



MEMORANDUM

To: Police Accountability Coalition c/o Social Planning Council of Winnipeg
From: Public Interest Law Centre of Legal Aid Manitoba
Date: November 26, 2021
Re: Manitoba's Independent Investigation Unit: Overview of Civilian Police Oversight Agencies in Canada and Their Practices

AN INDEPENDENT OFFICE OF LEGAL AID MANITOBA
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Summary

This report has been prepared by the Public Interest Law Centre of Legal Aid Manitoba for the Police Accountability Coalition as represented by the Social Planning Council of Winnipeg.¹

This report is intended to provide the Police Accountability Coalition with a summary of the mandates and activities of civilian police oversight agencies (COA) across Canada. The below sections may inform the Police Accountability Coalition's understanding of best practises and its advocacy for improved practise in Manitoba.

This report includes the following:

1. A timeline of establishing events for the Independent Investigation Unit of Manitoba and events of interest that have occurred since its creation.
2. An overview of the IIU's governing framework in relation to Manitoba's COA and breakdown of roles within the IIU.
3. Discussion of the Independent Investigation Unit (IIU) operations, including investigative procedures, an empirical overview of notifications, charge rates, case attrition, and relevant case law amending IIU operations.
4. An overview of COA's across Canada, including discussion of investigative procedure and empirical overview of investigations conducted and charge rates.
5. A critical review of Community Knowledge Safety Alliance's September 2020 review of the Police Services Act and its recommended changes to the IIU.
6. A literature review of best practices within investigative COAs on officer compliance, public reporting and transparency. Contextualizing contemporary policing issues and empirical studies into COA's in Canada and the US, including gaps in the empirical literature.
7. A concluding discussion apprising the state of policing and oversight in Manitoba, including suggestions for targeted advocacy and recommendations for change informed by academic literature and comparative analysis of COA practises across Canada.

¹ In conducting research and preparing this report, PILC has relied heavily on the contributions of Silas Koulack, articling student-at-law, and Emily Gerbrandt, PhD Candidate studying Sociology and Criminology at the University of Alberta.



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8. Appendices with grading comparisons of investigative COA's across Canada and annotated recommendations for investigative COAs from other provinces.

1. The Independent Investigation Unit (IIU): A Timeline

- March 9, 1988: The first call for an independent investigation agency in Manitoba comes following the [killing of J.J. Harper](#) by Winnipeg Police Service (WPS) Constable Robert Cross.
- 1991: The [1991 Aboriginal Justice Inquiry](#) tasked in part to examine Harper's fatal police interaction recommends creating an independent oversight agency.
- February 25, 2005: [Crystal Taman is killed by off-duty East St. Paul police officer Derek Harvey-Zenk](#) while driving impaired. Harvey-Zenk is given a [conditional two-year sentence](#) (house arrest) which triggers calls for a public inquiry into the police investigation into Taman's death.
- September 30, 2008: The [Taman Inquiry](#) into the Investigation and Prosecution of Derek Harvey-Zenk reveals a botched police investigation into Taman's death by East St. Paul Police Department and alleges police cover-up to protect fellow officers. [The Inquiry's final report recommends the creation of a civilian oversight agency.](#)
- October 6, 2008: [The provincial government moves to implement the Inquiry's recommendations](#), including establishing an Independent Investigations Unit (IIU) to investigate alleged criminal activity of a member of a police service alongside establishing a new Provincial Police Act under which the IIU will be governed.
- 2009: [The Police Services Act](#) (PSA) is introduced and replaces the Provincial Police Act. The PSA establishes the Manitoba Police Commission (MPC), the IIU, a Civilian Monitor Program (CMP) and adds regulations allowing First Nations communities to develop their own policing services.
- 2010: The [Manitoba Police Commission](#) is established and tasked with, amongst other things, guiding the creation of the IIU, training and appointing civilian monitors to IIU investigations when required. Rick Linden acts as the first chairperson of the MPC. Crystal Taman's widower, Robert Taman, is also named an original member of the MPC.
- June 19, 2015: The [IIU](#) becomes fully operational.
- April 15, 2016: [Robert Taman resigns his post with MPC](#), citing growing concern with the agency's direction and the failure to address the "blue wall of silence" within policing



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culture. Robert Taman questions whether the days of police investigating police were ended or just continuing under a different name. Taman calls the IIU ["an extra police force."](#)

- October 10, 2017: [Off-duty WPS officer Justin Holz](#) kills Cody Severight in a hit and run. Two Manitoba criminologists involved in the Taman commission and the establishment of the IIU, Frank Cormier and Rick Linden, vocalize their [confidence that a coverup and botched investigation similar to the Taman case is 'virtually impossible'](#) since the IIU will prevent such pitfalls. IIU administers a probe into the death and the conduct of two other unnamed WPS officers, finding an unspecified delay in issuing a breathalyzer on Holz. The two other officers are cleared of wrongdoing by the IIU. Holz pleads guilty and serves a 30-month sentence. Holz [admits he was driving impaired in a 2021 parole hearing](#). (The IIU has [not published a final report](#) on the Holz case and has not issued a press release indicating its investigation into the matter is closed.) [Robert Taman speaks out about the death of Severight](#) and its similarities to his wife's killing and the botched investigation in 2005.
- July 28, 2018: 34-year-old Matthew Richards Fosseneuve dies in WPS custody after officers administer their tasers. IIU triggers an investigation. [WPS denies three requests](#) from the IIU to provide officer notes from the cadets first on the scene.
- November 2018: an [8-month investigation by the Winnipeg Free Press](#) into the IIU reveals numerous incidents of WPS obstructing, undermining the IIU's operations, and failing to notify IIU when required. Including:
 - [Breaches of the Police Services Act](#) pertaining to the Police Chief's responsibility to limit contact between subject and witness officers to protect the integrity of IIU investigations. Two contraventions of this responsibility are made public: one involving a subject officer providing a written report to a member of the cadets acting as a witness officer before their IIU interview and a second in which a subject officer admitted discussing a shooting incident with witness officers before his interview.
 - WPS Police Chief blocks a 2017 investigation, [disputes the IIU's jurisdiction to interview cadets](#) and their right to investigate the shooting in question. The Civilian Director of the IIU fails to continue pursuing investigation but takes legal action against WPS.
 - The WPS Police [Chief refuses to hand over the procedural manual to IIU since the document is "constantly updated."](#) However, all other police services have complied with the IIU's request and provided their procedural manual.



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- A [missing annual report from the IIU to the Justice Minister](#) is later made public soon after the WFP investigation is publicized.
- November 20, 2018: [Liberal Party leader Dougald Lamont, NDP Justice critic Nahatti Fontaine, and other provincial and municipal leaders call for an overhaul of the PSA](#) to “sharpen the IIU’s teeth” by granting it the power to compel whatever evidence and testimony it needs to fulfil its mandate. Lamont also calls for the implementation of sanctions and penalties for refusing to cooperate with IIU investigators.
- November 2018: The provincial government [announces their intention to review the legislation](#).
- November 2018: [Robert Taman calls for a full provincial audit of the IIU](#) and return to the recommendations of the provincially struck Taman Inquiry, calls for more civilians involved in IIU investigations of police conduct.
- April 12, 2019: The [IIU takes legal action against the WPS](#) pertaining to the dispute as to whether the IIU has jurisdiction to interview cadets as witness officers and obtain cadet’s notes.
- April 2020: [Three police killings of Indigenous people in Winnipeg occur in 10 days](#), including an unnamed police officer who kills 16-year old Eishia Hudson.
- April 15, 2020: The [Indigenous Bar Association calls for a public inquiry](#) into the death of Eishia Hudson under sections 7.1(1)(i) and (m) of the [Manitoba Fatality Inquiries Act](#) (CCSM. c. F52) and further recommends that an inquest be considered to deal with potential biases within the WPS.
- July 29, 2020: [WPS fails to notify IIU](#) of an off-duty assault of an Indigenous man by off-duty Patrol Sgt. Jeffrey Norman. Norman is found to have multiple complaints and civil suits filed against him for his off and on-duty conduct. He remains employed by the WPS.
- August 2020: Civilian Director Zane Tessler [states he believes charges are warranted but does not lay them in a perjury case](#) pertaining to WPS Const. J. Macumber — since it was decided in consultation with Manitoba Prosecution Services that [“a conviction was unlikely.”](#) The perjury case in question pertains to a 2014 incident in which Macumber provided misleading information by ‘backfilling’ a evenings events to obscure that four police officers unlawfully entered a family’s hotel room, breached their charter rights, assaulted multiple people, seized recording devices without cause and falsely imprisoned two suspects. The WPS notified the IIU of this incident only after civil proceedings, 4.5 years



after the event in question. As a result, the IIU has not investigated the full scope of unlawful conduct, relegating their decision to the perjury case.

- August 25, 2020: [The Court of Queen's Bench rules in favour of the IIU](#) vs WPS in the case of producing cadet notes in IIU investigations, noting there is a 'gap in the legislative scheme' when it comes to producing cadets notes and compelling compliance with an IIU investigation as witness officers. The judge rules that "a deliberate exclusion should not be inferred in the legislative scheme in this case, and that the Notes [of cadets] should be characterized as witness officer notes pursuant to the [Regulation](#)." The judge concludes that "the IIU should not investigate with less than full disclosure from witness officers, which [...] include cadets." Additionally, "the police service should have no decision-making power over disclosure to the IIU [...] the IIU's investigation should not be hampered by a police service." As such, "cadet notes pertaining to an incident should be disclosed to the IIU when it assumes conduct of an investigation under the [Act](#)."
- September 2020: [A Provincial Review of the Police Services Act of 2009](#) is undertaken by Community Services Knowledge Alliance (CSKA) by Cal Corley MBA, Rick Linden, Ph.D. (former chairperson of the MPC), Fred Kaustinen MBA, Mark Reber MA. The review failed to undertake full public consultation, citing the pandemic made a public survey "inappropriate." Seventy recommendations are made to reform the PSA, IIU and the Civilian Monitoring Program, including recommendations to governing the IIU under legislation separate from the PSA and recommendations that would fill the gap in the legislative scheme as it pertains to the inclusion of peace officers (of which cadets are included) under the definition of 'witness officers.'
- Jan 29, 2021: [Zane Tessler holds a public press release, for the first time in its existence, to release the final report and announce no charges to be laid in the police killing of Eishia Hudson](#). The family of Hudson and advocates persist in calling for a public inquiry into racial bias in policing in Manitoba.

2. The IIU's History and Governing Framework

Manitoba's Independent Investigations Unit (IIU) was established in 2015 following the Police Services Act, 2009 and the recommendations of the 2008 Taman Inquiry.



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2.1 The 2008 Taman Inquiry

The [Taman Inquiry](#) investigated the death of Crystal Taman by off-duty East St. Paul Police Officer Derek Harvey-Zenk, and the police investigation and prosecution of Zenk following her death. The Inquiry revealed systemic issues underlying the East St. Paul Police Department and the Winnipeg Police Service Professional Standards Unit. The inquiry concluded that the police investigation into the death of Taman was “riddled with incompetence” and that aspects of the investigation by East St. Paul Police Chief Harry Bakema, Constable Ken Graham, and Constable Jason Moychuck were “conducted in bad faith.” (Salhany, 2008 p. 7). The investigation undertaken by the Winnipeg Police Service Professional Standards Unit into the activities of Zenk before the collision were “conducted honestly” but “so poorly [...] that it cast a light on a broader systemic problem,” revealing the “perils of having police officers investigate, or even interview, other police officers from their own force in criminal cases.” (Salhany, 2008, pp. 6-7). Commissioner Salhany concluded that “both the loyalty so important in permitting officers to rely on one another in moments of peril, and the importance of maintaining morale and the reputé of one's own police force positively, undermine our ability to rely on internal police investigations” (Salhany, 2008, p. 7).

As such, the Inquiry recommended the creation of a provincial special investigative unit independent of all police enforcement agencies in Manitoba to investigate any alleged criminal activity of a member of a police service, and that appropriate measures are taken “to prevent police investigators in the province from giving police witnesses special procedural concessions in criminal investigations before they are interviewed, including the right to consult with their police association, the right to have interviews scheduled during shift hours, or the right to be warned about the criminal, civil or administrative implications of the statements they give” (Salhany, 2008, p. 139).

On October 6, 2008, the provincial government took action to implement Salhany's 14 recommendations, including establishing “an Independent Investigations Unit to investigate alleged criminal activity of a member of a police service” (Government of Manitoba, 2008). The new oversight body would be governed under a new Provincial Police Act, which would modernize policing regulations and standards in the province.

2.2 The Police Services Act, 2009

The new [Police Services Act](#) (PSA) was introduced in 2009 and replaced the Provincial Police Act. The PSA established the Manitoba Police Commission (MPC), the IIU, a Civilian Monitor Program (CMP) and added regulations allowing First Nations communities to establish their own policing services.

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2.3 The Manitoba Police Commission

The [Manitoba Police Commission](#) (MPC) was established in 2010 and is tasked with governing police boards across the province, appointing civilian monitors to IIU investigations when required to do so. The MPC also conducts a legislation program that acts as a ‘vehicle’ for public consultation on law enforcement matters, providing “advice to the minister on regulations on specific issues relating to law enforcement or policing” (Manitoba Police Commission, n.d.).

The MPC has no formal or direct oversight of the IIU. However, the MPCs assign monitors to IIU investigations when required and receives reports from civilian monitors, who observe independent investigations of police officers and report their findings to the Commissioner of the MPC.

Rick Linden, who co-wrote the [2020 Community Safety Knowledge Alliance third-party review of the PSA](#), also served as the first chairperson of the MPC. The current resident chairperson is David Asper.

Robert Taman, the spouse of Crystal Taman, was a civilian appointee to the MPC. He resigned one year after the IIU became operational, citing concerns with the IIU’s direction after the IIU seconded a Winnipeg Police Service (WPS) officer to investigate their police service.

The MPC reports to the Justice Minister and may be asked by the minister to conduct research or provide recommendations on issues affecting or relating to law enforcement and policing. The MPC also oversees the Civilian Monitor Program.

2.4 The Civilian Monitor Program

The Civilian Monitor Program (CMP) was established under the *Police Services Act* and is governed by the Manitoba Police Commission (MPC). The CMP “oversees an investigation conducted [...] if it is possible that a police officer has caused the death of a person or if [The Civilian Director of the IIU] considers that the public interest demands it.” The civilian monitor is tasked with monitoring “the progress of the investigation in accordance with the regulations.” and “submits a report to the President of the Commission on the investigation he has supervised.” (Manitoba Police Commission, n.d.).

The commission may appoint anyone who is not a current police officer to monitor investigations conducted by the Independent Investigation Unit (IIU). There is no regulation restricting former police officers from acting as civilian monitors. However, it is unknown how many civilian monitors



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appointed to investigations have policing experience as information about civilian monitors and their reports are not publicly released.

The MPC is required to arrange training for monitors before they are appointed to an investigation. Under subsection 70(1) of the Police Services Act, the civilian director must ask the chair of the commission to assign a civilian monitor to monitor an investigation conducted if a police officer may have caused the death of a person or in any other case where the civilian director considers it to be in the public interest to involve a civilian monitor. When a request is made under subsection (1), the Chair of the commission must assign a civilian monitor to monitor the investigation in question.

The civilian monitor's role is two-fold:

1. To monitor the progress of the investigation by the independent investigation unit in accordance with prescribed practices and procedures.
2. To report to the chair of the commission on the investigation that he or she has monitored.

Civilian Monitor reports are not made public. Civilian Monitors are held to specific [regulations](#), including being provided access to all documentary and recorded evidence, including

1. The notes of all witness officers;
2. Transcripts and recordings of all witness statements and interviews;
3. All photographic, video or audio evidence taken or obtained by investigators; and
4. Expert and technical reports, including autopsy results, medical reports and forensic and ballistic reports.

A civilian monitor is not given access to physical evidence obtained by investigators or anything that might reveal the identity of a confidential informant or that might negatively affect the utility of an ongoing confidential investigative technique being employed by investigators. Civilian monitors must also not participate directly or indirectly in an investigation, must not communicate or attempt to communicate with an investigator unless authorized to do so by the civilian director, a subject or witness officer, or any other person who is identified as a witness or possibly having information that may be relevant to an investigation.

Because the IIU does not report to the MPC, nor does the MPC have a governing role over the IIU, the impact of the civilian monitor's report to the commission on the results of an investigation is



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unclear. Recommended reforms of the CMP by the CSKA review are detailed in section 5.4 of this report.

2.5 The Independent Investigation Unit (IIU)

The IIU was established in 2015 following the recommendations of the 2008 Taman Inquiry. Following Ontario's Special Investigations Unit (SIU) model, the IIU investigates on and off-duty police officer-related incidents in Manitoba involving death, serious injury, or alleged contravention of Canada's [Criminal Code](#) or other laws defined in Part 7 of [The Police Services Act](#). The civilian director of the IIU reviews all investigations when concluded and determines the outcome of each matter.

The IIU has the authority under the *Police Services Act* to investigate and provide oversight on all matters concerning police conduct in the province, including First Nations, RCMP, and municipal police forces.

Following an investigation, if the civilian director determines that an officer has committed an offence, they may lay charges against the subject officer or refer the matter to Manitoba Prosecution Service for a Crown opinion as to whether the officer should be charged. If the civilian director has determined that no charges are warranted, all parties involved are advised of that decision.



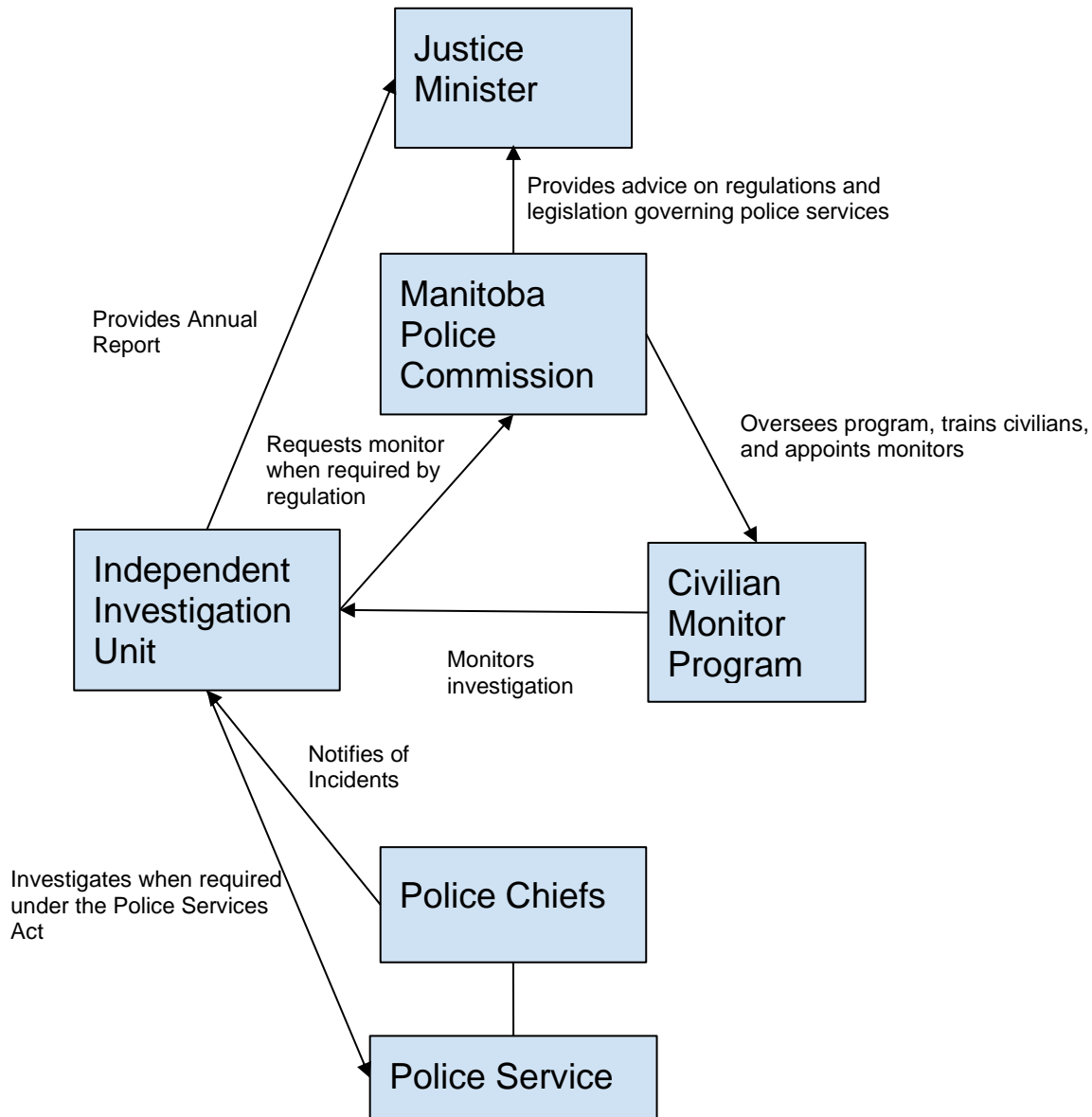
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Figure 1: Flowchart of the IIU's Governing and Reporting Relationship with Other Agencies



2.6 Breakdown of Roles within the IIU

2.6.1 Civilian Director

In March 2013, Zane Tessler was appointed as the province's inaugural civilian director of the IIU. The civilian director of the IIU is responsible for the management, administration and operation of the IIU, overseeing investigators and police officers seconded to the IIU, support staff, and subject matter experts who may be required on a case-by-case basis to provide technical expertise and performing any other duties imposed by the [Police Services Act](#). Under *The Police Services Act*, the Civilian Director may not be a current or former police officer.

2.6.2 Director of Investigations

The director of investigations is accountable to the civilian director for the overall leadership and supervision of the IIU team commander and investigators. Under the direction of the civilian director, the director of investigations supports and manages the strategic goals of the IIU. The director of investigations participates in internal and external committees and teams, representing the IIU and the civilian director's perspectives, as required.

2.6.3 Team Commander

The team commander is responsible for managing investigations and commanding the IIU investigative team. On the civilian director's authorization, the team commander deploys investigators to incidents where it appears the actions of a police officer may have caused a death, serious injury or prescribed offence. The team commander assesses investigative information and determines the appropriate response, priority and course of action. When an incident has been referred to the IIU by a police chief and meets the mandate of the IIU, the team commander will assign a primary investigator and as many additional investigators as required.

2.6.4 Senior Investigators

Reporting to the team commander of the IIU, investigators are responsible for investigating assigned incidents under the *Police Services Act*.

Investigators assess investigational information received from police agencies, attend on the scene, report incidents and determine an appropriate level of response. They also evaluate the scope and determine the methodology needed to carry out an efficient investigation. This may include evaluating the need to evaluate the demand for specialized assistance and support such as



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identification or other forensic services, surveillance, and determining what evidence is required and who should be interviewed.

Pursuant to [The Independent Investigation Regulation](#), IIU investigators must be Canadian citizens or permanent residents and have experience in major crime investigations or in conducting and managing a wide range of complex investigations. As such, senior investigators have predominantly been former or seconded police officers. For example, Robert Taman left the MPC due to a seconded WPS officer investigating their own police service. The practice of seconding police officers onto COA's is highly contentious and undermines public confidence in COA's independence from the police services they oversee.

2.6.5 Director of Strategic Policy and Coordination

The director of strategic policy and coordination (SPC) is responsible for managing, developing and implementing policies for the IIU to ensure that all investigations conducted are professional, effective and consistent. The SPC will develop extensive strategic recommendations to support and enhance operational, investigative and administrative business and policy development under the authority of The Police Services Act as it relates to the mandate of the IIU.

The SPC is also responsible for identifying and analyzing solutions for business procedural/systems review, feasibility studies, cost-benefit analysis, business solution evaluations, business requirements definition, and detailed policy and procedure and specification documents.

2.6.6 Office Manager

The office manager is responsible for the administration of the IIU, purchasing, invoice payments, human resources, and providing dedicated support to the civilian director.

2.6.7 Information Administrator

The information administrator (IA) is responsible for coordinating, prioritizing, verifying and organizing documents and other information on an investigation. The IA ensures that compliance requirements have been met to ensure the integrity of the records management process.

The IA is responsible for file management, document preparation, analysis and linking of information, scanning and exhibits. In addition, the IA organizes incoming data for entry into an electronic major case management application.



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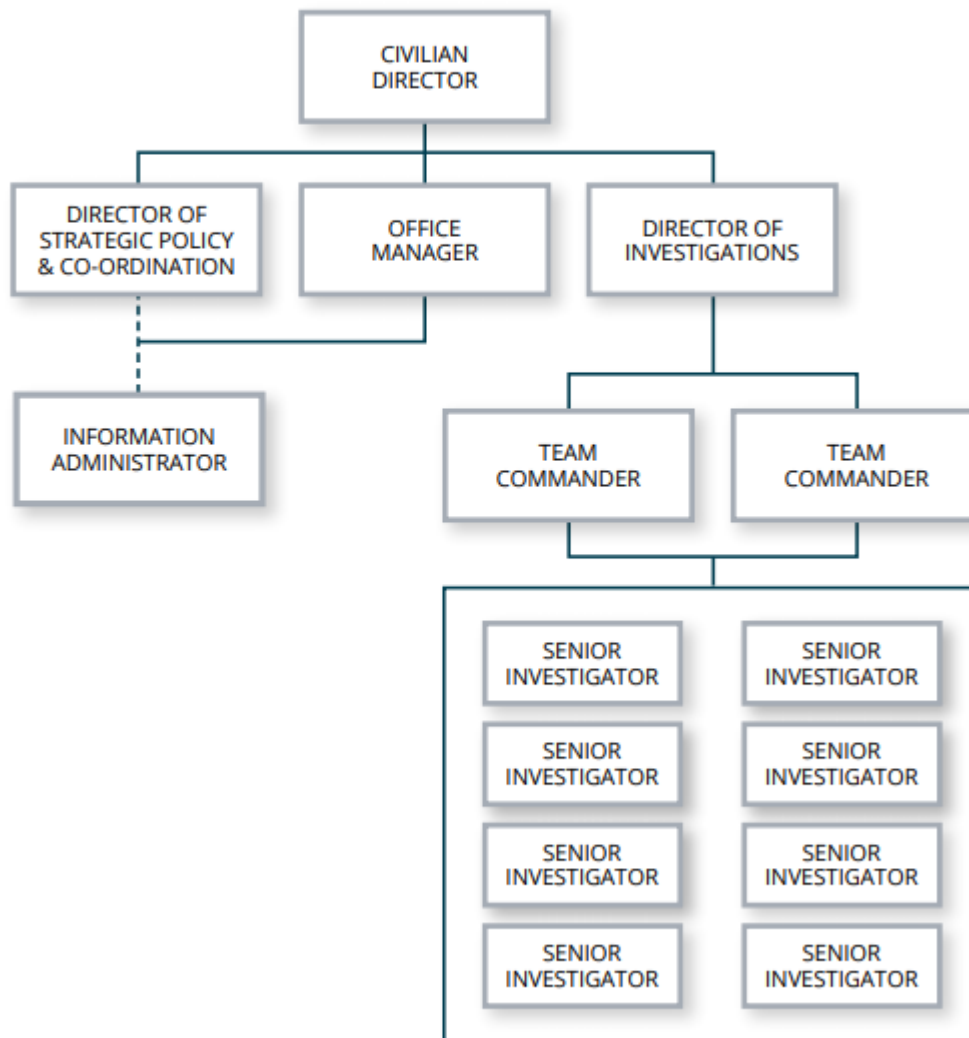
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Figure 2: Internal Organization of the IIU, 2019-2020

INDEPENDENT INVESTIGATION UNIT OF MANITOBA 2019-2020



Source: [IIU Annual Report, 2019-2020, p.5](#)

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3. Overview of IIU Operations

3.1 Notifications

As of their 2019/2020 annual report, the IIU has received 314 notifications and has conducted 185 investigations since its inception. On average, the IIU conducts 37 investigations a year. Ontario's SIU may receive over 300 notifications and conduct over 200 investigations per year. The operative scope and workload of the IIU most closely resemble Nova Scotia's Serious Incident Response Team (SiRT) and Alberta's Serious Incident Response Team (ASIRT). SiRT has conducted 213 investigations since its inception and conducts approximately 30 investigations per year. Alberta's ASIRT has conducted 386 investigations since 2015, 567 since its inception in 2008 and conducts approximately 80 investigations a year.

According to *The Police Services Act* (at section 65), notification must be provided to the IIU immediately when a death or serious injury may have resulted from the actions of a police officer, or where a police officer may have contravened prescribed provisions of the federal *Criminal Code* or other prescribed legislation. A definition of "serious injury" is provided in the regulations under *The Police Services Act*.

The most prevalent notifications the IIU receives regard a contravention of the Criminal Code (135, 43 percent) and the second most prevalent notification type regards serious injuries during arrest (39, 12 percent). Notifications regarding in-custody deaths (16, 5 percent) increased significantly in the 2019/2020 fiscal year. Whereas in-custody deaths never surpassed three notifications in previous years, nine notifications to the IIU in the 2019/2020 fiscal year regarded in-custody deaths. All notifications involving a death (in custody, in police presence with a firearm, in police presence, in a motor vehicle pursuit, in an officer-involved shooting, other) total 39 notifications (12 percent).



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Figure 3: Types of Notifications by Fiscal Year

TYPES OF NOTIFICATIONS BY FISCAL YEAR

Types of Occurrences	2015-2016 (June 19, 2015- March 31, 2016)	2016-2017	2017-2018	2018-2019	2019-2020
Prescribed Offence	0	1	3	3	5
Provincial Statute	0	0	1	3	4
Criminal Code Offence	12	26	32	36	29
In Custody Criminal Code Offence	1	3	7	0	0
Serious Injury	1	0	1	1	1
In Custody Serious Injury	1	3	1	1	0
Serious Injury During Arrest	3	6	6	10	14
Serious Injury During Arrest (PSD)	0	1	0	0	0
In Custody Death	1	3	1	2	9
Death in Police Presence (Firearm)	2	1	1	1	0
Death in Police Presence	0	0	0	0	1
Death (Other)	0	0	2	1	2
Injury During Arrest	2	2	6	8	7
Injury During Arrest (Police Service Dog)	1	0	0	0	1
Motor Vehicle Pursuit	0	0	0	1	0
Motor Vehicle Pursuit (Death)	2	1	0	0	0
Motor Vehicle Pursuit (Serious Injury)	0	1	2	1	2
Officer Involved Shooting (Death)	3	0	3	2	2
Officer Involved Shooting (Serious Injury)	0	2	4	3	7
Officer Involved Shooting	0	0	0	2	0
Other	0	0	4	0	1
Review for Mandate	0	0	0	0	1
Totals	29	50	74	75	86

Source: [Independent Investigation Unit of Manitoba Annual Report, 2019-2020](#), 2020, p. 14

According to a 2020 CBC investigation, fewer than 10% of police watchdog investigations in Canada end in charges against officers (Smart, 2020). According to Erick Laming, a Ph.D. Candidate at the University of Toronto who studies police accountability and use of force against Black and Indigenous people in Canada, this finding can be interpreted two ways. First, it is possible that officers, in most cases, were justified in their use of force. Second, these investigative COAs may be toothless against a legal system that makes it difficult to prosecute officers (Laming in Smart, 2020). The IIU has faced long-standing criticism for being ‘toothless,’ particularly following a 2018 eighth-month Winnipeg Free Press Investigation’s operations, which revealed only 4.5 percent of IIU investigations resulted in charges, amongst other internal problems, including failing to table

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annual reports within the required regulatory period. These revelations led to calls for review and reform of the IIU's mandate and practice by the public and several MP's, including NDP Justice Critic Nahanni Fontaine (Thorpe, 2018a, 2018b, 2018c, 2018d).

Of the 185 investigations conducted, the IIU appointed a civilian monitor through the Civilian Monitor Program (CMP) in 36 cases (20 percent). Under subsection 70(1) of the Police Services Act, the civilian director must ask the chair of the Manitoba Police Commission, which oversees the Civilian Monitor Program, to assign a civilian monitor to an investigation if a police officer may have caused the death of a person or in any other case where the civilian director considers it to be in the public interest to involve a civilian monitor. The IIU has also acted as a monitor to investigations carried out by a police agency in 96 cases (30 percent) and has declined an additional 32 notifications (10 percent), citing the incident to not fall within the IIU's mandate. This leaves one remaining notification, which was under review as to whether it fits within the IIU's mandate when publishing the IIU's 2019/2020 report.

Notification reports must be filed with the IIU by a Chief of Police within twenty-four hours of an incident which may fall within the IIU's mandate. A senior police officer not involved in the incident is also then to prepare a report, referred to in the regulation as a Public Safety Report, describing the incident, its location and identities of individuals involved including police officers and witnesses. Police officers present or involved are required to be segregated from one another until after they are interviewed, and officers who are involved as witnesses are to provide their incident notes to the IIU. Subject officers are required to complete their incident notes but cannot be compelled to provide them to investigators or the civilian director (*Independent Investigations Regulation*, [Man Reg 99/2015](#)).



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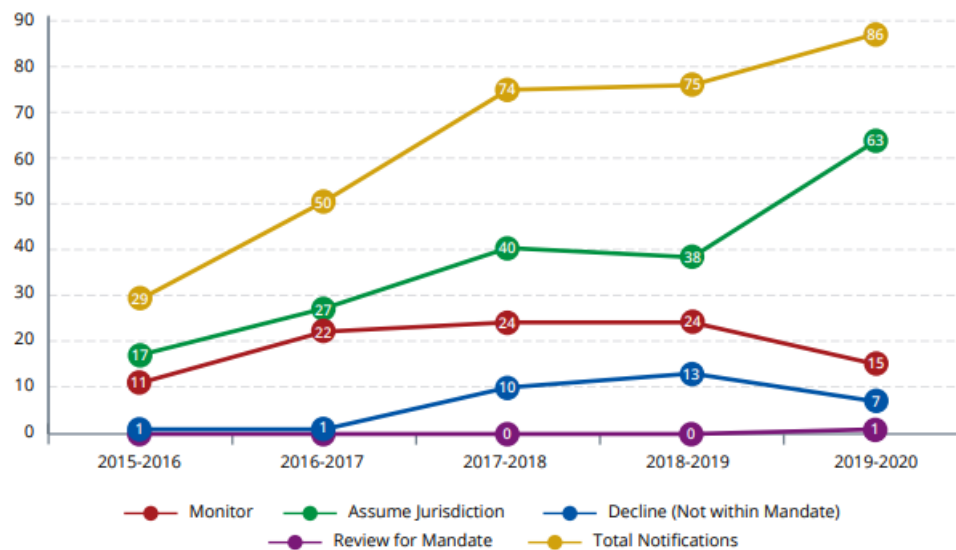
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Figure 4 & 5: Notifications by Fiscal Year and Role of IIU

NOTIFICATIONS BY FISCAL YEAR & IIU ROLE

Fiscal Year	Monitor	Assume Jurisdiction	Decline (Not Within Mandate)	Review for Mandate	Total Notifications
2015-2016	11	17	1	0	29
2016-2017	22	27	1	0	50
2017-2018	24	40	10	0	74
2018-2019	24	38	13	0	75
2019-2020	15	63	7	1	86
Totals	96	185	32	1	314



Source: [Independent Investigation Unit of Manitoba Annual Report, 2019-2020](#), 2020, p. 12

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Figure 6: Notifications by Police Region by Fiscal Year

NOTIFICATIONS BY POLICE REGION BY FISCAL YEAR

Reporting Agency	District	2015-16	2016-17	2017-18	2018-19	2019-20	Totals
ALTONA PS	–	0	0	0	2	0	2
MFNP	–	2	6	5	4	5	22
BPS	–	1	2	6	6	10	25
MORDEN PS	–	0	0	2	0	0	2
WPS	–	9	24	27	26	29	115
RCMP	East	4	8	17	10	18	57
RCMP	West	6	5	10	9	8	38
RCMP	North	7	5	7	18	15	52
RCMP J DIVISION	–	0	0	0	0	1	1

Source: [Independent Investigation Unit of Manitoba Annual Report, 2019-2020](#), 2020, p. 13

The majority of notifications are reported by the Winnipeg Police Service (115, 37 percent), followed by RCMP East (57, 18 percent) and RCMP North (52, 17 percent).

3.2 Case Attrition and Gaps in the IIU's Mandate

Of the 314 notifications the IIU has received since its inception, it has assumed over 185, just over half of all notifications (59 percent). Overarchingly, there is high attrition of notifications, indicating either a need to broaden the IIU's mandate to grant the agency the power to investigate the 51 percent of notifications that are declined or do not fall within the IIU's mandate, or suggests another agency may be required to assume jurisdiction. Practises of other COA's across Canada offer alternatives to consider. For instance, in 2016, British Columbia's Independent Investigation Office (IIO) began collecting information on notifications that fell outside their mandate as 'advice files,' in which the IIO does not commence investigation but "makes [a] note of the advice provided to the respective police forces regarding the notification" (Independent Investigation Office, 2018, p. 9). The IIO has also made their strategic plan for 2018-2022 publicly accessible, including assessing mandate expansion alongside internal training and external stakeholder assessment to implement and execute any potential mandate expansions with proficiency. In the 2019/2020 fiscal year, the IIO assumed jurisdiction in 80% of the notifications it received. The IIU may consider implementing a similar 'advice file' approach to help refine their assessment and interpretation of the IIU's mandate, as well as implement and make publicly available their strategic planning, and

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consider training and stakeholder consultation like the IIO to identify key gaps in the IIU's mandate, and/or identify and address confusion with notification protocols that result in such a high rate of attrition.

The 2020 review of the PSA also makes recommendations about the IIU's mandate as it pertains to the 'duty to comply' with the investigative process, linguistic changes to the definition of 'serious injury' to include fractures to the clavicle, pelvis, and hip and any injury that requires admission to a hospital or health care facility on an inpatient basis and that Part 7, Division 3 of the Act be amended to also apply to off-duty officers. However, the review does not identify the existing problem of high case attrition. As well, it does not meaningfully consider questions around expanding the IIU's mandate, despite this question being of current, national relevance. Specifically, debates from Atlantic Canada around the mandate of Nova Scotia's SiRT have considered whether the agency should be empowered to do more than investigate criminal wrongdoing and provide recommendations on how police can improve their performance (Tutton, 2017). In addition, empirical research from the U.S. suggests police officers engage in domestic violence at a higher rate than the general population (40 percent, compared to 10 percent) (Johnson, 1991; Neidig, Russell, & Seng, 1992). In Canada, a 2016 class-action lawsuit against the RCMP heard over 3,000 claims of gender-based discrimination, harassment, and sexual assault from female officers (Bastarache, 2020). The problem of gendered violence within policing has been widely established, yet no clear recommendations have been tabled to address its under-reporting and under-investigation by COAs.

Comparatively, gender-based violence, sexual assault and domestic violence are amongst the most prevalent allegations investigated by Nova Scotia's SIRT, in large part because their mandate specifies their mandate over these incidents. However, the provincial review neglects to recommend additional specifications of sexual assault and domestic violence incidents that fall within its mandate as criminal contraventions but are under-reported and/or face high case attrition rates. Additional recommendations may be made specifically to identify how the IIU's mandate can be better specified and refined, including additional consultation, training, and strategic planning with a specific focus on identifying notable these gaps in the IIU's mandate or considering the establishment of another agency specifically attuned to address police-involved sexual and domestic violence. Additional discussion can be found in sections 5 and 6 of this report.



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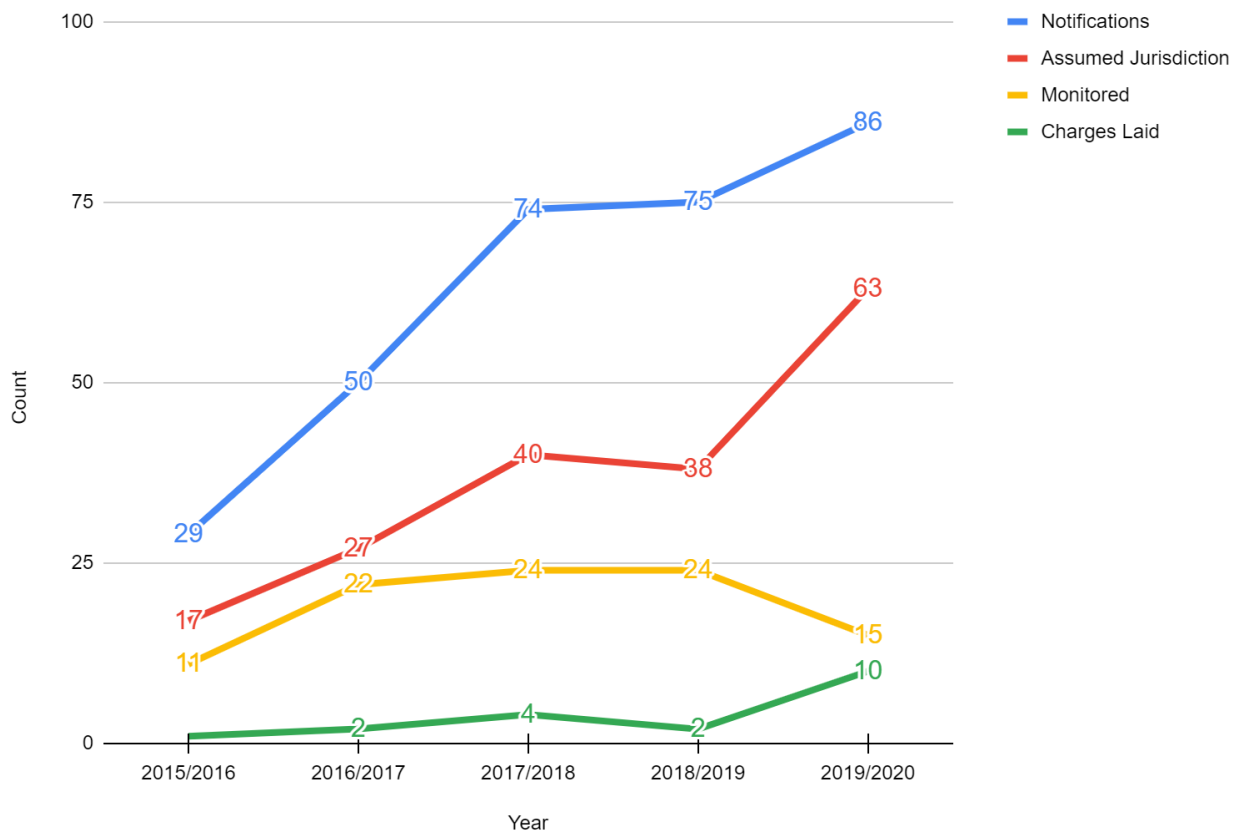
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Figure 7: IIU Case Attrition by Fiscal Year

IIU Operations by Fiscal Year



3.3 Charge Rates as a Measure of Effectiveness and Empowering Civilian Oversight Beyond the Minimum Standard of Legal Conduct

Of the 281 investigations conducted or monitored by the IIU, 36 charges have been laid against 20 officers. In other words, charges are laid in 7 percent of investigations, less than one in ten investigations the IIU conducts or monitors. This has marginally increased since 2018, when an eight-month *Winnipeg Free Press* investigation into the IIU reported that only 4.5 percent of closed investigations conducted or monitored by the IIU resulted in charges (Thorpe, 2018). The 2019/2020 fiscal year saw the highest record of police officers charged following an investigation since the IIU's

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inception. Charges were laid in 17 percent of investigations commenced in 2019/2020. (11 officers charged, 17 charges laid in 63 investigations commenced).

Of the 20 investigations conducted by the IIU leading to charges, 70 percent occurred while the officer was on duty (14 occurred while the officer was on duty, and six occurred while the officer was off duty). Assault-related charges predominate, including domestic and sexual assault (11 incidents), followed by reckless driving (7 incidents), reckless firearm use and unsafe storage (3 incidents). In addition, there has been one charge of manslaughter and one charge of criminal negligence causing death laid to date.

Some COAs of similar scope and workload with the power to lay charges have higher charge rates. For instance, Nova Scotia's SIRT, established three years before the IIU and has conducted a similar number of investigations as the IIU (213 investigations compared to 185 by the IIU), has a charge rate of 19 percent. Larger oversight agencies with the power to lay charges have significantly lower charge rates. Oversight agencies that can only refer cases to Crown Counsel or recommend charges but do not have the power to lay charges have even lower charge rates. Although measuring the efficacy of investigating COAs by their rates of conviction is reductionist, at best, low charge rates raise questions as to whether investigative COAs work for the public or to palliate the problem of unchecked police violence. These results also bring skepticism that other investigative COAs across Canada are effective enough to inform the practices of the IIU. Turning instead to the existing - albeit scant - empirical researchers investigating oversight practises yields cursory insights for how the plaguing issues around charging and accountability can be addressed.

Erick Laming (2020) recommends that COAs must be empowered to investigate and seek charges effectively. Laming contends that all investigative COAs should have broadened jurisdictional authority to lay charges. Where charges are not sought following an investigation, but misconduct or wrongdoing is suspected or founded, albeit not to a criminal legal standard, COAs should be empowered with the ability to inform policy recommendations that ensure policing is held to a standard of propriety, as well as legality (Roach, 2014). This is a power largely relegated to internal policing professional standard units (PSU). Although the 2020 provincial review of the PSA recommends expanding and universalizing professional standards in policing, no recommendations are made to empower civilian oversight or input into policing standards. Police officers are, first and foremost, civilian servants. Empowering civilian authority over policing standards *beyond the minimum requirements that they do not contravene the criminal code* should be actively pursued. Expanding the mandate of the IIU to provide policy recommendations based on their investigative experience could improve policing standards, writ large, and prevent future criminal contraventions.

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This recommendation is supported by existing empirical evidence from the US. Ali & Nicholson-Crotty (2021) surveyed 91 COAs across the US to measure the relationship between police performance and accountability across various oversight models (investigative, review/audit, and monitoring). The study found that jurisdictions with COA's with a broader scope of authority to investigate police criminal contraventions *and* misconduct have positive institutional outcomes. Specifically, areas governed by COAs with strong and broad mandates to investigate police services led to a decrease in violent crime as well as a decrease in police officer homicides. The implication then is that "it is not merely the existence of an accountability mechanism that can have an impact on performance; rather, it is the scope of authority of the mechanism that determines its impact" (Ali & Nicholson-Crotty, 2021, p. 544). In other words, strengthening and expanding the investigation mandate of COAs has a protective effect against violence, writ large. In addition, a 2019 study by Ali & Pirog found that investigative citizen oversight agencies (COAs), which conduct independent investigations *and* have the authority to recommend discipline to police officers found guilty of misconduct, were found to be associated with a reduction in racial disparity in disorderly conduct arrest rates and a reduction in racial disparity in police homicides of citizens. This study also included measurements of 'voice' and 'teeth.' Voice includes citizen views that would be otherwise excluded from a police accountability process in the absence of a COA due to ethnic, racial, or class bias. Teeth referring to a COA's ability to apply negative sanctions *and* recommended policy changes. While strong 'teeth' and 'voice' in a COA was not related to a reduction in racial disparity in disorderly conduct arrests, the authors did find, based on theirs and previous studies, that the ability of a COA to represent typically excluded citizens in accountability processes, produce sanctions as well as policy recommendations interact heavily with one another. Suggesting that teeth and voice "in and of themselves, may not be enough [but] they are likely to be important components in the overall authority of COAs" (Ali & Pirog, 2019, p. 422). Although in Manitoba, public complaints of misconduct are the jurisdictional authority of LERA, these findings net imperative insights into the importance of creating integrated systems that couple the investigative authority of COAs like the IIU with the public complaints and misconduct mandates of COAs like LERA. The interactive effect of strengthened and broad external investigation and oversight shows reductions in violence in current empirical research.



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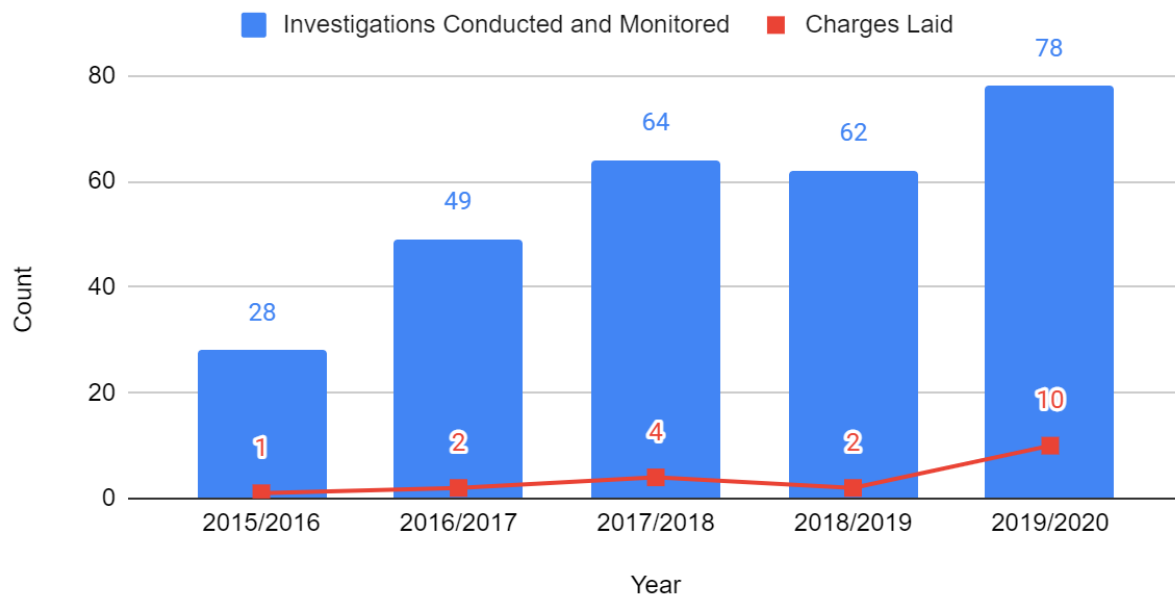
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Figure 8: Investigations Compared to Charges Laid by the IIU Across Time

IIU Investigations Conducted and Monitored and Charges Laid by Fiscal Year



3.4 Recent Case Law Relevant to the IIU and Recommended Changes to Regulatory Standards

Recent case law decisions have led to necessary amendments to IIU operations. Two cases are discussed below.

3.4.1 *The Civilian Director of the Independent Investigation Unit v. The Winnipeg Police Service* (2020 MBQB 125)

This case considered the legislative interpretation of ‘cadet’ pertaining to the regulations for ‘witness officers.’ Neither the Independent Investigation Regulations nor the Police Services Act mentions cadets. Accordingly, the IIU sought an order of *mandamus* requiring the Winnipeg Police Service (WPS) to produce the notes made by the cadets in connection with an officer-involved death on July 29, 2018. Alternatively, the IIU sought a declaration as to the meaning of s. 65(4) of the Police Services Act, which refers to the IIU’s duty to assume conduct of an investigation.



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WPS's position: The WPS refused to provide the cadet's notes to the IIU, under the interpretation of the IIU's regulations and the Police Services Act that cadets are neither police officers nor special constables as defined under the Police Services Act. The WPS submitted that there is no basis for disclosing the notes, including legislation, past practice, policy, or any other authority. In addition, the WPS contended that the IIU could obtain the notes by seeking a production order pursuant to the [Criminal Code, R.S.C., 1985, c. C-46](#). The WPS submitted both that the *mandamus* application should be denied and that if the IIU's interpretation of the legislative scheme were accepted, it would be necessary to proceed to a judicial review hearing, including submissions on the applicable standard of review.

The IIU's position: The IIU argued that the cadet's notes should be produced pursuant to s. 65(4) of the Police Services Act gives the IIU a right to assume conduct of an investigation and access, upon request, to all relevant information in possession of a police service. The IIU also argued that the standard of review is irrelevant to this application because there is no administrative decision under review. Instead, the IIU sought an order that the WPS perform its duty as required.

The Ruling: The ruling, in this case, favoured the IIU's position. Concluding that the "IIU should not investigate with less than full disclosure from witness officers, which [...] should include cadets." And that "the police service should have no decision-making power over disclosure to the IIU. Such an approach would be inconsistent with the purpose of the legislative scheme [...] In addition, the IIU's investigation should not be hampered by a police service." Recognizing WPS's assertion of a gap in the legislative scheme, it was recommended this be addressed, and that in the interim "the spirit and intent of the legislative scheme must be fulfilled" Thus, "pursuant to the legislative scheme, when the IIU assumes conduct of an investigation, it is entitled to the production of cadet notes made relative to the incident being investigated." The judge moved to hear the pending *mandamus* application upon filing supplementary material on the standard of review.

In other words, the court ruled that cadets may be compelled, as witness officers, to provide their mandated to investigate under s 65(1) of the Police Services Act in the incident in question, as it involved a death. notes to the IIU. The police service has no jurisdictional authority to withhold the notes of witness officers upon the request of the IIU, nor is the IIU obligated to seek a production order, as the IIU is

The 2020 provincial review of the PSA provides the recommendations to address this legislative gap:

Extending IIU oversight to peace officers and other police service personnel is particularly compelling where those persons are authorized to use force against members of the public in the performance of their duties

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RECOMMENDATION 52 That legislation be amended such that the minister may designate any class or individual peace officer to fall under the relevant provisions compelling their cooperation with the IIU. (Corley et al., 2020, p. 103)

3.4.2 *Hall v. Independent Investigation Unit of Manitoba* (2021 MBQB 67)

The case considered the interpretation of the Independent Investigation Unit's [regulations](#) concerning subject officer notes, the parameters of subject officer's rights against self-incrimination, and the limits of production orders as they relate to a subject officer's rights, per regulation, against self-incrimination. On June 5, 2019, while on duty in Thompson, Manitoba, Cst. Dumont-Fontaine used physical force against a member of the public. Within four hours of the incident, on the same night on the same shift, per RCMP policy, Cst. Dumont-Fontaine prepared, electronically, the two reports in issue here - a "supplementary occurrence report" (SOR) and a "subject behaviour – officer response report" (SB/OR). Cst. Dumont-Fontaine made no handwritten notes in his notebook. The IIU assumed investigation into the incident on June 24, 2019, and requested the RCMP's complete investigative file, designating Cst. Dumont-Fontaine as the subject officer.

The RCMP's Position: The RCMP withheld the SOR and SB/OR reports on the basis that their disclosure would contravene regulation that "A subject officer may voluntarily provide his or her notes to an investigator or the civilian director but a subject officer has no duty or obligation to provide his or her notes to an investigator or the civilian director." The RCMP held that these reports were to be considered notes, and therefore, could not be compelled due to the subject officer's rights against self-incrimination. The RCMP also conducted a "code of conduct investigation; into Cst. Dumont-Fontaine pursuant to [Royal Canadian Mounted Police Act, R.S.C., 1985, c. R-10](#)." As part of this investigation, the RCMP requested a use of force report. The use of force report found that Cst. Dumont-Fontaine's actions were reasonable and in accordance with RCMP training and policy.

The IIU's position: On May 22, 2020, at Cst. Dumont-Fontaine's request and with his consent, the use of force report was provided to the IIU. Upon receiving the use of force report, the IIU became aware of the two other withheld reports. Following further communications between the IIU and the RCMP, the RCMP ultimately refused to disclose the reports to the IIU on the basis that Cst. Dumont-Fontaine did not consent. The IIU obtained a production order on November 20, 2020, for the reports. The IIU also held the position that by consenting to the use of force report to the IIU, did Cst. Dumont-Fontaine impliedly waive any "privilege" that might attach to the reports.



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The Ruling: The judge ruled that a judicial officer cannot override an explicit legislative provision. In this case, the discretionary use of the word ‘may’ in [s. 487.0193\(4\)](#) of the [Code](#). Thus, “Where production of a document would disclose information that is protected from disclosure by law, based on [s. 487.0193\(4\)\(b\)](#), it follows that production of the document not be ordered.” In this sense, it is my view that the word “may” is used in [s. 487.0193\(4\)](#) of the [Code](#) to reflect only a discretion under subsection (a) – in considering whether “it is unreasonable in the circumstances to require the applicant to prepare or produce the document.”

It was considered that the SOR was ‘notes’ and therefore could not be produced to the IIU under [s. 11\(2\)](#) of the [Regulation](#), which is grounded in the [Charter](#) protection against self-incrimination. However, the judge found that SB/OR are not notes, and therefore the SB/OR report was to be produced.

In other words, the ruling of this case upheld the rights of Cst. Dumont-Fontaine and the officer’s choice not to produce ‘notes’ (of which it was also decided the SOR report was to be considered notes) despite consenting to produce the use of force report. It would stand then that even when a subject officer consents to producing and complying with some aspect of an IIU investigation, they are still granted the privilege not to produce notes to the IIU, nor can a judicial officer order the production of notes if they contravene the subject officer’s Charter right against self-incrimination.

4. Overview of Civilian-Led Independent Police Oversight Operations in Canada

4.1 British Columbia: The Independent Investigations Office (IIO)

The IIO was created in 2012 following the aftermath of the [2007 RCMP killing of Robert Dziekanski](#), who died after being hit with a Taser by officers inside Vancouver’s airport.

The IIO is a civilian-led police oversight body with jurisdiction over all of BC’s 11 policing agencies. The IIO’s authority comes from BC’s [Police Act](#).

The Police Act in BC requires police to notify the IIO whenever serious harm or death has occurred. Serious harm is defined by the Police Act and includes any injury which

- a. may result in death;
- b. may cause serious disfigurement; or
- c. may cause substantial loss or impairment of mobility of the body as a whole or the function of any limb or organ.



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After being notified of an incident, a delegate of the Chief Civilian Director (CCD), typically a team director, will consider whether there is any connection between the actions or inactions of an officer and an injury to the affected person and whether the injuries of the affected person meet the threshold of serious harm.

Whereas the Civilian Director of the IIU in Manitoba is granted the power to lay charges following an investigation, the Chief Civilian Director (CCD) of the IIO does not hold power to lay charges.

Following an investigation, the CCD determines whether there are reasonable grounds to believe that an officer committed an offence based on evidence gathered by the investigative team. If there are reasonable grounds to believe that an officer committed an offence, the CCD refers the matter to Crown Counsel. Crown Counsel then considers whether charges should be laid. If the CCD determines that there are no reasonable grounds to refer the file to Crown Counsel, and it is deemed to be in the public interest to communicate information about the situation, a public report is produced and released.

4.1.1 IIO Operations

The IIO is made up of two program areas: Investigations and Operations. The operations team oversees corporate services, media and communications, policy, privacy and records management, and legal services, including four investigative assistants.

Part of the Operations portfolio in the 2019-2020 fiscal year included hosting a Community/Police/Oversight Joint Forum that brought together key stakeholder groups to discuss topical issues where interests of respective groups converge (IIO, 2020). The Operations portfolio also organized the delivery of trauma-informed practice training to all staff.

Although the IIU claims to engage in community outreach and training every year, the IIU has not publicly announced whether they have received specific training on anti-racist or trauma-informed practices from venerable knowledge holders in these areas. The operations team of the IIU may consider implementing similar practises into their operations portfolio, including but not limited to:

1. Reviewing the regulatory standards for investigators based on anti-racist and inclusive principles,
2. Expanding their community outreach, including for purposes of recruiting civilian investigators from diverse gender and racial groups,
3. Holding public and stakeholder forums that include the voices of over-policed communities and police-critical groups, and;



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4. Partaking in anti-racist, decolonizing, and trauma-informed training led by Indigenous, Black, People of Colour, and trauma-surviving knowledge holders.

The Investigations team consists of 40 employees, 29 of whom are investigators. As of 2017, 28 investigative positions were filled, 14 of whom are former police officers (50%) (IIO, 2020). The IIO was historically restricted under the Police Act subsection 38.06(3) from hiring investigators who have been members of a B.C. police force in the previous five years. Therefore, unlike the IIU, which consists predominantly of former police officers, over half (55 percent) of the IIO investigative team are civilians with investigative experience and are not former police officers. In addition, team members possess multiple areas of expertise that support the IIO's investigative work, including fraud and finance investigations, the BC Coroners Service, and legal and law enforcement training. This civilian focus has, in the IIO's opinion, benefits and costs.

Positively, recruiting civilians onto investigative teams upholds a COAs mandate and stabilizes public confidence in their independence. However, the IIO has cited concerns with officer compliance with the investigations unit, and the IIO has limited jurisdictional authority to seek charges. Police are not as likely to comply with civilian investigators with no policing experience than with former police officers, which speaks to a broader issue of the 'blue wall of silence' culture within policing: Officers remain loyal to one another above being accountable to the civilians they are mandated to serve and protect and are less likely to see civilian investigators as holding the authority to investigate them. However, relying on seconded and former police officers undermines the credibility and independence of oversight agencies and risks a lack of public trust in a COA altogether. The practice of seconding officers to independent oversight agencies is a subject of controversy. It begs questions into the actual 'civilianness' and independence of civilian-led oversight agencies from the police services they are mandated to investigate (Savage, 2013a, 2013b).

The civilian-focused model in BC is changing through Bill 31. The restrictions on seconded and former police officers serving on the IIO have been recently amended in two important ways. The first is an amendment to subsection 38.06(3). Beginning on June 1, 2019, the IIO will temporarily remove restrictions on hiring investigators who have been members of a B.C. police force the previous five years. In other words, the capacity for the IIO to engage in the controversial practice of appointing seconded and former BC police officers to the IIO has expanded. The change was made to "allow the IIO to hire former officers with more recent experience in major case management," citing the IIO's struggle to hire to full staffing levels due to limited qualified applicants (IIO, 2020, p. 22). It is questionable how recruiting police officers to investigate the police will solve case management issues without adding new problems, such as issues upholding public confidence in the independence of COAs from police. Whereas revisions and review of investigator training and the regulatory standards for investigators could have been pursued to address staffing and case management

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issues, the decision to remove the few regulations that ensured the IIO was civilian-led and predominantly civilian-operated is troubling — particularly considering that investigative COAs are often created to address the issue of the ‘blue wall of silence,’ a concept defending the culture of loyalty amongst police officers and general intransigence to external review or criticism. These legislative changes play into the untested myth that civilians cannot investigate the police rather than address the blue wall or bring these beliefs into check. To date, no empirical study has compared the results of police-led and civilian-led investigations, nor have any investigative COAs been adequately impartial and independent from the police agencies they oversee to test this question. Although investigatory skill has become highly ‘professionalized’ and largely relegated to the confines of police work, locating civilians with case management expertise and sourcing expertise from academics, lawyers, and other professionals, such as social work, non-profit, and labour union workers, is possible. The problem of officer compliance with an investigative COA is not necessarily addressed by acquiescing more power to police. Further, the argument that police are the only professionals with the competency to investigate cases of such magnitude seems unfounded considering the low rate at which police solve cases, writ large. According to 2019 data from the Department of Justice, police solve only 39 percent of cases. This number is higher for violent incidents (63 percent). Still, it leaves marginal support for the argument that police are the only professionals equipped to investigate cases that fall under an investigative COAs mandate (Ibrahim, 2019). If police are, themselves, solving less than 2 out of every three violent incidents they investigate, broader questions must be asked about investigative best practices and the standard of police investigatory work today.

The second amendment to section 38.11 is a permanent change to the IIO’s referral standard to provide the CCD and the IIO generally more discretionary power to limit the number of referrals they make to Crown Counsel. Previously, the Police Act stated that the CCD must refer to Crown Counsel all matters in which an officer **may** have committed an offence. This language of ‘may’ was questioned because it “presented challenges as it did not allow for assessment regarding the presence of reasonable grounds to believe that an offence had actually been committed.” The amended referral standard expands the discretionary power of the CCD over whether or not to refer cases to Crown Counsel (IIO, 2021, p. 22). These changes are relatively recent, and their effects are yet to be seen but will likely result in fewer referrals to Crown Counsel. Overall, these changes seem to solve one problem with case management and investigative standards by adding another: departing from a civilian model and towards a police-led model of investigation while providing the IIO more discretionary power to limit referrals to Crown Counsel. These changes raise important questions if the IIO is moving towards a police-investigating police model while acting under the language of a COA.



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4.1.2 Investigations and Charges

In the 2020-2021 fiscal year, the IIO saw a 52% increase in overall investigations undertaken compared to the previous year. The IIO received 242 notifications and commenced investigations in 193 cases. Of the 193 investigations commenced in the 2019/2020 fiscal year, the IIO concluded 106 without a public report/media release, 8 with a media release, and 41 with a public report. In other words, more than half (54 percent) of investigations were concluded without a public notification via a report or media release. According to their 2020/2021 Annual Report, “if it is apparent that the actions or inactions of the officer played no part in the injury of the affected person, or the injury was not of a severe enough nature to be considered serious harm, the notification is recorded as an advice file. Although a file number is assigned to the notification, no investigative action is taken” (IIO, 2021, p. 7).

In 2020/2021, IIO received 339 notifications, conducted 232 investigations, and 106 were classified as advice files. This translates to 68% of all notifications receiving further investigation. Of the 104 investigations concluded in 2020/2021, 52 concluded with a public report and 44 with a media release. The report does not specify overlap, and these numbers should not be considered mutually exclusive. Eight cases were referred to crown counsel, and charges have been approved on one file, no charges were approved in 2 files, and five are pending charge assessment.

Like the IIU, most notifications received by the IIO pertain to assault/use of force incidents (19 percent of investigations in the 2019/2020 fiscal year), followed by motor vehicle incidents (17 percent). Of the investigations undertaken in 2020/2021 thus far, 64 relate to use of force incidents (61 serious harm, two death). In addition, 76 were deemed self-inflicted (46 death, 30 serious harm), and 18 motor vehicle incidents (5 death, 13 serious harm).

Of all investigations conducted, charges are laid in 1.5 percent of cases, 16 percent of cases referred to crown counsel result in charges laid. This is an exceptionally low rate of charging and will presumably only decrease following recent amendments that allow the IIO more discretion over whether to refer a case to counsel.

4.2 Alberta: Alberta Serious Incident Response Team (ASIRT).

ASIRT was created in 2008 and is governed under the [Police Act](#). ASIRT is Canada’s only civilian police oversight agency that wasn’t created in response to “[a crisis of confidence in law enforcement](#)” following a police-involved death or public inquiry (Wakefield, 2018). Instead, ASIRT was created by the Alberta Association of Chiefs of Police, which lobbied the province for an independent investigative agency. It launched in January 2008 with Clifton Purvis as the first executive director.



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The current civilian director is Sue Hughston. There is no term period limiting how long a civilian director can serve on ASIRT.

ASIRT investigates Alberta police officers whose conduct:

- May have caused serious injuries,
- May have caused death,
- Has led to serious or sensitive allegations of police misconduct, such as breach of trust, obstruction of justice, sexual assault, perjury, theft, and fraud.

4.2.1 ASIRT Operations

Whereas the IIU and other independent investigation bodies receive notifications from police chiefs under their jurisdiction, the province's director of law enforcement assigns ASIRT its files. ASIRT follows a hybrid model of external investigation and review of internal police investigations. Previously, ASIRT only held a review role. As their [mandate has expanded](#) to conducting investigations, the agency has faced under-resourcing, workload issues and prolonged delays. Today, ASIRT may be directed to conduct an investigation, take over an ongoing investigation, review the investigation of a police agency, oversee and provide direction on an investigation being conducted by a police agency. ASIRT's executive director decides – after consulting the Alberta Crown Prosecution Service – whether a police officer should be criminally charged.

ASIRT's [hybrid investigation model claims to](#) include a blend of civilians and seconded police officers who work together on investigations (Civilian Review and Complaints Commission for the RCMP, 2014). Months before ASIRT was set to launch, former Edmonton Police Commission complaints director Larry Jackson argued it would be better to pair former police officers and civilian investigators — the model used by Ontario's SIU. However, in 2017, [all 22 of ASIRT's investigators were former or seconded police officers](#). To date, no empirical research has measured the effects of employing seconded police officers on investigations and charge rates. However, the effect of relying solely upon former and seconded police officers while claiming to provide 'civilian' oversight has received ample public criticism and has shown, anecdotally, to weaken public trust and confidence in the true independence of oversight agencies (Savage, 2013a, 2013b).

4.2.2 Investigations and Charges

ASIRT does not release annual reports, nor are they obligated by legislation to publicly report on their investigations. However, ASIRT does publish statistics on assigned files and the names of charges



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officers and dispositions in cases where charges are laid. Although historical data before 2015 is not available in all cases, most data below reflects operations from 2015 to the present. In addition, historical data from 2008 to the present is provided, where possible. ASIRT is, however, required to provide complainants with updates on the status of their complaints every 45 days.

The most common files assigned to ASIRT are use of force allegations, followed by sexual offences and corruption. Finally, deaths involving firearms and in custody are the most common notifications when a death has occurred.

ASIRT has undertaken 567 investigations since it was established in 2008. In total, 44 charges have been laid against 29 officers. This results in a charge rate of approximately 5 percent. ASIRT publishes the dispositions in these cases, revealing that 20 officers have been convicted of an offence (3 percent of all investigations). The majority (15) of which is a consequence of an officer pleading guilty to one charge out of multiple or pleading guilty to a lesser offence. Sentencing decisions have included jail time in only two cases (0.3 percent), one 15 months for fraud, and one 90 days for assault. The most common sentencing decision is probation, conditional sentences, fines, and temporary firearm prohibitions. Two of 10 sexual assault charges led to a sentence for a lesser offence and received a conditional sentence or probation order. In all other sexual assault cases leading to charges, the officer was acquitted, or charges were withdrawn, even when the officer was sentenced for other non-sexual charges. In 2021, the only two cases that have resulted in charges are sexual assault cases and are currently before the courts.

4.3 Saskatchewan: Serious Incident Response Team (SIRT)

In the spring of 2021, the Saskatchewan government announced the Police (Serious Incident Response Team) Amendment Act, 2021, which will “implement a civilian-led independent Serious Incident Response Team (SIRT) to investigate serious incidents involving police officers” (Government of Saskatchewan, 2021).

Following the model of ASIRT and Nova Scotia’s SIRT, Saskatchewan’s SIRT will act “under a Civilian Executive Director” to investigate “all matters where a person has suffered a sexual assault, serious injury, or death while in the custody of the police or as a result of the actions of a police officer” and all other incidents “where the Executive Director believes it is in the public interest to do so” (Government of Saskatchewan, 2021). SIRT is expected to become operational in the fall of 2021.

The proposed amendments also will require an appointment of a First Nations or Métis community liaison if the victim is of First Nations or Métis ancestry. These “appointed liaisons” will assist the Executive Director and perform functions such as coordinating with the victim’s family and advising

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investigators on community interactions. The Executive Director will also have the discretion to appoint a community liaison in all other matters.” (Government of Saskatchewan, 2021). Saskatchewan’s current plans follow the model of the SIU and the recommendations currently before the Manitoba government for the IIU to implement a liaison program when affected persons are part of ‘racialized’ groups, albeit without specified provisions for First Nations and Métis representation.

4.4 Ontario: Special Investigations Unit (SIU)

Ontario’s SIU is the first independent oversight agency established in Canada. Following a series of police-involved killings of Black men in Ontario, the Task Force on Race Relations and Policing was established to report and make recommendations for changes in the law on the use of force by the police and on police training, as well as a recommendation to create an independent investigative body with the power to lay criminal charges when warranted (Lewis, 1989). The SIU began operation in 1990. Over 30 years, the SIU has undergone a series of reforms following public scrutiny of the agency’s transparency and credibility. Recently, racial justice organizing has called for greater transparency in SIU investigations (CBC Radio, 2016). On April 29, 2016, Ontario’s Premier charged the Honourable Mr. Justice Michael Tulloch, a judge from the Ontario Court of Appeal, to oversee an independent assessment of Ontario’s police oversight bodies. The Tulloch report recommended fines and even jail sentences for officers who don’t cooperate with the province’s Special Investigations Unit (SIU) (Tulloch, 2017). The Tulloch Report’s recommendations have greatly influenced Manitoba’s review of the Police Services Act and its accompanying recommendations, including provisions to govern investigative COAs under stand-alone legislation. In 2015, the SIU also was provided subpoena powers, “bolstering the SIU’s ability to ensure compliance with the duty to cooperate and obtain from police services the records it needs to conduct its investigations.” (SIU, 2015, p. 5)

In March 2019, the provincial government passed new legislation that set out the Special Investigations Unit Act, 2019. The Special Investigations Unit Act took effect on December 1, 2020. The Act gave the SIU its own governing legislation, expanded the Unit’s mandate and replaced police officers’ “duty to cooperate” with SIU investigations with a “duty to comply.” Breach of the duty to comply became a provincial offence that could result in a fine and/or imprisonment (Special Investigations Unit Act, 2019).

The SIU is led by a Director who cannot be a current or former police or peace officer or special constable. The Director oversees all investigations and is responsible for the training of staff in a manner which “promotes recognition and respect for (i) the diverse, multicultural character of

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Ontario society, and (ii) the rights and cultures of First nation, Inuit and Métis peoples” (Special Investigations Unit Act, 2019).

4.4.1 SIU Operations

The Unit’s investigative jurisdiction is limited to those incidents involving police officials where there is a serious injury, death, allegation of sexual assault or discharge of a firearm by an official at a person. A serious injury includes:

- An injury that results in admission to a hospital;
- A fracture to the skull, or a limb, rib or vertebra;
- Burns to a significant proportion of a person’s body;
- The loss of any portion of a person’s body; or
- A loss of vision or hearing.

Incidents that fall within this mandate must be reported to the SIU by the organization which employs the involved official. However, unlike the IIU, which only receives notifications from employing police services, any member of the public may notify the SIU. Unfortunately, the 2020 review in Manitoba did not make recommendations that would allow members of the public to lodge notifications with the IIU directly, despite many other recommendations aligning with the SIU’s current practice and the recommendations from the Tulloch Report.

There is reason to consider expanding notification to the public in Manitoba, particularly regarding domestic and sexual violence incidents, which are explored in further detail in sections 5.3.5 and 6.7 of this report.

The objective of every SIU investigation is to determine whether there is evidence of criminal wrongdoing on the part of the official. The SIU does not determine whether the involved official(s) may have committed some lesser offence, such as a breach of provincial law or professional misconduct. Such matters, including racial profiling, harassment, corruption, or use of force without serious injury, are referred to the [Office of the Independent Police Review Director](#) (OIPRD).

The SIU normally investigates incidents when the official was on duty but will investigate off-duty incidents if the official was

- Engaged in the investigation, pursuit, detention or arrest of a person or otherwise exercised the powers of a police officer, special constable or peace officer, as the case may be,



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whether or not the official intended to exercise such powers or identified him or herself as a person who may exercise such powers, or

- The incident involved equipment or other property issued to the official in relation to his or her duties.

During its investigations, the SIU gathers and assesses evidence. Witness officers are required to prepare and provide their notes within twenty-four hours and may be interviewed. All officials involved are to be segregated to the extent practicable until the conclusion of their interviews, and except for the Subject Officer all officials may be subjected to fines for failure to comply with the SIU. The Director of the SIU ultimately decides whether the evidence leads to the reasonable belief that a criminal offence has been committed. If the Director forms such a belief, they shall lay a criminal charge against the official(s), and the Crown Attorney will then prosecute that charge. If the Director does not form such a belief, they cannot lay a criminal charge against the official(s) (*Special Investigations Unit Act*, 2019).

4.4.2 Investigations and Charges

From 2001 to 2019, the SIU has completed over 8,212 investigations, completed and closed investigations into 4,838 files (terminating investigations in the remaining 3,374 cases), and laid 176 charges. In total, 199 officers have been charged by the SIU. The cases the SIU predominantly investigates relate to use of force, in-custody injuries, and vehicular incidents. The SIU also investigates more allegations of sexual assault than other agencies that do not specify their jurisdiction over these incidents within their mandate, such as the IIU.

In the event that an investigation is completed and charges are not laid, the Director is to publish a report setting out the reasons for the investigation and a summary of the investigation process and its findings. In all cases, investigations are to be concluded and public notice given of the outcome within 120 days of the beginning of the investigation (*Special Investigations Unit Act*, 2019).

4.5 Québec: Bureau des enquêtes indépendantes (BEI)

The BEI started operations in 2016 in response to public concerns over the conduct of police investigations. The [Police Act](#) was passed on May 9, 2013, creating the Bureau des enquêtes indépendantes (BEI) and establishing its mission and investigative powers across Québec.



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Furthermore, Bill 107 was adopted on February 14, 2018, and amended the Police Act by broadening BEI's mandate and changing its reporting practices in the following important ways. First, the Police Act was amended to require police chiefs to notify the BEI directly of events that could lead to an independent investigation, instead of the Minister of Public Security. Second, police chiefs were also mandated to specifically notify the BEI director of any allegations against a police officer concerning a criminal offence of a sexual nature committed in the performance of duties so BEI can investigate. The BEI reports to the Minister of Public Security but maintains that it holds “an arm’s length relationship with the Québec government and is not subject to the control of the government or any Québec police force.” At the same time, the BEI has the status of a specialized police force (BEI, n.d.).

4.5.1 BEI Operations

The BEI investigates any case where a person other than a police officer:

- Dies,
- Is seriously injured,
- Is injured by a firearm used by a police officer during a police intervention or while being detained by a police force,
- Any allegations against a police officer concerning a criminal offence of a sexual nature committed in the performance of duties,
- Investigate all criminal allegations against a police officer, and;
- All cases where the victim or the complainant is a member of the First Nations or the Inuit Nation.

BEI investigators can request a general warrant to examine crime scenes and gather required samples, a search warrant, an order to produce medical records, or an order to produce documents. Failure to comply or acting in obstruction of a BEI investigation is also sanctioned. Anyone who obstructs the work of a peace officer and may be prosecuted under [section 129](#) of the Criminal Code. BEI investigators are classified as peace officers in Quebec.

If the minister requests, the BEI may also conduct any other investigation of allegations relating to a criminal offence committed by a police officer or special constable and, in exceptional cases, may be tasked with investigating any other event involving a peace officer that is related to his or her duty. The BEI does not investigate any incidents of professional misconduct under the Code of



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Ethics of Québec Police Officers. The [Commissaire à la déontologie policière](#) receives and examines complaints involving police officers.

Upon completion of the investigation, BEI submits its final report to the [Directeur des poursuites criminelles et pénales](#) (DPCP). The DPCP decides whether criminal charges will be laid based on this report. In the event of a death, BEI must submit the same report to the coroner's office as soon as the DPCP decides whether to lay charges against the police officer. These reports are not made public. Each criminal investigation will also result in a report being filed with the DPCP. However, in the case of allegations against a police officer concerning a criminal offence of a sexual nature committed in the performance of duties, BEI may, after conducting its investigation, close the file if it considers the allegation to be "frivolous or unfounded" (BEI, n.d.) This is concerning, non-trauma-responsive language to appear in the BEI's mandate, particularly in the context of Robyn Doolittle's (2017) investigation that uncovered staggering high rates of police officers dismissing allegations of sexual assault as 'unfounded.'

Once BEI finishes an investigation, the agency writes an exhaustive report and sends it to The Directeur des poursuites criminelles et pénales and the Bureau du coroner if there has been a death. However, the BEI has no power to lay charges against a police officer.

On September 1, 2020, [the Ligue des droits et libertés \(LDL\)](#) published an alternative critical review of the BEI, assessing the first three years of its activity. The report includes ten findings and 46 recommendations to reform the BEI. Overall, the review concluded that:

1. The BEI's independence is compromised by its ongoing reliance upon the police community to conduct investigations,
2. The BEI struggles with a lack of transparency through its refusal to make public the contents of its investigation reports when no charges are laid against police officers,
3. Police impunity persists despite the creation of the BEI, revealed by letters sent by BEI management to the heads of some police forces in November of 2018 that indicated police officers and directors were not complying with their obligations under the BEI regulations and a lack of sanctions for such violations.
4. There is a plaguing lack of impartiality, particularly in light of the continued reliance on former police officers to investigate their own police force.

These are issues not unique to Quebec and are all issues the IIU has struggled with as well. For these reasons, the recommendations presented by the LDL are timely and important to consider in the Manitoban context. A list of these recommendations can be found in Appendix A.



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4.5.2. Investigations and Charges

The BEI does not publicly publish annual reports on the notifications they receive, investigations they commence, or charges laid following an investigation. For these reasons, no empirical overview of the BEI's investigations and charges. However, according to a 2019 CTV article, the BEI has opened 126 investigations. In 71 cases, the Crown did not charge police officers. Sixteen were under review by the Crown at the time of publication, and 39 were currently being investigated by the BEI ([CTV Montreal, 2019](#)).

4.6 Nova Scotia: Serious Incident Response Team (SIRT)

Nova Scotia's SIRT was established in 2012 and is governed under the province's [Police Act](#). SIRT's mandate is to investigate all matters that involve death, serious injury, sexual assault and domestic violence or other matters of significant public interest that may have arisen from the actions of any police officer in Nova Scotia. A serious injury includes:

- fractures to limbs, ribs, head or spine;
- burns, cuts, or lacerations which are serious or affect a major portion of the body;
- loss of any portion of the body;
- serious internal injuries;
- any injury caused by gunshot;
- admission to the hospital due to the injury (not including outpatient care followed by release).

Chiefs of Police are required to notify the Director of the SIRT as soon as practicable after such an event occurs or if the Chief believes an investigation would be in the public interest (*Police Act*, 2004)

4.6.1 SIRT Operations

SIRT is headed by a civilian director who has no prior experience in law enforcement. However, similar to ASIRT in Alberta, the SIU in Ontario, and Manitoba's IIU, seconded police officers can serve on SIRT's investigative team. Unlike the IIU, SIRT publishes background information on their investigators directly to their site. SIRT's investigative team employs seconded and former police officers in its entirety. The team consists of two former RCMP officers and two full-time seconded police officers, one from the Halifax Regional Police and one from the RCMP. Currently, SIRT and the

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Nova Scotia government are considering a proposal from New Brunswick that would seek to expand SIRT's mandate to New Brunswick. Representatives from nine Mi'kmaw communities in New Brunswick have also had discussions with the province about creating a policing oversight agency. There has also been public criticism of the lack of Indigenous representation and diversity within SIRT ([Donkin, 2021](#)).

After every investigation, SIRT will determine whether criminal charges should result from the police officer's actions. If a charge is laid, SiRT turns the case over to the Crown for prosecution, and the SiRT investigator(s) may provide support to the Crown in its prosecution. The Director issues a public summary of the investigation, which will outline the reasons for their decision. Unlike the IIU, SIRT accepts complaints from the public, provided the incident took place after the operational date of the agency (April 20, 2012). The chiefs of all police, and the head of the RCMP in Nova Scotia, are required by law to refer all serious incidents to the SIRT. The Minister of Justice can also make referrals, as can members of the public, by contacting the SIRT directly. SIRT can also launch or take over an investigation on its own. In every case, it is up to SIRT to determine whether the matter meets the team's mandate and should be investigated. Cases can meet the mandate even though there is no allegation of wrongdoing on behalf of the police. This is a unique stipulation, as many other investigative COA's, including the IIU, have narrow mandates and can only receive notifications from police services to instigate an investigation. In the IIU's case, this has become a serious reporting loophole exploited by the WPS, in particular.

If a matter does not fit SIRT's mandate, no investigation is conducted. The police service and members of the public who made the referral, if relevant, are notified. If the matter fits SIRT's mandate, a primary SIRT investigator and as many additional investigators as necessary are assigned to the case. Upon completing the investigation, the primary investigator must submit an investigative report, which the Director reviews. SIRT will issue a media release at the outset of a case to assure the public that an independent investigation of the serious incident has begun. Other releases may occur during the investigation that is necessary but is not required by regulation.

At the end of an investigation, the Director of SIRT must make a summary of the investigation available to the public. The summary is subject to the Freedom of Information and Protection of Privacy Act and "the needs of the investigation" (SIRT, nd.). The Director is required to release a summary within three months from completion of the investigation.

4.6.2 Investigations and Charges

Between 2012 and 2019, SIRT has conducted 216 investigations and laid charges in 41 investigations. This translates to a charge rate of approximately 19 percent—the highest of any

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investigative COA in the country. Importantly, SIRT also has the highest rate of investigating on and off-duty sexual and domestic violence allegations. SIRT has also laid charges in these cases higher than any other investigative COA in Canada. Some of this can be explained by SIRT's authority to initiate investigations, allowing the public to report to them directly, and SIRT's mandate specifying its jurisdiction over on and off-duty sexual and domestic violence allegations. Whereas the IIU implicitly has jurisdiction over all criminal contraventions, they have not separately and specifically outlined their mandate and procedure for investigating these incidents, as SIRT does. The 2020 review additionally makes no recommendations to align the IIU to SIRT's reporting and investigative standard over sexual and domestic violence. This oversight is curious, considering the review makes many other recommendations to specify the language and regulatory standards over the IIU, yet leaves the troubling lack of specification over the IIU's mandate to investigate off and off-duty sexual and domestic violence or address the lack of transparency provided in public reporting on their investigations into such incidents. This is discussed in further detail in sections 5.3.5 and 6.7.

4.7 Newfoundland and Labrador: Serious Incident Response Team of Newfoundland and Labrador (SIRT-NL)

The Newfoundland and Labrador internal oversight body is empowered by the *Serious Incident Response Team Act*. This Act creates the Serious Incident Response Team (SIRT-NL), authorizes the appointment of a Civilian Director (who reports to the Minister and appoints investigators), and sets out the powers and responsibilities of SIRT-NL. Directors and investigators are empowered with all the powers of police officers with jurisdiction throughout the province, and they may make agreements with any agencies or government required to undertake their work (*The Serious Incident Response Team Act*, 2017).

4.7.1 SIRT-NL Operations

Chiefs of Police are required to notify the Director of the SIRT-NL as soon as practicable where they believe a serious incident may have occurred involving a police officer. Serious incidents are defined in the regulations as including death, serious injury, sexual offences, domestic violence, or any other matter of significant public interest (*The Serious Incident Response Team Act*, 2017).

Upon being notified, the civilian director may initiate an investigation SIRT-NL or, where appropriate, refer the matter to other agencies. Every 45 days after an investigation has started, the director must provide an update on the investigation to the Minister, the Police Chief where the

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Subject Officer works, the police officer under investigation, and those affected by the incident (or their family if they are deceased).

The Director shall provide a summary of investigations to the public, and annual reports on SIRT are to be made. Where a charge is not laid, the summary will include a statement of why the incident is under SIRT's mandate, the facts, the time frame of the investigation, the legal issues, reasons why a charge is not being laid, and any other information the minister may request. Where a charge is laid the summary will include the officers name, the offense charged, court appearance details, and any other information the Minister requested.

During an investigation, all officers involved in or present at the scene are to be segregated from one another. Chiefs must provide any relevant investigative material where requested. All officers involved in or witnessing a serious incident will provide notes to the investigator within 24 hours of being directed to do so.

Police officers may be directed to attend interviews by the person in charge of the investigation. However, the officer subject to the complaint may not be so directed. Upon being directed to attend an interview, police officers are given an opportunity to consult with legal counsel. Persons shall not interfere with, obstruct, attempt to obstruct, or fail to cooperate with an investigation, however the extent of these terms is not defined (*The Serious Incident Response Team Act*, 2017).

4.7.2 Investigations and Charges

Despite legislative requirements to do so, the SIRT-NL does not appear to have yet published annual reports detailing its operations. However, it appears that the SIRT-NL remains in the early stages of its development, suggesting that regular annual reports may be forthcoming. The first Civilian Director, who remains in the role, was appointed in September of 2019 and at that time took on responsibilities for “the development of policies and memorandums of understanding, recruiting investigators and assisting the Department in developing Regulations” (Newfoundland and Labrador Justice and Public Safety, 2020).

The SIRT-NL announced only in June of 2021 that it was “fully operational” and committed at that time to making reports of its investigations public. Since that time, the SIRT-NL has released two Director's Reports, each summarizing the organization's investigation and findings into serious incidents involving police. The SIRT-NL found no evidence of wrongdoing by police in either case and did not lay charges (SIRT-NL, 2021).



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5. The 2020 Provincial Third-Party Review of the Police Services Act

In 2020, Community Safety Knowledge Alliance (CSKA) published their review of the *Police Services Act, 2009*. The purpose of the review was to undertake a comprehensive review of the Act, as required under section 90 of the Act, to ensure the PSA “remains current with the evolving standards and practices in policing and police governance.” (Corley et al., 2020, p. 1).

Key components of the review included literature and documentation review, legislative analysis, stakeholder consultation, and data review and analysis.

Stakeholder consultations were undertaken with key groups identified by Manitoba Justice, the MPC, and the review team. According to the review, “individuals who were not on the initial list of stakeholders also contacted the review team directly to provide input” (Corley et al., 2020, p. 25). However, these groups are not specified. The review team also received some written submissions, although further specifications on the details of these written submissions are not provided. According to the report, a public opinion survey was also to be included in the consultation process but ultimately was excluded “when it was determined that the COVID-19 pandemic would make the timing of such a public survey inappropriate.” Instead, the review team reportedly consulted with “a number of civil society organizations with an interest in policing and justice [...] to ensure the PSA review was as comprehensive and fulsome as possible under the circumstances” (Corley et al., 2020, p. 25). This reasoning is inconsistent with the practices of other provinces that have also been engaged in reviewing police legislation through public consultation during the pandemic.

5.1 Consultation, COVID-19, and Review Alternatives Exemplified by The British Columbia Legislative Assembly appointed the Special Committee on Reforming the Police Act

On July 8, 2020, The British Columbia Legislative Assembly appointed the Special Committee on Reforming the Police Act to examine and make recommendations to the Legislative Assembly on modernizing and oversight of policing under the *Police Act* (R.S.B.C. 1996, c.367). This report included examining the scope of systemic racism within BC's police agencies, the role of police concerning complex social issues including mental health and wellness, addictions, and harm reduction, reforms related to independent oversight, transparency, governance, structure, service delivery, standards, funding, training and education, and any other considerations which may apply to the modernization and sustainability of policing under the Police Act and “ensuring consistency of a modernized Police Act with the United Nations Declaration on the Rights of Indigenous Peoples” ([Legislative Assembly of British Columbia, 2020, p. 1](#)). The Special Committee began [accepting submissions](#) from British

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Columbians as part of its consultation process. The Special Committee is currently receiving input through [public surveys](#) and recommendations from a broad array of stakeholders, including but not limited to [bar associations](#), [inclusion and mental health supports](#), [suicide prevention and crisis centres](#), [feminist legal centres](#), [domestic violence services](#), and many other people and groups representing frontline perspectives as it relates to the scope of the Special Committee's review. The Legislative Assembly's survey list is available here:

<https://www.leg.bc.ca/content/CommitteeDocuments/42nd-parliament/2nd-session/rpa/RPA-Survey-Form.pdf>).

Albeit operating at a legislative level compared to the third-party provincial review of the PSA in Manitoba, the Special Committee has proven the feasibility of implementing a public consultation process amidst the conditions of COVID-19. The model employed in BC has proven effective thus far and comparatively reveals a major limitation in the review before Manitoba. More fulsome consultation and public opinion surveys should be actioned before legislative changes are implemented. BC presents just one of many models. In personal communication with Erick Laming, Ph.D. candidate researching police oversight and accountability across Canada, he reflected that "consulting with the community is a top priority for this and constant and continuous communication with the public is vital, especially if the agency wants public confidence and trust (as well as the appearance of legitimacy). [...] If anything, the lack of fulsome consultation undermines public confidence and trust, as well as the appearance of legitimacy pertaining to this review."

The fulsome consultation process undertaken in the Tulloch Report in Ontario may also provide a model useful to Manitoba. Following Tulloch's consultation process, consultation should include:

1. Representatives from the LGBTQ2s+ community as well as support agencies
2. Survivors of police sexual and/or domestic violence and their supporters and advocates
3. Representatives from various faith and religious communities
4. Mental health service providers, survivors, and consumers;
5. Medical health experts
6. Overdose crisis advocates and harm reduction practitioners
7. Disabled people and their advocates
8. Youth and youth workers;
9. Educators and parent groups;



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10. Legal clinics;
11. Black and other racially marginalized communities such as the Arab, Somali, South Asian, and East Asian communities;
12. More expansive consultation with Indigenous communities, including those living in urban communities and those living on reserve, Chiefs, Elders, band council members, Indigenous service providers,
13. The families of individuals whose deaths were caused by the police;
14. Public education, consultation and survey
15. Police accountability advocacy groups, including groups advocating for police defunding.
16. Policing stakeholders such as police associations, chiefs of police, police commissioners, and police services board members;

5.2 Potential Conflicts of Interest within the Third-Party Review

Another issue to note respecting the third-party review is the presence of [long-standing](#) and [ongoing](#) affiliations between review committee members and the Winnipeg Police Service and [the Manitoba Police Commission](#). These affiliations may have added expertise and experience to the process to complement the input of scholars and researchers. However, these affiliations were not disclosed in the committee's report which represents a missed opportunity for promoting transparency. The work of the review committee and its recommendations should be read with the breadth of experience represented on the committee in mind.

Despite these apparent shortcomings in community consultation and the research team's missed opportunities for transparency, the review set out several recommendations that influence the IIU and the CMP. An annotated list of these recommendations is provided below.

5.3 Recommendations relevant to the IIU

5.3.1 Governing Frameworks and Legislation

1. RECOMMENDATION 1 That Manitoba Justice adopt accountability frameworks for both police personnel and police organizations, whereby the Director of Policing is responsible for defining and issuing expectations; and independent agencies (e.g., LERA, IIU, and MPC) are responsible for verifying the maintenance of such expectations.



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2. RECOMMENDATION 49 That there be separate legislation to govern the Independent Investigations Unit.

- a. “This would give it the same status as LERA, which operates under its own legislation, while reinforcing its independence with the public. Ontario recently established new legislation governing its Special Investigations Unit, which had previously been under The Police Act” (p. 18). Yet, “no stakeholders advocated for—or articulated a clear need or benefit to— having the IIU operate under its own legislation, separate from the PSA.” (Corley et al., 2020, p. 45)

In this regard, the recommendations borrow much of the approach in Ontario’s SIU. The SIU Act came into effect in late 2020, and it is a stand-alone act and no longer connected to the Police Services Act. In personal communication with Erick Laming, he reflected that governing the IIU under separate legislation doesn’t meaningfully address issues of independence from the police. Although separate legislation may “[give] off a cleaner perception from the public, but in terms of any real meaningful changes or differences, I have yet to see any in Ontario [since the stand-alone legislation was implemented].”

5.3.2 Compliance and Sanctions

3. RECOMMENDATION 50 That the Act be amended to provide specific direction concerning the requirement for police chiefs, police services, and police officers to comply with all reasonable requests made by the IIU director or investigators.

- a. “Currently, the IIU has no statutory authority to require compliance by a police officer with legislative mandate nor the ability to enforce such compliance in a meaningful way. The current legislation lacks a clearly stated ‘duty to comply’ binding police chiefs, police officers, and services. The absence of this clearly stated duty to comply may result in refusals to participate in interviews, the timely production of relevant documents, and full and frank disclosure.” (Corley et al., 2020, p. 18)

4. RECOMMENDATION 51 That legislation pertaining to the IIU be amended to provide for the sanctioning of those who fail to meet the duty to comply with IIU investigations.

- a. “There have been a number of instances where the IIU has had to rely on the courts to seek compliance. This is not only costly but also adds significant delays to the investigation. Section 31 of the Ontario Special Investigations Unit Act, 2019 further provides that: (3) A person who fails to comply with subsection 1 [duty to comply] is guilty of an offence and on conviction is liable, (a) In the case of a first offence, to a



fine of not more than \$5,000, to imprisonment for a term of not more than one year or to both; or (b) In the case of a second or subsequent offence, to a fine of not more than \$10,000, to imprisonment for a term of not more than one year, or both.” (Corley et al., 2020, p. 102).

As previously mentioned in this report, sanctions via monetary fines of \$5,000 to \$10,000 are not commensurate with the requirements for an effective deterrence strategy. They may instead be treated as the ‘cost of doing business as usual.’ This is particularly the case in recognition that police officers rarely are convicted and rarely sentenced to jail time. Additionally, these fines pale in comparison to the sizable salary of police officers. In Ontario, the Adams Report of 1998 included community perspectives suggesting that the “most effective sanction, [...] would be an amendment to the [Act] to permit immediate suspension without pay of police officers who refuse to cooperate” (Adams, 1998, p. 37). Removing rewards, promotions, and the provision that police officers may be suspended without pay if they fail to comply with an investigation offers a more meaningful and effective approach to prevent non-compliance.

5.3.3 Witness Officers

5. RECOMMENDATION 52 That legislation be amended such that the minister may designate any class or individual peace officer to fall under the relevant provisions compelling their cooperation with the IIU.
6. RECOMMENDATION 53 That the IIU Regulation be amended as follows:
 - a. 12(1) An investigator may make a written request to a police chief to interview a police officer. The request must set out the time and location of the interview.
 - b. 12(2) A subject officer is not required to be interviewed by an investigator, but the officer may voluntarily agree to be interviewed.
 - c. 12(3) Subject to subsection (4), an interview with a witness officer must take place at the time and location specified in the request.
 - d. 12(4) In response to a written request from the police chief, the civilian director may, by written notice, grant the requested postponement of an interview or refuse to postpone an interview.
 - e. 12(5) The police chief must ensure that the witness officer attends an interview as required by this section.



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These recommendations directly address the gaps in the legislative scheme identified in IIU vs. WPS, discussed in further detail in section 3.4.1 of this report.

5.3.4 IIU Operations

7. RECOMMENDATION 54 That the Act be amended to provide that the civilian director, in consultation with the director of public prosecutions, may designate a Crown attorney to act as the acting director while the director is absent or otherwise unable to perform the duties of his or her office.
8. RECOMMENDATION 55 That section 73(1)(b) be revised so that a police chief must immediately notify the IIU when a police service has any suspicion or is conducting an investigation into the conduct of a police officer and where there is evidence that the officer may have contravened the Criminal Code or any other federal or provincial enactment, other than the provisions prescribed under clause 65(1)(c).

Recommendation 55 is particularly weak as police services are already mandated to notify the IIU and have proven a record of contravening and actively resisting this mandate. These slight changes to mandate language are not well poised to change this known behaviour. Instead, recommendations should follow the lead of other agencies, such as SIRT, by allowing the IIU to launch investigations without notification from a police service and receive notifications directly from the public. Such would help address the loophole in the current notification standards that operate on an honour system that leaves the blue wall of silence within police services unaddressed.

5.3.5 Language

9. RECOMMENDATION 56 That Part 7, Division 3 of the Act be amended to also apply to off-duty officers.
10. RECOMMENDATION 57 That the term “immediately” be used in Sections 66(1), 66(2), and 73(1).
11. RECOMMENDATION 58 That the term ‘formal complaint’ be replaced by ‘complaint’ in sections 66(2) and 73(1).
12. RECOMMENDATION 59 That the definitions of ‘incident notes’ and ‘record’ be included in the PSA or in the IIU regulations.



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13. RECOMMENDATION 60 That the PSA includes a duty for officers to complete their incident notes as soon as possible with respect to an IIU incident.
14. RECOMMENDATION 61 That public safety reports no longer be required and that Sections 8(1) and 8(2) be repealed.
15. RECOMMENDATION 62 That the definition of ‘serious injury’ be expanded to include fractures to the clavicle, pelvis, and hip and any injury that requires admission to a hospital or health care facility on an inpatient basis.

Troubling in these recommendations for specifying the language governing the IIU is what remains missing. Namely, the lack of recommendations to specify the IIU’s mandate to investigate on and off-duty domestic and sexual violence allegations. The IIU holds a poor record for investigating police-involved domestic and sexual violence, particularly in light of the known realities of gendered violence amongst police officers, further discussed in section 6.2 of this report. Indeed, questions into the mandate and protocols for investigating police-involved sexual and domestic violence has been a recent topic of national discussion (Burke, 2020), yet makes no appearance in the report and has no influence on recommended changes to the IIU’s governing language. The report excuses this discussion altogether by indicating the IIU’s mandate already includes all criminal acts committed by police. Therefore it doesn’t necessarily need to change any language about the types of cases required to investigate as part of its mandate. However, this conclusion, coupled with the granular semantic changes recommended above, presents a double standard. Whereas the authors are clear on the need to change language to ensure consistency, such as in recommendation to change the mandate’s wording to “immediately” rather than “as soon as practicable” for police chiefs/officers throughout the Act, such rationale does not hold for specifying the language within the mandate as it concerns what incidents the IIU should be investigating and what incidents police chiefs/officers should be required to automatically notify the IIU about, including domestic violence and sexual assault, both on and off duty. In all, this is an inconsistency in the review’s recommendations that should be discussed more thoroughly.

5.3.6 Hiring and Employment

16. RECOMMENDATION 63 That the IIU continue to allow former police officers to work as investigators but be encouraged to continue to recruit investigators who do not have a police background. The secondment of serving police officers to the IIU should be discontinued.
17. RECOMMENDATION 64 That the IIU be encouraged to recruit investigators from diverse backgrounds with a particular emphasis on people with Indigenous backgrounds.



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18. RECOMMENDATION 69 That the Police Services Act (or in IIU-specific legislation as proposed in this report) be amended to provide that the civilian director may appoint a community liaison or observer to work with the Independent Investigations Unit in the course of an investigation.

Diverse representation within the IIU has been a well-established priority amongst Indigenous-led groups. The Manitoba Métis Federation repeated such in the third-party review (Corley et al., 2020, p. 80). However, these recommendations remain too weak to assure compliance or a timeline to affect changes to the representative make-up of the IIU. Limiting recommendations to ‘encouraging recruitment’ and offering no strategy or timeline for the elimination of secondment overwhelmingly neglects to critically assess how the institutional culture and design of the IIU may contribute to the IIU’s issues with relying on police and its lack of representation. Namely, by treating the lack of diversity as a recruitment issue, the problem is framed as external to the current operational structure and culture of the IIU. In contrast, a commitment to anti-racist principles would consider the role of institutional design, culture and the need for structural redress as a fundamental aspect of ensuring diversity and representation. Strong recommendations in these regards would include:

1. A recommendation for strategic planning to implement diversity mandates, alongside timelines for these targets to be met,
2. A timeline and strategy for the end of secondment,
3. Recommendations for consultation and further strategic planning for workplace transformation and institutional change to address why diversity and inclusion remain such plaguing issues within the IIU, and;
4. Inclusion and leadership of diverse perspectives and consultation in the determination of these strategies.

See section 6.8 for fuller detail on the relationship between the lack of diversity on investigative COA teams and public trust.

5.3.7 Provincial Oversight of the IIU

19. RECOMMENDATION 70 That Manitoba Justice develop the capacity of the office of the Director of Policing to monitor and analyze complaints and conduct-related reports from LERA and IIU, as well as results of standards compliance monitoring inspections to develop a whole-of-system perspective on relevant trends. Furthermore, that the ministry issue an annual report on this matter.



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5.4 Recommendations Relevant to the CMP

The review concluded that the IIU provides sufficient civilian oversight and that the CMP may no longer be required, and therefore offered the following recommendations:

20. RECOMMENDATION 65 That Manitoba Justice terminate the Civilian Monitor Program. In the event that the government decides to retain the CMP, there are a number of ways in which it might be made more effective.
21. RECOMMENDATION 66 Should the CMP be retained, that:
 - a. (a) Civilian monitors be subject to more specific qualifications, preferably with a minimum of investigative or related experience.
 - b. (b) Civilian monitors be subject to background checks prior to their engagement.
 - c. (c) A pool of qualified potential candidates (including of Indigenous descent) be engaged on a casual contract basis to ensure that qualified civilian monitors are available at short notice.
 - d. (d) The civilian monitor reports also be provided to the civilian director, as well as to the minister.
22. RECOMMENDATION 67 That civilian monitors be provided contemporaneous access to investigations materials.
23. Alternatively: RECOMMENDATION 68 That Manitoba Justice provide the civilian director with the authority to engage a civilian monitor for the purposes of acting as a liaison to the community, particularly for particularly high profile or sensitive investigations, or those involving members of Manitoba's racialized communities.

Noted by the review was a “lack of value in the CMP reporting process” as “monitoring reports are only seen by a very limited number of people and have no statistical or analytical value.” (Corley et al., 2020, p. 46). As such, if the program were retained, “stakeholders suggested it be transferred to the IIU, which would select future civilian monitors and focus their role more on community liaison work, particularly in high profile or sensitive investigations” (p. 46). Crucial to these recommendations is the question of their purpose: Is the purpose of ending the CMP and replacing it with a liaison program to expand Indigenous voice and input in the IIU's operations? Is the purpose of improving the public perception of the IIU with the communities most affected by police violence? Although the 2020 third party review of Manitoba's Police Service Act admits the lack of Indigenous and racially diverse representation in the IIU is an issue, the tabled recommendations

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provide window dressing recommendations to improve outreach and liaison networks, rather than offer strategies and recommendations to improve Indigenous and racially marginalized representation within the IIU team. It is questionable why identified issues with the lack of ‘use’ of monitor reports due to their esoteric reporting practises did not result in recommendations to improve transparency by making monitor reports publicly available. Importantly, it is unclear whether liaisons will have less access to investigative material and interview powers currently held by monitors. In the absence of greater transparency via providing civilian monitors more power and access to investigative material, liaison programs appeal to the desire for more public confidence and trust while simultaneously providing less public transparency and civilian power in the investigative process.

5.5 Debunking the ‘Ferguson Effect’

As it pertains to the IIU, the report concluded:

Irrespective of the IIU’s mandate, chiefs of police had to retain a degree of disciplinary authority in their organizations. It was noted that chiefs were being held to account for effective management and that ‘outsourcing’ certain managerial authorities and responsibilities to third parties could only hinder the abilities of chiefs to manage and direct their police services effectively (2020, p. 45).

Following the police killing of Michael Brown in Ferguson, Missouri, and the acquittal of the officer responsible for his death, sweeping calls were made for greater civilian oversight and accountability of policing. The concern that additional external oversight will infringe on a police service’s ability to carry out their own mandate and disciplinary standards has been termed the ‘Ferguson effect’ by policing institutions. The sentiments underpinning the Ferguson effect are echoed in the review’s conclusion above. However, empirical research has not supported this concern. On the contrary, research in this area finds that police jurisdictions with civilian oversight models that follow an investigate model and a broad mandate have lower violent crime rates and police officer homicide (Ali & Nicholson-Crotty, 2021; Ali & Pirog, 2019). In other words, civilian oversight did not infringe or impede the quality of policing or internal police management. Civilian oversight models with a narrower mandate and less jurisdictional authority to investigate police services were correlated with less effective policing practises, in general. Although causal links should not be inferred, preliminary research suggests fear of negative consequences of oversight on the quality of policing is unfounded. Expanding the jurisdictional authority, broadening the mandate, and strengthening the teeth of civilian oversight agencies are related to a beneficial reduction in violent crime rates and police officer homicide. Further, police agencies in Manitoba do not publish their internal

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disciplinary records, whereas Ontario police agencies do. Former SIU director Ian Scott has remarked that “a lot of matters [in Ontario] get settled through informal disciplinary routes. But if it’s a formal hearing, that hearing is presumptively public. The public has a great interest, and ought to have an interest, in allegations of misconduct against police officers they’re paying for” (Scott in May and Thorpe, 2020). By empirical and pragmatic standards of other investigative COAs, evidence supports more, not less, external investigation of the police, and more, not less public transparency of internal disciplinary records.

6. Review of Best Practises: Transparency, Reporting and Officer Compliance in Civilian Oversight Agencies:

As police brutality against Black, Indigenous, and People of Colour worsen, investigative civilian police oversight agencies (COA) have become an increasingly popular mechanism promised to provide transparency into - and accountability over- police. Yet as investigative COA models burgeon, there remains scant empirical research into their effectiveness in addressing the root problems of systemic racism, sexism, and the ‘blue wall of silence’ that pervade policing today. This section briefly overviews these problems and examines the limited literature on COA’s, focusing on their practices to improve transparency in policing and address issues with officer compliance. Gaps and limitations in the literature are also discussed.

6.1 Systemic Racism in Policing

The growing use of investigative COAs across the US and Canada responds to notable cases of police brutality, corruption, or scandal involving police violence. In all but one instance, investigative COAs in Canada were created in response to a public inquiry or highly visible police-involved death of a racially and/or gender marginalized person or group. As such, discussions of COAs are intertwined with discussions of racism and sexism within policing.

The relationship between policing and racism is unfortunately symbiotic. In Manitoba, racism in policing is as old as policing itself. For example, the North West Mounted Police (the precursor to the Royal Canadian Mounted Police) was established to ‘clear the plains’ and ‘pacify the west,’ making the lands suitable for incoming (predominantly) white settlers (Macleod, 1976; Baker, 1998; Hubner, 1998; Beahen, 2000; Knafla & Swainger, 2006; Nettelbeck & Smandych, 2010). Today, the RCMP continues to engage in violent tactics to remove Indigenous people from their lands for unsustainable pipeline expansion, resource extraction, and private housing development (see, Palmater, 2019; Dhillon, 2019; McIvor, 2020; From Embers, 2020).

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Manitoba still faces plaguing issues with institutional and systemic racism. In 2015, *Maclean's* named Winnipeg '[Canada's Most Racist City](#)' (Macdonald, 2015). This was spurred, in part, by the many institutional failures within child welfare and policing that culminated in the death of 15 year old Tina Fontaine, police failure to properly investigate cases of disappeared and murdered Indigenous women and girls, and the medical racism resulting in the death of Brian Sinclair. He died while waiting 34 hours in Winnipeg's Health Sciences Centre without receiving treatment.

The history of Winnipeg holds its own divisive history of racist policing, which lives on in many commemorative place names today. For instance, Field Marshal Wolseley and his expedition were instrumental in the 'Reign of Terror' against Métis families to suppress the Red River Resistance (Barkwell, 2017). The police-killing of J.J. Harper and the murder of Helen Betty Osborne gave cause for the 1991 Aboriginal Justice Inquiry. The recommendations from the Inquiry included establishing an independent investigation unit over policing in the province (Aboriginal Justice Implementation Commission, 1991). It is important to underline that issues of racism and racial violence by police are homegrown and long-standing. For instance, calls for non-police crisis intervention for mental health crises in Winnipeg have come following the death of Machuar Madut while the Winnipeg police officers were performing a wellness check. Anti-Black police brutality and increased public attention do not arise solely from stories in the United States. Indeed, our local neighbourhoods are facing a growing over-policing and under-resourcing emergency.

In the spring of 2020, three Indigenous people were killed by Winnipeg Police in 10 days, sparking public outrage and resurfacing long-standing calls for police defunding, community-led and non-police crisis solutions, and revision of police oversight (Berman, 2020). In addition, the current problem of racism in policing has been empirically measured by Southern Chiefs' Organization (SCO) and national public perception data. Both are discussed, respectively.

6.1.1 Southern Chiefs' Organization 2021 Experiences of Racism in Policing Report

In 2021, Southern Chiefs' Organization (SCO) published their survey data on experiences and impacts of racism in policing in Manitoba. The data encompasses 738 participants representing members of 76 First Nations in Manitoba. Eighty-eight percent of respondents believed policing in Manitoba has a racism problem. Ninety percent of participants stated they had had at least one personal interaction with police in Manitoba in their lifetime, most of which (48 percent) had 2-5 interactions. Over half of respondents (52 percent) report feeling less safe when they see police, and only 10 percent said they feel safer in police presence. Of the 90 percent of respondents who indicated they have interacted with police, 70 percent reported they had experienced racism while interacting with the police in Manitoba. Eighty-one percent of respondents reported having a First Nation family member who has experienced racism from police in Manitoba. Fifty-eight percent of

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the participants indicated that they often or always expect to face racism when interacting with police in Manitoba. Sixty-six percent of participants indicated that they have avoided seeking help from police in Manitoba due to the effects of racism (SCO, 2021, p.1).

Eighty-two percent of SCO's study participants indicated that they did not believe police in Manitoba take responsibility for their actions (SCO, 2021, p. 13). On metrics of trust, 65 percent of participants indicated that their trust in the police had been affected by their interactions with police in Manitoba.

On metrics of police violence under the scope of the IIU's jurisdiction, of the participants who indicated they had interacted with the police in Manitoba, 39 percent reported experiencing excessive use of force, 17 percent experienced unnecessary use of tasers, restraints, or a firearm. In addition, one respondent recounted being subjected to a starlight tour, an infamous practice of picking up Indigenous people in below-zero temperatures and leaving them in isolated areas.

"I was beaten and thrown into a police car when I was 15. They drove me out to Pipeline here in Winnipeg where they released me with no cuffs in the middle of the night. It was winter time I only had a sweater on. They left me cold and out of sight where there was no traffic" (SCO, 2021, p. 23).

This practice has led to the death of many Indigenous people on the prairies, including Neil Stonechild in Saskatchewan (Campbell, 2016).

From these findings, the SCO has identified the following recommendations to address racism in policing, including:

1. Increasing Indigenous representation in the police;
2. Mandatory training and education on mental health, Indigenous histories, traditions, and culture;
3. Defunding the police and investing in social wellness and community-based initiatives,
4. Increase screening requirements for police recruits; and
5. Establishing community-based and community-led policing initiatives (SCO, 2021, p. 29).

As one respondent is quoted, "Winnipeg Police's racism is so obvious and blatant, and they need to be defunded of their bloated police budget so we can fund services and ensure the needs of our people are met. There is strong evidence and research that tells us that when communities are well supported, crime is greatly reduced. Winnipeg must strive for this" (SCO, 2021, p. 33).



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6.1.2 Public Perceptions on Racism, Discrimination, and Confidence in Policing in Manitoba

According to [Statistics Canada 2019 data](#), Winnipeg residents report having the lowest confidence in the police out of every major city in Canada. Only 31 percent of Winnipeg respondents indicate having confidence in the police. Seven in ten First Nations people, Métis and/or Inuit, said they did not have confidence in the police. Winnipeg also has the largest Indigenous population of any major city in Canada. People with disabilities were also found to report less confidence in the police than non-disabled people and more likely to interact with police than non-disabled people (mental or cognitive disability 42 percent, physical disability 35 percent, no disability 33 percent) (Ibrahim, 2020).

[2020 Angus Reid](#) data on public perceptions of police offer similar insights. Thirty-six percent of Winnipeggers polled indicated they believe there is a serious problem with the way police interact with Black, Indigenous, and other non-white people. Also, 36 percent, or over one in three Winnipeggers polled, indicated that local police spending was too high and needed to be cut. The only major city to report a higher proportion of support for defunding the police is Toronto (38 percent). Winnipeg also spends one of the highest proportions (27 percent) of its municipal budget on police than any other major city in Canada. Across Manitoba, 29 percent of people polled believe police budgets should be reduced, second only to Ontario (32 percent). A strong majority of Canadians across the country reported preferring spending on social welfare strategies rather than increasing police presence (63 percent) in areas with high crime rates (Angus Reid Institute, 2020).



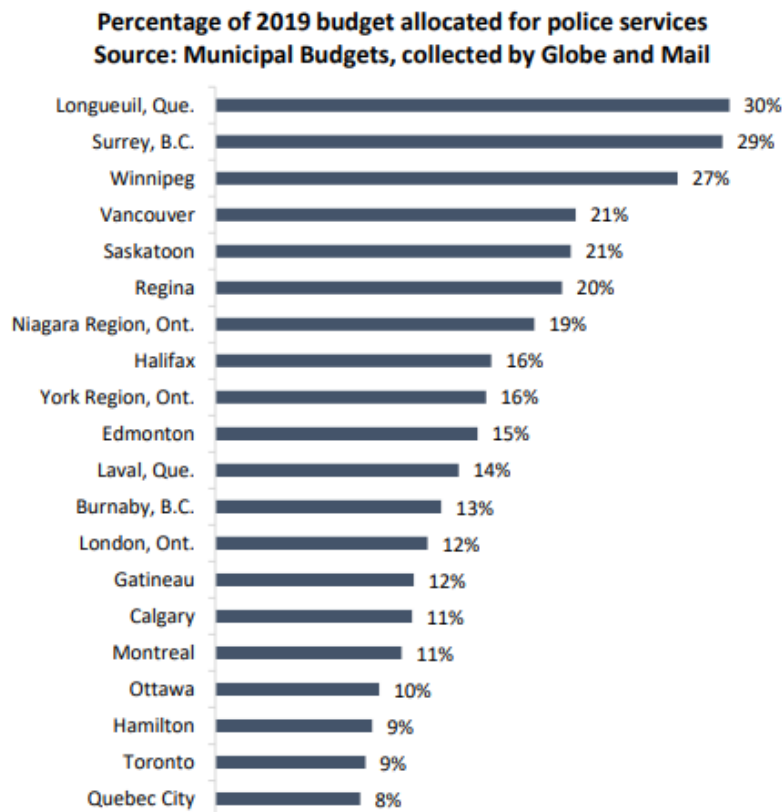
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Figure 9: Percentage of Municipal Budget Spent on Police Across Major Cities in Canada (Angus Reid Institute, 2020)



6.2 Sexism in Policing

Issues of sexism and gender-based violence are highly relevant to the scope and mandate of investigative COA's for three main reasons. First, the economic stressors and rolling lockdowns resulting from COVID-19 have expanded the 'shadow pandemic' of gender-based violence, including sexual and domestic violence (Global Affairs Canada, 2020). Sexual and domestic violence are also amongst the most under-reported crimes in Canada (Benoit et al., 2016; Conroy & Cotter, 2017). There is an increasing need to strengthen all reporting and investigative agencies - including the IIU - to make the investigative process more accessible and less traumatic for victims and Survivors. Second, police officers are statistically more likely than the general public to engage in domestic violence. Some studies report up to 40 percent of police officers have engaged in domestic violence, whereas 10 percent of the general public engages in domestic violence

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(Johnson, 1991; Neidig, Russell, & Seng, 1992). Assessing the IIU's efficacy and reviewing its current ability to receive notifications and properly investigate domestic and sexual violence cases while protecting against the specific vulnerabilities of a police officer's abused partner from retaliation are paramount concerns the IIU currently has no identified plan to address. The low rate of identifying and investigating police-involved sexual and domestic violence is omitted in the 2020 third-party review entirely. Despite numerous other recommendations to specify the IIU's mandate language, no recommendations have currently been tabled to advance further specification of the IIU's mandate over domestic and sexual violence, nor is there proper consultation or recommendations to establish Survivor-informed and Survivor-led protocols for investigating and reporting on police-involved gender-based violence. Third, there is a known culture of sexism, gender harassment, and impunity regarding gendered violence within policing. Such has been revealed by Robyn Doolittle's *Unfounded* investigation and the recent RCMP class action lawsuit, which included over 3,000 claims of sexual harassment and gender discrimination from female officers.

Doolittle's 2017 *Globe and Mail* investigation, a primary and contributing factor to the watershed #metoo movement, revealed a culture of apathy and a general belief in the rape culture myth that victims and Survivors lie about experiencing sexual harm within police departments across Canada. Doolittle found that police dismiss one in five sexual assault cases as 'baseless.' If police meet reports of gendered violence from the public with general malaise and disbelief, what is to be said about their propensity for identifying and addressing gendered violence within their own ranks? A 2016 class-action lawsuit against the RCMP heard over 3,000 gender-based discrimination, harassment, and sexual assault claims from female officers (Bastarache, 2020). The problem of gendered violence within policing has been widely established, yet no clear recommendations have been tabled to address its under-reporting and under-investigation by investigative COAs.

Sexism and racism are not merely issues entered into policing by individually sexist or racist actors. Sexism and racism are embedded into the culture of policing itself. As revealed in the National Inquiry into Missing and Murdered Indigenous Women and Girls (2019), the hyper-sexualization, objectification, and dehumanizing colonial imagery of Indigenous women and girls (Carter, 1997) is part and parcel of the ongoing institutional and police indifference towards the violence inflicted upon Indigenous women and girls and underlies why Indigenous women often do not report to police. As Indigenous scholars Tracey Lindberg, Priscilla Campeau, and Maria Campbell (2017) note, "many Indigenous peoples see Canadian police officers, judges, and justice officials as enforcement arms of the policies, laws, and legislation that dehumanize [them]. Violence exists on a continuum with many layers of overlap; Canadian justice is often viewed as a part of that violence." For these reasons problems of sexism within ranks cannot be fully addressed by diversifying gender



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representation within police forces. There is a need for a redress of policing culture beyond reactionary punishment of sexist actors. Larger revision within policing may include but is not limited to:

1. Changes in recruitment standards,
2. Improved consent and rape culture training led by Survivors,
3. Reallocation of immense police spending to trauma-responsive and non-punitive sexual and gender-based violence supports,
4. The removal of non-disclosure agreements and other legal loopholes that keep female officers from reporting harassment

Sexism and gender-based violence in policing is a central issue currently overlooked in the recommendations brought forth in the tabled 2020 review, both within the workplace and in the private lives of police officers. The IIU is authorized under its mandate to investigate all contraventions of the criminal code. Yet, as gender-based violence increases precipitously under the conditions of COVID-19, the IIU is still plagued by underreporting. Comparing the IIU to other investigative COAs in Canada reveals that this issue is likely rooted partly in the following issues:

1. A mandate that does not specify the IIU's jurisdiction to investigate on and off-duty domestic and sexual violence
2. The agency's inability to instigate an investigation without receiving a notification from a police agency,
3. Lack of specified data reporting on race and gender-based violence,
4. Inaccessibility for the public to launch direct complaints of criminal contraventions,
5. Risks of retaliation and revictimization for victim-Survivors that dissuade from reporting, and lack of gender-specific or Survivor-informed protections from police retaliation,
6. Ongoing criminalization of survival for sex working, poor, drug-using, disabled, LGBTQ2s+ and/or racially marginalized Survivors of police sexual and domestic violence,
7. Low rate of charging for police-involved gender-based violence, and;
8. The overarching lack of anti-oppressive or feminist institutional design within the IIU.



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6.3 *The Blue Wall of Silence*

The ‘blue wall of silence’ describes a longstanding culture of secrecy and self-protection within policing. The ‘blue wall’ or ‘blue shield’ refers to an unofficial oath of silence within departments and police officers to not report on a colleague’s errors, misconducts, or even criminal contraventions. In Canada, this culture within policing is evident and well-established. For example, former Toronto police officer turned defense attorney, James Lowry, investigated corruption within police ranks while working in internal affairs and has publicly identified the difficulty of gathering evidence because officers are reluctant to adhere to an internal investigation if it requires them to disclose information about a fellow officer (Annable & Kubinec, 2018). The effects of this culture are immediately and hold negative consequences for the public, particularly in cases of police-involved sexual assault and domestic violence.

Empirical research that has studied the structural effect of the ‘blue wall of silence’ on police-involved sexual misconduct reveals that officers widely believe police-involved sexual assault exists within their ranks but have very low willingness to report these incidents (Pollock & Becker, 2008; Braswell, McCarthy & McCarthy, 2008). Often the reason for not reporting is that officers do not want to be responsible for getting a fellow officer in trouble. For example, Maher’s (2003) research into this question surfaced the following quote from a police officer:

“You know, every profession has its perks, so cops usually don’t write other cops tickets or arrest cops for [driving while impaired]. The same thing goes for [police sexual misconduct], as long as it’s not something real bad, I would probably let it ride” (p. 376).

More recently, Cottler et al.’s (2014) study of police sexual misconduct and female drug court participants found that almost all women in their study who reported an incident of police sexual misconduct indicated that the misconduct occurred while the officer was on duty (96 percent) and approximately one of four (24 percent) reported that another officer was present during the act. As such, the assault could have been terminated or reported for immediate investigation in at least one in four incidents, yet wasn’t in any of these incidents. Victims themselves were tasked with reporting the incident without the institutional support of witnessing officers. The authors conclude this reveals the strength and impact of “unwritten rules of secrecy in the force [which] constrain officers’ reporting of one another’s misconduct.” (p. 342).

Unfortunately, in Manitoba, this culture of secrecy is not relegated to police services, but may in fact, be upheld by COA’s, including the IIU. This is exemplified in former WPS officer Justin Holz, who pleaded down to a lesser offence in the death of Cody Severight. The case is often cited for mirroring the officer-involved death of Crystal Taman. Taman’s death and the subsequent inquiry



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into East St. Paul's botched police investigation made recommendations for a heightened standard of investigation and police oversight, which ultimately led to the establishment of the IIU. Although the IIU's investigation into Holz revealed that fellow officers refused to perform a breathalyzer on Holz, claiming they did not want to be called as a witness in a case involving a fellow officer, the IIU subsequently did not pursue charges against the officers who delayed performing a breathalyzer test, nor were any other internal disciplinary measures taken against these officers. Such reveals both the culture of secrecy and protection within the WPS and the legitimizing role of the IIU by allowing such obstructions to occur while clearing the involved officers of wrongdoing (Lett, 2019). Although the IIU was created on the promise to crack open the blue wall of silence, incidents such as these reveal how the IIU may be helping to lay its bricks.

6.4 Civilian Oversight Agencies: A Brief Review of the Literature

In Canada, only one text currently provides a scopic overview of police oversight agencies in the country. Edited by Ian Scott, former director of the SIU, *Issues in Civilian Oversight in Policing in Canada* (2014) predates the existence of the IIU but overviews police oversight agencies in all provinces and the RCMP and military complaints system. The text provides discussion on litigation as a vehicle for police oversight reform, political regulation of the police, original research on the criteria for independence in civilian-led investigations of the police, a case study of Ontario's Special Investigations Unit, and description of various models of civilian police review.

This text offers original research or empirical insight into COA's sparingly. However, two chapters offer some empirical insight into best practices. Kevin Kunetski and Kelsi Barkway's "Independence in Civilian-Led Investigations of the Police" and Kevin Roach's "Models of Civilian Police Review: The Objectives and Mechanisms of Legal and Political Regulation of the Police" both offer some insights pertinent to Manitoba's third-party review of the PSA as it relates to the IIU, independence, transparency and officer compliance.

Kunetski and Barkway's (2014) study compiled expertise from (COA) agency heads or their delegates and civil liberties groups in Canada, Australia, New Zealand, and the United Kingdom of Great Britain and Northern Ireland to identify key themes and best practices to improve the independence of COAs from police. In a conference paper from this data, Kunetzki (2013) identifies ten key themes widely supported by their research participants to encompass the best practices for ensuring the independence of a COA. These themes were:

1. The head of a civilian-led oversight agency should never have worked as a police officer.



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2. The head of a civilian-led oversight agency should be employed for a non-renewable fixed term of 5-7 years.
3. The head of a civilian-led oversight agency should report to an all-party committee of the Legislature or Parliament, or should otherwise be structured to have real and perceived operational independence from any bureaucratic department of the government.
4. Civilian-led oversight agencies require adequate budgets to ensure they will be capable of fulfilling their mandates.
5. Civilian-led oversight agencies, wherever possible, should avoid using seconded or serving police officer resources. Instead, on their 'investigative teams,' civilian-led oversight agencies should employ a combination of trained civilian investigators with no prior police experience and former police officers, but in the case of the latter, only to the extent that it is necessary to ensure investigative competence.
6. The public should have the ability to report incidents directly to a civilian-led oversight agency.
7. Civilian-led oversight agencies should have the ability to self-initiate investigations.
8. Civilian-led oversight agencies, operating within their mandate, should have the sole authority to determine which incidents they will or will not investigate without influence from any person or entity.
9. Civilian-led oversight agencies should embrace public reporting with the idea of having greater transparency.
10. Civilian-led oversight agencies require strong legislation to ensure their independence from the police and the government.

However, Kunetzki (2013) found that despite a high degree of consensus regarding these key themes, no agency included in the study adhered to all ten themes or recommendations. No agency could be identified as having the 'best model.' The themes identified by Kunetzki (2013, Kunetzki & Barkway, 2014) offer a ready framework for assessing the practices of the IIU and the alignment of current recommendations presented in the third-party review to these identified 'best practices.' (See Appendix B for a graded comparison of investigative COAs on these and other metrics.)

Importantly this study is not without limitations. For instance, no affected persons or family members who have experienced the COA investigative process were included in the study. Additional qualitative inquiry, including broader community consultation, including affected



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persons and their families, and quantitative assessment comparing investigatory practices and outcomes (e.g. charge rates, case closure, case attrition), is still needed to measure independence and the efficacy of various COA models holistically. Larger theoretical questions about measuring the meaning and efficacy of ‘independence’ and ‘civilianness’ are also discussed in some UK-based research (Savage 2013a, 2013b).

Roach (2014) offers a descriptive overview of various civilian oversight models and argues that less emphasis should be placed on creating ‘independent’ models of oversight, and more emphasis should be placed on democratic control of police through police commissions and more fulsome practice of existing ministerial responsibility for policing. Notably, the recommendations in the review largely align in this assessment. Roach contends that independent review is often emphasized as a value in oversight models as an unqualified good, as opposed to police-investigating-police (PIP) models, but “not enough attention [...] has been paid to the connections between independent review and the enforcement of legal limits on the police, especially the difficulties of establishing that the police have engaged in criminal offences.” Similarly, Roach follows that “not enough attention has been paid to the limits of retrospective remedies for proven police misconduct in preventing police misconduct in the future. Much of the contemporary debate about civilian oversight of the police discounts the importance of *ex ante* political and policy direction to the police and its potential to prevent at least some police misconduct before it happens” (p.30).

The specific dangers of valuing independent oversight above all else as “an elusive end in itself” (Roach, 2014, p. 33) are two-fold: First, using the example of the SIU, the agency is only able to enforce the “most minimal standards that we can expect of the police” not to contravene the criminal code (p. 33). In other words, ensuring police conduct can be legally upheld is an incredibly narrow scope and standard for measuring the efficacy of policing and leaving no ability to oversee officer propriety or effectiveness on any other metric in the conduct of their duties.

Second, warranted criticisms of police behaviour are held to a different standard than civilians in criminal proceedings that make establishing legal wrongdoing a difficult to impossible task. Criminal prosecutions of police are rare and exceptionally difficult given how well-resourced police are through their unions and associations. As Roach (2014) contends, “low prosecution and conviction rates may erode public confidence even if they are legally warranted. They may also create resistance within policing organizations that may adversely affect other forms of civilian control and review” (p. 67).

The criminal legal emphasis on proof of guilt beyond a reasonable doubt is “an extremely blunt instrument to assert civilian oversight of the police” (Roach, 2014, p. 33) and as such, it is no



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surprise that criminal charges against the police have in the majority of cases resulted in acquittals. As recent CBC analysis found that only 10% of investigations conducted by COA's result in charges, this raises questions if investigative COA's are generally 'toothless' (Smart, 2020).

Roach (2014) worries that in the absence of empirical knowledge about its actual effects, the growth of SIUs-style COAs, "may ultimately be simply a form of symbolic and expressive politics about our attitudes towards the police." In other words, "the trends towards increased legal regulation of the police and decreased political regulation identified in this chapter may be interrelated in a manner that is producing a vicious circle of overinvestment in difficult *ex post* attempts to legally regulate the police and underinvestment in *ex ante* political regulation of the police." (p. 73) In 2014, Roach's concern with the SIU's oversight model being imported to other provinces for its limited mandate and the low rate of charging, let alone the abysmal record in prosecuting officers generally, seems to have been warranted.

In light of these concerns, Roach (2014) considers several alternatives, including establishing a representation model to improve public confidence, similar to the one The Saskatchewan Public Complaints Commission established in 2006, which "requires that one of its five members be of First Nations ancestry and another be of Métis ancestry" (p. 18). As "civilian institutions need to reflect a more diverse Canadian public both with respect to racial diversity but also age and class differences" (p. 47)

Additionally, Roach (2014) considers the importance of public inquiries and other systemic reviews.

"Frequent demands for public inquiries reveal much about the limits of current accountability processes. Public inquiries are constitutionally precluded from making conclusions of criminal or civil liability, yet they are still demanded as a response to perceived police misconduct. This suggests that some of the current emphasis on SIU investigations and civil lawsuits against the police may be misplaced and that the public is interested in the propriety of police conduct beyond the question of whether the police conduct in question was illegal. To be sure, there is a need to apply the rule of law when police officers engage in intentional misconduct, but the public often wants misconduct to be publicized and not repeated again. Public inquiries are designed to achieve these latter objectives and they focus more on organizational responsibility than individual fault that is the focus of criminal and civil litigation. In addition, public inquiries are not bound by the adjudicative ideal of applying pre-existing rules to past events. They can engage in a quasi-legislative fashioning of new rules to guide police conduct." (p. 70)

Roach (2014) also ponders the use of sanctions versus the removal of rewards.



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“Denying officers' rewards as a response to either misconduct or failure to meet management expectations may be more effective and efficient than attempts to impose sanctions, especially if there is legalistic resistance to the imposition of sanctions. Rewards may perversely even assist with police officers that are attracting a disproportionate number of complaints. It may be easier to convince these people to leave police services through early retirement packages than to justify their dismissal as a sanction” (p. 51).

However, legitimate questions may be raised about using rewards to entice problem officers to early retirement, namely, how this procedure rewards poor and violent actions. Generally, police accountability should require and strive for meaningful sanctions and proactive solutions: including improved hiring standards, fiscally responsible spending on police, and suspensions without pay due to non-compliance with an investigative process.

6.5 Transparency and Public Reporting

Greater transparency in policing practises is often cited as a mission of - and rationale for - civilian oversight agencies. Yet, issues of transparency have arisen for as long as civilian oversight bodies have existed in Canada. For instance, the 1998 Adams Report addressing perennial problems in the relationship between the SIU, police, and the public noted several concerns expressed by the public over transparency and public reporting. Complaints included an absence of ongoing public dialogue with the SIU, and the instability of the SIU director to issue a public report was seen as an “incongruous feature in a public oversight mechanism” (p. 38). As well, Indigenous leaders expressed at the time that the “failure to issue a written public report [following an investigation] was part of a broader problem of the SIU not responding to the unique needs of their communities. [...] Moreover, the absence of a public report [...] contributed to a decline in the relations between the community and the police service.” (p. 38). In Manitoba, these issues are unfortunately still prescient.

6.5.1 Transparency between IIU and police services

There is currently no way for the IIU to know how often a police service fails to notify the agency of an incident within its mandate. The IIU “relies on the integrity of the police service and chief to notify the IIU as required.” (Spokesperson for IIU in Thorpe, 2018). This ‘good faith’ procedural standard for notification has proven insufficient and a major loophole obfuscating reporting between police services and the IIU. For instance, Winnipeg Police Service withheld critical details from the IIU, including the excessive use of force against an Indigenous teen in the process of an arrest (Winnipeg Free Press, 2020). The incident was not reported to the IIU until after an incident

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was made public through the filing of a civil suit and media coverage of the incident. Although recommendations for legislative changes further specify the IIU's mandate, following the recent ruling from IIU vs. WPS, current recommendations do not meaningfully address this problem and keep the notification standard intact, despite these known and systemic problems.

Another issue is the lack of public reporting on disciplinary proceedings within police services. Winnipeg Police Service Chief Danny Smyth has publicly stated he will not consider making internal WPS disciplinary records public (May & Thorpe, 2020). Publishing disciplinary records empower transparency, civic literacy, and accountability. In addition, publishing these records is already standard practice in Ontario. In Winnipeg, however, union agreements have negotiated a high level of protection and privacy for police officers, ensuring disciplinary proceedings must be kept private. Such practices have harmful effects on the public and impede holding police accountable. In notable instances, the result of weak legislation that does not require publicly sharing disciplinary records and strong police bargaining power is high levels of protection for police with a long record of misconduct. No better is this exemplified than the case of Jeffrey Norman. WPS Patrol Sergeant Jeffrey Norman has been sued at least eight times for excessive force, wrongful arrest, and video and photographic evidence destruction. The IIU also cleared Norman of wrongdoing following an altercation in which Norman pepper-sprayed a cyclist who asked him to turn down his high beams on a residential street (CBC News, 2020).

The public has not been notified of any internal disciplinary sanctions for Norman's behaviour despite this record. Norman's story is an unfortunately common one. Internal police disciplinary standards fail to hold officers who have a record of excessive use of force to account for their actions. External disciplinary mechanisms either lack the strength, will, or mandate to address an officer's impropriety or misconduct or are generally disinterested in intervening when police standard units and other internal disciplinary mechanisms refuse. In addition, strong police unions fight against efforts to discipline problem officers. Overall, these actions result in officers remaining on the force and being able to cause harm in the community with almost complete impunity.

Regulatory standards often do not specify comprehensive duties to report and regulate access to information following freedom to information and privacy and upon the discretionary standards set within and amongst oversight agencies. Whereas the third-party review recommends standardizing profession standards units to address this concern, we can glean other insights from Nova Scotia's SIRT. SIRT has the authority to launch or take over an investigation on its own. In every case, it is up to SIRT to determine whether the matter meets the team's mandate and should be investigated. Cases can meet the mandate even though there is no allegation of wrongdoing on behalf of the police. This is a unique stipulation, as many other investigative COA's, including the IIU, have narrow mandates and can only receive notifications from police services to instigate an



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investigation. In the IIU's case, this has become a serious reporting loophole exploited by the WPS, in particular. Numerous incidents revealed through freedom of information requests indicate the IIU's civilian director was only made aware of serious injury or death incidents under their purview to investigate after a public story was released to the media (Thorpe, 2018a, 2018b, 2018c, 2019, 2020). There is no way to know if - or how many - incidents of serious injury or death have occurred without the IIU receiving a notification. The IIU has avoided public questioning on this issue, stating they believe the WPS is acting 'in good faith.' Troublingly, although this loophole in reporting is apparent, the 2020 review makes no recommendations to regulatory standards or governing legislation to address it. Recommendations could consider implementing the practices of SIRT by opening notifications from the public and equipping the IIU with more specific language in its regulations to strengthen its power to take over internal investigations that fall within its mandate, as well as strengthen the IIU's ability to launch an investigation into incidents they are notified of through public sources that fall within their mandate, even when there is no notification or allegation of wrongdoing launched by the police.

6.5.2 Public Reporting and Transparency with the Public

Currently, the IIU is mandated under the Police Services Act subsection 61(1) to submit an annual report on the operations of the independent investigation unit to the Justice Minister. The report must include the following information:

1. The number of investigations started in the year;
2. The number of investigations concluded in the year;
3. The number of charges laid against police officers in the year, and particulars of the charges; and
4. The number of investigations for which a civilian monitor was appointed.

The minister must table the annual report in the Assembly within 15 days after receiving it if the Assembly is sitting or, if it is not, within 15 days after the next sitting begins. There is no current regulation stipulating if or when the IIU must publicly report on their investigations. When the IIU launches an investigation, it will typically issue a news release after the relevant police agency issues its own release or statement.

Unless there is a specific reason to do so, the IIU will not issue statements or answer media questions related to ongoing investigations. That is, it will not issue any kind of progress report on its work. However, if there is a significant development—such as the death of an affected person or

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a need to call for witnesses—the civilian director can choose to issue a news release at their own discretion.

When an investigation is concluded, the civilian director will typically issue a news release. Once the investigation is complete, an IIU investigator advises all parties of the civilian director's decision and, in some cases, the civilian director will meet personally with the affected parties to provide a debriefing.

The disclosure of the civilian director's final report on an investigation may also be limited to “ensure impartiality of related investigations and proceedings such as parallel criminal investigations, fatality inquiries, disciplinary proceedings and civil litigation.” (IIU, nd).

There are several reasons why the civilian director will withhold or delay the publication of a final report. For instance, if the affected person has been charged with an offence due to the incident and those charges are still before the courts. Once the courts deal with the charge, the civilian director's report is released.

The IIU will also withhold publication if the affected person has had a warrant issued for his or her arrest. When there is an outstanding warrant, the publication of the final report will be held for a maximum of 12 months. The report will be published if the affected person is still at “warrant status” after that period. Rather than hold the report indefinitely, the IIU considers it in the public interest to release its report after this determined period.

When a charge is laid against an officer, the IIU “must also balance the public's right to know with the accused's right to a fair trial” (IIU, n.d.). Therefore, if a charge is laid by the IIU, a final report is not prepared. Instead, the file is forwarded to Manitoba Prosecutions Service for the court proceedings.

The release of a subject officer's name is prohibited by the *Freedom of Information and Protection of Privacy Act* before and after closing the case. However, if a charge is laid, the name is released since an Information is filed with the court and becomes part of the public record.

In 2015, five civilian oversight agencies in Canada (IIU, IIO, SIRT, ASIRT and SIU) agreed upon a joint standard across Canada on the release names of affected persons. An excerpt of that joint statement follows:

“Society is entitled to be fully informed when someone is killed by police, which is why we will continue to provide the media and public with a detailed account of our investigations. At the same time, we will continue to err on the side of compassion and human decency by empowering complainants and their families with the decision to release or not to release,



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while at the same time ensuring we are able to conduct effective investigations. We feel this is a reasonable compromise." (Loparco et al., 2015)

The IIU has been subject to public criticism for its lack of transparency in public reporting. For example, in 2018 a Winnipeg Free Press investigation revealed that two years of annual reports had not been released to the public (Thorpe, 2018). As evidenced from the public presser held by Zane Tessler reporting that no charges would be laid for the police killing of Eishia Hudson, the IIU can take a more active and accessible role reporting to the public but often do not do so unless there is targeted public interest in the case at hand.

Hudson's death and the IIU's conclusion of its investigation have sparked necessary and intense debate about the IIU's investigatory role, the lack of transparency with the public in its investigatory process and has raised concerns about the credibility of the unit's independence from police. In 2021, the IIU told CTV that out of eight investigators working in the unit, five were previously involved in law enforcement (Arsenault & McKendrick, 2021). As well, Winnipeg Mayor Brian Bowman has called for strengthened IIU transparency in forthcoming legislative reform. Stating, "one of the things I'll be looking to see strengthened in legislative reform, which we understand is coming this year, and I would hope that would happen sooner than later, is for increased openness and transparency in the IIU processes [...]. One of the ways in which we strengthen trust and confidence in the administration of justice is through the robust openness and transparency of the court process" (Bowman in Arsenault and McKendrick, 2021).

Issues with transparency between investigative COAs and the public are unfortunately not unique to Manitoba. Across Canada, there are no regulatory standards that specify a civilian oversight agency's duty to report to the public following an investigation. For BC's IIO, a public report upon the director's discretion when charges are not laid. In some circumstances, the CCD can choose not to release a public report. Typically, investigations where a public report is not prepared, are those where the injury of the affected person did not meet the threshold of serious harm, when the injury did not occur as a result of the actions of an officer, or when privacy concerns may be compromised by releasing a public report. At the end of an IIO investigation, if the CCD finds no reasonable grounds to believe that an officer has committed an offence, a public report may be issued if it is in the public interest to do so. There can be many possible reasons for a delay between a decision being made and the issuance of a public report. These can include but are not limited to outstanding administrative work requiring completion of the investigative file, preparation of appropriate disclosure, and the significant time required to produce the reports. (IIO, 2020, p. 17)

The IIO has encountered its share of public criticism and controversy over public reporting and transparency, which has informed the agency's 2021-2022 Strategic Outreach Plan. Specifically, the



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IIO has identified the need for better rapport with First Nations communities and has sought to address issues by implementing its first Indigenous Civilian Monitor. The Police Act outlines the role of the Civilian Monitor as a person to “review and assess the integrity of a specific investigation.” (RSBC 1996 c367). The program comes as Tla-o-qui-aht First Nations has called for an independent investigation into and murder charges against the officers who killed Tla-o-qui-aht First Nations members, Chantel Moore and Julian Jones. The West Coast’s larger Nuu-chah-nulth Tribal Council had released a statement on March 1 demanding a “fully independent and transparent investigation” where it must be involved in every step. The Tla-o-qui-aht are requesting access to body camera footage and any 911 dispatch calls related to the Jones shooting (Bailey, 2021).

The purpose of the Indigenous Civilian Monitor is to “allow for greater trust, communication, and collaboration.” However, the program does not address the aforementioned demands concretely, nor does it provide Tla-o-qui-aht First Nations or Nuu-chah-nulth Tribal Council with fulsome involvement in the investigation or access to dispatch calls or body camera footage. Importantly and troublingly, the Indigenous Monitor Program overlooks that Indigenous people are not a monolith. The interests of, experiences, and expertise of Tla-o-qui-aht First Nations members are specific. Monitor and Liaison Programs may consider the importance of specific representation, particularly in contexts where First Nations communities have made specific calls for input and oversight that the Indigenous Monitor Program does not answer.

This holds important relevance to Manitoba as the IIO considers recommendations from the third-party review of the PSA to abolish the current CMP and replace it with a liaison program like the Indigenous Civilian Monitor Program of the IIO. Liaison programs focus less on improving transparency and access of civilians to investigative material and focus more on outreach to Indigenous and other historically racially marginalized communities. This bodes questions of the recommended program's purpose. Is the purpose to expand Indigenous voice and input in the IIO’s operations? Is the purpose to improve the public perception of the IIO with the communities most affected by police violence? Although the 2020 third party review of Manitoba’s Police Service Act admits the lack of Indigenous and racially diverse representation in the IIO is an issue, the tabled recommendations provide window dressing recommendations to improve outreach and liaison networks, rather than offer strategies and recommendations to improve Indigenous and racially marginalized representation within the IIO team. In the absence of greater transparency via providing civilian monitors more power and access to investigative material and addressing internal hiring issues, liaison programs seem to appeal to the desire for more public confidence and trust in a process while simultaneously providing less transparency or real voice to under-represented and over-policed communities.



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In Alberta, the lack of transparency in reporting is even worse. Under the current legislation, ASIRT has no statutory duty to report on their investigations and no statutory duty to file a report to the chief, the affected person or hold a public release. Director Sue Hughson has called for legislative changes that will include timelines for when police services must notify her team of incidents, she said, noting there are still problems with delayed reporting (Russell, 2021).

In the 2020-2021 fiscal year, the IIO started collecting ethnicity data for affected persons voluntarily. Of the 235 affected persons, 90 chose to identify their ethnicity. Fifty-five identified as White, 25 identified as Indigenous, six identified as Asian, two indicated they were European, and two identified as Latin, Central or South American. While it is difficult to draw firm conclusions from these numbers given that they are based on voluntary declaration, the data suggest an over-representation of Indigenous persons. In addition, Ontario's SIU recently began collecting and reporting race-disaggregated data as well. Manitoba should consider collecting race-based data to aid public transparency and advocacy groups who may use this data to advocate for structural transformation.

6.6 Officer Compliance and Sanctions

All investigative COAs in Canada have faced issues with non-compliance amongst police agencies. For instance, The IIO has a stated goal of assuring at least 25% of subject officers provide statements to the IIO. This goal was not achieved in 2019/2020 but was exceeded in 2020/2021 as 30% of subject officers provided written statements (IIO, 2021, p. 21). However, a measure of 30% compliance via providing a written statement is astonishingly low, particularly considering that this measure accounts for prepared statements and not the number of subject officers complying with an interview. Furthermore, this marginal increase in officer compliance via written statements comes after long-standing issues with witness officer co-operation. For example, the IIO entered a legal battle with Vancouver Police officers for refusing to interview civilian investigators without witness officers being allowed to view security cameras and cellphone footage related to the case. An appeal court ruling on this matter recently upheld the IIO's right to "determine what "cooperate fully" under [s. 38.101](#) of the [Police Act](#) means." (IIO vs. Vancouver Police Department, 2020).

This example reflects similar issues with compliance between the IIO and Manitoba police agencies. As such, identifying best practices from other COAs to address these issues in Manitoba proves a challenging task. As per regulations under the Police Service Act and charter rights, subject officers are not required to comply with an investigation process and have no duty to provide their notes to the civilian director or an investigator. However, witness officers are required to provide their notes and schedule an interview which must take place within 24 hours of the request being made, with

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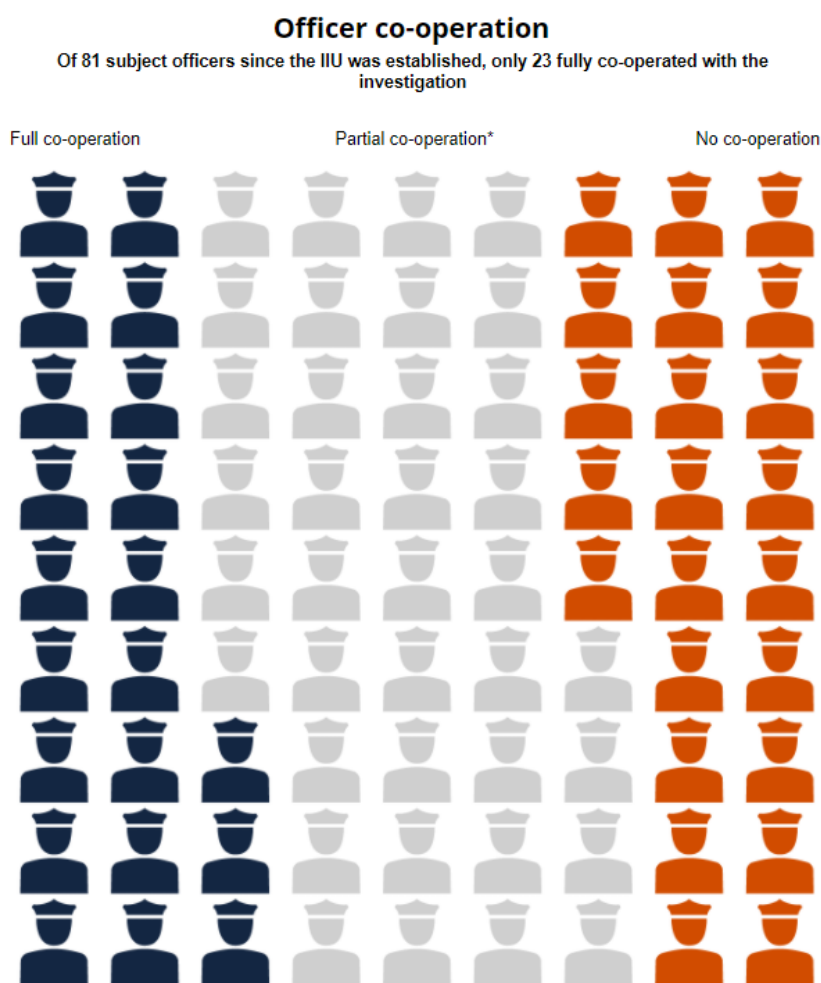
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exceptions. In addition, recent case law and recommendations from the 2020 third-party review expand the definition of witness officers to include peace officers, such as cadets (IIU vs. WPS, 2021; Corley et al., 2020).

Figure 10: Officer Co-operation with the IIU (Thorpe, 2018)



Source: Independent Investigation Unit of Manitoba

* Partial co-operation includes officers who gave notes or granted an interview, but not both

As noted in section 3.4, there have been a number of instances where the IIU has had to rely on the courts to seek compliance. This is not only costly but also adds significant delays to investigations. As the review notes, “the IIU has no statutory authority to require compliance by a police officer

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with legislative mandate nor the ability to enforce such compliance in a meaningful way. The current legislation lacks a clearly stated ‘duty to comply’ binding police chiefs, police officers, and services. The absence of this clearly stated duty to comply may result in refusals to participate in interviews, the timely production of relevant documents, and full and frank disclosure” (Corley et al., 2020, p.19).

The unqualified stipulation that the IIU cannot have statutory authority to enforce compliance in a meaningful way is an unnecessarily limited conclusion to reach when considering the various approaches not taken by the IIU that other COAs in Canada have employed to improve officer compliance. For example, in Quebec, BEI investigators are charged with the rights and responsibilities of peace officers with the power to investigate through search warrants, production orders and subpoenas. Ontario’s SIU has recently been granted the power to issue subpoenas. In BC, the IIO has identified subject officer compliance as a key issue in their 2018-2022 strategic plan. Their written statement quotas for subject officers are one (albeit weak) measure of progress.

Current recommendations in Manitoba pursue stand-alone legislation for the IIU and the adoption of sanctions for officers who do not comply with an investigative process. Concerns remain if these recommendations will be sufficient to strengthen the IIU’s power and enforce officer compliance. Specifically, the practice of fining officers less than \$5,000 for the first instance of non-compliance, as is currently recommended, may be considered the cost of doing business rather than an actual deterrence to non-compliance. Such that the cost of the fine is not compensatory to potential criminal charges, coupled with the known ‘blue wall of silence,’ these recommended sanctions are not likely to be effective deterrents to non-compliance. According to deterrence philosophies of deviance, which underpin contemporary approaches to police practises today, they must be strong, swift, and consistently enforced (Beccaria, 1764; Bentham, 1948). Deterrence philosophies and research addressing deviance amongst civilian populations indicate that approaches that do not interactively fulfill these three conditions are often ineffective (Beyleveld, 1979; Paternoster, 2010; Paternoster, 2018). With knowledge of the delays, under-resourcing, and low charge rates within investigative COAs in general, it is unlikely that these sanctions will reach the adequate standard to deter officers from noncompliance. Instead, scholars and community advocates have identified the possible benefits of sanctioning officers by removing rewards (Roach, 2014) and unpaid suspensions (Adams, 1998). No investigative COA has applied either option, but both present alternatives worth further inquiry.



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6.7 Mandate and Reporting Standards on Sexual Assault and Domestic Violence

The IIU, alongside SIRT, SIU, BEI, and ASIRT, have jurisdictional authority to investigate sexual assault and domestic violence incidents. Whereas SIRT, BEI, SIU, and ASIRT specify this jurisdiction within their regulations, while SIRT and ASIRT additionally track sexual assault notifications and investigations in their public reporting, the IIU does not provide this level of specification in their mandate or reporting. Although the review of the PSA recommends specifying a language for officer compliance and notification practises for police services, the review does not make recommendations based on practices set out by other investigative COAs to specify language and reporting around the IIU's jurisdictional authority to investigate sexual assault and domestic violence incidents. This presents a gap in the recommended changes and an incongruent with recommended best practices within the third-party review. COAs that offer public recording and specified mandates over sexual assault and domestic violence incidents, sexual and domestic incidents are investigated at a higher rate. In the case of SIRT, an agency with a clearly articulated mandate to investigate these incidents and reports on them as stand-alone incidents (vs. aggregating them with other criminal contraventions), sexual assault, and domestic violence investigations predominate those that led to charges.

As domestic and sexual violence has been termed a growing 'shadow pandemic' because of COVID-19 lockdowns and economic instability, and statistical data indicates that up to 40% of police officers engage in domestic violence, further review of current mandates, recommendations, and consultation with key stakeholders in domestic and sexual violence Survivors and support sectors is needed as it relates to the IIU's language, mandate, and public reporting practises. For example, the [Tulloch Report](#) on the SIU, a report that has deeply informed the third-party review of the PSA in many other regards, included a lengthy and comprehensive consultation practice, including domestic violence and sexual assault survivors as well as their advocates. Fulsome consultation with Survivors and service providers on the frontlines of sexual and domestic violence can and should be implemented in all legislative reviews that pertain to policing standards, investigation, and oversight.

6.8 Representation on the IIU and Its Influence on Public Trust

The IIU offers little demographic data on affected persons in their annual reports, let alone the representational make-up of their investigative or operational team. For example, a 2020 Canadian Press investigation found that of the 167 members of provincial independent investigation units, 111 are former officers or have had a working relationship with the police. One hundred eighteen of them are men. Excluding British Columbia, every provincial unit provided the number of investigators who identify as people of colour or visible minority, totalling 20 (Malone, 2020). In other words, 70 percent

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of investigative COA members across Canada are men, 88 percent are white, and 70 percent are former police officers or have working relationships with police. This lack of ‘civilianness’ and diverse representation is troubling, particularly as investigative COAs have been implemented in all provinces except Alberta to respond to police-involved deaths of Black, Indigenous, People of Colour, and/or women.

Applying these results to the Manitoba context yields troubling disparities between who is predominantly affected by police violence and who investigates these incidents. For example, a national CBC analysis found that Indigenous people account for almost two-thirds (66 percent) of victims of police shootings in Winnipeg, despite making up only 11 percent of the city’s population (Singh, 2020). Damon Johnston, president of the Aboriginal Council of Winnipeg, is amongst those calling for more Indigenous representation in the IIU (Arsenault, 2021). These calls are justified in light of the over-representation of Indigenous people experiencing fatal police encounters and their simultaneous under-representation in investigative and oversight authority positions, including but not limited to the IIU. Should the IIU continue operations in Manitoba, a tantamount priority must be achieving representation of Manitoba’s diverse population amongst the operational and investigative team, with particular priority for racially marginalized groups most affected by the police violence.

Every investigative COA in Canada has noted issues with public confidence and trust. However, very little has been done to explore the effect of the investigative team’s lack of demographic representation on public trust and confidence, despite this connection noted extensively by Indigenous leaders (Corley et al., 2020, p. 80; Arsenault, 2021). While data on the demographics of affected persons are often limited to gender (British Columbia and Ontario have recently begun collecting race-based data), many highly publicized cases of police violence and in-custody deaths investigated by COAs in Canada included a racially marginalized person and/or women. University of Toronto professor Akwasi Osuwu-Bempah has questioned the legitimacy of COA’s claims of acting as an independent agency when active police officers are seconded to units. Osuwu-Bempah recommends more fulsome training for civilians to work in these units (Malone, 2020). Erick Laming, a Ph.D. candidate at the University of Toronto specializing in police accountability and police violence against racially marginalized people similarly raises concerns with the overreliance of investigative units on former and seconded police officers who are predominantly white and male. Laming recommends “Indigenous, Black, and other minorities [...] serve on civilian-led oversight agencies” as “this ensures that the needs and views of these groups are represented” (Laming, 2020).

Unfortunately, no investigative COA in Canada has implemented these recommendations meaningfully to solve issues with public confidence. No COA has successfully established a fully ‘civilian’ or ‘independent’ investigative COA insofar as no COA has been able to successfully establish investigative units without former or seconded police officers acting as ‘civilian’ investigators.

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Especially concerning are cases in which seconded officers are enlisted to investigate their own police service. This occurred in the IIU's history in 2016 and was part of the reason Crystal Taman's widow, Robert Taman, resigned from the MPC (Rollason, 2016). Taman has continued to be an outspoken advocate for greater oversight and transparency over policing in Manitoba. Following a recent incident in which the IIU abdicated their responsibility to investigate a criminal accusation of sexual assault against a Winnipeg Police officer and allowed WPS to conduct their own preliminary investigation without notifying the IIU, despite this practice directly contravening the IIU's governing legislation, Taman stated this behaviour was disturbing, but not surprising. "If this is the way [the IIU] operates, shut it all down. Shut it down now, because it's not doing what it is supposed to do. And when I say shut it down, I mean it. Why are we wasting our money if the WPS are going to determine everything anyway?" (Taman in Thorpe, 2019).

The provincial review of Manitoba's PSA also raises concerns over the lack of representation of Manitoba's diverse population within the IIU (Corley et al., 2020), yet provides recommendations that do little to meaningfully address the problem, discussed in section 5.3.6 of this report.

An example of how diversity mandates can be introduced and implemented comes from Saskatchewan's Public Complaints Commission (PCC). Although not an investigative COA, the PCC mandates within their governing legislation that at least one member of the commission must be First Nations, one member must be Métis, and one member must be a lawyer. The PCC is governed under Saskatchewan's Police Act. The PSA review elided consideration or recommendation for representation mandates within the IIU body. Indigenous communities have clearly articulated their desire for better representation in the IIU, as seen in the comments within the third-party review from the Manitoba Métis Federation (Corley et al., 2020, p. 80). Saskatchewan's legislation governing the PCC exemplifies how diversity mandates may be implemented. This approach was not considered in the PSA review's recommendations. Opting instead for the abolition of civilian monitoring and implementing a liaison approach leaves much to be desired.

Current recommendations before the province on representation focus largely on defanging civilian monitoring into community liaison programming. This is counterintuitive to a goal of improving and empowering diverse representation and inclusion in the investigatory body. Civilian monitors have access to evidence, interviews and publish private reports on the investigative process. These powers add what Ali and Priog (2019) call 'voice' and 'teeth' to the civilian monitor by increasing civilian access to information. However, liaison programs are not oriented towards 'watching the watchers' in this way and therefore can make no promises to improve access, voice, or self-determination amongst racially marginalized communities. Recommendations for the civilian monitor program may consider publicly available monitor reports, diversity mandates, and shifting governance over the CMP from the MPC to community-led Indigenous governance.

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Although the review's recommendations include suggestions to end the practice of seconding officers onto investigative teams, this alone will not meaningfully address diversity issues or improve public confidence in the IIU's credible independence from police. Opportunities exist to implement similar practises seen in complaints commissions in Saskatchewan that set diversity mandates and from the IIO and SIU training and certification mandates that could empower diverse inclusion and retention of truly civilian investigators. Further still, the IIU could be more broadly redressed to align with the goals of decolonization by recognizing the immense knowledge and work Indigenous communities engage in when police renege on their duty to investigate disappearances of Indigenous people. Notably, Bear Clan patrols, volunteer search teams, and dredges of the Red River have been critical informal 'police' work taken up by Indigenous communities. These communities and collectives possess valuable investigatory skills to lend themselves to an IIU investigative team and leadership. Other ideas may include but are not limited to establishing steering committees and working groups led by Indigenous elders and community leaders from over-policed communities to identify strategic goals for the IIU and recognizing the diversity and value of knowledge acquisition from alternative and non-conventional career paths and life trajectories in hiring protocols. Additionally, civilian leadership of investigative COAs in Canada has been predominantly white and male for too long. Only one current director is a woman, and no directors are Black or Indigenous. As terms expire, priority must be given to ensuring directors represent the community they serve.

6.9 Knowledge Gaps and Future Directions

Despite the growing importance of, and controversy over, civilian oversight, there remains scant direct research of any kind on the actual operations and activities of the various models of civilian oversight, let alone research that meets conventional social science and academic standards. The following section lists a number of research gaps identified by the Civilian Review and Complaints Commission for the RCMP's (2014) literature review of civilian and police investigative models.

6.9.1 Quality of Investigations

There appear to be virtually no case studies of actual investigations of various kinds of police-investigating police (PIP), or other related processes that would allow detailed analysis leading to the establishment of best practices. Furthermore, there is a lack of detailed empirical data and information on PIP and its variations of either a qualitative or quantitative nature. This means that



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it is difficult to say with any certainty whether one model is more effective than another and why that is the case.

Research that can document in detail the investigative dynamics and strategies used in the various factors that affect investigative outcomes would allow for an assessment of the relative merits of different models and some systematic comparative analysis.

6.9.2 Unclear Investigative Skills

Though civilian investigators or investigations are argued by some to be a more desirable substitute for PIP approaches, there is currently no available evidence or research to either support this assertion or clarify the necessary investigative skills required for this function. Future research should explore necessary skills and experience to do effective investigations and provide an assessment on how best to transfer this functional knowledge for use by civilian investigators, as well as identify untapped sources of knowledge within communities.

6.9.3 Police Association Opposition

There is little research that adequately explores the role of police associations and collective bargaining agreements in inhibiting or assisting investigations. Police associations in Canada are little studied, yet they play a pivotal role in policy-making, procedure formulation, and legislative reform impacting public safety. Further research should examine the role of police associations in the context of investigations. This research could include an analysis of police associations at national, provincial, and municipal levels regarding the reform of public complaints systems and investigative COAs.

7. Conclusion

As described above, there is significant diversity of practise among COAs in Canada, which is attributable to their different legislative mandates, organizational structures and remedial authority.

While acknowledging shortcomings across the country and significant gaps in available information, the above sections set out the breadth of experience of civilian police oversight agencies in Canada, which may inform the identification of goals for pursuit in Manitoba.

The Public Interest Law Centre invites follow-up questions and further discussion on any of the provided content as necessary.



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Appendices

Appendix A: Recommendations from the LDL Alternative Review of Quebec’s BEI

Below is an annotated list of recommendations the LDL presented following their alternative review of the BEI’s first three years of operation. Many may be relevant to the Manitoban context.

1. That the prerogative of notifying the BEI in the event of serious injury or death at the hands of the police should not be the sole responsibility of the director of the police force involved. That any witness can also alert the BEI directly. That the Police Act be amended accordingly.
2. That the Police Act and the Regulations on the Selection Procedure and Training of Investigators of the Bureau of Independent Investigations be amended so that the BEI team is composed only of civilians who have never worked for a corps. police taking into account the end of the mandates of those currently in office.
12. That the BEI mention the source of the information it publishes in its press releases announcing the taking over of an independent investigation, as well as the position held by the persons who transmitted it.
13. That criminal sanctions be explicitly provided for in the Regulations on the conduct of investigations of the Bureau of Independent Investigations in the event of non-compliance with the obligations set out therein;



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14. That the BEI be required, during an investigation, to publish press releases immediately informing the public of any breach by the police force involved in its obligations under the Regulation respecting the conduct of investigations of the Bureau des inquiries independent or in the Act. on the police, as well as any action taken in this regard. That this communication obligation be included in the Rules;
15. That it be enshrined in the Police Act that the BEI is required to report to the DPCP any failure found to comply with the obligations provided for in the Regulation respecting the conduct of investigations of the Bureau of Independent Investigations;
16. That the BEI be required to inform the public by means of a press release of any report to the DPCP relating to an obstacle to its work by the police force involved and that this communication obligation be included in the Regulation respecting the conduct of investigations. the Bureau of Independent Investigations;
17. That the DPCP be required to open a file in each reported case in order to decide whether charges should be laid. That the decisions of the DPCP be made public.
20. That amendments be made to the Regulations on the conduct of investigations of the Bureau of Independent Investigations in order to oblige the BEI to make public a comprehensive and anonymized summary of its independent investigation reports in all cases where the DPCP decides not to not bring charges. This publication should be made at the same time the DPCP announces this decision;
25. That amendments be made to the Act respecting the determination of the causes and circumstances of death so that a public inquest by the coroner is held automatically when a person is killed in the hands of the police.
33. Clarify and broaden the definition of serious injury currently provided for in the Regulations on the conduct of investigations of the Bureau of Independent Investigations so as to restrict the discretionary power of interpretation of the director of the police force involved and the management of the BEI .
34. That the Police Act be amended to make it compulsory to conduct an investigation by the BEI in all cases of allegation of a sexual offense committed by a police officer, whether in the exercise of of its functions or not;
35. That the register of investigations taken over by the BEI following allegations of sexual offenses be made public on the BEI's website and updated regularly;



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36. That a press release be published when an investigation into sexual offenses is launched, and that the police force to which the police officer involved belongs be indicated, unless this information can allow the victim to be identified.
39. That the training of investigators include notions of intervention with people from [racialized](#) minorities and in mental health.
40. That the BEI ensure that it has greater representation of people from the First Nations and the Inuit nation among its staff;
41. That the BEI adopt a management policy and an internal procedure relating to its relations with people from the First Nations and the Inuit nation;
42. That the BEI considerably improve the training of its personnel in relation to the realities of people from the First Nations and the Inuit nation;
43. That the BEI collect statistics on the Indigenous identity of the persons concerned in its independent investigations, as it does for criminal investigations;
44. That the BEI have its translations in Inuktitut validated by at least one other person who understands this language.

<https://liguedesdroits.ca/regards-critiques-trois-premieres-annees-bei/>



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Appendix B: Grading Comparison of Investigative COA Practises

Below is a graded comparison of investigative COA practises across the country. The agencies are evaluated on:

1. The broadness of the agency's mandate,
2. Agency power to investigate, oversee police services and sanction non-compliance,
3. Internal organization and diversity,
4. Transparency in reporting,
5. Trauma-responsive and anti-oppressive training,
6. Community input and consultation,
7. Legislative review of the agency and opportunities for institutional transformation,
8. Existence and operations within affiliated civilian and liaison programs, as well as;
9. Any publicized problems with the aspects mentioned above.

Grading is used as a rhetorical device on metrics of best practices informed by existing literature from Canada and the US, local recommendations for police defunding and reform from Indigenous-led groups, including the 2020 survey from Southern Chiefs Organization on experiences of racism during police encounters, as well as feminist and trauma-responsive principles as it relates to investigating and addressing police-involved gender-based violence.

The existence of each practice listed in items 1-8 adds a grade of +1. An identified problem relevant to the agency's mandate (item 9) is graded as -1. Information that is not publicly reported is indicated with "-." This tool is limited by the lack of standardized reporting



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across the country on these metrics and the notable limitations of relying on media to identify if issues are widely believed to exist within an agency. The purpose of this tool is not to quantitatively assess each agency with any level of rigour. Future empirical research should engage in deeper comparative analysis of investigative COA's across Canada on these and other metrics. Until this research is conducted, this grading tool acts as a heuristic tool to compare the practices of investigative COAs across Canada, revealing potential areas for improvement and practises that could be implemented in Manitoba.

On these metrics, the highest an agency can score is **53**, indicating the existence of a broad mandate, strong institutional investigative power, fulsome and recurring review, excellent public reporting, comprehensive yearly training, fulsome community outreach, an empowered civilian liaison/monitoring program, and no publicly reported issues or calls for further investigation into policing issues relevant to the metrics of institutional excellence. IIO scores 13/53. ASIRT, taking together their lack of reporting on many of these metrics and publicly noted problems within the agency, predominantly noted by ASIRT's director, scores 0/57. The IIU scores 9/53. However, taking into consideration the publicly reported issues in the agency, the IIU scores 2/53. The SIU grades at 22/53. Like ASIRT, the BEI lacks the public reporting to reasonably evaluate their practices and scored a 6/53 before accounting for publicized issues with the agency. Accounting for these problems, BEI scores 0/53. SIRT offers some public reporting, but less than the IIO, SIU, and IIU, and therefore scored 2/53, accounting for publicly noted issues.

Overall, these low ratings may indicate the following conclusions. First, the evaluative framework for organizational excellence employed here is not aligned with the evaluative framework of excellence employed within agencies. The approach employed here does not take the standards currently used by investigative COAs agencies as the guiding framework but rather uses principles informed by existing data on racism in policing and recommended changes and anti-oppressive and trauma-informed principles for grading policy practice. These agencies all fail to align with these base principles of practice tells of a broader issue in the organizational design, goal, and drive of investigative COAs today. Second, these results overwhelmingly identify weaknesses in training, outreach, consultation, opportunities for institutional transformation, and public transparency. All of which can be easily addressed with proper resourcing and a more concrete dedication to and reliance upon the knowledge of affected communities who have firsthand experience of the problems in policing. Currently, investigative COA's over-rely on police and under-rely on the knowledge of affected communities to



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inform their practises and protocols. For an investigative COA to live up to its mandate and name, it must prioritize centring the expertise and needs of civilians most affected by police-involved injury and death. Priority must be set for investigative COAs to act in open transparency with the public in their reporting practises, implement diversity mandates for the team, and strengthen and increase community consultation as part of strategic planning for the agency.



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Name of COA		IIO	ASIRT	IIU	SIU	BEI	SIRT
Does the mandate :							
	Include sexual assault and/or domestic violence as a stand-alone incident?	No	Yes	No	Yes	Yes	Yes
	Provide a broad definition of serious harm? (eg. any harm requiring hospitalization)	No	No	No	Yes	No (mandates investigation of all incidents involving Indigenous people)	Yes
Does the agency have the power to investigate a broad mandate, including:							



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	Public complaints without direct notification from a police service	No	No	No	Yes	No	Yes
	The power to lay charges	No	Yes - in consultation with Crown	Yes	Yes	No	Yes
	Specify a duty to comply that includes sanctions for refusal	No	No	No	Yes	Yes	No
	Make recommendations for regulation or policy changes as it pertains to police conduct?	No	No	No	No	No	No
	Sanction police departments who fail to notify the agency of incidents within its mandate?	No	No	No	Yes	Yes	No



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Sanction officers who fail to comply with an investigation?	No	No	No	Yes	Yes	No
Limit internal rewards/promotion or enforced unpaid suspensions for officers who fail to comply with an investigation?	No	No	No	No	No	No
Is the agency mandated to release annual reports ?	Yes	No	Yes	Yes	No	Yes
Is the agency mandated to publish a report following an investigation where no charges are laid?	No	No	No	Yes	No	No
Does the agency release statistics on charges/dispositions ?	Yes	Yes	Yes	Yes	No	Yes



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Does the agency publish its strategic planning ?		Yes	No	No	Yes	No	No
	Does strategic planning include implementing diversity mandates?	No	-	-	Yes	-	-
	Is there a strategy/timeline to end the secondment of officers?	No	-	-	No	-	-
Do annual/public reports :							
	Include gender-disaggregated data for affected persons?	Yes	-	Yes	Yes	-	No
	Include race-disaggregated data for affected persons?	Yes	-	No	Yes	-	No



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	Include the agency's gender distribution?	No	-	No	Yes	-	No
	Include the agency's racial/ethnic distribution?	No	-	No	Yes	-	No
	Include the number of investigators/team members with former police experience or affiliation?	No	-	No	Yes	Yes	Yes
	Does agency's last year of training include:						
	Investigation certification for civilian investigators?	Yes	-	No	No	-	-
	Anti-racist training?	No	-	No	No (outlined priority in strategic	-	-



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					plan)		
	Decolonial training and/or Indigenous-led training?	No	-	No	Yes	-	-
	Trauma-informed or trauma-responsive training?	Yes	-	No	Yes	-	-
	Training from mental health professionals on mental health crisis and wellness interventions?	No	-	No	Yes	-	-
	Training on disability and accessible practises from disabled people?	No	-	No	No (outlined priority in strategic plan)	-	-
	LGBTQ2S+-led training on unlearning and addressing homophobia and	No	--	No	No	-	-



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	transphobia						
	Sexual harassment and consent culture training	No	-	No	No	training on investigations into sexual offences	-
	Anti-oppressive training of any kind?	No	-	No	No	-	-
Does community consultation or outreach :							
	Happen at least once a year?	Yes	-	Yes	Yes	-	-
	Include public forums?	Yes	-	No	No	-	-
	Include community stakeholders of any kind?	Yes	-	Yes	Yes	-	-



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Include advocates and representatives of diverse groups disproportionately affected by police violence?	Yes	-	No	No	-	-
Include affected people and/or family members?	No	-	No	No	-	-
Include informal police watchdogs and police critical groups?	No	-	No	No	-	-
Include Indigenous-led groups?	Yes	-	Yes	Yes	-	-
Include LGBTQ2S+-led groups?	No	-	No	No	-	-
Include disability justice groups?	No	-	No	No	-	-



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	Include migrant justice groups?	No	-	No	No	-	-
	Include anti-homelessness and anti-poverty groups?	No	-	No	No	-	-
	Include harm reduction groups?	No	-	No	No	-	-
	Include sex workers and sex workers rights groups?	No	-	No	No	-	-
	Include Black-led groups?	No	-	No	No	-	-
	Include Survivor-led groups?	No	-	No	No	-	-
	Is legislative/third party review over the agency:						
	Mandated and recurring?	Yes	-	Yes	No	-	-



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Conducted by a legislative, judicial, ministerial body or a third-party without conflicting interests?	Yes	-	No	Yes	-	-
Include fulsome community consultation, including public surveys and recommendations from representative groups and their advocates?	Yes	-	No	Yes (amendments to the SIU act include public consultation in creating regulations)	-	-
Have the power to make recommendations for legislative and/or institutional change?	Yes	-	Yes	Yes	-	-
Do Liaison/Civilian Monitor Programs:		N/A			N/A	N/A



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Have the power access records related to the investigation and/or request interview or statements from staff members	Yes	-	Yes	Not specified	-	-
Require monitors/liaisons have no prior police experience	Yes	-	No	No	-	-
Release reports to the public?	No	-	No	Not specified	-	-
Have diversity mandates?	No	-	No	Yes	-	-
Have the power to make recommendations for institutional change?	No	-	No	No	-	-
Has there been publicized						



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problems in the agency:							
	Agency transparency and public reporting	Yes	Yes	Yes	Yes	Yes	Yes
	Police impunity: Failure of police agencies to report incidents, abide by rules, or comply without any sanctions levied	Yes		Yes	Yes	Yes	
	Failing to pursue an investigation into incidents within their mandate			Yes		Yes	Yes
	Diverse representation within the agency	Yes		Yes	Yes	Yes	Yes
	Public confidence in the independence of agency	Yes	Yes	Yes	Yes	Yes	Yes



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	from police						
	Officer compliance with an investigation	Yes		Yes	Yes	Yes	Yes
	Recommendation to charge following investigation overridden by another agency		Yes	Yes			



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Appendix C: Comparison of Operational Requirements by province

PROVINCE	Definition of Serious Injury?	Is an investigation into a "serious Incident" Mandatory?	Mandatory notice to IIU?	Off duty police officers investigated ?	Note requirements	Annual Report	Segregation of officers after incident	Updates to family
Manitoba	Y	N – IIU may also decline jurisdiction or monitor. Death or serious injury = mandatory	Y	Y	Y (Witness Officers)	Y	Y	Y
Ontario	Y	N	Y, but only if death or serious injury occurred	Only if using police powers or equipment	Subject and witness officials to complete notes in full.	Y	Y – "to extent practicable"	
BC	Y	N	Y	Y	Y	Y	N	N
Alberta	N	N (minister's discretion)	N (Minister's discretion)	N	Y – (Witnesses only)		Y	
Quebec	Y	N	Y		Y	Y	Y	N
NS	Y	N	Y		Y – (Witness)	Y		
NFL	Y	N (may be referred out, overseen, etc)	Y		Y	Y	Y	Y



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