of Frank Paul. Interim Report. February 12, 2009. "Part 6 – The Criminal Investigations of Police-Related Deaths," "F. Developing a New System of the Criminal Investigation of Police-Related Deaths." Online at <http://frankpaulinquiry.ca/report/33-Part6-DevelopingANewSystem.pdf>, retrieved July 16, 2009.

Such investigations are no more complex than other similar investigations, because the identity of the persons involved and the weapon used are already known.

As we pointed out in Section 4.2.3 of this report, by opening the door to civilian investigators, training resources otherwise used for training police officers can be applied to training these investigators. Over time, the pool of trained investigators will become sufficient to ensure that qualified civilian investigators will be available.

For all these reasons, we are convinced that with appropriate training and mentoring from experienced criminal investigators, civilian investigators will quickly acquire the expertise required for investigating police officers. We are aware that this will not take place overnight, however, and a transition period will be necessary. We believe that civilians will need to be integrated gradually over a period of years and that sufficient resources will need to be dedicated to attaining the desired goal.

5.3.4 Relationships with Other Agencies

The proposed structure is simple. However, our model assumes cooperative relationships between the Special Investigations Bureau and various existing agencies. These links are critical to the Bureau's effectiveness.

5.3.4.1 Police Forces (Sûreté du Québec and Municipal Police Forces)

Certain aspects of investigations into serious incidents involving police officers require scientific expertise, particularly the analysis of physical evidence. The Special Investigations Bureau must have access to all specialized services in order to conduct forensic analyses of the evidence collected, such as ballistics, laboratory analysis, toxicology, and DNA analysis. Cooperation with specialized services is essential and can facilitate independent investigators' work by providing them with the same analytic capacities as those available for any other major criminal investigation. We believe that Ministère de la Sécurité publique can facilitate and organize this technical cooperation without compromising the Special Investigations Bureau's autonomy and control over its own investigations.

Investigations of serious incidents involving police officers require a rapid response from the investigators responsible. The efficiency of their work in the field and the time it takes them to begin the investigation are important elements guaranteeing the investigation's credibility. The capacity to deploy investigators to the scene of an incident quickly can be critical to the success of the investigation. Evidence can disappear or be compromised in the hour after an incident takes place. The agency that conducts these investigations must have the capacity to respond rapidly.

It is critical that the police departments involved cooperate by securing the scene, isolating witnesses, and preserving evidence intact until the independent investigators arrive. This cooperation must not interfere with the impartiality of investigations, and this work must be carried out according to the applicable

standards and rules. In less sensitive cases, certain parts of an investigation could be delegated to a designated police department where deemed appropriate by Special Investigations Bureau officials. In such cases, the Bureau would remain responsible at all times for the quality and impartiality of the investigation and would be empowered to deal with any irregularities that might occur.

The capacity to respond rapidly to an incident and send an appropriate number of investigators could be assured by developing a network of on-call investigators like that of Ontario's Special Investigations Unit (SIU). Part-time, similarly qualified Special Investigations Bureau investigators could be called upon as necessary. Experience in other jurisdictions shows that it is entirely possible, with proper support, to deploy an investigating team within a reasonable time frame.

The Ontario agency reports response times in its annual report. For example, in 2007–2008, the average response time for a firearms incident causing death or injury was between 1 hour and 10 minutes and 1 hour and 30 minutes. Detailed investigation reports from the British agencies (IPCC and PONI) include response times, which have also been very fast.⁷⁹

5.3.4.2 Director of Criminal and Penal Prosecutions

The Director of Criminal and Penal Prosecutions plays an important role at the conclusion of investigations conducted under the ministerial policy. It is the Director's responsibility to decide, based on the evidence collected by the designated police force during the investigation, whether there are grounds to file charges against the officers involved in an incident.

The Québec Ombudsman is of the opinion that this cooperation between the Director and the Special Investigations Bureau should be maintained as it is for all criminal investigations. Under the Director's founding legislation, the Director currently can advise peace officers and persons responsible for enforcement legislation on all aspects of criminal or penal investigations or prosecutions.⁸⁰

5.3.4.3 Police Ethics Commissioner

The Québec Ombudsman is also of the view that certain links should be established between the Special Investigations Bureau conducting criminal investigations and the police ethics system. For example, the Bureau should exercise the option provided for in Section 143 of the *Police Act*, that of sending complaint files regarding possible violations of regulatory obligations by police officers under investigation to the Police Ethics Commissioner or the police

⁷⁹ PONI has prescribed maximum response times of 90 minutes for the Belfast region and 3 hours for the rest of Northern Ireland. According to its 2008–2009 annual report, these targets were met in 100% of cases.

⁸⁰ *Act respecting the Director of Criminal and Penal Prosecutions*, R.S.Q., chap. D-9.1.1, section 20.

department concerned based on information obtained in the course of independent investigations.

We further believe that the Special Investigations Bureau should have the power to make recommendations directly to police forces regarding changes to their practices and policies if and when particular problems are uncovered in the course of an investigation.

5.3.4.4 Conclusion and Recommendations

In light of the above and in accordance with **recommendations 1 to 6** set forth in the preceding sections, the Québec Ombudsman has two additional recommendations which it deems essential to clarify the nature of the Special Investigations Bureau.

RECOMMENDATION 7 - SPECIAL INVESTIGATIONS BUREAU STRUCTURE AND OPERATIONS

Whereas the Minister of Public Security is responsible under the *Police Act* for determining the main policy directions in matters of police organization and crime prevention;

Whereas Recommendations 1 to 5 in this report, which aim to improve the consistency, formal framework, impartiality, transparency, and quality of the investigation process regarding serious incidents involving police officers, are an integral part of the independent body model proposed by the Québec Ombudsman;

Whereas Recommendation 2 proposes ongoing training for police force members with respect to their ethical and regulatory obligations, with a view to promoting adherence to these obligations;

Whereas Recommendation 4 aims to ensure the participation of qualified civilian investigators and the development of training programs for them in order to achieve this objective;

Whereas Recommendation 6 proposes the creation of a Special Investigations Bureau, an independent body in charge of investigating serious incidents involving police officers;

Whereas the Special Investigations Bureau should possess certain powers to ensure that it can fully and effectively fulfill its role;

Whereas certain organizational features should be described in more detail to clarify the nature of this Bureau;

Whereas these features will help ensure the independence, autonomy, and effectiveness of the new independent body;

THE QUÉBEC OMBUDSMAN RECOMMENDS

That the legislative and regulatory amendments creating the Special Investigations Bureau, an independent body in charge of investigating serious incidents involving police officers that lead to death, serious injury⁸¹, or injury resulting from the use of a firearm or conducted energy device during a police intervention or detention, provide that

- i. The Special Investigations Bureau report to the Minister of Public Security**
- ii. The Special Investigations Bureau be led by a director assisted by two part-time commissioners appointed by the government on the recommendation of a selection committee made up of an equal number of members of at least two political parties represented in the National Assembly**
- iii. The director of the independent body be a civilian who has never been a police officer or police force employee**
- iv. The commissioners have never been police officers**
- v. No active or on-duty officer be a member of the team or lead investigations, and that the long term objective be to have a majority of civilian investigators**
- vi. The investigators and lead investigator have the status of peace officer**
- vii. The Special Investigations Bureau can entrust, according to the circumstances and its assessment of the situation, certain parts of the investigation to a police force, particularly certain technical and scientific aspects, while retaining full responsibility for the investigation's conclusions**
- viii. The Special Investigations Bureau be granted the power to make recommendations to police chiefs regarding changes to their practices or policies when problems are observed following a criminal investigation**
- ix. The Special Investigations Bureau be granted the power to make recommendations to the Minister of Public Security about any issue related to the exercise of its mandate**

⁸¹ For details on the notion of "serious injury", see Section 4.2.1.4.

RECOMMENDATION 8 - ACCOUNTABILITY AND REPORTING

Whereas Ministère de la Sécurité publique is currently unable to evaluate in a satisfactory and detailed manner how the ministerial policy is applied, either from a professional or budgetary standpoint;

Whereas the Minister of Public Security would be responsible for ensuring that the Special Investigations Bureau, an independent body, has the appropriate conditions for investigating serious incidents involving police officers;

Whereas the Bureau should report on its activities once a year;

Whereas the proposed changes to current practices are substantial and considering that the process of setting up a Special Investigations Bureau and making it fully operational will require a transition period;

Whereas the Special Investigations Bureau should be granted the power to make recommendations to the Minister of Public Security on any issue related to the performance of its mandate;

Whereas it is in the interest of police officers, citizens, and the government that the transition period for setting up the Special Investigations Bureau be diligently and rigorously managed;

THE QUÉBEC OMBUDSMAN RECOMMENDS

That the Minister of Public Security table an annual report on the Special Investigations Bureau in the National Assembly in which this independent body will report on how it managed the investigations it conducted into serious incidents involving police officers that lead to death, serious injury⁸², or injury resulting from the use of a firearm or conducted energy device during a police intervention or detention

That the Special Investigations Bureau be evaluated after five years and the assessment tabled in the National Assembly

That the annual reports and the assessment of the Special Investigations Bureau take into account the attainment of the objectives set forth in the recommendations contained in this report, as well as the management process used to set up the Bureau

⁸² For details on the notion of "serious injury", see Section 4.2.1.4.

5.4 Administrative and Budgetary Implications

In Chapter 4, we stressed that any investigative process should be based on the following criteria: **consistent application of formal rules, transparency of the process and its results, impartiality, independence, oversight, and accountability**. For an independent organization to be able to conduct investigations while adhering to these criteria, it must be allocated sufficient human, organizational, and budgetary resources.

5.4.1 Economic Soundness of the Québec Ombudsman's Proposal

The decision to recommend the creation of an independent agency, notably one made up of civilian investigators, has an economic logic. Investing in the foundations and credibility of our justice system would provide benefits in terms of economics and administrative efficiency. An independent agency would help limit the legal challenges that currently arise subsequent to serious incidents involving police officers. By the same token, it would limit the high legal costs stemming from these challenges as well as the significant costs related to the public inquiries that are sometimes required in situations where police credibility and integrity are, at least with regard to appearances, called into question.

Investment in the foundations and credibility of our justice system offers benefits in terms of economics and administrative efficiency.

Legal challenges and public inquiries are not only very expensive but also drag police officers and their organizations into proceedings that are long and costly on the financial and human levels. The officers and organizations end up devoting time, effort, and resources to justify, defend, and explain their actions. Therefore, in addition to the costs of conducting investigations under the ministerial policy, it is also necessary to take into account the costs engendered by the setting into motion of other mechanisms.⁸³

What's more, overlap of recourse and investigative mechanisms in cases of serious incidents involving police officers engenders significant costs and inconveniences for the civilians and families involved.

In Québec, for the most controversial incidents involving officers, the Minister of Public Security requests a coroner's inquest. As the Minister of Public Security explained with regard to the Villanueva affair, the objective of these inquests is to shed light on all the circumstances of an incident. In such cases, additional costs are added to those incurred for the criminal investigation. Coroner's inquests like the one underway for the Villanueva affair can cost millions of dollars, notably because of the fees of the lawyers and the presiding judges and their legal advisors.

For his part, the Minister of Justice proposed in 2005, at the time the Office of the Director of Criminal and Penal Prosecutions was established, to invest in the

⁸³ These mechanisms are briefly described in Chapter 4.

creation of an independent organization on the basis of principles similar to those underlying this report:

“...the bill is based on three fundamental principles: first, accountability, notably that of the Attorney General who is accountable as an elected official; second, transparency... I think we gain a lot in terms of transparency and credibility as well as public trust. Third, the functional and institutional independence of the Director of Public Prosecution in the performance of daily activities.”⁸⁴

These elements lead us to conclude that the existence of a credible and impartial investigative system would allow for greater organizational and budgetary efficacy in all investigative processes. It is notably for these reasons that the Québec Ombudsman opts for the model of an independent, civilian-led agency making extensive use of existing resources to conduct criminal investigations into serious incidents involving police officers.

5.4.2 Costs and Funding of an Independent Agency

The funding of a police investigation agency is a fundamental issue. Such an organization must be able to properly fulfill its role. The main issue is not that such an organization is costly, especially given that the criminal investigations currently conducted by police forces under the procedure set out in the ministerial policy come with costs of their own. Rather, the main issue consists of ensuring that the investigative agency will have the proper means and investigative conditions to carry out its mission in a satisfactory manner.

As previously mentioned, Ministère de la Sécurité publique was unable to provide us with specific and documented budgetary data on the current costs of these investigations. Our most recent discussions on this subject date to January 25, 2010. Given that the information we received was incomplete, we have endeavored to present an exploratory estimate of the costs associated with implementing an independent agency. To this end, we based our assumptions principally on the experience in Ontario.

When Ontario’s Special Investigations Unit (SIU) was established in 1991, it was clearly underfunded. This situation was criticized in early reports on SIU implementation.⁸⁵ Commissioner Davies stressed that lessons should be learned from the difficulties experienced by the SIU in its first years:

⁸⁴ MARCOUX, Yvon, Minister of Justice and Attorney General, *Journal des débats de l’Assemblée nationale*. Review of Bill 109, Wednesday, November 30, 2005, p. 23. (translation)

⁸⁵ Notably in the following reports: RACE RELATIONS AND POLICING TASK FORCE (1992), *The Report of the Race Relations and Policing Task Force*. Toronto: Race Relations and Policing Task Force, and ADAMS, George W., Q.C. (1998), *Consultation Report of the Honourable George W. Adams to the Attorney General and Solicitor General Concerning Police Cooperation with the Special Investigations Unit*. Retrieved from the SIU website on January 5, 2009: <http://www.siu.on.ca/adams.html>.

“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.”⁸⁶

The SIU is completely independent. It has its own offices, laboratories, specialized forensic equipment, vehicles, and communication system. In 2007–2008, it had 72 employees, including some forty civilian investigators⁸⁷ and 10 forensic identification technicians. Interestingly, in outlying areas, the SIU relies on part-time investigators who are employed on an “as-needed” basis and can be mobilized on demand.

As regards operating costs, in 2007–2008 the SIU conducted 246 investigations with a total budget of 6.8 million dollars.

That said, to have a better idea of the sums required for the creation of an independent organization in Québec, more information is needed.

The current scope of the ministerial policy of Ministère de la Sécurité limits the number of investigations conducted to some thirty a year. We postulate that, even with the expanded mandate arising from the notion of “serious injury”⁸⁸ introduced in this report, the number of investigations conducted by an independent Québec agency would range from 130 to 145 a year, given the size of Québec’s population.⁸⁹

What’s more, by using the scientific and specialized services of police forces, the Québec agency would be able to conduct investigations at a lower cost than the Ontario organization, whose in-house forensic service represents close to 20% of its total budget. All things considered, we estimate that the operating costs of the

⁸⁶ DAVIES, William H. Davies, Q.C. (2009), *Alone and Cold*. The Davies Commission Inquiry into the Death of Frank Paul. Interim Report. February 12, 2009. “Part 6 – The Criminal Investigations of Police-Related Deaths,” “Developing a New System of the Criminal Investigation of Police-Related Deaths.” Online at <http://frankpaulinquiry.ca/report/33-Part6-DevelopingANewSystem.pdf>, retrieved on July 16, 2009.

⁸⁷ This team is made up of 12 full-time investigators and some 30 part-time investigators located throughout the province of Ontario. See MARIN, André, Ombudsman of Ontario (2008), *Oversight Unseen*. Ombudsman Report: Investigation into the Special Investigation Unit’s operational effectiveness and credibility, p. 18.

⁸⁸ For details on the notion of “serious injury,” see Section 4.2.1.4.

⁸⁹ Ontario had a population of 13 million in 2009, while Québec had 7.8 million, or approximately 60% of Ontario’s population. We therefore believe that around 20 investigators would be required, most of whom would be part time and available on demand.

independent agency in charge of conducting these investigations in Québec would be in the range of 2.5 to 3.3 million dollars.⁹⁰

The savings generated as a result of avoiding public inquiries are likely to largely or even entirely compensate for the additional costs brought about by the creation of this new structure.

In 2009–2010, the annual budget allocated to Québec police forces, all sources combined, was over \$1.4 billion. Investigations conducted under the ministerial policy are currently financed from these budgets. The amount required to operate an independent agency would represent 0.2% of Québec’s total annual police budget, which is relatively marginal. In addition, the savings generated by avoiding costly public inquiries are likely to largely or even entirely compensate for the additional costs brought about by the creation of this new structure.

In conclusion, it is important to remember that the cost of investigations into serious incidents involving police officers is currently divided among the police departments that conduct them. The Québec Ombudsman believes that an independent organization should be created by reallocating the resources currently used for this type of investigation. As such, any additional costs would be marginal in absolute terms and quite insignificant when compared to the advantages gained in terms of public confidence in police forces.

6 Conclusion

During the hearings of the Committee of Inquiry into Relations Between Police forces and Visible and Ethnic Minorities in 1988 (Bellemare report), the chair of the complaints committee of Service de police de la Communauté urbaine de Montréal stated that

“There are requirements for transparency and credibility that are not currently met. [...] It is not that the work is poorly done. Even if you have the best system and the best results in the world, if there’s a lack of public trust, there is a problem Mr. Chairman.”⁹¹

In our opinion, this excerpt from the Bellemare report shows that the Québec public was already raising questions in 1988 regarding the independence, impartiality, transparency, and accountability of the oversight mechanisms for police activity.

⁹⁰ To arrive at this amount, we estimated that the budget of the Québec organization would be around 60% of the one in Ontario, minus the costs associated with its forensic service.

⁹¹ BELLEMARE, Jacques, Chair (1988), *Enquête sur les relations entre les corps policiers et les minorités visibles et ethniques*. Rapport final du Comité d’enquête sur les relations entre les corps policiers et les minorités visibles et ethniques. Québec: Commission des droits de la personne du Québec, p. 277. (translation)

Over the years, major reforms have responded to some of these concerns, notably with the creation of the police ethics system.

Because the questions raised by Quebecers are still relevant, our analysis of the current Québec procedure for investigating serious incidents involving police officers convinces us that there is a need for change. The status quo is neither acceptable nor in the interest of police officers, citizens, or sound governance. This is why we have made eight recommendations in the hope they will prevent other situations that give rise to doubt and erode public trust.

Although aware of the changes in the culture and practices that these recommendations call for, the Québec Ombudsman believes that their implementation is essential to maintaining—if not restoring—public confidence in investigations into serious incidents involving police officers. We also believe that the police would be the first to benefit from greater public trust in an oversight mechanism that insures credibility, accountability, and cost effectiveness.

APPENDICES

Appendix I: History of Serious Incidents Involving Police Officers in Québec

1987 - The Anthony Griffin Affair and the Bellemare Report (1988)⁹²

In November 1987, Anthony Griffin, a young black man of 19, attempted to flee after being arrested by Allan Gosset, a Communauté urbaine de Montréal police officer. Gosset ordered Griffin to stop and aimed his revolver at him. He fired a shot that hit the young man in the head. Griffin died shortly after. Criminal charges were laid against Gosset, which led to a Supreme Court decision⁹³ ordering a second trial that ended in his acquittal. Griffin's family initiated a civil lawsuit that also led to a Supreme Court decision.⁹⁴ This ruling set a legal precedent with regard to civil injury by awarding damages to the young man's mother for *solatium doloris*, e.g., the moral prejudice she suffered as a result of her son's death. The trial courts had found that Gosset was negligent in the use of his firearm and that this negligence was the direct cause of the victim's death.

On December 4, 1987, in the wake of the Griffin affair, Commission des droits de la personne decided, on its own initiative, to investigate "allegations of discriminatory treatment and racist behavior toward visible and ethnic minorities by police forces and the causes of tension in relations between these minorities and the police forces."⁹⁵ To this end, the Commission created the Committee of Inquiry into Relations Between Police Forces and Visible and Other Ethnic Minorities, headed by Jacques Bellemare, a lawyer, criminologist, and Université de Montréal law professor.

In its report, the Committee made many recommendations, including a call for the creation of an independent system for handling complaints against police officers. The Committee also stressed that the disciplinary system in which "police judge each other is, in the public's eye, irremediably biased."⁹⁶ The Bellemare report is at the origin of the creation of today's police ethics system, which was created in 1988 by the *Act respecting police organization*⁹⁷ and implemented in September 1990.

1991 - The Marcellus François Affair and the Corbo Report (1992)⁹⁸

On July 18, 1991, Marcellus François, a young black man of 24, was killed by an officer who believed he was armed. In January 1992, Service de police de la Communauté urbaine de Montréal (SPCUM) acknowledged that the police action in the Marcellus François had been a failure, and the officer involved was reassigned to administrative duties. The coroner

⁹² BELLEMARE, Jacques, Chair (1988), *Enquête sur les relations entre les corps policiers et les minorités visibles et ethniques*, op. cit., see Note 90.

⁹³ *R. v. Gosset*, [1993] 3 S.C.R. 76.

⁹⁴ *Augustus v. Gosset*, [1996] 3 S.C.R. 268.

⁹⁵ COMMISSION DES DROITS DE LA PERSONNE, Resolution COM-295-5.1, December 4, 1987. (translation)

⁹⁶ *Ibid.* (translation)

⁹⁷ R.S.Q., c. O-8.1. Chapter O-8.1 was rescinded and replaced in 2000 by the *Police Act* (c. P-13.1)

⁹⁸ CORBO, Claude, Chair (1992), *Une occasion d'avancer*. Rapport du Groupe de travail du ministre de la Sécurité publique du Québec sur les relations entre les communautés noires et le Service de police de la Communauté urbaine de Montréal. Québec: Ministère de la Sécurité publique du Québec.

investigating the affair, Harvey Yarowsky, found the SPCUM seriously at fault and recommended the creation of a task force responsible for developing concrete policies to fight racism at SPCUM.

Consequently, on May 15, 1992, Ministre de la Sécurité publique established the Task Force on Relations Between the Black Communities and the SPCUM. This task force, headed by Claude Corbo, made numerous recommendations,⁹⁹ calling among other things for the creation of an organization to analyze, research, and reflect on the functioning of the police in a democratic society characterized by diversity. The organization's first mandate would have been to evaluate how police officers exercise discretionary power in light of the existing perception that treatment varies depending on the identity of the person over whom such power is exercised.

1993 - The Richard Barnabé Affair

On December 14, 1993, Richard Barnabé went into a coma after several officers from Service de police de la Ville de Montréal (SPVM) tried to subdue him in a police jail cell. He never regained consciousness and eventually died on May 2, 1996. On January 14, 1994, the Attorney General laid assault charges against six of the officers involved. At the end of the proceedings, the Superior Court found four of the six agents guilty. This verdict was unanimously upheld by the Québec Court of Appeal. The conduct of the officers involved in the Barnabé affair was also examined by the Police Ethics Commissioner, and then the Police Ethics Committee, which ordered the dismissal of certain officers and suspended others without pay. The officers appealed the decision to the Court of Québec, which overturned the Police Ethics Committee decision. This led to much public criticism. On April 25, 2004, the Superior Court quashed the Court of Québec decision and reestablished the Police Ethics Committee decision. This judgment was ultimately brought before the Court of Appeal and affirmed on May 4, 2006.

1995 - The Martin Suazo Affair

On May 31, 1995, police officers intercepted three individuals they were pursuing for robbery. During the operation, officer Michel Garneau shot suspect Martin Suazo while making his arrest, hitting him in the head. Suazo died as a result of his injury. Following a Sûreté du Québec investigation, no criminal charges were laid against the officer who fired the shot. A coroner's inquest was conducted and concluded that the weapon had been accidentally discharged while the officer was maneuvering to force Suazo to the ground. However, the coroner leading the investigation made numerous recommendations in his report with regard to police firearm training. Officer Garneau was cited before the Police Ethics Committee and acknowledged that he had not used his service weapon with caution and good judgment during the incident. The Committee took disciplinary action in 2001, suspending him without pay for 45 days.

1999 - The Jean-Pierre Lizotte Affair

On September 5, 1999, two SPVM officers answered a call at a Montréal café after employees had evicted Jean-Pierre Lizotte. In the course of their intervention, an officer struck Lizotte in

⁹⁹ *Ibid.*, recommendations 19 and 20, p. 29-30.

the face, and he died following injuries he received. The investigation was entrusted to Sûreté du Québec and led to charges against one of the two officers, who was acquitted following a criminal trial in 2002. The two officers were cited before the Police Ethics Committee in 2004 and, in 2008, the Committee found that they had demonstrated recklessness and negligence during their intervention. The penalty was handed down in February 2009 and the two officers were suspended without pay for 20 and 25 days respectively.

2005 - The Mohamed Anas Bennis Affair

Mohamed Anas Bennis, a 25-year-old Moroccan immigrant, was killed by an SPVM officer on December 1, 2005 in the course of a Sûreté du Québec building search. Bennis was not linked to the search in any way and had been leaving a nearby mosque when the incident occurred. Ministre de la Sécurité publique entrusted the investigation into the officer's actions and the circumstances surrounding Bennis's death to Service de police de la Ville de Québec (SPVQ). Based on the conclusions of the SPVQ investigation, the Québec Crown Prosecutor decided that there were no grounds for charges against the police officer involved. In June 2008, the chief coroner ordered an inquest into the circumstances of the death. This inquest is currently being challenged in court by Fraternité des policiers et des policières de Montréal.

2007 - The Claudio Castagnetta Affair

Claudio Castagnetta was arrested on September 18, 2007, after being shot multiple times with an electronic stun gun known as a Taser. He was detained and spent the night in an agitated state, banging his head against the walls of his cell at the La Cité borough police station in Québec City. The next day, he was too confused to appear in court. He suffered convulsions prior to his transfer to the Québec City detention center. Because he was still in an agitated state during the transfer, a hockey helmet was placed on his head to prevent him from hitting it against the grilled walls. He was unconscious upon his arrival at the detention center and was declared dead the next day at Hôpital de l'Enfant-Jésus.¹⁰⁰

Ministre de la Sécurité publique entrusted the investigation to Sûreté du Québec, in accordance with the ministerial policy. On August 22, 2008, after having read the Sûreté du Québec investigation report and the autopsy report, the Director of Criminal and Penal Prosecutions stated that there was no reason to conclude the police had used more force than necessary or were criminally negligent and he decided that criminal charges would not be laid against the officers involved in Castagnetta's arrest and incarceration.

On November 4, 2008, the coroner submitted his investigation report.¹⁰¹ He concluded that Castagnetta had not been mistreated during the police intervention and that his death was not caused by the use of the Taser. He determined that the death was due to cerebral edema following use of amphetamines. The coroner noted, however, that even though many people—including police officers—had noticed that Castagnetta was in a state of distress during his

¹⁰⁰ BUREAU DU CORONER (2008), "Décès de M. Claudio Castagnetta." Press release of November 4. Available online at <http://qgov.newswire.ca/gouvqc/communiqués/GPQF/Novembre2008/04/c4880.html>, retrieved on July 13, 2009.

¹⁰¹ Source: <http://www.communiqués.gouv.qc.ca/gouvqc/communiqués/GPQF/Novembre2008/04/c4880.html>.

arrest and detention, neither the police nor correctional officers had given Castagnetta access to the medical care he needed. The chief coroner found the investigation report sufficient and did not order an inquest.

Castagnetta's family filed an approximately \$780,000 civil lawsuit against Québec City and the Attorney General of Québec in May 2009. An out-of-court settlement was reached between the family, Québec City, and the Government of Québec, ending the lawsuit.

Appendix II: Table Summarizing Professional Ethics and Police Investigation Reports in Québec

Commission and year	Mandate	Findings and notable recommendations	Followup
<p><i>Committee of Inquiry into Relations Between Police Forces and Visible and Other Ethnic Minorities (Comité d'enquête sur les relations entre les corps policiers et les minorités visibles et ethniques)</i></p> <p>1987</p> <p>Chaired by Jacques Bellemare</p>	<p>In the wake of the Anthony Griffin affair¹⁰², Commission des droits de la personne tasked this committee with investigating "allegations of discriminatory treatment and racist behavior toward visible and ethnic minorities by police forces and the causes of tension in relations between these minorities and the police forces."¹⁰³</p>	<p>The Committee's recommendations included a call for the creation of an independent system for handling complaints against police officers.</p> <p>The Committee stressed that the disciplinary system in which "police judge each other is, in the public's eye, irremediably biased."¹⁰⁴</p>	<p>Creation of the police ethics system in 1988 under the <i>Act respecting police organization</i> and implementation of this system in 1990. In 2000, this law was replaced by the <i>Police Act</i>.</p>
<p><i>Task Force on Relations Between the Black Communities and the SPCUM (Groupe de travail du ministre de la Sécurité publique du Québec sur les relations entre les communautés noires et le Service de police de la Communauté urbaine de Montréal)</i></p> <p>1992</p> <p>Chaired by Claude Corbo</p>	<p>Task force struck by Ministre de la Sécurité publique following the Marcellus François affair.¹⁰⁵</p>	<p>The Task Force made many recommendations in its report entitled <i>Une occasion d'avancer</i> [An Opportunity for Progress].¹⁰⁶ The Task Force recommended the creation of an organization to analyze, research, and reflect on the functioning of the police in a democratic society characterized by diversity. This organization's first mandate would have been to evaluate how police officers exercise discretionary power in light of the existing perception that treatment varies depending on the identity of the person over whom such power is exercised.</p>	<p>This organization was never established. However, a task force on racial profiling was created in 2003. Cochaired by Ministère de l'Immigration et des Communautés culturelles and Ministère de la Sécurité publique, the task force brought together eight ministries and government agencies as well as some ten community groups.¹⁰⁷</p>

¹⁰² For details on the Anthony Griffin affair, see Appendix I.

¹⁰³ COMMISSION DES DROITS DE LA PERSONNE, Resolution COM-295-5.1, December 4, 1987. (translation)

¹⁰⁴ *Ibid.* (translation)

¹⁰⁵ For details on the Marcellus François affair, see Appendix I.

¹⁰⁶ CORBO, Claude, Chair (1992), *Une occasion d'avancer*, *op. cit.*

¹⁰⁷ MINISTÈRE DE LA SÉCURITÉ PUBLIQUE, Direction de l'organisation et des pratiques policières, "Comité sectoriel du milieu policier sur le profilage racial – Bilan des travaux effectués," Québec, April 2008.

Commission and year	Mandate	Findings and notable recommendations	Followup
<p><i>Task Force to Review Criminal Investigation Practices Within Police Forces in Québec (Group de travail chargé d'examiner les pratiques en matière d'enquêtes criminelles au sein des corps de police du Québec)</i></p> <p>1995</p> <p>Chaired by Jacques Bellemare</p>	<p>This Task Force was created by Ministre de la Sécurité publique following allegations concerning the investigation techniques Québec police forces used for major crimes.</p> <p>The report analyzed all the investigative techniques used as well as the selection and training of investigators and investigation monitoring and oversight.</p>	<p>One of the recommendations concerned the importance of the oversight that Ministre de la Sécurité publique must provide. The Task Force also recommended that Ministère de la Sécurité publique develop and apply directives on investigation management and the other main subjects addressed in the report.¹⁰⁸</p>	
<p><i>Review Report on the Mechanisms and Functioning of the Police Ethics System (Rapport de l'examen des mécanismes et du fonctionnement du système de déontologie policière)</i>¹⁰⁹</p> <p>1996</p> <p>Chaired by Claude Corbo</p>	<p>Six years after the police ethics system was created, Ministère de la Sécurité publique tasked Claude Corbo with examining and reviewing its functioning.</p>	<p>The report made many recommendations, including the following one addressed to Ministre de la Sécurité publique calling for</p> <p><i>“a task force to evaluate the appropriateness of creating, when the state of public finances allows, a specialized police force having the following responsibilities:</i></p> <p><i>a) conduct professional ethics investigations and, when circumstances require, criminal investigations concerning police force members...”</i>¹¹⁰</p>	

¹⁰⁸ BELLEMARE, Jacques, Chair (1996), *Les pratiques en matière d'enquêtes criminelles au sein des corps de police du Québec*. Rapport final du Groupe de travail chargé d'examiner les pratiques en matière d'enquêtes criminelles au sein des corps de police du Québec, Presented to Ministre de la Sécurité publique, Guideline 4, p. 264.

¹⁰⁹ CORBO, Claude, Chair (1996), *À la recherche d'un système de déontologie policière juste, efficient et frugal*. Rapport de l'examen des mécanismes et du fonctionnement du système de déontologie policière. Québec: Ministère de la Sécurité publique du Québec.

¹¹⁰ *Ibid.*, p. 114. (translation)

Commission and year	Mandate	Findings and notable recommendations	Followup
<p><i>Commission of Inquiry into the Sûreté du Québec (Commission d'enquête chargée de faire enquête sur la Sûreté du Québec)</i></p> <p>1999</p> <p>Chaired by the Honorable Lawrence A. Poitras</p>	<p>The Commission was tasked with investigating Sûreté du Québec practices with regard to criminal investigations for major crimes as well as management and oversight of such investigations and also the practices in place with regard to internal investigations concerning the conduct of its members. This investigation was ordered following the Matticks affair, in which police officers were accused of fabricating evidence, obstruction of justice, perjury, and forgery.</p>	<p>The Poitras Commission report¹¹¹ shed light on a disturbing organizational culture and a crisis of values at Sûreté du Québec.</p> <p>The Commission concluded that despite the efforts of the force and its corrective measures with regard to the management of internal investigations and criminal investigations into major crimes, "Sûreté du Québec lacks the required impartiality, and therefore the necessary credibility, to conduct investigations into crimes that might have been committed by its officers."¹¹²</p> <p>The report made many recommendations to facilitate the denunciation of criminal conduct by police colleagues and better structure the internal investigation process. In particular, it recommended that police who witness a crime committed by another officer be obliged to denounce it and collaborate with the criminal investigation and that this obligation be expressed through a provision in the <i>Regulation respecting the discipline of members of the Sûreté du Québec</i>.</p>	<p>The recommendation concerning the obligation to collaborate with a police investigation into a police colleague was integrated in the new <i>Police Act</i>¹¹³ adopted in 2000.</p>

¹¹¹ POITRAS, Lawrence, Chair (1999), *Pour une police au service de l'intégrité et de la justice*. Rapport de la Commission d'enquête chargée de faire enquête sur la Sûreté du Québec. Québec: Ministère de la Sécurité publique du Québec.

¹¹² *Ibid.*, p. 35. (translation)

¹¹³ R.S.Q., c. P-13.1.

Appendix III: Complete Texte of “Pratique policière 2.3.12 – Décès à l’occasion d’une intervention policière ou durant la détention” [Police Practice: 2.3.12 – Death in the Event of a Police Intervention or Detention]

Note: Certain passages containing personal information were redacted by the Québec Ombudsman.

GUIDE DE PRATIQUES POLICIÈRES

À L'USAGE EXCLUSIF DES SERVICES DE POLICE

Section : 2.0 Opérations	Sous-section : 2.3 Arrestation et détention
Sujet : 2.3.12 Décès à l'occasion d'une intervention policière ou durant la détention	En vigueur le : 30 juin 1995 Révisée le : 3 mars 2003
<p>A. DÉFINITIONS</p> <p>A.1 Décès à l'occasion d'une intervention policière : comprend tout décès survenu lors d'une intervention policière de quelque nature que ce soit.</p> <p>A.2 Détention : action de priver une personne de sa liberté, de la limiter dans ses mouvements et de la garder sous contrainte physique.</p> <p><i>Note : Il peut y avoir détention sans qu'il y ait contrainte physique ou menace de contrainte physique si la personne se soumet ou acquiesce à la privation de liberté en croyant qu'elle n'a pas le choix d'agir autrement.</i></p> <p>A.3 Mort évidente : le décès d'une personne est évident et ne nécessite pas de constat par un médecin lorsqu'il s'agit d'ossements ou lorsque le cadavre présente des signes évidents de décapitation, de sectionnement complet du corps, de compression complète ou d'évidement du crâne, de putréfaction avancée, d'adipocire, de momification ou de calcination.</p> <p>A.4 Décès apparent : tout décès autre qu'une mort évidente et qui doit être constaté par un médecin.</p> <p>A.5 Service de police désigné : service de police désigné pour effectuer l'enquête sur l'événement au cours duquel le décès est survenu (voir annexe A).</p> <p>A.6 Service de police impliqué : le service de police de qui relèvent le ou les policiers impliqués ou concernés dans l'événement.</p> <p>B. PRINCIPES D'ORIENTATION</p> <p>B.1 La présente pratique constitue la politique ministérielle en matière de décès à l'occasion d'une intervention policière ou durant la détention.</p> <p>B.2 Lorsqu'une personne décède ou subit des blessures pouvant causer la mort à l'occasion d'une intervention policière ou durant sa détention par un service de police, le service de police désigné effectue l'enquête sur cet événement afin d'assurer l'impartialité et la transparence de celle-ci.</p> <p>C. PRATIQUES D'APPLICATION</p> <p>C.1 Les policiers du service de police impliqué qui sont sur les lieux de l'événement :</p> <p>a) avisent le coroner et :</p> <ul style="list-style-type: none">- en cas de décès apparent, appliquent les mesures appropriées et demandent l'assistance d'un service ambulancier ou d'un médecin et ensuite protègent la scène de l'événement;	

Section : 2.0 Opérations

Sous-section : 2.3 Arrestation et détention

Sujet : 2.3.12 Décès à l'occasion d'une intervention policière ou durant la détention

En vigueur le : 30 juin 1995

Révisée le : 3 mars 2003

- en cas de **mort évidente**, protègent la scène de l'événement et y laissent le cadavre jusqu'à ce que les enquêteurs du service de police désigné en décident autrement;
 - b) avisent sans délai l'officier responsable de leur service de police;
 - c) localisent les témoins civils et policiers, prennent note des moyens de les rejoindre et s'assurent de leur disponibilité aux fins de l'enquête.
- C.2 Tout policier impliqué ou concerné dans l'événement demeure disponible aux fins de l'enquête par le service de police désigné.
- C.3 L'officier responsable du service de police impliqué avise immédiatement son supérieur afin que l'information soit aussitôt transmise au directeur ou à son représentant.
- C.4 Le directeur du service de police impliqué ou son représentant :
- a) avise immédiatement le service de police désigné afin que l'enquête soit entreprise sans délai;
 - b) avise le ministère de la Sécurité publique en informant, dans l'heure qui suit l'événement, et ce, par téléphone et aussi par écrit via les télécopieurs, une des personnes suivantes :
 - Bureau du sous-ministre associé
Monsieur [REDACTED]
Téléphone bureau : (418) [REDACTED]
Télécopieur : (418) [REDACTED]
Cellulaire : (418) [REDACTED]
Téléavertisseur : [REDACTED]
 - Monsieur [REDACTED]
Sous-ministre associé à la Direction générale des affaires policières, de la prévention et des services de sécurité
Téléphone bureau : (418) [REDACTED]
Télécopieur : (418) [REDACTED]
Cellulaire : (418) [REDACTED]
Téléavertisseur : [REDACTED]

Dans l'éventualité où aucune des deux personnes susmentionnées n'est disponible, vous pouvez communiquer avec :

Monsieur [REDACTED]
Direction générale des affaires policières, de la prévention et des services de sécurité
Téléphone : (418) [REDACTED]
Télécopieur : (418) [REDACTED]
Cellulaire : (418) [REDACTED]
Téléavertisseur : [REDACTED]

Section : 2.0 Opérations		Sous-section : 2.3 Arrestation et détention
Sujet : 2.3.12 Décès à l'occasion d'une intervention policière ou durant la détention		En vigueur le : 30 juin 1995 Révisée le : 3 mars 2003
<p>D. <u>CONSIDÉRATIONS</u></p> <p>D.1 Le service de police impliqué est responsable :</p> <ul style="list-style-type: none"> a) du maintien de la sécurité et de la conservation de la preuve jusqu'à l'arrivée des enquêteurs du service de police désigné; b) de l'enquête portant sur l'infraction ou l'incident à l'origine de l'intervention policière, à l'exception des actions effectuées par les policiers qui sont sous enquête du service de police désigné. À cette fin, le service de police impliqué maintient la liaison avec le service de police désigné; c) d'obtenir l'assistance médicale requise; d) d'assurer la liaison avec les médias en se tenant strictement aux faits, sans commenter la responsabilité des policiers impliqués, et les réfèrent, pour toute autre information, au service de police désigné chargé de l'enquête. <p>D.2 La protection de la vie humaine a toujours préséance sur la conservation de la preuve.</p> <p>D.3 Lorsque le décès survient dans un poste de police, le directeur du service ou, en son absence, la personne qui y détient l'autorité doit en aviser immédiatement le coroner.</p> <p>E. <u>SOURCES</u></p> <p>E.1 <i>Loi sur la recherche des causes et des circonstances des décès</i>, L.R.Q., c. R-02, notamment les articles :</p> <ul style="list-style-type: none"> 38(4) (décès dans un poste de police); 44 (avis au coroner); 47 (enquête par un policier à la demande d'un coroner); 48 (rapport du policier au coroner). <p>E.2 <i>Code criminel, notamment les articles :</i></p> <ul style="list-style-type: none"> 25 (emploi de la force); 26 (force excessive). 		

Sujet 2.3.12 : Décès à l'occasion d'une intervention policière ou durant la détention

Résumé de la politique relative aux enquêtes policières dans le cas de décès lors d'une intervention policière ou durant la détention

DANS LES SITUATIONS SUIVANTES	CORPS DE POLICE DÉSIGNÉ POUR EFFECTUER L'ENQUÊTE (*)
Lorsque le décès concerne les activités d'un policier ou d'un corps de police oeuvrant au Québec <u>autre que la Sûreté du Québec.</u>	SÛRETÉ DU QUÉBEC
Lorsque le décès concerne les activités de la Sûreté du Québec ou un de ses membres sur le territoire des districts de la SQ suivants : Mauricie, Centre du Québec, Estrie, Laurentides, Lanaudière, Laval, Outaouais, Montérégie, Abitibi-Témiscamingue, Nord du Québec, Montréal.	SERVICE DE POLICE DE LA VILLE DE MONTRÉAL
Lorsque le décès concerne <u>à la fois</u> les activités d'un policier ou d'un corps de police municipal et de la Sûreté du Québec ou d'un de ses membres sur le territoire des districts suivants : Mauricie, Centre du Québec, Estrie, Laurentide, Lanaudière, Laval, Outaouais, Montérégie, Abitibi-Témiscamingue, Nord du Québec, Montréal.	
Lorsque la Sûreté du Québec ne peut conduire l'enquête.	
Lorsque le décès concerne les activités de la Sûreté du Québec ou d'un de ses membres sur le territoire des districts de la Sûreté du Québec suivants : Bas Saint-Laurent, Saguenay-Lac St-Jean, Québec, Côte-Nord, Gaspésie les Iles, Chaudière-Appalaches.	SERVICE DE POLICE DE LA VILLE DE QUÉBEC
Lorsque le décès concerne <u>à la fois</u> les activités d'un policier ou d'un cops de police municipal <u>et</u> de la Sûreté du Québec ou d'un de ses membres sur le territoire des districts de la SQ suivants : Bas Saint-Laurent, Saguenay-Lac St-Jean, Québec, Côte-Nord, Gaspésie les Iles, Chaudière-Appalaches.	
Lorsque la Sûreté du Québec ne peut conduire l'enquête.	

(*) Sur autorisation des autorités du ministère de la Sécurité publique, l'enquête peut être confiée aux corps de police de Laval-Longueuil-Gatineau.

AUX DIRECTEURS DE CORPS DE POLICE

Objet : Pratique policière : 2.3.12 – Décès à l'occasion d'une intervention policière ou durant la détention
N/Réf. : 2002-17

Messieurs les Directeurs,

Par le présent communiqué, nous vous informons des changements à apporter en ce qui a trait à la désignation des répondants du ministère de la Sécurité publique en regard de l'application de la pratique policière ci-dessus mentionnée.

Comme vous le savez, cette pratique policière constitue une politique ministérielle qui définit les lignes directrices à observer à la suite d'un décès lors d'une intervention policière ou durant la détention d'une personne par un service de police. Il importe de souligner que cette pratique policière s'applique pour le décès de toute personne **autre qu'un policier**.

Par conséquent, je vous rappelle qu'il incombe à tout directeur d'un service de police ou son représentant, d'aviser le ministère de la Sécurité publique d'un tel événement en informant, **dans l'heure qui suit**, l'un des répondants désignés à cette fin, à savoir :

Monsieur _____
Sous-ministre associé des affaires policières, de la prévention et
des services de sécurité
Téléphone : _____
Cellulaire : _____
Téléavertisseur : _____

Advenant que celui-ci ne soit pas disponible, il vous est possible de joindre :

Monsieur _____
Directeur des affaires policières et de la prévention de la
criminalité
Téléphone : _____
Cellulaire : _____
Téléavertisseur : _____

Dans l'éventualité où aucune des deux personnes ci-dessus mentionnées n'est disponible, vous pouvez communiquer avec :

Monsieur _____
Sous-ministre de la Sécurité publique
Téléphone : _____
Cellulaire : _____

...2

Par ailleurs, nous joignons en annexe le résumé de la politique relative aux enquêtes policières dans le cas de décès lors d'une intervention policière ou durant la détention, lequel constitue un guide pour l'identification du corps de police désigné pour effectuer une enquête dans ces situations.

Comptant sur votre collaboration habituelle pour diffuser le présent communiqué, je vous prie d'agréer, Messieurs les Directeurs, l'expression de mes sentiments les meilleurs.

Le sous-ministre associé,

Régis Larrivée

Le 28 novembre 2003

À TOUS LES DIRECTEURS DE CORPS DE POLICE

Objet : Pratique policière : 2.3.12 – Décès ou blessures graves laissant craindre pour la vie à l'occasion d'une intervention policière ou durant la détention

N/Réf : 2003-40

Messieurs les Directeurs,

Par la présente, nous vous informons des changements apportés en ce qui a trait à la désignation des répondants du ministère de la Sécurité publique au regard de l'application de la pratique policière ci-dessus mentionnée.

Comme vous le savez, cette pratique policière constitue une politique ministérielle qui définit les lignes directrices à observer à la suite d'un décès lors d'une intervention policière ou durant la détention d'une personne par un service de police. Il importe de souligner que cette pratique policière s'applique pour le décès de toute personne ou lorsque que l'on craint pour sa vie.

Par conséquent, je vous rappelle qu'il incombe à tout directeur d'un service de police ou son représentant, d'aviser le ministère de la Sécurité publique d'un tel événement en informant, **dans l'heure qui suit**, l'un des répondants désignés à cette fin, à savoir :

Monsieur
Direction générale des affaires policières, de la prévention et des services de sécurité
Téléphone bureau :
Cellulaire :
Téléavertisseur :

Advenant que celui-ci ne soit pas disponible, il vous est possible de joindre :

Monsieur
Sous-ministre associé à la Direction générale des affaires policières, de la prévention et des services de sécurité
Téléphone :
Cellulaire :
Téléavertisseur :

Dans l'éventualité où aucune des deux personnes susmentionnées n'est disponible, vous pouvez communiquer avec :

Monsieur
Direction générale des affaires policières, de la prévention et des services de sécurité
Téléphone :
Cellulaire :
Téléavertisseur :

.../2

Par ailleurs, nous joignons en annexe le résumé de la politique relative aux enquêtes policières dans le cas de décès lors d'une intervention policière ou durant la détention, lequel constitue un guide pour l'identification du corps de police désigné pour effectuer une enquête dans ces situations.

Comptant sur votre collaboration habituelle pour diffuser cette information, je vous prie d'agréer, Messieurs les Directeurs, l'expression de mes sentiments les meilleurs.

Le sous-ministre associé,

ORIGINAL SIGNÉ

Michel Beaudoin

Le 4 août 2004

À TOUS LES DIRECTEURS DE CORPS DE POLICE

Objet : Décès ou blessures graves laissant craindre pour la vie à l'occasion d'une intervention policière ou durant la détention

Blessures par balles survenues lors de l'utilisation d'une arme à feu à l'occasion d'une intervention policière

N/Réf : 2004-13

Messieurs les Directeurs,

Les membres du comité de révision du Guide des pratiques policières seront saisis à nouveau au cours des prochaines semaines pour réviser la pratique policière 2.3.12 « Décès à l'occasion d'une intervention policière ou durant la détention ».

Toutefois d'ici à ce que la pratique soit révisée, veuillez prendre note que la politique ministérielle (ref. communiqué 2003-40) est modifiée à compter de ce jour **pour y inclure, en plus des décès et des blessures graves laissant craindre pour la vie, les cas de blessures par balles survenues lors de l'utilisation d'une arme à feu à l'occasion d'une intervention policière.**

L'enquête policière de tels événements sera par conséquent, confiée à un corps de police autre que celui de qui relève le policier.

Par conséquent, je vous rappelle qu'il incombe à tout directeur d'un corps de police ou son représentant, d'aviser le ministère de la Sécurité publique d'un tel événement en informant, **dans l'heure qui suit**, l'un des répondants désignés à cette fin, à savoir :

Monsieur
Sous-ministre associé à la Direction générale des affaires policières,
de la prévention et des services de sécurité
Téléphone : ()
Cellulaire : ()
Téléavertisseur : ()

Advenant que celui-ci ne soit pas disponible, il vous est possible de joindre :

Monsieur
Direction générale des affaires policières, de la prévention et
des services de sécurité
Téléphone bureau : ()
Cellulaire : ()
Téléavertisseur : ()

Nous comptons sur votre collaboration habituelle pour voir à la mise en application de la présente politique et en informer les membres de votre corps de police.

ORIGINAL SIGNÉ

Michel Beaudoin

Le 6 septembre 2007

À TOUS LES DIRECTEURS DE CORPS DE POLICE

**Objet : Décès ou blessures graves laissant craindre pour la vie à l'occasion
d'une intervention policière ou durant la détention**

**Blessures par balles survenues lors de l'utilisation d'une arme à feu à
l'occasion d'une intervention policière**

Changement de répondants à compter du 10 septembre 2007.

N/Réf : 2007-15

Messieurs les Directeurs,

Par la présente, je vous informe que le répondant principal et le substitut, en regard de l'application des directives auxquelles il est fait référence en objet, seront changés à compter du 10 septembre 2007, et ce, jusqu'à nouvel ordre. Madame deviendra ainsi répondante principale et madame agira comme substitut. Leurs coordonnées respectives sont indiquées plus bas.

En guise de rappel, il incombe à tout directeur d'un corps de police ou son représentant, d'aviser le ministère de la Sécurité publique d'un événement comme ceux décrits plus haut en informant, dans l'heure qui suit, l'un des répondants désignés à cette fin et dont voici les coordonnées :

Madame

Directrice générale adjointe à la Direction générale des affaires
policières, de la prévention et des services de sécurité
Téléphone bureau :
Cellulaire :

Advenant que cette dernière ne soit pas disponible, il vous sera possible de joindre :

Madame

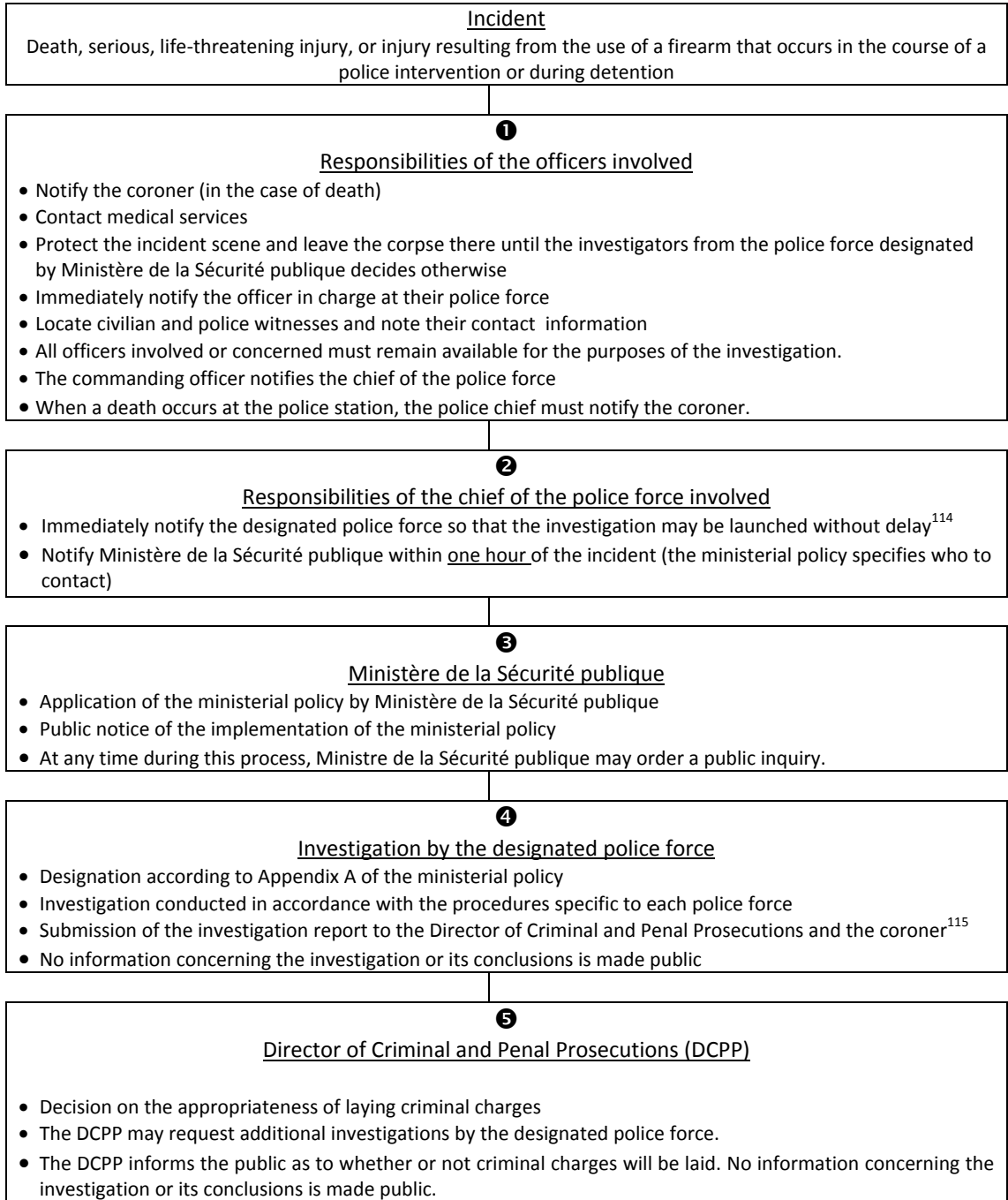
Directrice de l'organisation et des pratiques policières
Téléphone bureau :
Cellulaire :

Comptant sur votre collaboration habituelle pour diffuser cette information, je vous prie d'agréer, Messieurs les Directeurs, mes salutations distinguées.

Original signé

Robert Lafrenière

Appendix IV: Diagram of the Procedure Followed in Implementing the Ministerial Policy Regarding Death in the Event of a Police Intervention or Detention



¹¹⁴ In the official text, this responsibility is among those entrusted to the chief of the police force involved. Ministère de la Sécurité publique confirmed that in practice it assumes this responsibility. The Ministry also explained that its policy would soon be modified to reflect current practices.

¹¹⁵ See Chapter 4 of this report.

Appendix V: Other Mechanisms in Québec

Coroner's Office

The coroner is summoned for all cases in which a death occurs in obscure or violent circumstances, notably at the following locations:

- Places where the deceased person was in custody
- Detention centers and penal institutions
- Police stations

In such cases, the coroner will launch an investigation or an inquest by virtue of the *Act respecting the determination of the causes and circumstances of death*.¹¹⁶

Investigation

A coroner's investigation aims to determine the causes and circumstances of death as well as whether the death could have been avoided. The coroner informs the public of the probable medical reasons and circumstances of the death and makes recommendations to prevent similar deaths and better protect human life.¹¹⁷ However, he or she cannot comment on any person's civil or criminal responsibility.

Inquest (public hearing)

At times, the scope of an incident in which there is a loss of life is such that it is important for the public to hear the information presented to the coroner. In such cases, when ordered by the chief coroner or upon request by *Ministre de la Sécurité publique*, the coroner conducts an investigation during which those able to provide him with useful information will be questioned under oath at a public hearing. The decision to call an inquest is left at the discretion of the chief coroner, contrary to the situation in other Canadian provinces where coroner's inquests are mandatory when a civilian dies in the course of a police intervention.¹¹⁸

The reports and recommendations stemming from investigations and inquests are made public. However, the documents appended to the coroner's report (i.e., autopsy report, toxicology report, medical records, and peace agent's report) may only be transmitted to certain people or organizations able to demonstrate that these documents are required to establish or assert rights.

The coroner's recommendations upon completion of an investigation or inquest can have a direct impact on the work of police officers.

¹¹⁶ *Act respecting the determination of the causes and circumstances of death*, R.S.Q., c. R-0.2.

¹¹⁷ *Ibid.*, sections 92 and 105.

¹¹⁸ For further details, see Appendix VI of this report.

Criminal Investigation into a Police Force

The *Police Act*¹¹⁹ stipulates that Ministre de la Sécurité publique or the person it designates may conduct an investigation into any police force or into any crime allegedly committed by a police officer. This is a discretionary power of Ministre de la Sécurité publique and is only used on rare occasions.

Police Ethics System

The objective of police ethics complaints is to prevent the reoccurrence of conduct that is detrimental to the proper functioning, credibility, and integrity of police forces.

The Police Ethics Commissioner receives and examines complaints filed against police officers who may have violated the Code of Ethics of Québec police officers. The Commissioner can make recommendations to remedy any detrimental situation observed or prevent its reoccurrence, and formulate observations to improve the conduct of a police officer.

Furthermore, if an offence appears to have been committed, the Commissioner can refer the case to the appropriate police force for a criminal investigation. Once an ethics investigation has been completed, the Commissioner can also forward the case file to the Director of Criminal and Penal Prosecutions so that the Director can decide whether criminal charges should be laid.

The Commissioner is independent. The government appoints the Police Ethics Commissioner for a term of five years.¹²⁰ His staff consists entirely of civilians, although many are former police officers. If investigators of the Commissioner are former police officers, they cannot be assigned to a case concerning the police force to which they belonged.

All complaints must be submitted to conciliation. The Commissioner proceeds with a preliminary examination of the complaint and decides whether or not to conduct an investigation. The investigation is an exceptional provision. The decision to hold an investigation falls under the Commissioner's responsibility. This decision by the Commissioner is subject to review by another Commissioner within 15 days of the decision.

At the end of an investigation, the Commissioner may decide to cite the police officer concerned before the Police Ethics Committee if he or she considers that the evidence warrants it. A public hearing is then held to determine if the officer's conduct constitutes a breach of the police officers' Code of Ethics.

¹¹⁹ *Police Act*, R.S.Q., c. P.13.1, sections 279 to 289.

¹²⁰ *Police Act*, R.S.Q., c. P.13.1, sections 129 and 130.

Legal Oversight of Police Activity

In Québec, apart from the Police Ethics Commissioner and the Police Ethics Committee, there are a number of provisions in the *Police Act*¹²¹ concerning oversight of police activity, including the following:

- Inspection of police forces by Ministère de la Sécurité publique (sections 268–269)
- The obligation for police chiefs to immediately notify Ministre de la Sécurité publique of any allegation against a police officer concerning a criminal offence (section 286)
- The legal requirement for every police officer to inform his chief of any conduct by another police officer that may constitute a criminal offence (section 260)
- The obligation for police chiefs to transmit an annual activities report to Ministre de la Sécurité publique concerning, in particular, the progress of disciplinary, conduct-related, and criminal investigations involving their members and the corrective measures that have been implemented, if any (section 264)
- The internal verification departments of the police forces (section 266)

Recourse to Common Law

Incidents involving police officers often result in civil proceedings against the officers involved and the municipality that employs them. Given the gravity of the consequences of these affairs, notably the death of a person, it is understandable that families seek to obtain a form of justice or compensation for the loss of a loved one. Controversial or not, a number of cases of death resulting from a police intervention have ended up before the civil courts, notably in the Griffin, Suazo, Lizotte, Castagnetta, and now Villanueva affairs. Some of these situations result in a long legal saga, while others are settled out of court. For example, the Griffin affair led to a civil remedy against the City of Montréal that went to the Supreme Court of Canada, while Fredy Villanueva's family claimed \$990,000 from the City of Montréal and the police officers involved in the events leading to Villanueva's death.¹²²

Police officers are therefore exposed to such actions in addition to any other criminal, ethical, or disciplinary procedures they may face. However, in most civil proceedings, the employer of the officers concerned (city, municipality, or government) is involved and usually ensures the defense of its employees.

¹²¹ *Police Act*, R.S.Q., c. P.13.1

¹²² SANTERRE, David (2009), "La famille Villanueva poursuit la Ville de Montréal," *Rue Frontenac*, February 11. Online at <http://ruefrontenac.com/nouvelles-generales/justice/636-dsanterrevillanueva>, retrieved November 18, 2009.

Appendix VI: A Broader Geographic Perspective

For a clearer perspective of the investigative procedure used for police incidents, we examined practices in other Canadian provinces and countries to establish a comparison and inspire better practices. We tried to present the options adopted in each jurisdiction in great detail in order to compare and contrast the models other administrations have developed. Our aim is to highlight the major trends and best practices implemented elsewhere.

Four Other Canadian Provinces

Ontario

Ontario's Special Investigations Unit (SIU) is tasked with investigating serious incidents involving police officers. It was created in 1990 in the wake of *The Report of the Race Relations and Policing Task Force*.¹²³ This report expressed serious reservations about the integrity and objectivity of the process by which police officers investigate other police officers or police forces. The SIU was launched in January 1991.

The SIU currently reports to the Ministry of the Attorney General, where it was transferred after several years to further ensure independence. The SIU is entirely made up of civilian investigators¹²⁴ (although many are former police officers) and a team of forensic identification technicians.¹²⁵ The *Police Services Act*¹²⁶ stipulates that the SIU director cannot be a police officer or former police officer.

The SIU's mandate is to investigate police incidents involving serious injury¹²⁷ or death. It also investigates allegations of sexual assault by a police officer. SIU investigations must be conducted in accordance with a regulation that specifies the rights and responsibilities of police officers involved in incidents, chiefs of police, and SIU members.¹²⁸ A second regulation¹²⁹ stipulates that failure to meet these regulatory obligations constitutes an ethics violation. When an investigation is completed, the report is reviewed by SIU lawyers who decide, in conjunction with the director, whether to press criminal charges against the police officers involved.

¹²³ RACE RELATIONS AND POLICING TASK FORCE (1989), *The Report of the Race Relations and Policing Task Force*. Ontario: Race Relations and Policing Task Force.

¹²⁴ 12 full-time investigators and around 30 part-time (on call)

¹²⁵ 10 part-time (on call)

¹²⁶ R.S.O. 1990, c. P.15

¹²⁷ The definition of *serious injury* remains ambiguous. According to the SIU, this notion includes injuries requiring hospitalization, fractures to a limb, severe burns, loss of vision or hearing, and allegations of sexual assault. The definition of serious injury should also include "the impact the injury has on the individual's life, health, and ability to carry on in a normal fashion." In this regard see SPECIAL INVESTIGATIONS UNIT (SIU), *One Law: Annual Report 2005–2006*. Mississauga, Ontario: Special Investigations Unit, p. 7. Available on the SIU website at http://www.siu.on.ca/siu_images/SIU2006ENGLISH.pdf, retrieved January 5, 2009.

¹²⁸ Regulation 673/98, adopted under the *Police Services Act*, R.S.O. 1990, c. P.15 (see Appendix VII for the complete text). This regulation stipulates, in particular, that the police officers involved must not communicate among themselves until after they have been interviewed by the SIU. It also specifies the time requirements police officers must respect in reporting to SIU investigators, witness officers' obligations in collaborating with the investigation, and measures to preserve the scene and evidence.

¹²⁹ Regulation 123/98, adopted under the *Police Services Act*, R.S.O. 1990, c. P.15

Ombudsman of Ontario's Report on the SIU (2008)

The SIU underwent a systemic investigation conducted by the Ontario Ombudsman from June 2007 to September 2008. The Ombudsman report¹³⁰ cites many problems within the SIU but never calls into question its reason for being. The Ombudsman instead seeks to reinforce the SIU's legal foundation and proposes that it strengthen its position by taking a more critical look at the misconduct of police forces it investigates.

Much of the Ombudsman's critique of the SIU echoes concerns expressed in Québec about such investigations, namely that police forces delay reporting incidents to the SIU and that SIU investigators take too much time to arrive at incident scenes, unduly postpone interviews with witness officers, and show signs of police affiliation.

The Ombudsman of Ontario addresses a total of 46 recommendations to the SIU. It recommends changes in the SIU's internal practices to improve the credibility of investigations and legislative changes to better define the SIU's role and strengthen its position in relation to police forces. The Ontario government and the SIU responded positively to these recommendations. Difficulty remains, however, in implementing the recommendation that witness officers be interviewed immediately with delays of more than 24 hours prohibited unless justified by exceptional circumstances and authorized by a supervisor.¹³¹

Coroners Inquest

In Ontario, the *Coroners Act*¹³² stipulates that in cases where a person dies while detained by an officer, the coroner must conduct an inquest into the cause of death. Unlike an investigation, this inquest is public.

Alberta

Alberta created a special team to investigate police officers, the Alberta Serious Incident Response Team (ASIRT), which began its activities on January 1, 2008.

It should be noted that ASIRT was created at the request of the Alberta Association of Chiefs of Police. ASIRT's director explains that Alberta police chiefs realized they were putting themselves in an untenable position when they had to investigate their own officers; first, because their close relationship with the police forces involved meant they could not keep investigations completely confidential, and second, because they could not assure the public that investigations were impartial.

¹³⁰ MARIN, André, *Ombudsman of Ontario (2008), Oversight Unseen*. Ombudsman Report: Investigation into the Special Investigations Unit's operational effectiveness and credibility, September 2008

¹³¹ JENKINS, Jonathan, "SIU Ripped over Probe Delays; Failure to Promptly Interview Officers Leaves Impression Stories Being Fixed, Ombudsman Says," *The Toronto Sun*, June 24, p. 8.

¹³² *Coroners Act*, R.S.O. 1990, c. C. 37

The ASIRT team is mainly composed of a civilian director (who is also a Crown prosecutor), police officers or retired police officers who serve as team leaders and investigators, and civilian criminal analysts. The police officers on the team of around 14 people are “on loan” to ASIRT for two years.

ASIRT reports to the Ministry of Public Security and the Solicitor General. The Ministry assigns investigations to ASIRT. The Alberta *Police Act*¹³³ stipulates which cases are under ASIRT’s jurisdiction:

- Police-related death or serious injury¹³⁴ or complaints alleging death or serious injury
- Complaints alleging serious or sensitive matters with regard to police actions (mainly allegations of corruption)

Investigations are conducted in accordance with major crime investigation procedures. To ensure independence, investigating police officers are not from the same police force as officers involved in the events.

The regulatory framework is currently in the early stages. However, ASIRT plans to soon adopt a regulation very similar to Ontario’s with regard to the rights and obligations of police officers subject to investigation.

When an investigation is completed, the report is submitted to the director, who then forwards it to the Crown Prosecutor. The Crown Prosecutor issues an opinion on whether criminal charges are warranted. The ASIRT director then makes the final decision as to whether to press charges.

Public Inquiry

The *Fatality Inquiries Act*¹³⁵ stipulates that a public inquiry must be held if a person dies in custody or in a correctional institution or as a result of police intervention. The inquiry is led by a provincial court judge.

British Columbia

There was much media attention when Robert Dziekanski died at Vancouver’s airport in October 2007 after a Royal Canadian Mounted Police (RCMP) intervention. The Integrated Homicide Investigation Team (IHIT) conducted the criminal investigation into the RCMP officers’ actions.

The IHIT unit investigates homicides and other major crimes and includes officers from the RCMP and four municipal police departments in the vicinity of Vancouver. The Vancouver Police Department (VPD) is not part of this unit. Criminal investigations into VPD officers’ conduct are entrusted to criminal investigators from VPD.

¹³³ *Police Act*, R.S.A. 2000, c. P-17

¹³⁴ The notion of serious injury includes injuries requiring hospital admission, fractures to limbs, and severe burns.

¹³⁵ *Fatality Inquiries Act*, R.S.A 2000, c. F-9

According to its 2006 annual report, IHIT is made up of 76 investigators and one civilian support member. Although mainly specialized in homicide investigations, IHIT also investigates in-custody and police-related deaths as well as injuries resulting from police use of a firearm. According to IHIT, the impartiality of police officers involved in its investigations is ensured by the fact that they must complete a questionnaire in which they disclose any professional relationship or affiliation with the police officers under investigation.

When the IHIT investigation is completed, a report is submitted to the provincial Crown prosecutor, who makes the decision whether to press criminal charges. The investigation report is not made public.

Since March 2007 the Commission for Public Complaints Against the RCMP (CPC) has overseen an independent observer pilot project in which observers are assigned to RCMP investigations into incidents involving RCMP officers. The observers are responsible for monitoring the investigation and raising any concerns about the impartiality of the investigative process. An independent observer is assigned to all investigations into death resulting from police intervention involving RCMP officers. The effectiveness of this project was recently evaluated and remains the RCMP's means of assessing the impartiality of its investigations.¹³⁶

Coroner's Inquest

As in Alberta and Ontario, British Columbia's *Coroners Act*¹³⁷ stipulates that a public inquiry must be held when a person dies while in police custody or in a detention center.

Public Inquiry into the Dziekanski Incident

The IHIT investigation into the RCMP intervention leading to the death of Robert Dziekanski on October 13, 2007, following the discharge of a conducted energy weapon, was completed in 2008. On December 12, 2008, British Columbia's Criminal Justice Branch made public the decision not to bring charges against the police involved in the incident.¹³⁸

On October 15, 2007, an independent observer was assigned to the IHIT investigation into the Dziekanski incident. On November 30, 2008, the independent observer's final report concluded that there did not appear to be any issues of impartiality with regard to the IHIT investigative team.¹³⁹

In January 2009 a commission of public inquiry was established to examine the circumstances surrounding the death of Robert Dziekanski. This commission of inquiry was headed by Thomas R. Braidwood, Q.C. The final days of the hearing were held in fall 2009. The parties concerned

¹³⁶ COMMISSIONS FOR PUBLIC COMPLAINTS AGAINST THE RCMP (2009), "Final Report – Review of the Independent Observer Pilot Project," April 20. Online at <http://www.cpc-cpp.gc.ca/prr/rep/opp/review-examen08-eng.aspx>, retrieved July 16, 2009.

¹³⁷ *Coroners Act*, SBC 2007, c. 15.

¹³⁸ CRIMINAL JUSTICE BRANCH (2008), *Criminal Justice Branch Clear Statement*, December 12. British Columbia. Online at <http://www.ag.gov.bc.ca/prosecution-service/media-statements/pdf/CJB-ClearStmnt-12Dec2008.pdf>, retrieved July 20, 2009.

¹³⁹ CPC/RCMP Independent Observer Pilot Project: Vancouver International Airport In Custody Death, Conducted Energy Weapon Deployed. Final Status Report. November 30, 2008. Online at <http://www.cpc-cpp.gc.ca/prr/rep/opp/fsp-rsf/vancouverIA-eng.aspx>, retrieved July 20, 2009.

made many statements following the submission of evidence and witnesses' testimony. Some criticized the fact that the IHIT investigators tasked with investigating the police officers involved did not reinterview them after receiving the amateur video of the incident that contradicts the officers' original version of events.¹⁴⁰ The Braidwood commission also sent the four police officers who were involved in the incident and had testified before the commission of inquiry notices advising them that it could, when the inquiry was completed, find them guilty of misconduct, notably in using a conducted energy weapon in circumstances that did not justify such use and in misrepresenting the facts of the incident and Dziekanski's behavior before IHIT investigators and the commission of inquiry.¹⁴¹ The IHIT's investigation into the incident cannot be evaluated until the Braidwood commission has issued its findings.

On July 23, 2009, the commissioner made public the first part of his report, which specifically addresses the use of a conducted energy weapon.¹⁴² The final report is expected in 2010.

Public Inquiry into the Frank Paul Incident and Commissioner Davies' Recommendations

On the morning of December 5, 1998, two Vancouver police officers arrested Frank Paul for public intoxication. He was released the same evening. Later in the evening, two other police officers found Paul sleeping in the street, in a state of intoxication, in their opinion. The officers asked that he be taken into custody. Paul had to be carried by the officers because he was unable to walk. The officer responsible for taking him into custody refused to readmit him and requested that Paul be driven to "where he lives." The driver and correctional officer dropped Paul off at a street corner and left him outside. The temperature outside was 5°C and it was raining. Paul died the same night from hypothermia due to or as a consequence of acute alcohol intoxication, according to the pathologist.

A public inquiry conducted into this incident led to a report made public on February 12, 2009.¹⁴³ The report in particular mentioned the criminal investigation conducted by a detective from the homicide squad within the major crimes section of the Vancouver Police Department. For the following reasons, Commissioner Davies concluded that this investigation was not conducted appropriately:

- The instructions given to the forensic identification agent were insufficient and the agent did not take the investigative steps normally followed for a possible homicide.
- The police officer responsible for the investigation did not contact or interview many relevant witnesses.

¹⁴⁰ Statement to the media by Don Rosenbloom, lawyer representing the Government of Poland, cited by CBC NEWS (2009), "Taser inquiry into Dziekanski's death hears last witness," May 26. Online at <http://www.cbc.ca/canada/british-columbia/story/2009/05/26/bc-taser-inquiry-last-witness.html>, retrieved July 16, 2009.

¹⁴¹ *Rundel v. British Columbia – Braidwood Commission*. 2009 BCSC 814, par. 17. This decision rejects the involved police officers' request to declare that the Braidwood commission did not have jurisdiction to make findings of misconduct against RCMP agents.

¹⁴² Thomas R. BRAIDWOOD, Q.C., 2009. *Restoring Public Confidence: Restricting the Use of Conducted Energy Weapons in British Columbia*. Braidwood Commission on Conducted Energy Weapon Use. June 2009. Online at <http://www.braidwoodinquiry.ca/report/>, retrieved November 3, 2009.

¹⁴³ William H. DAVIES, Q.C., 2009, *Alone and Cold*. The Davies Commission Inquiry into the Death of Frank Paul. Interim Report. Vancouver: British Columbia. Online at <http://wwwfrankpaulinquiry.ca/report>, retrieved July 20, 2009.

- The police officer responsible for the investigation did not attempt to interview police officers, correctional officers, or detention center employees even though meetings were required under the circumstances.
- The police officer responsible for the investigation did not attempt to analyze or reconcile inconsistencies in the evidence obtained.¹⁴⁴

Commissioner Davies noted two main differences between how the major crimes section investigates police-related deaths specifically and how it investigates deaths from possible homicide generally. First, investigating officers do not normally attempt to interview subject officers but instead rely only on their written reports, which officers have at least five business days to prepare after a maximum of ten hours of consultation with a lawyer (paid for by the department). Second, the investigating officers' report to the Crown prosecutor is neutral and does not recommend criminal charges. In regular investigative reports, police officers identify recommended charges and the evidence supporting each charge.

After considering other alternatives, Commissioner Davies concludes that the only solution that satisfactorily addresses concerns about possible conflicts of interest in investigations into police-related deaths is the creation of an independent organization made up of civilian investigators.¹⁴⁵ This model is based on the experience of Ontario's Special Investigations Unit, which is made up of a director who has never been a police officer and a team of civilian investigators. Commissioner Davies rejects the idea of investigations conducted by another police force or any organization composed of investigating officers from the RCMP or other force, in particular for reasons of independence and credibility.

Manitoba

On October 6, 2008, the Manitoba government announced that the province would establish an independent civilian unit similar to those in Ontario and Alberta to investigate police officers. This announcement came in the wake of the report from the commission of inquiry into the Taman incident, headed by Robert Salhany.

Crystal Taman died on February 2005 after an accident involving the vehicle of police officer Derek Harvey-Zenk, who was on his way back from a party where much alcohol was consumed in the company of police colleagues. The commission of inquiry examined the way in which police forces carried out the investigation into Harvey-Zenk's conduct. The commissioner found that the local police force's investigation was riddled with incompetence and, in certain regards, conducted in bad faith. The commissioner then examined the Winnipeg Police Service Professional Standards Unit's investigation, and concluded that

The picture that is painted is one of an incestuous process that is incapable of uncovering the truth. While I do not find bad faith, it is understandable that

¹⁴⁴ *Ibid.*, "Part 1—Overview and Executive Summary," "The Institutional Response to Frank Paul's Death," "The Criminal Investigation." Online at <http://frankpaulinquiry.ca/report/05-Part1-ExecutiveSummary.pdf>, retrieved July 16, 2009.

¹⁴⁵ *Ibid.*, "Part 6—The Criminal Investigations of Police-Related Deaths," "F. Developing a New System for the Criminal Investigation of Police-Related Deaths." Online at <http://frankpaulinquiry.ca/report/33-Part6-DevelopingANewSystem.pdf>, retrieved July 16, 2009.

there has been public suspicion that the investigation was not intent on disclosing facts that would embarrass the Winnipeg Police Service. That perception could only be fuelled by the inappropriate practice exercised in this case of permitting officers, who are being interviewed in a criminal case, to consult first their union representatives; schedule their interviews to fit their work schedule or holiday time; and receive warnings or cautions not given to lay witnesses in ordinary police investigations. This is an unflattering picture of special treatment of police witnesses.¹⁴⁶

In his recommendations, Commissioner Salhany asks the Minister of Justice to consider creating an independent provincial police investigations unit to investigate allegations of criminal activity by police officers.

In spring 2009 the Manitoba government presented a bill establishing an independent investigations unit.¹⁴⁷ The new organization's mandate would be to investigate incidents involving police use of fatal force, incidents resulting in serious injury to members of the public as a result of contact with police, and other incidents or allegations against police where there is a public interest in independent investigations. The unit would be made up of investigators (former and active police officers and civilians). The director would be a civilian who is independent of all police services. The bill was subject to consultations and at the time of writing had not yet been adopted.

The U.K.

We thought it important to also examine practices elsewhere in the world. The models adopted in the U.K. are worth considering, especially since they are independent organizations that are responsible, within a single structure, for conducting both criminal and ethics investigations into serious police incidents. Although these organizations are relatively new, they respond quickly and are very transparent in their actions.

IPCC (U.K.)

In the U.K. the organization in charge of investigating public complaints against the police and overseeing the review of these complaints is also in charge of conducting certain criminal investigations into the police actions. The Independent Police Complaints Commission (IPCC) was launched in 2004.

Depending on the situation, the IPCC can elect to oversee or supervise police investigations or to independently investigate. The following incidents must be reported to the IPCC by police forces:

¹⁴⁶ SALHANY, Roger, Q.C., Commissioner (2008), *Report of the Taman Inquiry*. Taman Inquiry into the Investigation and Prosecution of Derek Harvey-Zenk. Winnipeg: Minister of Justice and Attorney General, p. 13.

¹⁴⁷ "Proposed new police services act introduced in legislature," Press release, April 14, 2009. Online at <http://news.gov.mb.ca/news/index.html?item=5667>, retrieved July 20, 2009. See also "Consultation Paper: Independent Investigation Unit." Police Act Consultations Background and Issues. Online at http://www.gov.mb.ca/justice/policeact/pdf/independent_investigation_unit, retrieved July 20, 2009.

- Serious incidents (death, serious injury)
- Serious allegations of misconduct (corruption, serious allegations concerning senior officers, racism, etc.)

The IPCC determines whether an independent investigation should be conducted, based on the seriousness of allegations and the public interest. Normally the IPCC will independently investigate cases of police-related death or serious injury.

The IPCC has considerable resources given the organization's broad mandate. The IPCC is led by 15 commissioners who, by law, cannot be former police officers. These commissioners are appointed for five years. They are responsible for investigations and make decisions on a case-by-case basis. In the event of a criminal investigation, the final report is submitted to the Crown Prosecution Service, which then decides whether to press charges.

Reports on investigations the IPCC conducts independently are made public.¹⁴⁸ However, some sections of these reports are redacted to protect the privacy of third parties. The IPCC is one of the few police oversight and investigation organizations that release their full investigation reports to the public.

It is also notable that in its reports, the IPCC may make recommendations to the police forces concerned in the section entitled "Learning Points."

PONI (Northern Ireland)

Although Northern Ireland is part of the U.K., it has had an independent police investigation system since 2000, the Police Ombudsman for Northern Ireland (PONI).

PONI's mandate is twofold: it investigates public complaints against police, and it independently investigates situations police forces must report, including police use of a firearm, all fatal accidents involving police officers, and all police-related deaths. In the event of other "serious" complaints, PONI can elect to conduct an independent investigation if it is deemed to be in the public interest.

PONI's resources are substantial and the organization seeks to ensure that its response times for serious incidents are as short as possible. Accordingly, PONI investigators can be at an incident scene within 90 minutes in the Belfast area and within three hours in the rest of Northern Ireland. The investigative team is around 50% civilian and 50% former police.

When an investigation is completed, the report is sent to the Public Prosecution Service for Northern Ireland if it is determined that a crime has been committed. Otherwise, the officers who were investigated are subject to ethics procedures.

¹⁴⁸ For an example of an investigation report that was made public, see INDEPENDENT POLICE COMPLAINTS COMMISSION (IPCC) (2007), *Brown/Baker and Khan Investigation: Investigation into the Response by Staffordshire Police to Incidents between the Brown/Baker and Khan Families on [REDACTED]*. IPCC References 2007/009515 and 2007/010378. Available on the IPCC website at http://www.ipcc.gov.uk/brown_final_report.pdf, last retrieved on January 5, 2009.

PONI publicly announces the initiation of an investigation but divulges investigation results in summary form. However, by law PONI may produce written public reports if it is judged to be in the public interest. These reports include many details on the circumstances surrounding the death, the investigation conducted by PONI, the analysis of police actions in the circumstances, and the recommendations.

Conclusion

After analyzing these examples of to a different degree, independent organizations and structures, we can see that in Canada there is a general trend toward the creation of independent organizations to conduct criminal investigations into police incidents. Because of the experience of Ontario, which has developed this approach for over 15 years, Canadian commissions of inquiry having reflected on this issue often recommend creating an independent civilian organization. In their findings, these commissions are rather critical of police investigations into incidents involving other police forces.

Appendix VII: Regulations in Ontario

REGULATION 673/98

MADE UNDER THE
POLICE SERVICES ACT
*CONDUCT AND DUTIES OF POLICE OFFICERS RESPECTING INVESTIGATIONS BY THE SPECIAL
INVESTIGATIONS UNIT*

1. (1) In this Regulation,

"SIU" means the special investigations unit established under section 113 of the Act;

"subject officer" means a police officer whose conduct appears in the opinion of the SIU director, to have caused the death or serious injury under investigation;

"witness officer" means a police officer who, in the opinion of the SIU director, is involved in the incident under investigation but is not a subject officer.

(2) The SIU director may designate an SIU investigator to act in his or her place and to have all the powers and duties of the SIU director under this Regulation and, if the SIU director appoints a designate, any reference to the SIU director in this Regulation, excluding this subsection, means the SIU director or his or her designate.

2. (1) The chief of police may designate a member of the police force who is not a subject officer or witness officer in the incident to act in the place of the chief of police and to have all the powers and duties of the chief of police in any matter respecting an incident under investigation by the SIU.

(2) If the chief of police appoints a designate under subsection (1), any reference to the chief of police in this Regulation, excluding this section, means the chief of police or his or her designate.

(3) The person appointed under subsection (1) must be a senior officer.

3. A chief of police shall notify the SIU immediately of an incident involving one or more of his or her police officers that may reasonably be considered to fall within the investigative mandate of the SIU, as set out in subsection 113 (5) of the Act.

4. The chief of police shall ensure that, pending the SIU taking charge of the scene of the incident, the scene is secured by the police force in a manner consistent with all standing orders, policies and usual practice of the police force for serious incidents.

5. The SIU shall be the lead investigator, and shall have priority over any police force in the investigation of the incident.

6. (1) The chief of police shall, to the extent that it is practicable, segregate all the police officers involved in the incident from each other until after the SIU has completed its interviews.

(2) A police officer involved in the incident shall not communicate with any other police officer involved in the incident concerning their involvement in the incident until after the SIU has completed its interviews.

7. (1) Subject to subsection (2), every police officer is entitled to consult with legal counsel or a representative of the association and to have legal counsel or a representative of the association present during his or her interview with the SIU.

(2) Subsection (1) does not apply if, in the opinion of the SIU director, waiting for legal counsel or a representative of the association would cause an unreasonable delay in the investigation.

8. (1) subject to subsections (2) and (5) and section 10, immediately upon being requested to be interviewed by the SIU, and no later than 24 hours after the request where there are appropriate grounds for delay, a witness officer shall meet with the SIU and answer all its questions.

(2) A request to be interviewed must be made in person.

(3) The SIU shall cause the interview to be recorded and shall give a copy of the record to the witness officer as soon as it is available.

(4) The interview shall not be recorded by audio tape or videotape except with the consent of the witness officer.

(5) The SIU director may request an interview take place beyond the time requirement as set out in subsection (1).

9. (1) A witness officer shall complete in full the notes on the incident in accordance with his or her duty and, subject to subsection (4) and section 10, shall provide the notes to the chief of police within 24 hours after a request for the notes is made by the SIU

(2) subject to subsection (4) and section 10, the chief of police shall provide copies of a witness officer's notes to the SIU upon request, and no later than 24 hours after the request.

(3) A subject officer shall complete in full the notes on the incident in accordance with his or her duty, but no member of the police force shall provide copies of the notes at the request of the SIU.

(4) The SIU director may allow the chief of police to provide copies of the notes beyond the time requirement set out in subsection (2)

10. (1) The SIU shall, before requesting an interview with a police officer or before requesting a copy of his or her notes on the incident, advise the chief of police and the officer in writing whether the officer is considered to be a subject officer or a witness officer.

(2) The SIU shall advise the chief of police and the police officer in writing if, at any time after first advising them that the officer is considered to be a subject officer or a witness officer, the SIU director decides that an officer formerly considered to be a subject officer is now considered to be a witness officer or an officer formerly considered to be a witness officer is now considered to be a subject officer.

(3) If, after interviewing a police officer who was considered to be a witness officer when the interview was requested or after obtaining a copy of the notes of a police officer who was considered to be a witness officer when the notes were requested, the SIU director decides that the police officer is a subject officer, the SIU shall,

(a) advise the chief of police and the officer in writing that the officer is now considered to be a subject officer;

(b) give the police officer the original and all copies of the record of the interview; and

(c) give the chief of police the original and all copies of the police officer's notes.

(4) The chief of police shall keep the original and all copies of the police officer's notes returned under clause (3) (c) for use in his or her investigation under section 11.

11. (1) The chief of police shall also cause an investigation to be conducted forthwith into any incident with respect to which the SIU has been notified, subject to the SIU's lead role in investigating the incident.

(2) The purpose of the chief of police's investigation is to review the policies of or services provided by the police force and the conduct of its police officers.

(3) All members of the police force shall co-operate fully with the chief of police's investigation.

(4) The chief of police of a municipal police force shall report his or her findings and any action taken or recommended to be taken to the board within 30 days after the SIU director advises the chief of police that he or she has reported the results of the SIU's investigation to the Attorney General, and the board may make the chief of police's report available to the public.

(5) The Commissioner of the Ontario Provincial Police shall prepare a report of his or her findings and any action taken within 30 days after the SIU director advises the Commissioner that he or she has reported the results of the SIU's investigation to the Attorney General, and the Commissioner may make the report available to the public.

12. (1) The police force may disclose to any person the fact that the SIU director has been notified of an incident and is conducting an investigation into it.

(2) Except as permitted by this Regulation, the police force and members of the police force shall not, during the course of an investigation by the SIU, disclose to any person any information with respect to the incident or the investigation.

13. The SIU shall not, during the course of an investigation by the SIU, make any public statement about the investigation unless such statement is aimed at preserving the integrity of the investigation.

14. A chief of police or police officer shall not be required to comply with a provision of this Regulation if, in the opinion of the SIU director, compliance is not possible for reasons beyond the chief of police's or police officer's control.

15. This Regulation comes into force on January 1, 1999.

Appendix VIII: Overview of the Director of Criminal and Penal Prosecutions

On March 15, 2007, the Director of Criminal and Penal Prosecutions (DCPP) was created as an organization independent of Ministère de la Justice under the *Regulation respecting the criteria for the selection of the Director of Criminal and Penal Prosecutions*.¹⁴⁹

Under the general authority of the Minister of Justice and the Attorney General, the DCPP provides, on behalf of the government, an independent department of criminal and penal prosecutions that contributes to ensuring the protection of society in accordance with the public interest and the legitimate interests of victims.

More specifically, the DCPP

- Directs proceedings under the Criminal Code, the Youth Criminal Justice Act (YCJA), and any other federal law in respect of which the Attorney General of Québec has the authority to act as prosecutor
- Acts as prosecutor in proceedings under the Code of Penal Procedure
- Advises the police forces entrusted with enforcing Québec law on all aspects of an investigation or criminal or penal proceedings

The prosecutors acting under the authority of the Director must adhere to the directives established by the Director, notably the directive specifically concerning a criminal prosecution against a police officer (POL-1).¹⁵⁰

The role of the Director to whom the results of an investigation are submitted under the ministerial policy is to read the reported facts to determine whether a criminal offence has been committed. If the Director believes the facts show this to be the case, he or she examines the sufficiency of evidence and the appropriateness of prosecution in accordance with the standard criteria set forth in directive ACC-3.¹⁵¹ Prior to authorizing an indictment, it is incumbent upon the prosecutor to ensure that the investigation report is complete and takes into account the manner in which the elements of evidence were obtained. He or she may request that the peace or law enforcement officers or agents conduct additional investigations into the case to which he or she is assigned.

¹⁴⁹ R.Q., c. D-9.1.1.

¹⁵⁰ This document is available online on the DCPP website at <http://www.dpcp.gouv.qc.ca/ressources/pdf/envoi/POL-1.pdf> (in French only). The document also refers to the general directive concerning a prosecutor's decision to issue an indictment (*Accusation – Poursuite des procédures ACC-3*: <http://www.dpcp.gouv.qc.ca/ressources/pdf/envoi/ACC-3-M.pdf>).

¹⁵¹ *Ibid.*

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