

**Report of the Civilian Monitors into the death of AP on October 1, 2022 at the  
Williams Lake RCMP Detachment**

**Pursuant to Terms of Reference dated February 1, 2024  
IIO FILE NO. 2022-258**

**Civilian Monitors:**

**Robin N. McFee, KC**

**Maya Ollek**

**October 4, 2024**

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## 1. INTRODUCTION

1. On October 1, 2022, the Affected Person (“AP”) died while in custody of the Williams Lake Detachment of the Royal Canadian Mounted Police (“RCMP”). He was 21 years old.
2. AP was a member of the Yunešit’in First Nation (Stone) and a member of the Tšilhqot’in Nation. Yunešit’in is one of six communities that collectively comprise the Tšilhqot’in Nation. The Tšilhqot’in National Government was established in 1989 to meet the needs and represent the Tšilhqot’in Nation and the six member communities.
3. There are multiple levels of police oversight throughout the Province of British Columbia, provided through various entities. Under the British Columbia *Police Act*, [RSBC 1996, c. 367](#) (the “*Police Act*”), the Independent Investigation Office (“IIO”) is a civilian-led police oversight agency mandated to investigate any incident that occurs in the province in which an affected person has died or suffered serious physical concern and there appears to be a connection to the actions of the police. After AP’s death in custody, IIO was notified and conducted an investigation into the circumstances surrounding his death.
4. We were saddened to learn of the death of AP while in custody of the Williams Lake RCMP. Within days of AP’s death, the Tšilhqot’in National Government issued a statement demanding an explanation of AP’s death.<sup>1</sup> Shortly after AP’s death, we were approached by the Tšilhqot’in Nits’il?in–Qi (Council of Chiefs), of the Tšilhqot’in National Government, to serve as Civilian Monitors. Under the *Police Act*, Civilian Monitors may be appointed to review and assess the integrity of an IIO investigation. We understand that the request for a Civilian Monitor to

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<sup>1</sup> “First Nations leaders demand explanation from RCMP for Indigenous man’s death experience in police custody,” CBC News Report, October 4, 2022, at <https://www.cbc.ca/news/canada/british-columbia/williams-lake-first-nation-surveillance-myerson-death-1.6606023>.

review the IIO Investigation reflects, at least in part, a historically difficult relationship between the Williams Lake RCMP and members of the T̓silhqot̓in Nation, and the resulting level of mistrust by members of the Nation in the RCMP. Indigenous organizations and communities have reported a lack of accountability, trust and independence in the existing policing oversight and complaint systems.<sup>2</sup>

5. We have worked with members of the T̓silhqot̓in Nation for a number of years and have witnessed and been deeply impressed by the Nation's strength, resiliency, and commitment to protecting the rights of its people. We are honoured by the trust and faith placed by the Nits'il?in–Qi in us in asking us to serve as Civilian Monitors.
6. On February 1, 2024, the Chief Civilian Director ("CCD") of the IIO, then Ronald J. MacDonald, KC appointed us to the role of Civilian Monitors, pursuant to s. 38.08 of the *Police Act*. Under our Terms of Reference, our mandate was to review and assess the integrity of IIO Investigation 2022-258 (the "IIO Investigation") into the death of AP and to provide a written report within 30 days of the conclusion of the IIO Investigation. The IIO Investigation concluded on or about September 6, 2024.
7. From the date of our appointment as Civilian Monitors to the writing of this report, to fulfill our role as Civilian Monitors, we were provided with full access to IIO investigative file (the "IIO File") generated by the IIO Investigation, as well as access to the IIO investigators responsible for the Investigation (the "Investigators"). We were provided with assistance by the IIO in navigating the IIO File, opportunities to ask questions of the Investigators and to receive answers, and to request and receive further information and documentation from the Investigators.

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<sup>2</sup> Report of the Special Committee on Reforming the Police Act, "Transforming Policing and Community Safety in British Columbia", 3<sup>rd</sup> Session, 42<sup>nd</sup> Parliament, April 28, 2022, p. 64 ([https://www.leg.bc.ca/committee-content/CommitteeDocuments/42nd-parliament/3rd-session/rpa/SC-RPA-Report\\_42-3\\_2022-04-28.pdf](https://www.leg.bc.ca/committee-content/CommitteeDocuments/42nd-parliament/3rd-session/rpa/SC-RPA-Report_42-3_2022-04-28.pdf))

8. As we elaborate further in this report, in our view, Civilian Monitors can and should serve an important role in upholding public confidence in the integrity of IIO investigations and police oversight. There are, however, challenges associated with the nature of this role, including with the appointment process itself.

## **2. OVERVIEW OF EVENTS**

9. In our capacity as Civilian Monitors, for the purposes of our role of evaluating the integrity of the IIO Investigation, it is not necessary, nor within our mandate, to provide a detailed narrative of the events surrounding AP's death, nor to detail the investigative steps taken by IIO during the IIO Investigation.
10. We provide here only a brief overview of the events during the evening in question as background to our Civilian Monitoring report. We anticipate that the underlying events will be more fully described in the Public Report. We rely on the IIO's Public Report for the detailed narrative of events. Our report as Civilian Monitors should be read together with the Chief Civilian Director's Public Report.
11. During the evening of September 30, 2022, Officer 1 of the Williams Lake RCMP detachment observed AP driving in Williams Lake on an unlicensed moped with a passenger, Civilian Witness ("CW"). Due to previous interactions with AP, Officer 1 believed AP did not have a driver's licence, was prohibited from driving, and had avoided being stopped by police before while driving the moped. Officer 1 attempted to stop AP, at which time AP drove away. Officer 1 followed AP until he drove onto the footpaths of the Stampede Grounds where the officer could not follow in his vehicle. Officer 1, together with Officer 2, located AP soon after on a nearby road. Officer 2 exited their vehicle, pursued the moped on foot, and pulled AP and CW to the ground off the moped where they were arrested. Shortly after midnight, Officer 3 drove AP to the RCMP cells, while Officer 1 drove CW home near her residence and without charges. AP was lodged in cells. Approximately two hours after he was lodged in the cell, AP fell off his bed to the floor, ending up

lying on the floor in a sleeping/recovery position on his side with his face facing away from the cell door and the camera. Around 04:48 am on October 1, 2022, Officer 1 entered AP's cell to release him and found him non-responsive. The officers administered CPR and Narcan until emergency health services arrived. Emergency health services continued life-saving measures before AP was pronounced deceased.

12. During the IIO Investigation of AP's death in custody, the IIO opened a related secondary investigation (the "Secondary Investigation") into a potential weapons offence by an officer involved in the events in question. This Secondary Investigation arose from reports by CW, who was with AP on the moped, that Officer 1 had stuck a gun out of the window of his vehicle and pointed it at AP and CW. We rely again on the IIO's Public Report for the narrative of events relating to this Secondary Investigation. Our report as Civilian Monitors should be read together with the Public Report.

### **3. THE *POLICE ACT***

13. The *Police Act* provides the legal framework for policing in British Columbia. It addresses, among other things, oversight mechanisms for police in the Province.
14. Part 7.1 of the *Police Act* establishes and sets out the mandate, functions, and powers of the IIO. The IIO is a civilian-led, police oversight agency. Under the *Police Act*, the IIO is responsible for conducting investigations reported to it in accordance with the *Police Act*. This responsibility includes investigating when an officer is at the scene of an incident where it appears that a person may have died or suffered serious harm as the result of the actions of an officer,<sup>3</sup> whether on or

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<sup>3</sup> Serious harm is defined in Part 11 of the *Police Act* as injury that may result in death, may cause serious disfigurement, or may cause substantial loss or impairment of mobility of the body as whole or of the function of any limb or organ.

off duty, or an officer, whether on or off duty, may have contravened a provision of the *Criminal Code* or another federal or provincial enactment.<sup>4</sup>

15. As set out by the IIO in numerous public reports, at the conclusion of its investigation, it aims to “provide assurance to the public that when an investigation is complete, they can trust IIO conclusions, because the investigation was conducted by an independent, unbiased, civilian-led agency.”
16. A Civilian Monitor may be appointed under s. 38.08 of the *Police Act*. The *Police Act* defines a civilian monitor as follows:

"civilian monitor" means a person appointed by the chief civilian director under section 38.08 (1) to review and assess an investigation by the independent investigations office under this Part.<sup>5</sup>

The role of the Civilian Monitor, including its limitations, is defined by the *Police Act* and includes:

#### **Civilian Monitors**

**38.08 (1)** The chief civilian director may appoint a person who is not a current or former member of a police force in British Columbia or the Royal Canadian Mounted Police to review and assess the integrity of a specific investigation in accordance with this section and the terms of reference, if any, established by the chief civilian director in the appointment.

(2) Before beginning to exercise powers and perform duties, a civilian monitor appointed under subsection (1) must take an oath before the chief civilian director

(a) to faithfully and impartially review and assess the integrity of the independent investigations office investigation in accordance with this section and the terms of reference, if any, established by the chief civilian director in the appointment, and

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<sup>4</sup> *Police Act*, s. 38.02 and s. 38.09

<sup>5</sup> *Police Act*, s. 38.01.

(b) not to divulge any information obtained as civilian monitor, except in accordance with this section.

(...)

(4) A civilian monitor is not entitled to participate in, attend or conduct an independent investigations office investigation under this Part, but the civilian monitor

(a) is entitled access at reasonable times to any record of the independent investigations office that is directly related to the investigation in respect of which the civilian monitor is appointed and the duty of the civilian monitor described in subsection (2) (a) in respect of that investigation, and

(b) may request an interview with or statement from a staff member of the independent investigations office or an IIO investigator in order to assist the civilian monitor in the performance of that duty.

(...)

17. Under s. 38.08, persons to whom requests are made by a civilian monitor must comply with the request. Staff members of the IIO and IIO investigators also have a duty to cooperate with civilian monitors.<sup>6</sup>

18. A civilian monitor appointed under the *Police Act* must provide a written report to the CCD respecting the civilian monitor's assessment of the integrity of the investigation within 30 days of the conclusion of the investigation.<sup>7</sup>

#### **4. APPOINTMENT AS CIVILIAN MONITORS**

19. We were appointed as Civilian Monitors on February 1, 2024. In taking the Oath, we agreed:

a. to base our conclusions on the objective evidence available to us; and

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<sup>6</sup> *Police Act*, s. 38.08(5)-(6).

<sup>7</sup> *Police Act*, s. 38.08(7).

- b. to safeguard any information obtained as a civilian monitor, and not to divulge it to anyone except in accordance with s. 38.08 of the *Police Act* or otherwise required to do so by law.
- 20. Under the Terms of Reference of our appointment as Civilian Monitors, we agreed to take an oath to “faithfully and impartially review and assess the integrity of the independent investigations office investigation”. These Terms of Reference made clear to us that we were entitled to:
  - a. access any record of the Independent Investigation Office directly related to the investigation;
  - b. request an interview with or statement from any staff member of the Independent Investigations Office or an IIO investigator to assist the civilian monitor in the performance of that duty;
  - c. meet with members of the Command Triangle (including the Team Director, Primary Investigator and File Coordinator) to review the progress of the investigation;
  - d. request the Command Triangle to provide access to relevant records from the investigation;
  - e. conduct interviews with investigators involved in the investigation team to inform our report to the CCD; and
  - f. provide verbal and written interim reports to the CCD, should we deem it appropriate.
- 21. Finally, under the Terms of Reference, we were required to provide a final, written report, including our findings, recommendations and conclusions to the CCD, including providing a factual basis for the conclusions reached.

## **A. The Role of a Civilian Monitor**

22. Before proceeding further, it is important to stress the limitations of our role as Civilian Monitors. Our role is narrow: we are to review and assess the integrity of the IIO investigation into the death of AP.
23. We understand that assessing the “integrity of the investigation” asks us to make a determination of the overall completeness and quality of the IIO investigation – whether it was conducted in a fair, comprehensive and ethical manner. In reviewing the IIO Investigation, we paid attention to several factors such as:
  - a. if the investigation was comprehensive, exploring all relevant avenues and gathering the necessary evidence;
  - b. whether the investigators sought evidence from all material witnesses; and
  - c. whether the IIO Investigators investigated and evaluated all of the evidence impartially; and
  - d. the documentation of the investigation, such as whether there was a record of the steps, findings, and investigative decisions.
24. As Civilian Monitors, it is not our role:
  - a. to uncover or make findings of fact relating to AP’s death;
  - b. to provide a detailed narrative of the factual circumstances surrounding AP’s death;
  - c. to provide a chronology narrative of the investigative steps and decisions taken by IIO; or

- d. to provide an opinion about the actions or omissions of specific RCMP officers involved.

These tasks are clearly beyond the role of Civilian Monitors and lie within the purview of the IIO. Responsibility for sharing this information with the public is with the CCD. It is also not our responsibility to comment on the conclusions reached by the CCD about the actions or inactions of specific RCMP officers involved or to share these with the public. This is the role of the CCD.

## **B. Information reviewed as Civilian Monitors**

- 25. At the outset, it was made clear to us as Civilian Monitors, we would be given full access to IIO File to conduct our review.
- 26. The IIO Investigators provided us with a helpful guide to the IIO File. IIO Investigators provided to us, and we reviewed to the extent necessary to evaluate the integrity of the IIO investigation, the following, among other things:
  - a. the Final Investigation Report, including a Detailed Narrative prepared by the IIO Investigators;
  - b. the Investigative/Decision Log, which included a summary of how the investigation unfolded, what evidence was gathered, and what investigative decisions were made;
  - c. the RCMP notification to IIO of the incident;
  - d. RCMP Police Records Information Management System (“PRIME”) and Computer Aided Dispatch (“CAD”) documents;
  - e. investigative notes of IIO investigators;

- f. analysis documents for the closed-circuit television (“CCTV”) videos, including analyses of the traffic stop, the RCMP cell block, and the RCMP Prisoner Log and Cell Block;
  - g. CCTV footage documenting: the traffic stop; the RCMP detachment; the RCMP cell block; the RCMP jail guard room; and the RCMP detachment cell video;
  - h. audio and/or video recordings of all IIO interviews in relation to this investigation as well as transcripts of these interviews, including with multiple civilian witnesses, medical witnesses, and involved officers;
  - i. autopsy documents, including the Autopsy Report and Toxicology Report from the BC Coroner’s Service;
  - j. documentation, photographs and other materials relating to the Forensic Scene Examination of the relevant RCMP areas, including the RCMP cell and the RCMP vehicle;
  - k. records of RCMP Radio transmissions; and
  - l. RCMP National and E-Division Policy materials relating to the guarding of prisoners and checking responsiveness.
27. We also spoke with the IIO Director of Investigations and the lead IIO Investigator on multiple occasions. These individuals:
- a. provided us with updates about the status of the investigation, to the extent they were able, while the IIO Investigation was ongoing;
  - b. assisted us with becoming oriented in and familiar with the IIO File;
  - c. provided assistance in accessing and navigating the IIO File, including to review CCTV videos;

- d. answered questions we had about the IIO File materials; and
  - e. answered questions we had about investigative steps and decisions made by IIO;
  - f. answered questions about specific aspects of the IIO Investigation; and
  - g. where necessary, sought further information to answer our questions and/or additional materials to answer questions we raised in our capacity as Civilian Monitors.
28. During our meetings with the IIO Director of Investigations and the lead IIO Investigator, both were careful to ensure that all of our inquiries were responded to and we did not require any further information. They also followed up by email to confirm that we did not have further questions after our meetings.
29. We were provided an opportunity to provide an interim report to the CCD prior to the conclusion of the IIO Investigation. We exercised this ability and did provide a high-level interim report setting out our preliminary conclusions to the CCD, prior to the conclusion of the IIO Investigation.

## **5. IIO'S INVESTIGATION**

30. Upon being notified of AP's death in custody of the Williams Lake RCMP Detachment, IIO Investigators mobilized rapidly to attend the Williams Lake RCMP Detachment and to begin the IIO Investigation.
31. We make the following non-exhaustive list of observations based on our review of the IIO File.
- a. IIO prepared a detailed narrative report which made clear IIO investigated the full sequence of events surrounding AP's death, including but not

limited to: the RCMP's initial interaction with AP; the traffic stop and arrest of AP; the reason AP was placed in the cells and the length of time he was in the cells; AP's level of responsiveness; AP's fall to the floor, his lack of movement, and the cell guard's response; the discovery of AP and RCMP response and emergency health services response; discussions regarding patient care while in the cells; the scene exam; the autopsy; the toxicology report; and the RCMP cell policy.

- b. IIO's File contained a detailed record of Investigative Tasks completed and the associated steps and documentation relating to each task, which we reviewed.
- c. IIO took steps to and did obtain extensive CCTV footage, beginning with officers following AP in Williams Lake, pulling AP over for a traffic stop, AP's arrival at the Williams Lake RCMP Detachment, and AP's time in the cell block.
- d. IIO undertook a careful review of this CCTV footage, including obtaining video analyses of the key CCTV footage. These video analyses, in particular, were helpful to our review of AP's interactions with the police from his first contact with the police, to his arrival at the RCMP Detachment, throughout his time in the cells, and until medical aid was summoned. This video analyses obtained included analysis of AP's ability to physically function upon arrival at the detachment, to determine that AP had no prior injury, to determine if there was any use of force in the cells, to determine the medical condition of AP, to determine the level of care given to AP while in cells, and to determine the medical response.
- e. IIO obtained and reviewed extensive RCMP radio transmissions and records.

- f. IIO spoke with and conducted detailed interviews with all material witnesses. We did not identify any significant gaps in the lines of questioning or areas canvassed during these interviews.
  - g. IIO sought, obtained, and reviewed extensive documentation and records from the jail cell guard, RCMP, emergency health services, and autopsy records.
  - h. IIO obtained and reviewed extensive photographic records of the events involving AP.
  - i. In the completeness of their investigation, the IIO Investigators took steps beyond what was required, including diligently persisting in their efforts to interview the jail guard, to obtain additional information about the events in question.
- 32. In the IIO Investigation, the IIO Investigators looked into and evaluated the applicable RCMP policies relating to the care of persons detained in police custody as well as broader resourcing and staffing issues at the Williams Lake RCMP Detachment. It is not our role to comment on or criticize existing RCMP policies or adherence to these policies on the night in question, nor to be providing our views on resourcing and staffing issues. This is the role of the CCD.
- 33. Based on our review of previous Public Reports released at the conclusion of IIO Investigations, we are aware that the CCD can and has provided their views on systemic issues plaguing the RCMP and recommendations on reform in past investigations. It is within the role of the CCD to evaluate and comment on the applicable RCMP policies and any systemic issues, including staffing shortages, and making any recommendations as necessary, in their report.
- 34. Throughout the IIO Investigation, the IIO Investigators regularly updated the CCD about the progress of the investigation, including about the associated timelines of

the investigation. We address the overall timelines of this investigation in more detail below.

35. We are satisfied based on our review of the IIO File that IIO conducted a comprehensive and thorough investigation of the events leading up to and culminating in AP's death, beginning late in the evening of September 30, 2022 and until his death in the early hours of October 1, 2022. We do not have concerns about the integrity of the IIO Investigation.

## **6. IIO SECONDARY INVESTIGATION INTO POTENTIAL WEAPONS OFFENCE**

36. Our mandate as Civilian Monitors tasked with reviewing the IIO Investigation included a mandate to review the IIO Secondary Investigation into the potential weapons offence.
37. We are satisfied based on our review of the IIO File that the IIO Investigators diligently investigated with care CW's report that an officer pointed a weapon at AP and CW. We reach this conclusion based on the following non-exhaustive list observations we made about the IIO File.
  - a. Upon becoming aware of the potential weapons offence, IIO Investigators opened the Secondary Investigation and conducted a thorough inquiry into the potential weapons offence by the officer in question.
  - b. The IIO Detailed Narrative included a comprehensive review of the Secondary Investigation.
  - c. IIO took steps to and did obtain extensive CCTV footage relating to the potential weapons offence. IIO undertook a careful review of this CCTV footage, including obtaining video analysis of the CCTV footage. This video analysis included an analysis of multiple dimensions of the investigation into the potential weapons offence. These video analyses in

particular were a critical investigative step and helpful to our review of the IIO File with respect to the potential weapons offence.

- d. IIO spoke with and conducted extensive interviews with all material witnesses. We did not identify any significant gaps in the lines of questioning or areas canvassed during these interviews, relating to the Secondary Investigation.

- 38. We do not have concerns about the integrity of the IIO Investigation of the potential weapons offence.

## **7. CONCLUSION ABOUT THE INTEGRITY OF THE IIO INVESTIGATION**

- 39. We wish to reiterate our role as Civilian Monitors: our role is not to make findings about the events that transpired; it is not to reach conclusions about the actions (or inactions) of police officers; and it is not to review or provide our opinions on the conclusions of the IIO. Our role is narrowly limited to reviewing the integrity of the IIO Investigation.
- 40. As Civilian Monitors, we were provided with full access to IIO File investigative materials. We reviewed the IIO investigative materials carefully and in detail. To the extent that we had outstanding questions based on the investigative materials, we had the opportunity to raise these with IIO Investigators. Where we did, we were provided with the additional information and documentation requested.
- 41. As set out above, the IIO Investigation of AP's death in custody of the Williams Lake RCMP Detachment and of the Secondary Investigation of the potential weapons offence appears to have been comprehensive and thorough. We have not identified major avenues of investigation or inquiry that have not been pursued. IIO pursued lines of inquiry necessary to properly investigate the facts. We do not have concerns about the integrity of either IIO investigation.

42. IIO diligently investigated matters as thoroughly as reasonably possible, given the limitations of IIO's mandate under the *Police Act*. This is particularly true of IIO's commitment meeting with and interviewing the jail guard on duty when AP was booked into the Williams Lake RCMP detachment.

## 8. LIMITS OF IIO'S MANDATE

43. In sharing our conclusions about the integrity of the IIO investigation, we feel compelled to comment on the limits of this investigation. Under the *Police Act*, there are multiple levels of police oversight provided through separate entities. Some law enforcement personnel, such as jail guards, are not included in the oversight system.<sup>8</sup>
44. The IIO is mandated to investigate event where an "officer" is involved. The *Police Act* narrowly defines an "officer" as "a person who is a member of the Royal Canadian Mounted Police".<sup>9</sup> This restriction of IIO investigations to the actions of RCMP Officers is a significant limitation on IIO's mandate: the effect of this language is to exclude from IIO's mandate other individuals, such as the jail guard in this case. The IIO stressed the impact of this restriction on its mandate before the Special Committee on Reforming the Police Act, reporting that most jail guards in British Columbia are classified as civilian employees and therefore do not fall within its jurisdiction.<sup>10</sup>
45. In the events involving AP's death, the actions (or inaction) of the civilian jail guard, a municipal employee of the City of Williams Lake, appear to us to be a central part of the sequence of events. Although the RCMP ultimately removed the security clearance of the civilian jail guard, such that the civilian jail guard is no

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<sup>8</sup> Report of the Special Committee on Reforming the Police Act, "Transforming Policing and Community Safety in British Columbia", 3<sup>rd</sup> Session, 42<sup>nd</sup> Parliament, April 2022, p. 63.

<sup>9</sup> *Police Act*, s. 38.01.

<sup>10</sup> Report of the Special Committee on Reforming the Police Act, "Transforming Policing and Community Safety in British Columbia", 3<sup>rd</sup> Session, 42<sup>nd</sup> Parliament, April 2022, p. 64.

longer acting in that role, in our opinion this does not adequately resolve the matter. To preserve public confidence in the policing system and the policing oversight system, jurisdictional boundaries must not result in certain actors being beyond the reach of the bodies charged with conducting this oversight.

46. On April 25, 2024, Bill 17, the *Police Amendment Act 2024*, received Royal Assent. Among other things, the *Police Amendment Act* strengthens the oversight of policing in British Columbia. The *Police Amendment Act* extends the oversight responsibilities of the IIO to include “detention guards” within its mandate. The term “detention guard” is defined to mean persons, other than officers, who perform detention guard duties relating to the care, custody, and supervision of persons held in a place of detention.<sup>11</sup>
47. In our view, this extension of IIO’s mandate to include examination of the role a jail guard may have played in the serious harm or death of a person is a critical step in enhancing the IIO’s oversight function and to upholding public confidence in the IIO. Under the *Police Amendment Act*, the amendments to the *Police Act* extending IIO’s mandate to include jail guards will come into force by regulation of the Lieutenant Governor in Council. The necessary regulations have not yet been issued, and as a result, IIO’s mandate is still limited to oversight of the actions of officers. We strongly encourage British Columbia to act swiftly to enact the necessary regulations to bring these sections of the *Police Amendment Act* into force to amend the *Police Act*.

## **9. ADDITIONAL REFLECTIONS AS CIVILIAN MONITORS**

48. We are grateful to have been asked by the Nits’il?in–Qi in to serve in the important role of Civilian Monitors of the IIO Investigation into the events surrounding AP’s death in custody.

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<sup>11</sup> Bill 17, [Police Amendment Act](#), 5<sup>th</sup> Session, 42<sup>nd</sup> Parl., British Columbia, 2024 (assented to April 25, 2024), ss. 41 and 45-50.

49. Under the *Police Act*, civilian monitors play an important role in protecting and upholding public confidence in the integrity of IIO investigations. After being approached by the Nits'il?in–Qi to serve as Civilian Monitors, from our first conversations with IIO about serving in this role as civilian monitors, it was made clear to us that IIO was committed to supporting the Nits'il?in–Qi's desire to have us appointed to that role.
50. Based on our experience as Civilian Monitors in this matter, we wish to raise two overarching concerns.

#### **A. Civilian Monitoring Appointment Process**

51. Our first overarching concern relates to our experience with the process of appointment as Civilian Monitors. The appointment process was cumbersome and fraught with unnecessary difficulties and bureaucratic obstacles.
52. Where a serious incident occurs that triggers an IIO investigation under the *Police Act*, there is no restriction on who can serve as a civilian monitor. The *Police Act* sections dealing with civilian monitors focuses on what the civilian monitor does, rather than the requirements of who can serve in that role. This is important, as in principle it allows for those most impacted by the events in question to have a say in who can play this civilian monitoring oversight function of the IIO investigation.
53. In practice, based on our experience in negotiating the terms of our appointment as Civilian Monitors, the process of being appointed as civilian monitors is complex, protracted, difficult and raises significant concerns for us about the ability of lay persons to serve in this role.

54. The General Services Agreement which the Province of British Columbia required us to enter before we could be appointed as civilian monitors is a lengthy contractual document with densely worded terms. As lawyers, it took considerable effort to unpack and understand the General Services Agreement to ensure that we clearly understood what the Province required us to agree to. There were multiple meetings between IIO, the Province of British Columbia, and ourselves, including meetings involving IT professionals, over many months to resolve the contractual arrangements for us to serve in this role. For any lay person being asked to serve as a civilian monitor, we expect this would be a daunting, if not near impossible task without the guidance of counsel and IT professionals.
55. It is worth noting in particular the challenges surrounding the security provisions of the General Services Agreement. The Province of British Columbia understandably required us as Civilian Monitors to agree to a Schedule dealing with security matters. As lawyers, we appreciate and respect the importance of strong security agreements and practices, particularly so where individuals obtain access to IIO Investigations that include highly sensitive and confidential information. We have no concerns *per se* with civilian monitors being required to agree to certain terms surrounding security if they are to serve in this role. However, again, we have serious concerns about the complexity of the security terms presented by the Province. Again, to reach a satisfactory and achievable set of terms around security, it required review and negotiation over complex terms requiring extensive involvement of IT professionals to decipher and resolve. This is simply beyond the capacity of most individuals to understand.
56. To be clear, throughout the appointment process, IIO was committed to supporting our appointment as civilian monitors given the expressed desire of the Nits'il?in-Qi for us to serve in this role. Our IIO contacts worked hard to support us in navigating the challenges of negotiating the General Services Agreement with the Province of British Columbia and to ensure that bureaucratic hurdles and

requirements from the Province were not ultimately a barrier to our accepting this appointment.

57. Our experience causes us concern about the appointment of future civilian monitors. Navigating the labyrinth of contractual requirements with the Province risks deterring individuals from accepting the role of civilian monitor. This is particularly concerning given the important role that civilian monitors play in upholding public confidence in the police oversight system. Failure to address these issues may result in fewer individuals agreeing to serve as civilian monitors, and ultimately undermine public confidence in the oversight process.
58. If the Province is truly committed to supporting the appointment of civilian monitors to review the integrity of IIO investigations, it must simplify and improve the appointment process. If it does not, there is a very real risk that individuals, whether lawyers or lay persons, will either decline to serve in this role because it is too difficult to navigate the appointment process or will be agreeing to contractual terms of appointment which are wholly beyond their capacity to understand. Neither scenario is a good outcome. Moving forward, it is imperative that the civilian monitoring appointment process be streamlined and that contractual terms be reasonable, achievable and clear.

## **B. The Civilian Monitoring Role and Communication by the IIO with the impacted family and community**

59. The *Police Act* requires civilian monitors to take an oath before the CCD “not to divulge any information obtained as civilian monitor...”.<sup>12</sup> We agreed as our oath taken on February 1, 2024 that we would not divulge any information obtained as civilian monitors. Our terms of reference explicitly stated that we would not provide any updates on the IIO Investigation to anyone in the community.

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<sup>12</sup> *Police Act*, s. 38.08(2)(b)

60. We recognize and respect the underlying rationale for this requirement of confidentiality. Civilian monitors are granted unencumbered access to IIO investigative files that contain highly sensitive and confidential information. This unrestricted access is critical for civilian monitors to fulfill their role. Divulging any information obtained as civilian monitors, including about the investigation itself, poses a serious risk of compromising the IIO investigative process.
61. Our second overarching concern relates to the need for regular and consistent communication by the IIO with the family of a deceased, such as AP, and the community from which a civilian monitor is appointed.
62. Having been asked by the Nits'il?in-Qi to serve as Civilian Monitors, it is understandable that the Nits'il?in-Qi were anxious to receive updates about the progress of the IIO investigation and to know when the IIO investigation would be complete. Given the Nits'il?in-Qi asked to have a civilian monitor, they reasonably expected that we could communicate with them. As Civilian Monitors, we could not provide them this information. Our expectation was that the IIO would provide regular updates to AP's family and the Nits'il?in-Qi, who asked us to act as Civilian Monitors, about the progress and anticipated timelines for the IIO Investigation.
63. AP's family, the Nits'il?in-Qi and the Tsilhqot'in Nation waited two years from the date of AP's death until the conclusion of the IIO's Investigation. It is our understanding that AP's family and the Nits'il?in-Qi did not receive regular updates from IIO throughout the last two years about the progress and timelines of the IIO Investigation. This is a concern. This is particularly so given the overall length of the IIO Investigation. It is apparent that this caused significant stress and frustration for the Nits'il?in-Qi.
64. We acknowledge that the length of time to complete this investigation by the IIO reflects: the comprehensive and thorough nature of IIO's investigation and the diligence of IIO Investigators in pursuing interviews and documentation from

certain key witnesses; the emergence of the Secondary Investigation which resulted in a further investigation and contributed to the overall timeline of the IIO Investigation; and time to obtain detailed analyses that were necessary to the investigation of AP's death and the Secondary Investigation. Video analyses were critical to both parts of the IIO Investigation.

65. Having said this, the lengthy nature of the IIO investigations in cases such as this risk undermining confidence in the IIO investigative process, in the absence of keeping the family and community of the deceased regularly updated about the progress of the investigation.
66. Transparency and regular communication are crucial elements to maintaining trust, particularly in circumstances such as this one involving a death in custody, a lengthy investigation, a concern about potential police misconduct, and a lengthy history of mistrust. While a thorough investigation requires time and diligence, it is equally important to recognize the role that perception plays in the overall integrity of the police oversight system. The adage "justice must not only be done, but must also be seen to be done" springs to mind. The absence of transparency and communication with affected families and communities about the investigation process is problematic and risks undermining not only confidence in the IIO's function as an oversight body but also confidence in the role of the civilian monitor.
67. Delivery of timely and appropriate updates is a tool through which IIO and its investigators can demonstrate their commitment to accountability and openness. Such communications by the IIO can: help to reassure a community that a matter is being actively investigated; manage expectations regarding the timeline and complexity of an investigation; and provide opportunities for the community to feel engaged and informed. Ultimately, such communication fosters a greater sense of trust between the IIO and the public, even as investigations unfold over an extended period.

68. In investigations going forward, we call on the IIO to ensure that it provides regular and timely updates about IIO investigations to impacted families and communities, to the extent possible without compromising ongoing investigations.

Dated this 4<sup>th</sup> day of October, 2024.



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**Robin N. McFee, K.C.**



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**Maya O. Ollek**