

# Report of the s. 42 Review of the Independent Investigations Office

June 14, 2017

This report summarizes the findings and recommendations of a limited review of the Independent Investigations Office of BC, conducted on behalf of the Director of Police Services between November 2016 and February 2017.

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## *Executive Summary*

In September 2016, the Director of Police Services initiated a review of the Independent Investigations Office of BC (the IIO), under the authority of s. 42 of the *Police Act*. The purpose of the review was to examine the investigative principles, practices and strategies used by the IIO, particularly the application of major case management; IIO investigator training and re-training; and the effectiveness of the *Memorandum of Understanding Respecting Investigations* (MOU) between the IIO and British Columbia's policing and law enforcement agencies.

Simultaneous to the Director's review, Justice Services Branch, Ministry of Justice, undertook a review of various aspects of the IIO's administrative and operational processes. These two review processes were coordinated to support collaboration and information sharing.

This report pertains to the Director's review.

The review team consisted of two members of the Director's staff in the Policing and Security Branch, Ministry of Public Safety and Solicitor General, as well as a consultant with extensive expertise in major case management, retired RCMP Superintendent Doug Kiloh.

The methodology for the review included examining a small sample of concluded investigations, conducting interviews with IIO executive and a small number of investigators, and reviewing written documents such as the IIO's Business Rules and Manual of Investigations. The file and document review were primarily completed in November and December 2016, while interviews took place in January and February 2017.

Throughout this assignment, the review team received cooperation and support from staff at all levels of the IIO. Their commitment to the success and continuous improvement of the IIO was demonstrated on numerous occasions and the review team was grateful for their assistance.

Overall, the review team noted that the IIO would benefit from greater cohesion and coordination of its efforts to continue to advance the quality and timeliness of its investigations, some of which, while practical, appeared to be ad hoc and siloed within the IIO.



The review team found that the investigations examined during the review fundamentally reached sound conclusions; however, timeliness and the potential vulnerability of some evidence should a case proceed to trial were areas of concern. A more disciplined application of major case management is an approach by which the IIO could address these and other challenges. Full implementation of major case management is the underlying theme of many of the review team's findings and recommendations.

IIO training has shifted and evolved throughout the IIO's relatively short history. Overall it has included a mix of: IIO investigators attending police training programs or courses, alongside police officers; the adaptation, to varying degrees, of police training programs or courses to the unique needs of IIO investigator training and delivered to IIO investigators; and the development and delivery of in-house training tailored to the IIO's specific needs. Training has also been supplemented by on-the-job mentoring and coaching. Recognizing some of the limitations of the effectiveness of these approaches, the IIO recently began planning and developing a two-year IIO investigator certification program. This will include both in-house training as well as partnering with external agencies.

Overall, the review team observed this vision to be a fundamentally sound approach to addressing many of the challenges involved in meeting the IIO's training needs. However, the review team recommends the incorporation of expertise in curriculum development to ensure that the training is defensible, effective and aligned to job requirements. In addition, the review team has identified specific, immediate training needs to support more robust implementation of major case management throughout the IIO.

With respect to the MOU, the third area of focus for this review, the review team identified a few specific areas where amendments should be considered to clarify the focus of IIO investigations and address gaps that are impacting on speed, flow and direction in some cases. These include the threshold for IIO notification, the definition of subject officer, and interviews with witness officers

The review team has identified the following 13 recommendations:

#### Theme #1 - Systems and processes to support major case management

1. Acquire and implement a proven electronic major case management (eMCM) software system.
2. Consider engaging external resources (e.g., consultants and/or partners), including an Accredited Team Commander and an experienced File Coordinator, to assist in implementing rigorous major case management processes and systems at the IIO.
3. Consider creating, and allocating dedicated resources to, a mechanism to assist the IIO in addressing the backlog of inactive cases, using consultant and partner resources as appropriate.
4. Ensure that business rules are updated to reflect any changes implemented and that systems are in place to ensure business rules are communicated to, reviewed by, and readily accessible to staff.



## Theme #2 - Structures to support major case management

5. Consider creating a file coordination unit.
6. Consider creating a third investigative team.
7. Consider tiering investigator positions.
8. Consider aligning administrative staff to investigative teams and the file coordination unit.

## Theme #3 - Training

9. Consider engaging a person(s) with expertise in curriculum development to assist with the development and implementation of the IIO's strategic vision for training.
10. Consider incorporating experiential training in dynamic use-of-force scenarios into the use-of-force training provided to IIO investigators.
11. Consider seeking opportunities for IIO investigators to shadow police specialists as part of their training.
12. Take immediate steps to secure specific training for certain roles:
  - Canadian Police College Team Commanders course, for Team Directors;
  - Leadership and/or mentorship training, for Team Directors and mentors;
  - File Coordinator's Course, for investigators deemed suitable for specialization in file coordination per recommendation 5;
  - MCM training (e.g., online course available through Canadian Policy Knowledge Network), for all investigators;
  - Further training in interviewing skills, for all investigators.

## Theme #4 - Revisions to the MOU to support effective investigations

13. Prioritize the need to amend the MOU.

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## 1 Introduction

### 1.1 The Independent Investigations Office

The Independent Investigations Office (IIO) is a civilian investigative agency responsible for conducting investigations into police-related incidents that result in death or serious harm, to determine whether or not an officer may have committed an offence. Its mandate and authorities are set out in the B.C. *Police Act*. The IIO has been in operation since September 10, 2012.

Prior to the IIO's establishment, these investigations were conducted by members of the same or another police force. While an interest in enhancing civilian oversight of serious police incidents had been mounting in many jurisdictions across Canada, two events in particular prompted the creation of the IIO in British Columbia:

- the public inquiry into the death of Frank Paul, which commenced in 2007 led by Justice William Davies; and
- the public inquiry into the death of Robert Dziekanski, which commenced in 2008 led by Justice Thomas Braidwood.

Both Justice Davies' and Justice Braidwood's reports included recommendations that a civilian-based investigative body be established to examine critical incidents involving the police. In June 2010, government announced the creation of the IIO to investigate incidents of serious harm and death involving British Columbia police officers, including members of the RCMP, and special constables.

Amendments to the *Police Act* establishing the IIO were passed by the Legislative Assembly in July 2011. The first Chief Civilian Director (CCD) was appointed in January 2012, and the IIO became operational later that year, on September 10, 2012.

With the exception of minor revisions prior to the IIO becoming operational in September 2012, the IIO's governing legislation has not undergone any significant changes. Key aspects of the legislation which are of relevance to this review include:

- The IIO is established in the Ministry of Justice, and consists of a CCD and IIO investigators appointed by the CCD.
- The CCD has overall responsibility for the IIO's management, administration and operations, and oversees investigations conducted by the IIO.
- The CCD is appointed by the Lieutenant Governor in Council for a maximum of two five-year terms. The CCD cannot be a current or former member of a police force.
- IIO investigators appointed by the CCD cannot be a member of any police force at the time of the appointment, or have served as a police officer in B.C. within the previous five years.



- The CCD and IIO investigators have all of the powers, duties and immunities of a peace officer and constable at common law or under any Act, and have jurisdiction throughout the province while carrying out their duties.
- Officers (as defined in the *Police Act*<sup>1</sup>), must immediately report to the IIO, and upon receiving notification the IIO must investigate, any incident where a person may have died or suffered serious harm as a result of the actions of an officer, on or off duty, or an officer, on or off duty, may have contravened a provision of the *Criminal Code of Canada* or another federal or provincial enactment.
- Police services must also notify the IIO when, during the course of an investigation into the conduct of an officer under Part 11 of the *Police Act*, there is evidence that an officer, on or off duty, may have caused the death of a person, or caused a person serious harm, or contravened a provision of the *Criminal Code* or another federal or provincial enactment. Similarly, the police complaint commissioner (PCC) must notify the IIO when the PCC receives such a report.
- Officers must take measures to obtain and preserve evidence until IIO investigators arrive at the scene of an incident.
- Officers must cooperate with the CCD and IIO investigators carrying out the IIO mandate.
- At the conclusion of the IIO investigation, if the CCD considers that an officer may have committed an offence under any enactment, the CCD must report the matter to Crown counsel.
- The CCD may appoint a ‘civilian monitor’ to review and assess the integrity of a specific IIO investigation. A person appointed to this role must not be a current or former member of a police force in B.C. or the RCMP.
- The IIO is a police force under the *Police Act*, and is within the scope of certain oversight functions of the minister responsible for policing and the director of police services. The director may establish standards with respect to the training and retraining of IIO investigators or the CCD, and cooperation between the IIO and the provincial police force, municipal police departments, designated policing units and the designated law enforcement units in relation to IIO investigations. The minister or the director may assign a special investigation to the IIO.

In addition to the legislation, a MOU was established between the IIO, the RCMP, and municipal and designated police forces in B.C. to facilitate efficient, effective and timely investigations involving these police services. The MOU addresses issues such as the incidents requiring notification of the IIO, the appointment of liaison officers, concurrent investigations, officer notes, and media relations. The MOU was initially signed in July 2012 and was subsequently amended in February 2013.<sup>2</sup>

Since becoming operational in September 2012, the IIO has been subject to various review processes. These include internal processes (such as a work environment survey, SWOT analysis and consultant

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<sup>1</sup> In addition to municipal, provincial and designated constables, this also includes special provincial constables, special municipal constables, auxiliary constables and enforcement officers (s. 1) and members of the RCMP (s. 38.01).

<sup>2</sup> In 2014, the IIO also signed an MOU respecting investigations with agencies employing special provincial constables. This MOU was not included in the scope of the Director’s review.



reviews) and external processes, perhaps most significantly the Special Committee to Review the Independent Investigations Office. The Special Committee was mandated to review the overall administration and general operations of the IIO, with a particular focus on the progress toward full civilianization of IIO investigators. The Special Committee's report was released in February 2015. Its recommendations included that: government continue to support civilianization; the CCD to have discretion in exceptional cases to appoint an investigator who served as a police or law enforcement officer in B.C. within the previous five years (or in any other jurisdiction); the *Police Act* be amended to require regular reviews of the IIO by a Special Committee of the Legislature; the Ministry of Justice review and report publicly within one year on actions taken to address human resource issues at the IIO; that reports by a civilian monitor be made public, subject to privacy and other legal considerations; and that government aggressively pursue steps necessary to implement police use of body-worn cameras.

During the Special Committee review, the Ministry of Justice indicated that it planned to conduct a further review of the IIO in 2016. The timing of this review was intended to coincide with the end of the current CCD's term. Following the CCD's departure in September 2016, an interim CCD was appointed and undertook this review on behalf of the Ministry of Justice.

The timing of the Ministry of Justice review also coincided with a decision of the Director of Police Services to examine the investigative processes of the IIO. It was agreed that the two reviews be completed in combination to support collaboration and information sharing. The overall purpose of these combined reviews is to identify any matters related to administrative, operational and investigative processes of the IIO that may need to be addressed.

This report pertains to the Director's review.

## 1.2 s. 42 B.C. Police Act - Studies by Director

Under s. 42 of the B.C. *Police Act*, the Director of Police Services has the authority to study, investigate and prepare a report on matters concerning policing, law enforcement and crime prevention in British Columbia or in a designated area of British Columbia. Under this authority, the Director of Police Services initiated a limited review of the investigative principles, practices and strategies of the IIO, in order to support the IIO's adherence to investigative standards and assist the IIO in addressing identified challenges with respect to the timeliness of its investigations. The IIO was notified of the review on September 8, 2016. The purpose of the review, as set out in a Terms of Reference, was to examine the following matters:

- 1) The adequacy of the IIO investigative principles, practices and strategies, including the application major case management principles.
- 2) The adequacy and effectiveness of IIO training, and re-training for investigators.
- 3) The effectiveness of the *Memorandum of Understanding Respecting Investigations* between the IIO and British Columbia's policing and law enforcement agencies.





The report was to include general findings and analysis; recommendations concerning the conduct of IIO investigations and IIO investigator training; and suggestions for the development of *British Columbia Provincial Policing Standards* and/or revisions to the *Memorandum of Understanding Respecting Investigations*.

A review team was established to conduct the review on the Director's behalf. The review team included Policing and Security Branch staff and Doug Kiloh, a retired RCMP Superintendent with extensive experience in major case management, working under contract.

The review team met with IIO executive on November 4, 2016, and commenced its review activities shortly thereafter. The review team submitted its final report to the Director in April 2017.

### 1.3 Approach and Limitations

The scope of a s. 42 review varies. This review was a limited review focused on particular aspects of the IIO's operations as set out in the Terms of Reference. Emphasis is on consideration of the extent to which major case management principles had been incorporated by the IIO, and the implications of the review team's observations for training and the MOU.

The principal methodologies used in the review were:

- Review of a small sample of concluded investigations from a range of points in the history of the IIO's operations. Files were purposively selected by the review team, taking into account the complexity of the incident under investigation, the date of the incident, the type of police force or unit involved (e.g., RCMP or municipal police department, integrated team, etc.), and input from IIO executive regarding any aspects of an investigation that made it uniquely suitable for inclusion in the review. A total of six files were reviewed.
- Review of written documents, including: IIO Business Rules, Investigative Manual, annual reports, training materials (e.g., curriculum documents, lesson plans, training records, etc.), the MOU and Part 7.1 of the *Police Act*.
- Interviews with key staff (members of the Executive, Team Directors, and the Training Specialist) and a small sample of investigators.

The methodology was constrained by a number of considerations:

- To ensure a robust examination of the investigations included in the file review within the time and resources available, the file sample was limited to six investigations.
- To avoid any potential risk to investigations that may result in a prosecution, the file review was restricted to concluded investigations. Concluded files tended to be older, and to involve staff, systems and procedures that had since changed or were in various stages of review.
- The review team prioritized interviews with investigators who had a longer history with the IIO and had been involved in some or all of the investigations included in the file review, so that the review



team could gain further insight into the backdrop for IIO investigations and its investigative practices at points in time, and how they have evolved.

It is important to acknowledge the limitations of this review. The review team's findings are largely based on a paper review of a small number of older files, supplemented to the extent possible by interviews.

The timing of this review may also pose limitations to the review team's findings. Throughout the review, IIO Executive described the organization as being in the midst of a "re-set", in light of a number of changes to various aspects of the IIO's administration and operations which were planned, underway or had recently been implemented. Many of these began with the introduction of a new Executive team between 2014 and 2015, such as changing the deployment model from four teams to two teams, and the creation of an induction program for new investigators. More recent developments include the departure of the first CCD; efforts to secure funding to develop and implement a new training model, and to acquire and implement IT solutions; the development of a new process for managing file information and building investigative reports; and the creation of a "second-in-command" to support the Chief of Investigations. The ultimate effect of these changes was not yet apparent, but the review team recognizes their potential to address some of the issues observed during this review.

## 1.4 Operational Context of the IIO at the Time of the Review

At the outset of the review, the IIO had a total of 54 FTEs, including management staff, investigators, legal counsel and administrative staff. Investigative staff included:

- 22 investigator positions divided into two investigative teams;
- three investigator positions assigned to a forensics team;
- three Directors, each responsible for leading an investigative team or the forensics team; and
- a Chief of Investigations, who oversaw all investigations.

The three Directors reported directly to the Chief of Investigations. As the review was concluding, a new position was created which will see the Directors reporting directly to a Deputy Chief of Investigations moving forward.

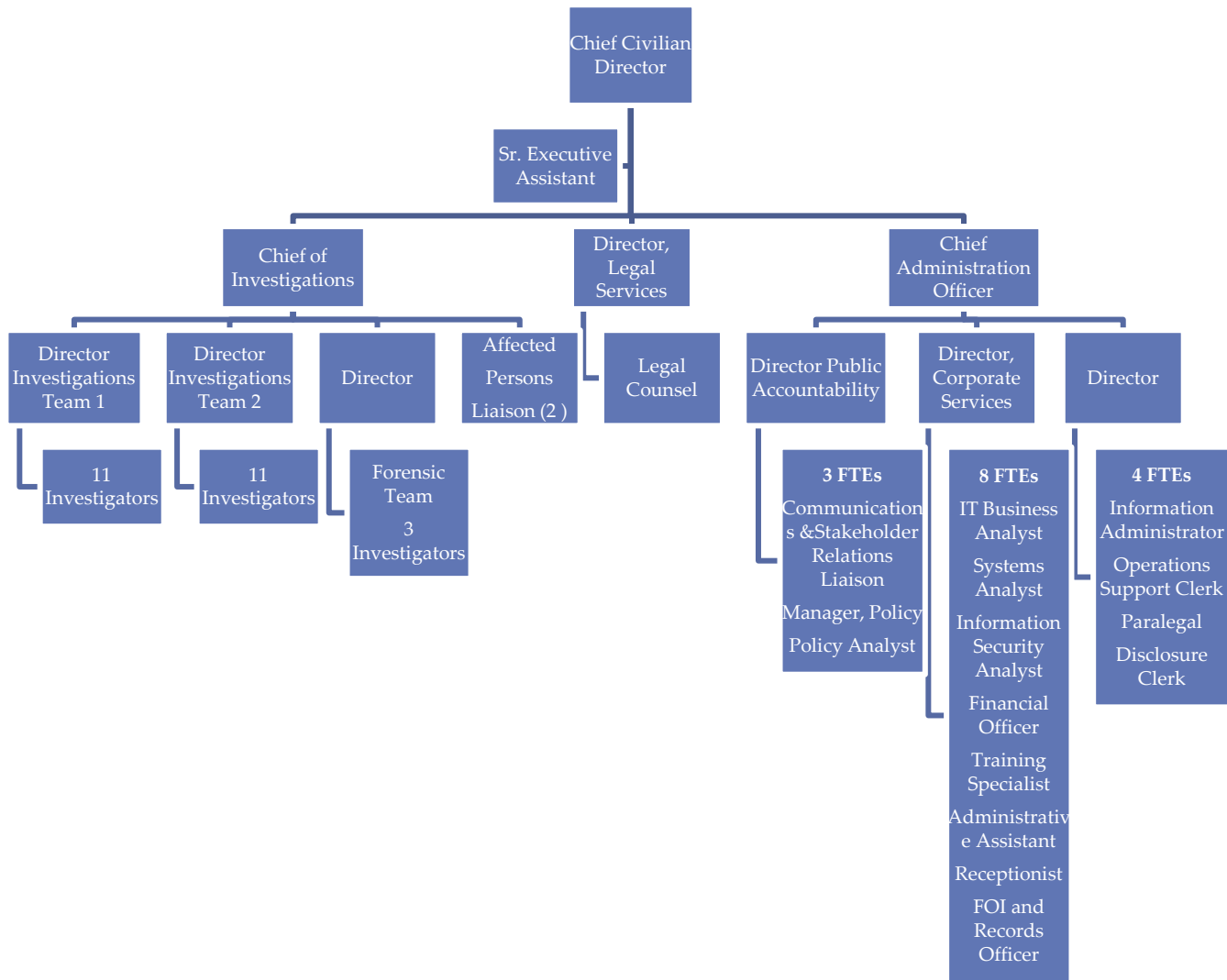
The two investigative teams alternated "on-call" duties on a weekly basis, meaning they could be deployed anywhere in B.C. on short notice when notification of a new critical incident was received. The forensics team could also be deployed as necessary.

The proportion of investigators with policing or civilian backgrounds has fluctuated with turnover. At the time of the review, approximately 43% of the investigative staff had a policing background. Investigator turnover and leave have also required the IIO to operate below authorized strength on a fairly consistent basis.



The IIO’s organizational structure at the time of the review is depicted below in Figure 1.<sup>3</sup>

Figure 1



<sup>3</sup> This figure is based on an IIO Organization Chart provided to the review team, dated December 6, 2016.

## 2 Findings

This section of the report summarizes the review team's findings with respect to each of the three areas of focus of the review:

- 2.1 Major Case Management;
- 2.2 Training; and
- 2.3 Memorandum of Understanding Respecting Investigations.

Recommendations are touched on in various places throughout this section. However, due to overlap in the issues that some recommendations are intended to address, recommendations are formally presented in [Section 3 Conclusions and Recommendations](#).

### 2.1 Major Case Management

Major case management (MCM) is a methodology for managing major incidents that provides accountability, clear goals and objectives, planning, utilization of resources, and control over the speed, flow and direction of an investigation.

MCM has been used by many Canadian police forces for a number of years. Its growth has been shaped by case law, as well as lessons learned from reviews of wrongful convictions and failures to swiftly identify and act on suspected multiple homicides. In Ontario, the use of MCM for specific types of investigations has been mandated in legislation since 2005, following Mr. Justice Archie Campbell's review of the Paul Bernardo investigation. Similarly, in British Columbia, *BC Provincial Policing Standards* have been developed governing police use of MCM, in response to recommendations of the Missing Women Commission of Inquiry. These standards will take effect beginning in January 2019.

The application of MCM continues to evolve, but it remains grounded in core principles:

- Command Triangle
- Communication
- Leadership and Team Building
- Management Considerations
- Crime Solving Strategies
- Ethical Considerations
- Accountability mechanisms
- Legal considerations
- Partnerships.

MCM is designed not only to assist with the investigative stage, but also to enhance successful prosecution in the event of a trial. Documentation of investigative tasks and decisions is critical under Canadian law, and depending on the size of the investigation, can be demanding. Although the MCM

model can be used for any investigation, it is more typically reserved for investigations of complex and/or serious crimes.

The use of MCM for IIO investigations is important for somewhat different considerations. First and foremost is the high degree of public—and police—interest in ensuring that the investigation is thorough yet timely and that it can withstand scrutiny during subsequent criminal proceedings, should any occur. Another factor when considering the applicability of MCM to IIO investigations is that IIO investigators come to the job from a variety of civilian and police backgrounds and perspectives. The systems and processes involved in MCM impart consistency and oversight to investigations where investigator experience ranges and the risk of tunnel vision must be controlled. Regular, routine use supports skill development. It also strengthens the integrity of investigations, encourages critical thinking, enhances communication, values balancing and weighting how resources are used, among other benefits. MCM is essential for IIO investigations of officer-involved shootings or deaths, but there is also a compelling basis to apply MCM to all IIO investigations, regardless of their scope or complexity.

This section highlights the review team's key findings with respect to the IIO's use of MCM. It is organized according to the nine principles of MCM listed above. Prior to discussing the review team's observations with respect to each principle in the IIO context, the principle is described in general terms, and relevant *BC Provincial Policing Standards* are highlighted.<sup>4</sup> Although each principle is discussed separately, it must be emphasized that the principles of MCM are intertwined and overlap. To minimize repetition, the review team has attempted to associate each observation to the principle with which it is most closely aligned. However, in many cases, the implications cross over into other principles.

### 2.1.1 Command Triangle

The Command Triangle has been referred to as the “engine” which advances an investigation.<sup>5</sup> It includes a Team Commander<sup>6</sup>, Primary Investigator and File Coordinator. The Team Commander has ultimate authority, responsibility and accountability for an investigation, including its resources (human and physical), mandate, and adherence to the principles of major case management. The Primary Investigator is responsible for controlling the speed, flow and direction of the overall investigative process, and the File Coordinator ensures thorough and consistent tasking and

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<sup>4</sup> The scope of the Director's authority to set standards for the IIO is limited under s. 40 of the *Police Act* to the training and retraining of IIO investigators and the CCD, and cooperation and coordination between the IIO and police agencies. As such, the majority of *BC Provincial Policing Standards for Major Case Management* will not apply to the IIO, the exception being standards involving training. However, information about the standards has been included to provide additional context about the use of MCM in British Columbia.

<sup>5</sup> Major Case Management Guide Produced by the Office of Investigative Standards and Practices in conjunction with the 'E' Division Major Case Management Committee (September 2012), p. 7.

<sup>6</sup> In some jurisdictions, this may be referred to as the Major Case Manager.



documentation of the investigation. In addition to their individual responsibilities, their interaction as a team is also critically important. All members of the Command Triangle are jointly involved in making key decisions about the investigation – synthesizing information, considering and debating strategies based on the information coming in, as well as anticipating and reacting to shifts in the investigation.

The appointment of a Command Triangle addresses a critical need: it clearly establishes who is in charge without demanding that one person attempt to personally coordinate, supervise and control all aspects of an investigation.

Once in effect, the *BC Provincial Policing Standards for Major Case Management* will require the timely formation of a Command Triangle for all major cases. They will also identify minimum experience and training criteria for a person assigned to the role of Team Commander, Primary Investigator or File Coordinator during a major case investigation. The standards pertaining to training will apply to IIO investigations where a person may have died as a result of the actions of an officer.

#### *Review Team Observations:*

The IIO names individuals to the roles of Primary Investigator and File Coordinator for its investigations. Team Directors assume the role of Team Commander on all files. Overall, however, the review team concluded that the IIO has not fully implemented the Command Triangle principle. Further understanding of the intended functions and enhanced role discipline is needed.

The review team acknowledges that certain aspects of the IIO's operational context may have impacted its ability to fully implement the Command Triangle concept. For example, the high turnover of investigators and legislative restrictions on the hiring of former police officers limit the number of IIO staff, at any point in time, who are ready to undertake Command Triangle roles. Team Directors, Primary Investigators, File Coordinators and investigators are stretched across a large number of files. This makes it difficult for the Command Triangle to safeguard speed, flow and direction (e.g., ensuring compliance with diary dates for task completion) and to coach and mentor investigators. It has also made it difficult to send staff on training that would help the IIO to create and maintain a pool of qualified Primary Investigators, File Coordinators, and Team Directors, and support succession planning.

Some examples of the review team's observations with respect to the IIO's implementation of the Command Triangle, based on the files reviewed and interviews, include:



- Limited evidence (i.e., documentation) of the identification, critical analysis, and communication of the key elements of an investigation by the Command Triangle to assist with speed, flow and direction (e.g., examples of critical elements missed during interviews, lack of use of peer review processes to critique investigative plans);
- Inconsistent documentation of decision-making;
- Briefings that lack structure and fail to document the development of the investigation;
- Multiple key position changes on some files; and
- Inconsistent leadership between Team Directors (leadership is discussed further in section [2.1.3 Leadership and Team Building](#)).

### 2.1.2 Communication

Communication within the Command Triangle and the rest of the investigative team is essential to the success of an investigation and is a key principle of MCM. Effective and appropriate external communication with stakeholders and the media is another important aspect of this principle.

Two key tools to support communication within the Command Triangle and the investigative team are briefings and decision documents (e.g., decision log). Briefings serve to keep all members of the investigative team informed of the direction and progress of the investigation, and are an opportunity for investigators to provide feedback and brainstorming. Briefings should be held regularly, include all members of the investigative team, and be conducted in a manner that encourages open dialogue and exchange of ideas. It is essential that all team members – from Command Triangle members to investigators and support staff - come to briefings prepared. Minutes must provide a record of who attended and the substance of the briefing.

Decision logs are important for a number of reasons, principal among them to support oversight of the investigation by senior management and critical analysis of the state of the investigation by the Command Triangle.

*The BC Provincial Policing Standards for Major Case Management will require that the agency's business rules or procedures provide clear direction with respect to internal and external communication, (including investigational briefings and engaging with the media) and the documentation of investigative activities and decisions (including records of briefings and the maintenance of an investigative chronology and decision log).*

#### *Review Team Observations*

The IIO has developed business rules regarding briefings that provide direction on the frequency, structure and purpose, and roles and responsibilities with respect to briefings. However, based on the





files reviewed and interviews, it appears the IIO is not consistently achieving compliance and is not capitalizing on all of the benefits that briefings can lend to an investigation. The review team observed unexplained time lags between briefings on some files, and inconsistent structure and documentation of action, inaction and decisions between investigative teams and over time. There are some indications that the work environment has not encouraged open communication and the role of the contrarian, which are valued in MCM.<sup>7</sup>

Similarly, although the business rules require the Primary Investigator to document investigational decision-making in a Daily Investigative Log, the review team noted inconsistencies and gaps in compliance with this practice.

With respect to external communication, the review team believes opportunities are being missed to contribute to the IIO's vision of building confidence in police accountability by providing more information to the public about the known facts surrounding a deployment, the status of investigations, and the IIO's findings and conclusions.

### *2.1.3 Leadership and Team Building*

While the leadership of the Command Triangle is paramount, responsibility for leadership and team building extends to all levels of the organization and the investigative teams. Within the Command Triangle, the leadership responsibilities of the Team Commander are particularly significant under the MCM model. The Team Commander has ultimate authority for the investigation, including its human resources. The Team Commander is responsible for identifying the right person for the right job, and monitoring not only the job performance but also the wellbeing and development of team members throughout the investigation, taking action as appropriate to safeguard both.

The role and contribution of all members of the team or unit – from top to bottom – to the end result should be valued and understood by all. Team members are expected, under MCM, to approach their responsibilities with utmost professionalism, and a sense of urgency and importance of their assigned tasks.

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<sup>7</sup> The role of contrarian or “devil’s advocate” is an important part of MCM. The intent is to help prevent tunnel vision by using critical thinking, for example, questioning the team’s investigative theories, and identifying possible alternative explanations for key events or developments in the investigation. The role may be assigned to a particular person and is also encouraged as a mindset for the entire team.





The *BC Provincial Policing Standards for Major Case Management* identify the Team Commander as responsible for establishing, maintaining and adjusting an investigative team commensurate to the needs of the organization, and ensuring that team members have the appropriate knowledge, skills and abilities for their assigned role or function.

#### *Review Team Observations*

The review team noted considerable variation between Team Directors as well as Senior Executive in their approach to leadership as well as the processes used by Team Directors, Primary Coordinators and File Coordinators to support speed, flow and direction and manage file information. Some front-line staff were also reported to have developed their own systems and approaches to managing their individual tasks and responsibilities. Overall, the review team noted that the degree of variation may undermine efforts to maintain a culture of teamwork. Many, but not all, of the variation and inconsistencies can be attributed to the shortcomings of the case management software program the IIO has been using. A robust electronic MCM (eMCM) system would assist significantly in standardizing practices, and support more disciplined application of MCM. There is also a need for common procedures, processes and standards to be developed and communicated to all staff to promote consistency and efficiency. This may also aid in promoting individual responsibility and performance expectations.

Under MCM, the Command Triangle, particularly Team Directors, should be the first line to address issues with a team member or the manner in which a task has been completed. It was apparent from interviews that the Team Director's authority has been bi-passed in certain respects, by both front-line staff and by Senior Executive. A consistent, properly communicated and constructive approach to leadership at the Team Director level in particular is important to build the skills, confidence and resilience of the team to the internal and external stresses of the job. Leadership training, particularly within the context of the MCM model, is recommended to assist Team Directors to build on their significant investigative backgrounds and support role discipline under MCM.

#### *2.1.4 Management Considerations*

There are many different aspects of major case investigations that must be considered and planned for. Examples include, but are not limited to, resource management, electronic file management, disclosure/prosecution management, and exhibit management. This principle involves anticipating, recognizing and responding to these management considerations.



While the Command Triangle has oversight in all areas and overall accountability for the investigation, management considerations are not reserved for managers; all members of the team have a stake in ensuring that major case management is operating at a high level.

The *BC Provincial Policing Standards* for major case management address various management considerations. For example, the standards:

- identify the Team Commander's responsibility for managing the team's human resources;
- will require the use of a provincially-approved eMCM system;
- will require adequate resources and systems and processes be in place to support timely and accurate disclosure and reporting to Crown counsel; and
- will require clear assignment of responsibility for media liaison.

#### *Review Team Observations*

- **Investigative Plan Management:** The files examined by the review team lacked evidence of a consistent, structured process to plan and execute investigations (e.g., to identify the elements of the offence, the evidentiary needs of the investigation, etc.). Processes described during interviews varied between teams, and it was not clear whether or how persons below the Team Director level were involved in or understood the investigative planning process. Purposely exposing junior personnel to the planning process, particularly when that process is consistent across the organization and reflects shared corporate principles and values, is an opportunity to strengthen and develop staff.

- **Resource Management:**

Ensuring that adequate resources are in place to meet the needs of an investigation, and that those resources are used effectively and efficiently is a critical component of major case management. Assessing the resource levels or needs of the IIO is outside of the scope of this review. However, the review team observed areas where the full implementation of major case management has the potential to create efficiencies in the IIO's use of its existing resources. For example, persons trained and assigned exclusively to file coordination could carry out the role and functions of a file coordinator more efficiently, consistently and effectively than persons taking turns at this role while at the same time assuming different roles on other files. It also supports the development of in-house experts and future trainers.

Opportunities to coach, mentor and develop existing investigators by actively modelling major case management in action (e.g., structured, consistent briefings) have been limited as a result of observations previously detailed with respect to Communications, Leadership and Team Building.

- **Electronic File Management:** The IIO's current case management software is not meeting its needs. The IIO recognizes its shortfalls and is planning to invest in a new system. The review team sees the IIO's



need for an established eMCM product as critical and urgent. An eMCM system would automate tasks and foster accountability, efficiency and consistency.

A number of eMCM software products are commercially available. A product that may be very well suited to the IIO's needs is Xim by Xanalys, which is currently used by Worksafe BC. The review team recommends that the IIO include consideration of this product in its analysis of options.

- **Disclosure/Prosecution Management:** The review team noted a number of potential concerns with the disclosure packages and reports to Crown included in the file review. Although the review team did not have an opportunity to obtain Crown's perspective, the review team concluded that the IIO's disclosure packages are likely not fully meeting Crown's needs and criminal case disclosure obligations. Some particular concerns noted by the review team include:
  - Considerable administrative work is required to locate and extract file information to include in the disclosure package. This is due in large part to the shortcomings of the case management system. Coupled with the lack of clear, singular direction as to the procedures to be used, the risk of error (e.g., omissions or inconsistencies between source documents and copies), may be substantial.
  - The disclosure packages were difficult to navigate. For example, some information that a reader might expect to be linked was not, and once a link was followed it was difficult to return to the reader's previous location in the document. Supplemental reports were not consistently constructed in accordance with known practices, making it difficult in some cases to distinguish new or corrected material, potentially increasing the risk of disclosure challenges or legal arguments.
- **Scene Management:** In the files included in the review, scene plans were often not well articulated or included in the file. Information obtained during interviews suggests that more is being done to plan for scene management on recent investigations; however, the documented communication with other team members (e.g., briefings, debriefings) was limited in the files reviewed.
- **Exhibit Management:** IIO investigations involve a variety of shared services and locations with varying degrees of police control and action. In some of the files reviewed, it was evident that IIO investigators involved in the collection of exhibits were not fully aware of the need to establish the continuity of an exhibit prior to the IIO assuming custody and control. This issue was rectified through oversight, but it underscores the limited experience of some investigators as well as the challenges of dealing with multiple agencies in the collection, documentation and control of exhibits.

### 2.1.5 *Crime Solving Strategies*

This principle is about identifying what needs to be done to maintain the speed, flow and direction of an investigation. This includes evaluating investigative techniques available to gather evidence, identifying the risks to an investigation's speed, flow and direction and determining how they could be mitigated. Taking a multi-dimensional approach and engaging others outside the organization when



an investigation is stalling are important strategies to consider. Overall, this principle demands critical thinking, flexibility, and innovation.

The *BC Provincial Policing Standards for Major Case Management* will require that:

- Early and ongoing communication and consultation with Crown counsel occurs during a major case investigation to address potential legal or prosecution issues that may arise;
- Police forces have, either using members of the police force or through an agreement with another police force, access to specific investigative techniques and investigative support functions listed in the Standard (e.g., affiant, interviewers, polygraph examiner, forensic experts, etc.);
- Officers conducting suspect or key witness interviews are thoughtfully selected and have appropriate training and skills, or competency and experience for the type of interview;
- Consideration be given to consulting with other police officers and/or experts from other fields to assist with an investigation at risk of stalling (e.g., conducting a case conference or convening a strategic advisory group); and
- Consideration be given to accessing expert resources listed in the Standard, such as behavioural science services, pattern/wound interpretation, and other forensic experts.

#### *Review Team Observations*

Overall, the IIO has and continues to struggle to maintain speed, flow and direction on its investigations; the caseload of open investigation grows each year as files are carried forward and new investigations are initiated.

The review team believes the IIO could make better use of its existing resources to maintain speed, flow and direction. In particular, the review team noted the following:

- Investigation Planning – the IIO appears to lack a unified and consistent approach to investigation planning. The development of tools such as investigative plan templates, checklists and decision-making matrices could make planning and decision-making quicker and more consistent across the IIO. Planning tools should support the identification of different levels of investigation and reporting based on the facts known at the time, with procedures for review and escalation/de-escalation as the investigation unfolds. This could facilitate quicker conclusion of files where there is evidence to support conclusion by public report (exoneration), freeing up resources for more complex investigations.
- Statements and Interviewing – The IIO uses the P.E.A.C.E. interviewing model for its investigations (Planning and Preparation, Engage and Explain, Account, Closure, Evaluate). In the file review, the



review team observed examples where the planning and evaluation components of this model in particular were not sufficiently reflected. This resulted in missed opportunities and delays (e.g., follow up interviews were required to obtain information that, with better planning and evaluation, may have been covered during the first interview). In addition, failure to appropriately challenge or clarify inconsistencies during an interview may weaken evidence given by a witness at trial, should a case go to court. Overall, the review team sees a need for further interview training for investigators and potentially better use of analysts to review interview transcripts to assist with individual investigations (e.g., examine for themes, consistency with other evidence, etc.) as well to monitor and provide feedback on interviewer strengths and weaknesses for investigator development and training purposes.

- Briefings – as noted elsewhere in this report, the review team observed that briefings are not being used to their full potential to assist with speed, flow and direction. Briefings – and briefing documentation – provide an avenue for review of task completion and investigator development and understanding, and is extremely helpful for Team Commanders and Monitoring Officers (in the context of the IIO, Team Directors and the Chief of Investigations), to monitor the progress of an investigation and the welfare and performance of the investigative team.
- Consultation with other experts – Independence in the IIO's actions and decision-making is critical, however, the IIO could explore opportunities to engage with and draw on the experience and knowledge of external stakeholders and experts. Examples of opportunities the review team identified which the IIO may wish to consider include:
  - Seeking chances for IIO investigators to shadow police investigators and specialists. For example, shadowing police forensic specialists would give IIO investigators an opportunity to observe a higher volume of scene examinations, evidence seizures, etc. in a shorter period of time than could be accomplished shadowing IIO staff on IIO investigations. Similarly, shadowing specialized units such as the Integrated Homicide Investigation Team (IHIT) members on a file from inception to trial would expose IIO investigators to investigative practices and the types of issues that can arise during court presentation.
  - Brainstorming with police leaders and other oversight bodies across Canada for assistance in addressing roadblocks to timely investigations (e.g., lack of cooperation from witnesses, delays receiving the results of forensic analysis, etc.), whether generally or case-specific (e.g., strategic advisory group or case conference);
  - Establishing a forum which includes IIO representatives as well as external partners and stakeholders to review investigations where the bulk of investigative activities have been completed and support exoneration, to assist the IIO to determine whether and how the conclusion of the investigation could be expedited.

#### 2.1.6 *Ethical Considerations*

In any investigation, it is important to ensure the investigation is conducted in a legal, moral and ethical manner. This is particularly true in major cases, as the level of public interest and potential for legal challenges tend to be much higher, and is absolutely critical for any investigation into the actions



of police. Investigators must be mindful of the need to avoid placing the public at risk, without allowing the urgency of the investigation to support cutting corners or the use of tactics that violate legal, moral or ethical standards. Investigators should contemplate how the community would react to their approach to an investigation. Determining what information will be shared with the public regarding an investigation, and what tactics will be used to gather evidence, are two areas where ethical considerations are paramount and should be factored into the decision-making process.

Ethical considerations reflected in the *BC Provincial Policing Standards for Major Case Management* include a requirement to assign clear responsibility for supporting victims and family members as well as media liaison, standards governing the manner in which victims and families are to be notified of key events and involved in the release of photographs of the victim to the media, and a requirement to consider the need to assess and mitigate any risks to community safety or community relations resulting from the investigation.

#### *Review Team Observations*

From the review team's perspective, ethical considerations must be woven throughout every aspect of the IIO's operations. The focus may be somewhat different compared with policing (for example, IIO investigations are unlikely to involve the use of complex investigative techniques such as wiretaps or agents); however, all investigators must maintain strong ethical standards. Two key areas where the review team made specific observations with respect to ethical considerations are the timeliness of its investigations and systems and processes to safeguard against tunnel vision.

#### **Timeliness of investigations**

IIO investigations have a significant impact on affected persons and their loved ones, as well the subject officers and witness officers, who can be affected both personally and professionally by an incident. The need to ensure that problematic behaviour is addressed to protect the public from potential future harm adds further to the urgency of IIO investigations. The review team recognizes that balancing the tension between emotionally charged circumstances and the need to secure the appropriate investigative material to draw conclusions is always a challenge; however, the timeline to completion on a significant portion of the IIO investigations has been acknowledged by the IIO to be unacceptably lengthy. There is likely a combination of causes, some related to systems and processes to support major case management.

Developing systems and processes are within the IIO's immediate control, and may help foster a culture of urgency. For example, and as discussed elsewhere in this report, structured briefings provide





an opportunity to hold investigators accountable for the completion of tasks within diary dates. Extensions, including the rationale for the extension, should be documented. Clear organizational policies supplemented where possible by tools or templates will support consistent and timely critical analysis and understanding of the elements and evidentiary needs of an investigation. The use of an established eMCM system will automate many aspects of major case management and has significant potential to make the completion and documentation of investigations more efficient.

At the time of the review, the IIO had recently implemented a “moderation process” to expedite the conclusion of investigations where the bulk of investigative activities have been completed and support exoneration. The IIO should continue to explore other opportunities to distinguish the level of investigation and reporting required for different types of cases; this may have a significant impact on timeliness. The review team recommends that the IIO consider a role for various external stakeholders in such processes to promote transparency and ensure decisions are scrutinized for legal, moral and ethical considerations.

### **Systems and processes to safeguard against tunnel vision**

The development of MCM in Canada has been influenced significantly by the learnings from wrongful convictions. One of these is the need to recognize and mitigate the risk of tunnel vision. During interviews, IIO Executive noted instances where investigator bias was suspected and addressed with some of its former investigators at an individual level. The review team noted that further opportunities remain for the IIO to incorporate systems and processes to help control for the potential for bias and tunnel vision. These include: ensuring an emphasis on this issue in investigator training (see also section [2.2.2 Training](#)); encouraging and incorporating the role of the contrarian on investigations; and consistent use of peer review during planning and other stages of an investigation.

#### **2.1.7 Accountability Mechanisms**

Mechanisms must be in place to hold all team members, at all levels of the organization, accountable for their role in ensuring the success of the investigation. This includes measures applied at the front-line to safeguard each individual case (e.g., business rules, briefings, documentation of decisions), as well as actions by senior management to promote a high standard of investigations in a more general sense (e.g., internal audit).



Accountability measures are woven throughout the *BC Provincial Policing Standards for Major Case Management*. For example, the *Standards* will require:

- that business rules are established and accessible to all members of the investigative team to provide clear, agency-specific direction on many different aspects of major case investigations;
- that the Team Commander is accountable to a senior officer responsible for monitoring the progress of a major case investigation (a monitoring officer);
- that the monitoring officer ensures that investigations are reviewed at specific intervals (and thereafter as appropriate) to support early identification of and response to potential risks to speed, flow and direction;
- that the Command Triangle and/or the monitoring officer consider conducting a case conference or convening a strategic advisory group to brainstorm any investigation that has been open for 9 months and remains unsolved;
- that processes are in place to regularly update senior management regarding major case investigations; and
- that an internal audit of a sample of investigations is conducted each year.

In addition, Part 8.1 of the *Police Act* will require police forces to conduct an internal review and report to the Director of Police Services regarding any major case investigation that has become inactive. Cases are considered inactive if no investigative steps have been taken for one year. If the Director considers that the investigation did not comply with the *BC Provincial Policing Standards*, the Director may require an audit of the investigation, to be conducted by a member of another police force.

#### *Review Team Observations*

Overall, the review team observed that a more consistent and disciplined application of major case management could systematically incorporate greater accountability into IIO investigations. For example, better use of briefings to hold team members accountable for task completion and to support investigator development; better documentation of speed, flow and direction in briefing minutes, investigative logs, and decision documents; and critical review of documentation (task reports, narratives, briefing minutes, etc.) for quality assurance and compliance with business rules. A proven eMCM system has inherent potential to enhance accountability and consistency.

The IIO has drafted a set of business rules and an Investigation Manual. The review team found that these generally cover all of the issues referred to in the *BC Provincial Policing Standards* regarding





business rules; however, the extent to which they have been incorporated into day-to-day operations was not clear. During interviews, reference was made to policy and procedure direction being issued by email directives, and it appeared that there was considerable variation in the approaches to investigative planning, documentation, task flagging and the use of case reviews. Overall, the review team observed a potential need for greater clarity in the IIO's procedures.

Consistent with the *BC Provincial Policing Standards*, the role of the Chief of Investigations at the IIO, and the recent addition of a Deputy Chief of Investigations, addresses the need for a monitoring officer, to whom Team Directors are accountable for investigations.

While one of the investigations included in the file review had undergone a formal internal review, there did not appear to be an internal audit process in place.

#### 2.1.8 Legal Considerations

Understanding of legal requirements and disclosure obligations by all team members is critical to ensure that investigations into serious incidents can withstand scrutiny at trial, should an investigation go to court. Failure to respect the rights of an accused poses risks to public confidence and, potentially, public safety.

Legal constraints and obligations are continually evolving; liaison with Crown counsel is recommended throughout major case investigations to encourage timely and current consideration of legal issues.

The 2016 Supreme Court of Canada ruling in *R. v. Jordan*<sup>8</sup> imposes greater urgency for Crown counsel and police to work together efficiently and effectively to support timely and accurate disclosure, particularly supplemental disclosure.

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<sup>8</sup> *R. v. Jordan*, 2016 SSC 27. This ruling establishes a new framework for applying an accused's right under s. 11 (b) of the *Canadian Charter of Rights and Freedoms* to be tried in a reasonable time. The framework imposes presumptive time limits between the laying of charges and the end of trial (18 months for cases heard in provincial courts and 30 months for superior court trials). The onus is on Crown to justify, citing exceptional circumstances, why a trial cannot be completed within the time limits. Otherwise, if time limits are exceeded, the time to complete trial will be considered unreasonable and a stay of proceedings will be ordered. (Where time limits are not exceeded, the onus to prove a delay is unreasonable rests with defence).



The *BC Provincial Policing Standards* for major case management will require police forces to engage in early and ongoing consultation with Crown counsel during major case investigations, and to ensure that adequate resources and systems or procedures are in place to support timely and accurate disclosure of file materials and preparation of reports to Crown counsel.

#### *Review Team Observations*

The review team's concerns with respect to the disclosure packages examined as part of the file review are discussed earlier in this report (see [2.1.4 Management Considerations](#)). These included the potential for omissions or errors when preparing materials for disclosure, given the absence of a robust eMCM system and variations in procedures used by different staff; difficulty navigating the disclosure packages; concern with the quality of narratives; and some indications that disclosure obligations may not have been always fully understood at all levels of the organization.

In addition to engaging with Crown counsel, the IIO has internal legal resources: a Director of Legal Services, whose role with respect to individual investigations is primarily to review the final investigative report and make recommendations to the CCD whether the matter should be referred to Crown counsel; and an 'operational' Legal Counsel who provides advice to investigators during investigations. The review team sees potential for the IIO to make greater use of these resources to improve investigative practices. For example: to provide input on potential offences, the associated evidentiary needs and lines of enquiry to pursue during interviews; to develop investigator understanding of the probative value of materials taken or put on file; and to assume the role of contrarian during file discussions to identify risks, gaps, potential available defenses and mitigating strategies.

Clarification of the manner in which certain aspects of the governing legislation and/or MOU are to be interpreted or applied, could allow the IIO to focus its resources on priority cases, helping to maintain speed, flow and direction, and enhancing public confidence and police cooperation with the IIO.

Some examples of areas noted by the review team include:

- **s. 38.11 Report to Crown counsel:** Section 38.11 of the *Police Act* states that, if the CCD determines, upon conclusion of the investigation, that an officer may have committed an offence under any enactment, the matter must be reported to Crown counsel. The responsibility to report does not require any nexus between the potential offence and the death or serious injury sustained in the incident under investigation, and in practice the IIO does not apply such a test when referring a matter to Crown counsel. The scope of the standard of referral in s. 38.11 makes sense in light of



sections 38.09 (1) and 38.10 (1), which dictate a role for the IIO in the investigation of (a) incidents where the actions of a police officer may have caused a person serious harm or death or (b) potential violations of the *Criminal Code* or other federal or provincial enactments by police officers. However, in practice and as agreed to under the MOU, the IIO is only investigating incidents where the actions of an officer may have caused a person serious harm or death. It does not currently investigate, for example, an allegation that an officer committed theft, unless a person also suffered serious harm or death.

The review team noted that allowing consideration of the proximity between the potential offence and the harm or death when determining whether to refer a matter to Crown counsel, as is done when determining jurisdiction to investigate, could help to improve the overall timeliness of IIO investigations. Similarly, allowing some assessment by the IIO of the weight of the evidence or the likelihood of the evidence satisfying Crown counsel's charge approval test could also help to improve timeliness.

Alternatively, another opportunity to consider is to engage in earlier and more succinct reporting to Crown in cases where the strength of the evidence or proximity is questionable. This would allow decision-making to remain with Crown counsel, but also permit more efficient and timely referrals to Crown and conclusion of IIO investigations. Currently, the IIO provides the same product to Crown counsel in all cases, the majority of which do not result in charges.

- **s. 38.06 Independent investigations office staff and investigators.** The review team noted an opportunity, under s. 38.06 (5) for the CCD to retain consultants, experts, specialists and other persons. The review team recommends the IIO consider using this authority to retain consultants, including former police with expertise in major case management, to assist in implementing systems and processes to support a more disciplined application of major case management. In addition, the review team observed a need for a unit or mechanism dedicated to clearing the growing backlog of older cases. The review team recommends that the IIO consider the potential use of consultants from a range of disciplines—policing, defence, Crown, and civilian experts—to assist the IIO in this regard (e.g., form a panel to review outstanding files and make recommendations to the IIO regarding the action required to conclude the investigation).
- **S. 38.101 Officers to cooperate with independent investigations office.** Section 38.101 requires police officers to cooperate with IIO investigations. It was apparent from interviews that there are some uncertainties surrounding the application of this section, and the IIO noted specific investigations where difficulty obtaining cooperation has contributed to delays in the investigation. Clarification of the duty to cooperate, for example by reaching a shared agreement on guiding principles, could help to avoid bottlenecks in individual cases, and support expedient resolution when they arise.



- **Article 14.2 (MOU) Definition of subject officer.** In specific sub-sections of article 14.2, the definition of subject officer includes officers whose actions are reasonably believed to have been a contributing factor in the death or life-threatening injury to any person. The review team observed occasions in the files reviewed where greater discretion by the IIO in the determination of subject officers, with the underlying rationale documented in the file, could have enhanced the speed, flow and direction of the investigation. The Command Triangle must balance what can be competing goals – thoroughness, fairness, timeliness – to get to the facts. (See also [2.3 Memorandum of Understanding Respecting Investigations](#)).

#### 2.1.9 Partnerships

Approaching an investigation from the perspective that the case can be solved using only the internal expertise and resources of the team or organization is anathema to major case management; partnerships are critical. Solid working relationships with partners must be sought and maintained. The team must consider how existing partnerships could be leveraged to assist with an investigation, and be mindful of other, previously unexplored experts and partners that might be worthwhile to engage.

The *BC Provincial Policing Standards* for major case management addresses the importance of partnerships in a number of ways. They will require: that responsibility for victim liaison and media liaison be assigned to designated persons; consideration of the need for someone who is familiar with the community to conduct a community impact assessment; ongoing communication and consultation with Crown counsel; that police forces have access to specific expert resources that may be required during a major case investigation; and consideration of the need to consult with other experts from policing or other disciplines to obtain feedback or advice that could assist with a major case investigation that is at risk of stalling.

#### *Review Team Observations*

The IIO has a number of measures in place that demonstrate an appreciation for the importance of partnerships. For example, they have dedicated resources to liaison with affected persons and the media, and an advisory group that brings together a wide range of stakeholders to provide input on policy decisions and other matters. Recently, this group assisted the IIO to responsively amend its policy on deployment to critical incidents where an officer has administered first aid, which had become a pressing issue to resolve in light of the opioid crisis.

The review team identified additional measures the IIO may wish to consider to continue to enhance partnerships. These include:



- Consider providing more frequent, fulsome and direct public statements on its findings, as an investigation proceeds and at its conclusion. This may help build public – and police – confidence in the IIO, which in turn may enhance cooperation and support speed, flow and direction in other investigations.
- Consider establishing partnerships with academic institutions (e.g., to research Canadian and international trends in policing and police oversight, to provide qualitative review of statements for analysis of thematic issues, to assist in the development and/or delivery of training).
- Continue to identify and proactively establish working relationships with police leaders, unions, civilian stakeholder groups, and other oversight agencies. In particular, there may be opportunities to engage with the IIO's counterparts in other jurisdictions to collaborate on training development and establish a community of practice.

## 2.2 Training

### 2.2.1 History of IIO training

The approach to training has shifted and evolved throughout the IIO's history. The review team noted three distinct stages:

- **2012:** The first cohort of investigators received training prior to the IIO becoming operational in September 2012. This training varied depending on whether the investigator had previous police experience or not.

Those without Canadian police experience completed a 12-week training course at the Justice Institute of BC (JIBC). This was taught as a group for IIO investigators only. The course was a modified version of existing police training. Subsequently, IIO investigators who had a police background (Canadian or international) completed a 2-week Major Crime Investigative Techniques (MCIT) course at the RCMP Pacific Regional Training Center (PRTC).

In-house training regarding the IIO mandate and ethics was also provided, followed by a six-month on-the-job coaching plan. The coaching plan required regular evaluations during which time the investigator was still on probationary status.

- **2013 – 2014:** In 2013 and 2014, it was not feasible to run the same 12-week course for new investigators hired at various times throughout the year as a result of attrition. Therefore new IIO investigators who did not have previous Canadian policing experience attended the JIBC Police Academy police recruit training, alongside police recruit candidates. Additional in-house training and on-the-job coaching was provided.
- **2015 – present:** In 2015 the IIO reviewed its training program, and developed and delivered more in-house lessons to address topics of identified need, as well as providing specific e-learning police training courses. New hires were given a more purposeful introduction to their jobs and were no longer sent to the Police Academy. This was due in part to the Police Academy coincidentally and fundamentally revising its approach to recruit training.

The IIO Executive described certain advantages and disadvantages with each of these approaches. Overall, however, the IIO Executive noted concerns that past training was not sufficiently tailored to the IIO's mandate. Overall, the IIO Executive identified a need to develop a custom-built training program for the IIO.

### 2.2.2 Future Plans

The IIO is in the process of developing a new two-year certification program for investigators. This will involve a combination of in-house training and mentoring, and partnering with external agencies (e.g., JIBC, PRTC, Simon Fraser University and BC Institute of Technology) to provide existing specified



police training, as well as developing IIO-tailored training. The IIO has recently engaged a consultant with expertise in MCM to assist with their training plans.

The IIO will require existing investigators, as well as new hires, to complete the new program so that all investigators will be ‘on the same page’.

### 2.2.3 Review Team Observations

The review team acknowledges that IIO training is a challenging area. In the absence of existing training for police oversight bodies, the IIO has primarily used a combination of existing police training, and training courses developed and/or delivered in-house. Often, the police training has not been tailored for the unique context and environment of the IIO. In addition, the background and skills of persons hired as IIO investigators has varied widely, making it particularly challenging to provide targeted training.

The review team echoes the need identified by IIO Executive to develop a customized training program for IIO investigators. Overall, the IIO’s plan to develop a two-year certification program is a fundamentally sound approach. The review team also observed a number of areas that may require further consideration and incorporation into the program design. These include: efforts to mitigate the impact of operational needs on the timely completion of training; ensuring sufficient emphasis on specific topics in the program; and ensuring that the program is designed consistent with the Provincial Learning Strategy.

#### *Mitigating the impact of operational needs on training:*

During interviews, the review team was advised that training has frequently been interrupted or re-scheduled by job requirements. It was also noted that the investigators most recently hired at the time of the review had not yet completed their six week induction training despite being employed by the IIO for approximately five months. Given the backlog of open investigations, careful scheduling and allocation of resources is required to help ensure that, moving forward, training can be prioritized and completed in a timely manner.

#### *Ensuring sufficient emphasis on specific topics:*

Within the previous 24 months, the IIO developed training to address what it had identified as pressing needs. Topics included interviewing and key legal issues. The review team recommends that these areas continue to receive emphasis in training and notes three other topic areas that require that additional attention: MCM, training in leadership for anyone selected to fulfill a mentorship role, and issues related to recognizing and controlling for bias.

- **MCM:** As previously discussed, the review team noted several areas where a more disciplined application of MCM could provide many benefits to the IIO. A more robust understanding of MCM





by all investigators as well as in depth training for anyone assuming a Command Triangle role would support enhanced use of MCM across the organization.

- **Leadership training:** Coaching and mentoring have important roles to play in developing new IIO investigators. Interview findings indicate that the IIO has had difficulty ensuring a consistent and effective approach to mentorship across the organization. Leadership training should be provided to anyone selected to be mentors, including but not limited to Team Directors.
- **Bias:** The potential for investigator bias is an inherent and ongoing risk for any investigation. As such, training has a critical and ongoing role in guarding against bias. The review team observed that issues related to recognizing and controlling for bias may not be adequately reflected in current and planned IIO training.

The development and implementation of the planned investigator certification program will take time. In addition to ensuring that interviewing, legal issues, MCM, leadership, and bias are addressed in the certification program; the review team recommends that training in these areas be prioritized in the interim.

### ***Ensuring consistency with the Provincial Learning Strategy***

Policing and Security Branch (PSB) set out a provincial learning strategy for police training in 2009. The principles of the Provincial Learning Strategy (PLS) are to ensure that training is defensible, effective and accessible. (See text box, *The Provincial Learning Strategy*).

It is important that IIO training be designed in accordance with the PLS to ensure that the program is defensible and effective, and meets the knowledge and skills requirements for IIO investigators. It is important that the training be built for the specific learners, environment and tasks of an IIO investigator.



## The Provincial Learning Strategy

The principles of the *Provincial Learning Strategy* are to ensure that training is defensible, effective and accessible.

**Defensible:** Defensible training means that the training a learner receives will stand up to legal scrutiny. This refers both to the legal defensibility of the content and the manner in which the course is constructed. Serious consequences could arise if investigators are not able to perform required tasks to the required competency level. Serious consequences can also arise if it cannot be proven that investigators had access to the necessary learning opportunities to achieve and maintain that competency. Ways to promote defensibility include:

- Designing the training through an established method such as the Systematic Instructional Design (SID) process. This process includes the following steps:
  - Analyzing the tasks, learners and context
  - Designing performance objectives, test creation and instructional methods
  - Developing learning materials (instructor and learner guides and job aids)
  - Implementing a pilot run and revising final training materials
  - Evaluating the course and the learners and making any necessary revisions.
- Ensuring that materials used to develop the curriculum content are evidence-based and rely on peer reviewed research or evidence of best practice
- Ensuring that any legal content of the course is reviewed and endorsed by a qualified legal expert
- Assessing learner performance and course effectiveness using reliable methods and on a regular basis, and
- Ensuring materials are properly archived.

**Effective:** Effective training is training that does what it is supposed to do. In order to build effective training, sound educational strategies must be used. These strategies include but are not limited to:

- Building training that is supported by the necessary learning objectives
- Building performance-based training that is designed to improve performance in the field
- Ensuring that the principles of adult education and the most effective instructional strategies are used
- Testing to ensure that the learning objectives are being achieved, and
- Assessing to see that desired performance is occurring in the field.

**Accessible:** Accessible training means that training is available to all learners who need it. There are a number of factors that must be balanced when considering optimal training accessibility. These include:

- Characteristics of the target learners and the learning environment
- Ensuring that the desired level of learning can be conveyed effectively through the selected delivery method (e.g. eLearning may not be suitable to physical skills training), and
- Maximizing training efficiencies and leveraging economies of scale (e.g. having students travel to a training facility is expensive and difficult to schedule, when it may be possible to bring the training to the agency).



The IIO's plan for the two-year training certification program lists various topics from the police recruit training curriculum to be delivered by the JIBC. While it is useful for IIO investigators to understand how police are trained, ultimately the training provided to IIO personnel should be tailored for the learning needs of IIO investigators and IIO job requirements.<sup>9</sup>

This will require expertise in curriculum development as well as subject matter expertise, in order to analyze the job requirements and build the training using sound educational strategies. This expertise is key to developing the IIO's training program as efficiently and effectively as possible.

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<sup>9</sup> For example, one of the training topics to be provided to IIO investigators by the JIBC is a lesson on police dogs. The lesson that police recruits are given on police dogs focuses on officers containing, and not contaminating, a scene prior to the police dog arrival, and how to behave so as not to be in the way of, or be bitten by, a police dog. While some of this is relevant to an IIO investigator, there are additional aspects about police dog use (e.g., key aspects of police dog training and the BC Provincial Policing Standards regarding police dog deployment) that are important for IIO investigators to know for the context of a use-of-force investigation. This is a gap which is not filled by the existing JIBC lesson.

## 2.3 Memorandum of Understanding Respecting Investigations

The third and final purpose of this review was to examine the effectiveness of the MOU between the IIO and British Columbia's policing and law enforcement agencies. More specifically, the Director asked the review team to consider any potential implications for the MOU from its findings with respect to the effectiveness of the IIO investigative principles, practices, and strategies and the application of major case management. For example, issues or gaps that may be affecting speed, flow and direction of IIO investigations. Under s. 40 of the *Police Act*, the Director has the authority to set standards respecting cooperation between the IIO and police agencies. This component of the review was undertaken to identify areas where the creation of standards may need to be explored.<sup>10</sup>

As noted in Section 1 of this report, the MOU was initially established in July 2012, prior to the IIO becoming operational in September 2012. It was amended in February 2013, five months into the IIO's operations. It addresses issues such as the incidents requiring notification of the IIO, the appointment of liaison officers, concurrent investigations, media relations, evidence-related considerations, officer notes and interviews, access to records, and dispute resolution and compliance.

Some of the review team's observations regarding potential shortcomings in the MOU have been discussed in preceding sections of this report; these are summarized again below. Overall, however, the review team noted that renegotiation of the MOU is required.

### **Article 3 - Incidents requiring notification of the IIO:**

Article 3.1 identifies the incidents requiring notification of the IIO. The notification criteria described in article 3.1 are, in some respects, broader than the notification criteria set out in s. 38.09 of the *Police Act*. For example, where the *Act* refers to incidents where it appears that an officer may have 'caused' serious harm or death, the MOU refers to incidents where there is reasonable belief that the presence, action, or decision of an officer may have been a 'contributing factor' in a death or life-threatening injury. (With respect to disfigurement and the loss or impairment of any function or mobility of the body, the term 'may cause' is used, consistent with the *Act*). The MOU acknowledges that the scope of article 3.1 is broader than the IIO's statutory mandate under article 3.2, which also states that the IIO will only investigate cases that are within its mandate.

The practice of over-notification may be due for re-examination. Consideration should be given to whether the underlying policy basis continues to exist, four years in to the IIO's operation, and if so, whether this outweighs the resulting impact on IIO (and police) resources. Over-notification – even if the IIO does not assert jurisdiction – can re-direct resources, if temporarily, from investigations where

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<sup>10</sup> It is important to note that the MOU is not a legally binding document. Provincial policing standards created under s. 40 of the *Police Act* are binding; to date, standards regarding cooperation between the IIO and police agencies have not been established.



the IIO has asserted jurisdiction. Bringing the MOU more in line with the *Act* has the potential to have a positive impact on the timeliness of IIO investigations and partnerships with police.

**Article 14.2 – “Subject officer” definition:**

Article 14.2 uses similar terms as article 3.1 in defining a subject officer. Where death and life-threatening injuries are involved, article 14.2 defines a subject officer as any officer whose presence, action or decision is reasonably believed to have been a ‘contributing factor’. (As in article 3.1, the term ‘caused’ is used with respect to disfigurement and the loss or impairment of any function or mobility of the body). This language is potentially broad-based, and may restrict the IIO’s ability to gather evidence from involved officers. In light of concerns with timeliness of IIO investigations, this is another aspect of the MOU which may warrant re-evaluation.

**Article 18 – Interviews with witness officers:**

Article 18 addresses timelines, location and the video- and audio-recording of interviews with witness officers. Pre-interview disclosure (e.g., whether or not a witness officer may view video evidence, dispatch records or other materials prior to providing a statement) is not addressed in the MOU. This issue should be addressed, ideally in the MOU, and in a manner that allows for principled guidance and flexibility, rather than trying to anticipate and provide strict direction on the myriad circumstances that will arise.<sup>11</sup>

**Article 22 – Dispute resolution and compliance:**

Article 22.1 states that disagreements regarding the conduct of an investigation which cannot be resolved at the liaison officer level may be referred to the CCD and the chief of the police force. Article 22.2 permits the CCD or the chief of a police force to make formal complaints to one another, if either believes that an employee has intentionally failed to comply with the terms of the MOU. Consideration should be given to adding timelines for resolving disputes at the liaison officer level, which, if exceeded, result in automatic referral to the CCD and chief of the police force. This may help maintain speed, flow and direction on investigations.

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<sup>11</sup> Subsequent to the review, the IIO filed a petition in B.C. Supreme Court seeking clarity with respect to the duty to cooperate and related issues involving pre-interview disclosure.

### 3 *Conclusions and Recommendations*

This section summarizes the review team's conclusions and presents recommendations.

#### 3.1 *Conclusions*

Overall, the review team determined that the investigations examined as part of this review were fundamentally thorough and likely reached appropriate conclusions, grounded in relevant and available evidence. However, timeliness and potential vulnerabilities of IIO investigations to withstand scrutiny at trial were particular areas of concern.

With respect to MCM, the review team concluded that the IIO has not fully implemented and is not fully complying with the principles of MCM. When fully implemented, MCM offers a range of benefits that are well suited to addressing some of the IIO's challenges. These benefits include but are not limited to:

- Increased consistency and efficiency;
- Staff development and employee engagement;
- Timeliness of investigations; and
- Safeguards against threats to the integrity of investigations (e.g., tunnel vision, investigator bias) and successful prosecution (e.g., incomplete disclosure, intense scrutiny of the investigation by defence counsel).

The review team has identified a number of opportunities for the IIO to consider to enhance the use of MCM throughout the organization and capitalize on the many benefits it has to offer.

With respect to IIO training, the review team observed that it has been in constant transition since the organization was established. Initially, much of the training provided involved IIO investigators attending police courses, and was not necessarily tailored to meet the unique environment of the IIO. Training included aspects that were irrelevant for the IIO and lacked emphasis on some critical aspects, such as MCM. The IIO has also created and delivered in-house training to address gaps or needs as they were identified.

IIO investigators vary significantly in terms their background and abilities as well as what training they have previously received. While there are benefits to having a range of perspectives and backgrounds throughout the organization, it adds to the challenges of the meeting the organization's and the individual learners' training needs.

The IIO's strategic vision for training is to develop and implement a two year investigator certification program tailored to the requirements of civilian investigations of police. The program is planned to involve in-house training as well as partnering with external agencies. This training vision is a fundamentally sound approach. However it is still in the development stage.

The review team advises that further expertise is needed to bring this vision to a fully developed program, likely requiring the expertise of an experienced curriculum developer as well as subject matter experts.

There are also key aspects of training that need to be addressed immediately, prior to the two-year certification program being finalized. Key areas requiring focused training are: MCM, including Team Commander and File Coordination training for specific roles; interviewing; leadership; and legal issues.

Finally, with respect to the MOU, the review team identified two areas where the IIO may wish to re-examine the existing wording of the MOU to determine the ongoing criticality and practicality of the current scope. Amendments could provide opportunities to streamline and focus IIO activities on the most critical cases, which could help improve timeliness. These areas include the threshold for notification and the definition of subject officer. In addition, the review team noted areas that are not sufficiently addressed in the MOU, which has contributed to delays on specific investigations. These include pre-interview disclosure and the dispute resolution process. Overall, the review team noted that the MOU has not been updated since February 2013; MOU renewal should be prioritized.

## 3.2 Recommendations

The review team has identified 13 recommendations, under the following four themes:

- Theme #1 – Systems and processes to support MCM;
- Theme #2 – Structures to support MCM;
- Theme #3 – Training
- Theme #4 – Revisions to the MOU to support effective investigations.

### *Theme #1 - Systems and processes to support major case management*

#### **1. Acquire and implement a proven eMCM software system.**

Two examples that the review team encourages the IIO to consider include Xim and PowerCase. The use of an eMCM system has many potential benefits, in particular increased efficiency and consistency (e.g., forced compliance with one set of input rules), accountability (e.g., monitoring of workflow), timeliness (e.g., investigative file is built as the investigation proceeds), and reliable and accurate disclosure (e.g., disclosure materials exist in one place).

#### **2. Consider engaging external resources (e.g., consultants and/or partners), including an Accredited Team Commander and an experienced File Coordinator, to assist in implementing rigorous major case management processes and systems at the IIO.**

Under recommendations 1 and 5, the review team has recommended the adoption of specific major case management tools: electronic MCM and dedicated file coordination resources. The review team recommends that the IIO draw in experts to assist the IIO in implementing these



recommendations as well as other MCM tools, such as coaching to enhance the use of briefings. Given existing demands on the IIO Executive, as well as the review team's findings with respect to the extent to which MCM has been successfully implemented to date, the review team concludes it would be very challenging for the IIO to augment its use of MCM using existing, internal resources. These experts could also be consulted and involved in the development of the investigator certification program.

**3. Consider creating, and allocating dedicated resources to, a mechanism to assist the IIO in addressing the backlog of inactive cases, using consultant and partner resources as appropriate.**

For example, such a mechanism could include:

- former police officers or other investigative experts working on contract to review inactive files to assess the evidence gathered to date and the outstanding investigative tasks and recommend a course of action; and/or
- presentation of the files by IIO Executive to a panel that includes a range of stakeholder groups (e.g., Crown and defence counsel, civilian groups such as Pivot Legal Society, and police), to provide input to the IIO on the action to take to conclude the file.

While there may be a role for IIO investigators to carry out specific tasks, overall a dedicated mechanism may assist IIO investigators to focus on maintaining speed, flow and direction on active investigations.

Under the status quo, the IIO backlog may continue to grow, and with it, frustrations with the time to conclude investigations. The backlog must be addressed to improve the timeliness of IIO investigations.

**4. Ensure that business rules are updated to reflect any changes implemented and that systems are in place to ensure business rules are communicated to, reviewed by, and readily accessible to staff.**

It is important that a single, current source of procedural direction is available to and followed by staff. This will support the interoperability of teams, and enhance consistency in investigative products and materials outputs, facilitating internal and external legal review and disclosure. Compliance with the business rules should be monitored.

*Theme #2 - Structures to support major case management*

**5. Consider creating a file coordination unit.**

Consideration should be given to identifying two to three existing investigators who may be well suited to the File Coordinator role, for immediate training and designation as File Coordinators on all files. Using specific File Coordinators and support staff in a repetitive manner will help them to





develop confidence, skill and product, among other potential benefits. Succession planning should also be contemplated.

The critical potential benefits are increased efficiency and quality of reports to Crown counsel and disclosure products.

**6. Consider creating a third investigative team.**

The current structure of two investigative teams does not provide adequate time between callouts to complete investigative tasks on existing files and engage in training and professional development. In addition, it limits the Team Commander's ability to monitor individual development and ensure the health and wellbeing of all members of the investigative team – one of their key responsibilities under major case management.

**7. Consider tiering investigator positions.**

Currently, investigator positions appear to be classified at the same level and investigators are assigned to the roles of Primary Investigator or File Coordinator on a rotating basis, depending on availability and the Team Director's assessment of the investigator's readiness for the role, taking into account the complexity of the file. The review team recommends that the IIO consider implementing a more structured approach, for example creating designated Primary Investigator positions for each team, with specific training and experience requirements, job descriptions and compensation. This will help ensure that persons assigned to the role Primary Investigator, particularly on investigations involving a death or officer-involved shooting, have appropriate knowledge, skills and abilities, and may also provide more opportunities for career growth within the IIO. The IIO may wish to consider additional tiering of investigators for succession planning purposes.

**8. Consider aligning administrative staff to investigative teams and the file coordination unit.**

The review team recommends that the IIO critically examine the support required by investigations from administrative staff and analysts, and the optimal reporting structure and job responsibilities to ensure that those supports are provided.

Under MCM, analysts and support staff are recognized, included and valued as members of the investigative team. If implemented, the review team's recommendations regarding eMCM software, the creation of a file coordination unit, and engaging consultants to assist the IIO in implementing more rigorous MCM processes may create an opportunity to forge a new role for information administrators and other support staff at the IIO, working backwards from the needs of the investigations.



### *Theme #3 - Training*

**9. Consider engaging a person(s) with expertise in curriculum development to assist with the development and implementation of the IIO's strategic vision for training.**

While the IIO has access to subject matter experts through contract and in-house resources, it does not currently have access to expertise in curriculum development. Engaging a skilled curriculum developer and designing the training program in accordance with the PLS will help ensure that training emphasizes topics required for the job (e.g., MCM, interviewing, legal issues).

**10. Consider incorporating experiential training in dynamic use-of-force scenarios into the use-of-force training provided to IIO investigators.**

Use-of-force training should not only address the legal basis and theory of use-of-force training for police in B.C., but also provide scenario-based experiential training to provide an appreciation of how complex and how quickly decisions can need to be made.

**11. Consider seeking opportunities for IIO investigators to shadow police specialists as part of their training.**

On-the-job opportunities to observe specialized investigative functions such as scene examinations, evidence handling and interviews with vulnerable witnesses are somewhat limited within the IIO. It may be beneficial for IIO investigators, as part of their induction training, to shadow police specialists such as forensic officers and IHIT investigators. This may give IIO investigators the opportunity to observe a higher frequency and a greater range of scenes and issues in a shorter amount of time.

**12. Take immediate steps to secure specific training for certain roles:**

- **Canadian Police College Team Commanders course, for Team Directors;**
- **Leadership and/or mentorship training, for Team Directors and mentors;**
- **File Coordinator's Course, for investigators deemed suitable for specialization in file coordination per recommendation 5;**
- **MCM training (e.g., online course available through Canadian Policy Knowledge Network), for all investigators;**
- **Further training in interviewing skills, for all investigators.**

While the development and implementation of the IIO's strategic vision for training is underway, it is important that these immediate training needs be addressed using existing available training.

*Theme #4 - Revisions to the MOU to support effective investigations*

**13. Prioritize the need to amend the MOU.**

The review team noted key areas of the MOU that have the potential, if amended, to enhance the speed, flow and direction of investigations. These include: further limiting the incidents requiring notification; the definition of subject officer, and ensuring that pre-interview disclosure issues are addressed. The review team recommends that the IIO critically examine its position on these and other issues in preparation for MOU renewal negotiations.

Based on interviews, the review team also noted three areas in particular where the application of the IIO's governing legislation has created challenges that impact on speed, flow and direction. These include: the restrictions on hiring former police officers as investigators (i.e., must not have served as a police officer in British Columbia in the previous five years); the threshold for referring a matter to Crown counsel for consideration of charges (i.e., an officer *may* have committed an offence under any enactment); and the lack of clarity regarding an officer's duty to cooperate with an IIO investigation. The review team is aware that these issues are being examined through other processes and therefore does not make any specific recommendations with respect to amending the *Police Act*.