



The Québec Investigative Procedure for Incidents Involving Police Officers

***For a Credible, Transparent, and Impartial Process That Inspires
Confidence and Respect***

- SUMMARY -

BACKGROUND

Overall, Quebecers express confidence in the police¹. This confidence is invaluable to officers' everyday work and vital to a healthy democracy. However, when officers are involved in incidents resulting in serious injury or death, public trust can be severely tested². In particular, such events call into question the investigative procedure used to clarify the circumstances surrounding incidents.

The Québec Ombudsman decided to analyze the policy implemented by Ministère de la Sécurité publique in such cases 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.

OVERVIEW OF THE CURRENT INVESTIGATION PROCEDURE

The *Politique ministérielle en matière de décès à l'occasion d'une intervention policière ou durant la détention* [Ministerial policy regarding death in the event of a police intervention or detention] is applied when, in the course of a police intervention or during temporary detention in a police station, a person

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

¹ Léger Marketing. 2007. *Profession Barometer: OmniCan Report*. May 15, 2007; Léger Marketing. 2008.

² *L'émeute de Montréal-Nord : Rapport d'étude*. Léger Marketing survey, August 13, 2008.

In such cases, Ministère de la Sécurité publique entrusts the investigation to a police force other than the one involved in the event.

After the police force completes its investigation, it submits a report to the Director of Criminal and Penal Prosecutions, who decides whether or not criminal prosecution is warranted.

OBJECTIVES OF THE QUÉBEC OMBUDSMAN’S ANALYSIS

The Québec Ombudsman believes that in investigations of serious incidents involving police officers, the process must guarantee the rights of both the citizens concerned and the officers and must take into account the realities of police work and the circumstances of the event being investigated. The process must ensure not only that justice is done, but also the “appearance of justice.”

The Québec Ombudsman took into account the following criteria in its analysis of the ministerial policy:

- Consistent enforcement of formal rules
- Transparency of the process and the results
- Impartiality
- Independence
- Oversight and Accountability

After completing its analysis, the Québec Ombudsman has made five findings and formulated eight recommendations.

FINDINGS AND RECOMMENDATIONS

FINDING 1: Lack of formal rules and inadequate framework

A formal framework implies that the investigation process is based on clearly defined and stable rules that are applied consistently to persons under investigation and from one investigation to another. The investigation process implemented under the Ministère de la Sécurité publique policy does not provide an adequate framework to guarantee that the rules of criminal investigation are consistently applied in all cases. The current system does not ensure the impartiality of the investigations conducted on officers involved in serious incidents.

RECOMMENDATION 1 - STRENGTHENING AND PROVIDING AN ADEQUATE FRAMEWORK TO 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 policy³ does not guarantee that the rules of criminal investigation are consistently applied when officers are subject to investigation;

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 framework 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 framework of the investigation process for 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. 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;

³ The exact title of the policy is “Pratique policière 2.3.12 – Décès à l’occasion d’une intervention policière ou durant la détention”. The full text is included in **Annex III** of this report.

- 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;
- 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 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 injury, or injury resulting from the use of a firearm or conducted energy device during a police intervention or detention

FINDING 2: Lack of transparency in the process and the results

Transparency has to do with the level of information released to the public and allows the public to assess the integrity, probity, and effectiveness of the investigative process. The Québec Ombudsman found that the public has little access to information about the process and the results of investigations conducted under the ministerial policy. This lack of transparency adversely affects the public's understanding of the process and the credibility of the investigation.

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, helps to allay citizens' concerns, and improves 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 injury, 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, with regard to 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 in the course of a police intervention or during detention, **systematically consider releasing the detailed reasoning in support of his or her decision to not undertake criminal proceedings.**

FINDING 3: Appearance of partiality in peer-conducted investigations

Impartiality refers to the absence of prejudice, whether favorable or unfavorable, with regard to one of the parties involved in the events. With respect to enforcement of the ministerial policy, the concerns expressed about investigator impartiality focus in particular on the strength of police solidarity. One of the practices applied in Canada and the U.K. to address these concerns is to ensure that qualified and competent civilians play a greater role in the investigative process.

The Québec Ombudsman believes that investigative teams must include qualified civilian investigators and that civilians must ensure oversight and accountability in the investigative process.

To build public trust, persons involved in conducting, monitoring, and overseeing investigations should be representative of Québec's gender balance and ethnocultural diversity.

RECOMMENDATION 4 - IMPARTIALITY: PRESENCE OF CIVILIAN AND FORMER 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 can reassure 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 investigators⁴ into the teams in charge of conducting 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, **and that to this end it mandate École nationale de police to implement training programs on criminal investigation techniques for designated civilians**

RECOMMENDATION 5 - IMPARTIALITY: BALANCED REPRESENTATION OF DIVERSITY

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 diversity among the civilians in charge of conducting, monitoring, and overseeing the 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

FINDING 4: Doubts about the independence of the investigation process

Independence refers to organizational mechanisms that help foster an arm's length relationship and independence with regard to the subject of the investigation. It mainly consists of ensuring that the persons in charge of the investigation have no ties to the police organization involved. The Québec Ombudsman agrees with the conclusions of the Poitras, Corbo, Bellemarre (Québec), Davies (British Columbia), and Salhany (Manitoba) commissions, namely that entrusting investigations into serious incidents involving police officers to another police force does not guarantee their independence.

Given our findings and the difficulty of implementing the above recommendations without changing existing administrative structures, the Québec Ombudsman believes that the best solution is to create an independent body based, notably, on active civilian participation. Experiences in other jurisdictions show that this model is feasible and effective.

⁴ By "civilian investigators," we mean people who have no police training or experience.

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 framework, 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 injury, or injury resulting from the use of a firearm or conducted energy device during a police intervention or detention

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 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 injury, 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 chairperson 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 chairperson 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 officer;
- 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.

FINDING 5: Shortcomings in the oversight and accountability of investigations into incidents involving police officers

Oversight and accountability should make it possible to assess the quality and impartiality of the investigations conducted, to properly report the process used, and to present the results obtained. The Québec Ombudsman considers that the minister responsible for investigations into serious incidents involving police officers should be able to answer for the process followed during these investigations and their management. He or she should also publish a report to this effect.

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 exercise 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

- a) **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 injury, or injury resulting from the use of a firearm or conducted energy device during a police intervention or detention
- b) **That the Special Investigations Bureau be evaluated after five years and the assessment tabled in the National Assembly**
- c) **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**

ECONOMIC RATIONALE AND BUDGETARY IMPACT

Having an investigation system that is both credible and impartial, backed up by rigorous reporting requirements, should improve the organizational and budgetary efficiency of the process used to investigate serious incidents involving police officers. The Québec Ombudsman believes that the creation of an independent body can be largely achieved by reallocating existing resources. The cost of these investigations is currently shouldered by the police services that conduct them. In addition, the Special Investigations Bureau will use existing technical and scientific resources to conduct the investigations, thus minimizing its operational costs. The Québec Ombudsman believes that additional costs involved in setting up an independent body will be marginal in absolute terms, and negligible given the resulting benefits with regard to the public's trust in police officers.

IN CONCLUSION

After analyzing the existing process in Québec for investigating serious incidents involving police officers, the Québec Ombudsman believes that changes are necessary. The status quo is neither acceptable nor in the interest of police officers, citizens, or sound governance. For this reason, we have formulated eight recommendations aimed at strengthening the public's trust in the crucial and complex work of police officers.