



LCCCLXXV
 Department of Justice
 Maligaliqiyikkut
 Ministère de la Justice

Response to the Standing Committee on Oversight of Government Operations and Public Accounts' Report on the Review of the 2016-2017 Annual Report of the Legal Services Board of Nunavut

Introduction

The Government of Nunavut sincerely appreciates the opportunity to respond to the recommendations of the Standing Committee on Government Operations and Public Accounts review of the Legal Services Board's 2016-2017 Annual Report.

The Legal Services Board is an independent board created under the *Legal Services Act* which is responsible for the provision of legal representation to eligible applicants and the delivery of public legal education and information to Nunavummiut. While the Minister of Justice appoints board members, they maintain a large degree of independence. This ensures that the Board can, without interference, provide necessary and valuable services to Nunavummiut.

The Government of Nunavut values the work done by the Legal Services Board and strives to provide the funding necessary for them to undertake its work. Funding for the Legal Services Board has more than doubled since the 2010-2011 fiscal year, with the bulk of the funding being provided by the Government of Nunavut.

A breakdown of the funding provided is below:

Fiscal Year	Funding Amount
2010-2011	\$5,807,000
2011-2012	\$8,307,000
2012-2013	\$8,307,000
2013-2014	\$10,064,000
2014-2015	\$11,818,000
2015-2016	\$11,818,000
2016-2017	\$11,818,000
2017-2018	\$12,318,000
2018-2019	\$12,318,000

This funding compares very favourably with other jurisdictions' support of legal aid providers. Yukon Legal Aid, for example, received \$2.58 million in government funding in 2018-2019. The Legal Aid Commission of the Northwest Territories received \$6.55 million in government funding in 2017-2018. Moreover, Nunavut received the lowest federal funding as a proportion of actual legal aid costs (approximately 25% federal funding) in Canada. By comparison, federal funding as a percentage of total legal aid costs was higher in Yukon is approximately 43% and in the Northwest Territories legal aid is approximately 38% funded by the federal government. The territorial contribution to legal aid in Nunavut is the 7th highest among provinces and territories. On a *per capita* basis, legal aid funding in Nunavut is the highest in Canada by a wide margin.

In the coming sections the Government of Nunavut has responded to each of the Standing Committee on Government Operations and Public Accounts' recommendations. In addition to these responses, the following documents are being provided as additional information:

1. The Gjoa Haven Office Organizational Chart for the Legal Services Board;
2. Memorandum of Understanding between the RCMP, Ottawa Police Services and Government Nunavut for the investigation of serious police involved incidents;
3. Memorandum of Understanding between the RCMP, Calgary Police Services and Government of Nunavut for the investigation of serious police involved incidents;
4. Body Worn Video Feasibility Study Final Report, December 2015
5. The Legal Services Board Inquest Participation Policy
6. The Legal Services Board Criminal Law Financial Eligibility Policy
7. The Legal Services Board Family Law Eligibility Policy
8. The Legal Services Board Poverty and Civil Law Eligibility Policy

Response to Recommendation #1:

The standing committee recommends that the Government of Nunavut's response to this report clarify, in detail, the reasons for the delay in tabling the 2016-2017 annual report of the Legal Services Board.

Response:

While the Government of Nunavut received the finished annual report from the Legal Services Board in September of 2017, we did not receive translated versions until May of 2018. The report was tabled shortly thereafter.

The standing committee further recommends that the Minister of Justice begin the practice of providing an annual *Letter of Expectation* to the Chairperson of the Board of Directors of the Legal Services Board which is broadly consistent with those that are currently provided to the Chairpersons of the Board of Directors and/or Governors of the Nunavut Arctic College, the Nunavut Business Credit Corporation, the Nunavut Development Corporation, the Nunavut Housing Corporation and the Qulliq Energy Corporation.

Response:

The Department can commit to preparing an annual Letter of Expectation, or a similar document outlining our mutual expectations, to the Chairperson of the Board of Directors of the Legal Services Board. We appreciate this opportunity to better communicate our shared strategic direction with the Legal Services Board.

The standing committee further recommends that the Legal Services Board begin the practice of preparing an annual, stand-alone business plan for transmittal to the Minister responsible for the Legal Services Board and subsequent tabling in the Legislative Assembly.

Response:

The Department will discuss this further with the Legal Services Board and the Department of Executive and Intergovernmental Affairs.

The standing committee further recommends that the Legal Services Board begin the practice of either preparing an annual, stand-alone report on its contracting, procurement and leasing activities for transmittal to the Minister responsible for the Legal Services Board and subsequent tabling in the Legislative Assembly, or including comprehensive information on these activities in the annual report which is required under section 9 of the *Legal Services Act*. The information should be presented in a format that is broadly consistent with that which is currently published by the Nunavut Arctic College, the Nunavut Business Credit Corporation, the Nunavut Development Corporation, the Nunavut Housing Corporation and the Qulliq Energy Corporation.

Response:

The Legal Services Board and Government of Nunavut will work together to determine how best to provide more information on procurement activity to the Legislative Assembly. A new procurement policy is scheduled to be reviewed by the Legal Services Board at their next in-person meeting.

Response to Recommendation #2:

The standing committee recommends that the Government of Nunavut's response to this report clarify, in detail, the process by which the Legal Services Board's business case that is referred to on page 2 of its 2016-2017 annual report was submitted and considered by the Department of Justice and/or the Financial Management Board.

Response:

The Department of Justice made every attempt to assist the Legal Services Board in submitting business cases by the deadline for submission in the fall of 2015. E-mails were sent to the Legal Services Board several times to remind them of the upcoming deadline; however the Legal Services Board did not make a submission that fall. In 2016 additional e-mails were sent to the Legal Services Board about the upcoming 2016 fall deadline. Rather than submit a business case for the 2016 deadline, the Legal Services Board instead approached the Department of Finance directly in December of 2016, long after the deadline for business case submission. This was after the evaluation of all business cases were completed and recommendations had already been finalized. Because they had missed this deadline, as a solution it was recommended that the Legal Services Board use their annual surplus to fund, as a pilot, the new projects and positions they were requesting funding for. Below is a summary of the LSB's surplus over the last five years:

	2013-14	2014-15	2015-16	2016-17	2017-18
Government of Nunavut	\$10,064,000	\$11,818,000	\$11,818,000	\$11,818,000	\$12,818,000

Contribution					
Operating Expenses	\$9,784,000	\$10,646,000	\$11,700,000	\$11,279,000	\$11,771,000
Surplus	\$280,000	\$1,172,000	\$118,000	\$539,000	\$547,000

The standing committee further recommends that the Government of Nunavut's response to this report clarify, in detail, the specific directives and/or guidelines that are issued by the Financial Management Board to entities that fall under Schedule A of the *Financial Administration Act*, including the Legal Services Board, in respect to the development and submission of budget proposals, requests and business cases.

Response:

The Financial Management Board does not communicate directly with Public Agencies under Schedule A of the *Financial Administration Act*. Any timelines, directives or guidelines with regards to budget proposals, requests, and business cases go through the respective GN departments to which each of the public agencies is tied. Each of these departments may have specific internal requirements with regards to budgeting and controls, however, the general timelines set out by the Department of Finance, in regards to business case and Main Estimates development are as follows:.

Mid-June	FMB approves a call letter and O&M targets. Call letter and targets are issued to all departments outlining the Main Estimates process and timelines for business case development.
Late June – Mid- September	Each department works with the Department of Finance to develop and finalize business cases and three-year forecasts. Departments work with their respective public agencies, as needed, throughout the process.
Late September	FMB approves final O&M targets for the Main Estimates and these targets provided to departments.
Mid-October – Mid-November	Departments work with the Department of Finance to finalize Main Estimates for submission to FMB.
Late November	FMB approval of Main Estimates.
Jan-March	Standing Committee review and Legislative Assembly consideration of Main Estimates.

The Department of Justice has no additional formal timelines or deadlines outside of those provided to us by the Department of Finance. Should the Legal Services Board request advice or review of their business cases before submission, we would require

several days to complete this review but otherwise we ask that they work under the same timeline that we do in submission of our own business cases.

Response to Recommendation #3:

The standing committee recommends that the Government of Nunavut's response to this report provide a detailed update on the status of the review of the Legal Services Board's Gjoa Haven office.

Response:

There are currently three full time employees staffed in the Gjoa Haven Office; an office manager, a senior statute administrator and a finance and operations analyst. The organizational chart currently on file is up to date and while discussions have taken place regarding this office no formal review has taken place.

The Government of Nunavut commits to re-engaging in discussions with the Legal Services Board to determine how best to utilize the Gjoa Haven office and its associated positions. A copy of the current organizational chart has been provided here for informational purposes.

Response to Recommendation #4:

The standing committee recommends that the Government of Nunavut prohibit, through the use of such mechanisms as directives made under the *Financial Administration Act* and Ministerial *Letters of Expectation*, the practice of permitting senior employees of statutory bodies listed in Schedule A of the *Financial Administration Act*, or territorial corporations listed in Schedule B of the *Financial Administration Act*, from being a resident of a jurisdiction other than Nunavut. This recommendation does not apply to any entities currently listed in Schedule C of the *Financial Administration Act*.

Response:

The Government of Nunavut (GN) works to implement recruitment efforts to address workforce needs and vacancies within the public service. As with any employer, attracting staff to fill specialized or senior level positions can be a challenge for the government. The GN uses human resources tools, such as recruitment firms and eligibility lists, to hire for specialized positions that are difficult to fill.

The employees of some public agencies, including the Nunavut Housing Corporation, Nunavut Arctic College, Qulliq Energy Corporation, and Nunavut Business Credit Corporation are considered GN employees and public servants under the *Public Service Act*. Any position that falls under the *Public Service Act* must be staffed in its home community in Nunavut, unless a special exemption is made by Cabinet.

Some public agencies, however, such as the Legal Services Board, have senior employees that are not considered public servants under the *Public Service Act*. The authority for staffing such positions falls to the agency themselves, and their respective boards.

The Minister of Finance recognizes the importance of serving Nunavummiut from within the territory, and will send correspondence to all Ministers responsible for public agencies encouraging the following:

- That Ministers communicate to their respective agencies that all efforts must be made to staff senior positions within the territory.
- That responsible Ministers follow-up on any particular circumstances of positions being staffed outside of Nunavut, and ensure each agency makes it a priority to repatriate positions into the territory, while taking into consideration operational needs.

Response to Recommendation #5:

The standing committee recommends that the Government of Nunavut's response to this report clarify, in detail, the design and operation of the funding formula under the current *Canada-Nunavut Access to Justice Services Agreement*.

Response:

Currently all Territories share 5% of all federal funding allocated for Access to Justice in Canada. The amount each territory receives is then negotiated among the three territories and the federal government. These negotiations result in a signed, legal agreement. In the *Agreement Respecting Access to Justice Services 2017-2022* (Access to Justice Agreement), the amounts provided for Legal Aid by the federal government will be as follows:

Contribution	2017-2018 (\$)	2018- 2019(\$)	2019- 2020(\$)	2020- 2021(\$)	2021- 2022(\$)
Federal (Legal Aid)	1,813,177	1,898,382	2,028,839	2,337,672	2,295,471
Federal (Indigenous Court Worker)	732,436	732,436	732,436	732,436	732,436
Public Legal Education Initiatives	70,000	70,000	70,000	70,000	70,000
Sub Total	2,615,613	2,700,818	2,831,275	3,140,108	3,097,907
Federal Additional (Indigenous Court Worker)	500,000	500,000	500,000	500,000	500,000
Total Federal	3,115,613	3,200,818	3,331,275	3,640,108	3,597,907
Government of	9,202,387	9,117,182	8,986,725	8,677,892	8,720,093

Nunavut					
Access to Justice Agreement	12,318,000	12,318,000	12,318,000	12,318,000	12,318,000
% Federal	25.29%	25.98%	27.04%	29.55%	29.21%
% Government of Nunavut	74.71%	74.02%	72.96%	70.45%	70.79%

Every year we will see an increase except for in 2021-2022 as the overall federal funding for all territories and provinces during this year is decreasing. As noted previously, *per capita*, Nunavut pays the highest of any province or territory in Canada for legal aid.

Response to Recommendation #6:

The standing committee recommends that the Government of Nunavut's response to this report clarify, in detail, how the Chairperson and the members of the Board of Directors of the Legal Services Board are currently remunerated.

Members of the Legal Services Board are currently remunerated for work done under *Financial Administration Manual Directive 810*. Directive 810 provides for the payment of honoraria and reimbursement of certain expense to individuals who provide services to the GN and who have been authorized by ministerial, Executive Council or legislative authority to provide such services.

The standing committee further recommends that the Government of Nunavut's response to this report clarify, in detail, its timeline for reviewing and amending the *Legal Services Regulations* in respect to the rates paid to the Chairperson and members of the Board of Directors of the Legal Services Board and the *Tariff of Rates* for resident lawyers performing legal aid work.

Response:

A review and update of the *Legal Services Act* and its associated regulations are currently part of a long list of legislation that the Department of Justice is responsible for that requires updates. Analysis, research and Policy and Planning resources are currently focussed on prioritizing Government of Nunavut mandate items and outstanding major project such as the *Corrections Act*.

Response to Recommendation #7:

The standing committee recommends that the Government of Nunavut's response to this report include copies of the Memoranda of Understanding that were referenced in

the Minister of Justice's formal Statement to the Legislative Assembly of October 23, 2018.

Response:

The Government of Nunavut has attached to this report copies of these agreements.

The standing committee further recommends that the Government of Nunavut enter into exploratory discussions with the Government of Alberta concerning the advisability and practicability of entering into an intergovernmental agreement for the use of the Alberta Serious Incident Response Team to investigate serious incidents occurring in Nunavut involving the Royal Canadian Mounted Police.

Response:

There are currently several independent civilian investigative bodies operating throughout Canada. British Columbia, Alberta, Manitoba, Ontario and Nova Scotia all currently have independent investigatory bodies. While the Alberta Serious Incident Response team has an agreement with the Yukon to provide their services in Yukon, one of the other bodies may be better suited to provide services to Nunavut.

The Government of Nunavut has been engaged, and will continue to engage, with these groups, as well as the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police, to determine if improvements can be made to oversight of serious incident investigations in Nunavut.

The standing committee further recommends that the Government of Nunavut's response to this report provide a detailed description of the work of the contract management committee established under the *Canada-Nunavut Territorial Police Services Agreement* in relation to the installation and use of security cameras, body cameras and related technologies in the Royal Canadian Mounted Police's Nunavut detachments, and that this description include a detailed accounting of all expenditures incurred, and installations undertaken, by the Royal Canadian Mounted Police's 'V' Division between April 1, 2013 and March 31, 2018.

Response:

The Contract Management Committee (CMC) is a committee is comprised of Assistant Deputy Ministers from the federal Ministry of Public Safety and the eleven provinces and territories currently policed by the Royal Canadian Mounted Police (RCMP). The CMC meets twice per year and is primarily responsible for big picture planning and strategic direction, as well as information sharing.

There are currently no RCMP policed jurisdictions in Canada that have rolled out body worn camera technology on a large scale, although the use of body cameras has been piloted and attempted on small scales in southern Canada. The primary barrier to the use of body cameras on a national basis has been the cost as well as several other

issues. These issues are detailed in a feasibility study done by the RCMP in 2015. This study has been attached here for your information.

There are privacy, cost and training implications that need to be thoroughly researched and considered before this technology could be deployed in Nunavut. We do not know how long the batteries will last in the extreme cold, whether Nunavut cellular infrastructure could support the internet and wireless data requirements for these devices or how much the technology would cost to implement in Nunavut. There is a good deal more work we would have to undertake before we could commit to use of this technology in Nunavut.

Security cameras were installed by the RCMP in all detachments between 2014 and 2018. The dates the cameras were installed are as follows:

Community	Date of Installation
Baker Lake	October 2014
Cambridge Bay	May 2015
Kugluktuk	February 2017
Igloolik	February 2017
Rankin Inlet	February 2017
Pangnirtung	March 2017
Gjoa Haven	March 2017
Cape Dorset	March 2017
Hall Beach	April 2017
Sanikiluaq	May 2017
Kimmitut	June 2017
Whale Cove	July 2017
Chesterfield Inlet	July 2017
Resolute Bay	August 2017
Pond Inlet	August 2017
Iqaluit	November 2017
Arctic Bay	November 2017
Grise Fiord	January 2018
Nauyasat	January 2018
Coral Harbour	January 2018
Arviat	February 2018
Taloyoak	March 2018
Kugaaruk	March 2018
Clyde River	October 2018
Qikitarjuaq	October 2018

The total cost incurred by the Government of Nunavut for cameras and hardware was \$690,147.23

The total cost incurred by the Government of Nunavut for Installation, labour and travel for the cameras was \$114,071.03.

Response to Recommendation #8:

The standing committee recommends that the Government of Nunavut's response to this report clarify, in detail, its position regarding the concerns noted by the Chairperson of the Legal Services Board in respect to the *Public Guardianship and Trusteeship Act*.

Response:

Under the *Guardianship and Trusteeship Act* (the Act), the Nunavut Court of Justice can appoint a guardian for any individual who is unable to make decisions with respect to their health care, personal care, or finances. Family members, friends, or any other adult concerned about the wellbeing of a person can apply to the court for a Guardianship Order. When no family member or other adult is willing to be a guardian, the court will appoint the Public Guardian to represent the individual.

The Office of the Public Guardian (OPG) makes all court applications for guardianship whether the proposed guardian is a private guardian or the Public Guardian. A petition for guardianship must establish to the satisfaction of the judge that the person is in need of a guardian. A judge may rule an individual is in need of a guardian if they are unable to understand the information relevant to making decisions for themselves, or that they cannot understand the reasonably foreseeable consequences of making or not making a decision. It is only where the judge is convinced that one of these circumstances exists that a guardianship order is made.

An initial guardianship application typically includes an affidavit from the Public Guardian containing a description of the individual's circumstances, a referral for an assessment from a family member or medical professional, and a formal psychological capacity assessment. The formal psychological capacity assessment must be completed and included within the guardianship application.

All application documents must be served on the individual about whom the application is being made, as well as on the care facility where they reside, the Public Trustee, and their 'nearest relative'. Nearest relative is a defined term in the Act and is determined by the closeness of the blood relationship to the individual.

Furthermore, the Act requires that the judge, when making a guardianship order, must specify the period of time within which the order must be brought back to the court to be reviewed. The minimum review period is three years and the maximum period is five. In situations where the individual's circumstances change more rapidly, the OPG brings the matter back to the court for an early review.

Every individual has the right to legal representation and as such, Nunavummiut who are subject to guardianship applications are informed of their right to legal representation at the time of application. Both the individual with whom the guardianship application is for, and their family, are provided with information regarding their right to legal representation. OPG legal counsel has met with Nunavut Legal Services Board on

several occasions to discuss this process and ensure applicants are aware of their right to legal representation. Recently, Legal Services Board provided a brochure to OPG legal counsel outlining applicants' rights to legal representation. These brochures are translated into all four official languages and are now included within the package of documents served on individuals and their nearest relatives.

The OPG legal counsel represents all individuals for whom a guardianship order is made. The OPG's legal counsel is an external lawyer retained by the Government of Nunavut.

The OPG acknowledges that a guardianship order is a significant infringement on an individual's freedom and ought only to be made where the requirements of the legislation have been met. It is noteworthy that the Act requires that all of these applications be approved by the court, ensuring that the rights of individuals are respected.

As such, the Department would like to clarify the concerns raised by the Chairperson of the Legal Services Board, that if an individual is low functioning and/or homeless, but is deemed to be able to make well-informed decisions with respect to their health care, personal care, or finances, they would not be subject to a guardianship order.

In addition to this, Nunavummiut are never subject to guardianship applications with no legal representation or assistance. As noted above, the OPG's legal counsel represents all individuals with whom a guardianship order is made for.

Furthermore, it is important to reiterate that the Nunavut Court of Justice will not grant a guardianship order unless the judge is satisfied that an adult requires a guardian because he or she cannot understand information relevant to making key decisions or appreciate the consequences of those decisions. As noted previously, this requires a formal psychological capacity assessment, before the judge would make a ruling with respect to guardianship.

The standing committee further recommends that the Government of Nunavut's response to this report provide a detailed statistical breakdown of the number of individuals who are, as of November 1, 2018, under guardianship orders made pursuant to the *Public Guardianship and Trusteeship Act*, and that this breakdown indicate how many of the persons are currently residing outside of Nunavut.

Response:

As at November 1, 2018, the Public Guardian was responsible for 274 active files. The table below outlines the number of individuals accessing Guardianship Services.

Number of Individuals Accessing Guardianship Services	#
Number of individuals under public guardianship	151
Number of individuals under private guardianship	65
Number of pending public guardianship applications	31
Number of pending private guardianship applications	27
TOTAL	274

Of the 274 individuals accessing guardianship services, 156 individuals are residing out-of-territory, and 118 are residing in-territory.

Individuals under guardianship residing out-of-territory typically require a level of care that is not available in-territory. For example, individuals with dementia and/or complex medical needs require a level of care that is not available in Nunavut. Similarly, individuals with significant mental health issues cannot obtain the supports they require within Nunavut. When residential care placement is required, placement is arranged through the Departments of Health or Family Services. The OPG does not arrange placement.

The standing committee further recommends that the Government of Nunavut's response to this report provide a detailed update on the status of its work to "explore modelling the Public Guardian office as a separate entity, similar to the Public Trustee Office affiliated with the Department of Justice."

Response:

The Department of Family Services continues to work towards establishing the OPG as a separate entity, similar to the Office of the Public Trustee. The purpose of establishing the OPG as a separate entity is to reduce the potential conflict of interest. Specifically, a conflict of interest could arise when the duties the Public Guardian has conflict with the responsibilities the employee has to Family Services and the Government of Nunavut.

In order to reduce the conflict of interest, the Department of Family Services created a position for the Public Guardian, separate from all other Family Services' duties and operations. Additionally, the Public Guardian was moved from the Children and Family Services Division to the Corporate Management Division, reporting directly to the Deputy Minister. With the Public Guardian having fewer responsibilities related to other aspects of Government of Nunavut administration, and reporting directly to the Deputy Minister, the potential for a conflict of interest was reduced.

Furthermore, the Department secured separate office space in Iqaluit for the OPG, which the OPG is anticipated to move into at the beginning of FY 2019/20. The new office space will accommodate the growing staff complement of the OPG and further reduce the conflict of interest by physically separating the OPG from Family Services.

Response to Recommendation #9:

The standing committee recommends that the Government of Nunavut's response to this report clarify, in detail, the extent to which the Department of Justice, the Legal Services Board, the Nunavut Law Foundation and the Nunavut Human Rights Tribunal co-ordinate the design and delivery of public legal education programs and initiatives in Nunavut.

Response:

The Legal Services Board is the designated recipient of Justice Canada public legal education initiative funds for Nunavut. With lawyers resident in all 3 regions and regular travel to every hamlet in the territory, the Legal Services Board has engaged in radio shows, school presentations, and community session on legal topics across the territory. They have also have compiled a catalogue of resources on a variety of legal topics which comprise frequently asked questions received in the clinics. The Legal Services Board operates a website and 2 toll-free law lines to provide general legal information on family and civil issues. It has provided information sessions to community groups and organizations such as Community Justice Outreach Workers, counsellors, volunteer boards of directors, and community radio shows. Members of the Board have appeared at trade shows, school classrooms, and college classrooms preparing presentations on requested topics. The Board has also offered sessions at women's shelters and custodial facilities in the territory.

From time to time, the Legal Services Board partners with other territorial justice partners on public legal education initiatives. One particularly successful partnership in Iqaluit has been the high school moot Court project.

The Legal Services Board relies heavily on community court workers and travelling lawyers to coordinate and deliver these initiatives in the hamlets. Staff shortages can reduce its ability to deliver public legal education initiatives, but the Legal Services Board coordinates this work whenever they are able.

Response to Recommendation #10:

The standing committee recommends that the Government of Nunavut introduce a bill during the life of the 5th Legislative Assembly to amend section 4 of the *Legal Services Act* to provide for a three-year term of office for the Chairperson of the Board of Directors of the Legal Services Board.

Response:

The Department of Justice supports this change, however we believe that it can be included in the general review of the legislation and does not require an urgent, short term legislative amendment which could derail other ongoing projects.

The standing committee further recommends that the Minister of Justice invite the Board of Directors of the Legal Services Board to submit formal recommendations concerning other specific potential amendments to the *Legal Services Act* and/or the *Legal Services Regulations*, and that these recommendations be included in the Legal Services Board's 2018-2019 annual report.

Response:

While we can't commit to a timeline to include these recommendations in an LSB annual report, as the board is independent from the Government of Nunavut, the Department of Justice agrees with this recommendation and looks forward to working with the Legal Services Board on this initiative.

Response to Recommendation #11:

The standing committee recommends that the Government of Nunavut's response to this report clarify, in detail, its position respecting the establishment of an advisory committee under section 27 of the *Legal Services Act*.

Response:

The Government of Nunavut is not opposed to the establishment of an advisory committee; however, we do not see a pressing need for this committee. The Department of Justice has numerous lawyers on retainer to advise us and works closely with the Nunavut Court of Justice and Legal Services Board. Our only concern would be adding an additional committee and using up limited administrative resources when there is no clear need or mandate for this committee.

The Legal Services Board does not see value in adding an advisory committee and would prefer planning resources go into other strategic changes they've identified as more pressing, including transforming regional clinic boards to regional advisory committees.

Response to Recommendation #12:

The standing committee recommends that the Government of Nunavut's response to this report clarify, in detail, the status of the Nunavut Justice Efficiency Committee/Court Users Committee.

Response:

In 2017 Chief Justice Sharkey moved away from holding Court Users Meetings (formerly known as the Nunavut Justice Efficiency Committee) and replaced these meetings with regularly scheduled and more frequent bench and bar meetings. In addition, court users may request meetings on an as needed basis with the Chief Justice when issues arise.

Response to Recommendation #13:

The standing committee recommends that the Government of Nunavut's response to this report clarify, in detail, what specific actions the Legal Services Board is currently taking to achieve a "satisfactory increase in the number of resident, criminal law lawyers willing and able to take on section 40 files."

Response:

The Legal Services Board supports increasing the number of resident lawyers including staff lawyers, private lawyers who are willing to perform work for the Legal Services Board in all areas of law, including criminal defense. It believes that section 40 is not the best mechanism to help create more resident lawyers, even criminal defense lawyers and that the better approach is to increase tariffs for private resident lawyers.

The Board believes another positive initiative that will increase resident lawyers is the Nunavut Law Program which has 25 students and is in its second year of a four year program.

Response to Recommendation #14:

The standing committee recommends that the Government of Nunavut's response to this report clarify, in detail, the Legal Services Board's methodology for determining the current income thresholds in its Financial Eligibility Grid.

The current grid used to determine financial eligibility for legal aid applicants is contained in Legal Services Board's financial eligibility policy for each of the practice areas. This formula was approved by the Board in 2010. The financial eligibility policy is the same for all areas of law that the Legal Services Board provides legal aid for, whether criminal, family or civil poverty.

The Legal Services Board requests proof of income of every applicant. If the applicant is on social assistance, the applicant simply provides proof and given the Legal Services Boards' eligibility criteria, any persons on social assistance will automatically qualify. If the applicant is employed, the Legal Services Board requests proof of income by providing a copy of their last pay stub or T4 or income tax statement.

The standing committee further recommends that these income thresholds be periodically reviewed every three to five years.

The Legal Services Board is committed to reviewing its policies every 5 years or earlier, especially if the board determines that there is some element of its policy in its interpretation or implementation that requires adjustment in practice or amendment. The Legal Services Board has done this several times since it developed the financial eligibility policy including requesting and considering assets, expenses including private accommodation, income from other sources such as business or child support from multiple sources, to name a few. The financial eligibility policy is currently under review and within the next year, an updated financial eligibility policy will replace the existing one.

Response to Recommendation #15:

The standing committee recommends that the Government of Nunavut's response to this report include copies of the Legal Services Board's "inquest participation policy," "legal aid financial eligibility policy" and "non-harassment policy."

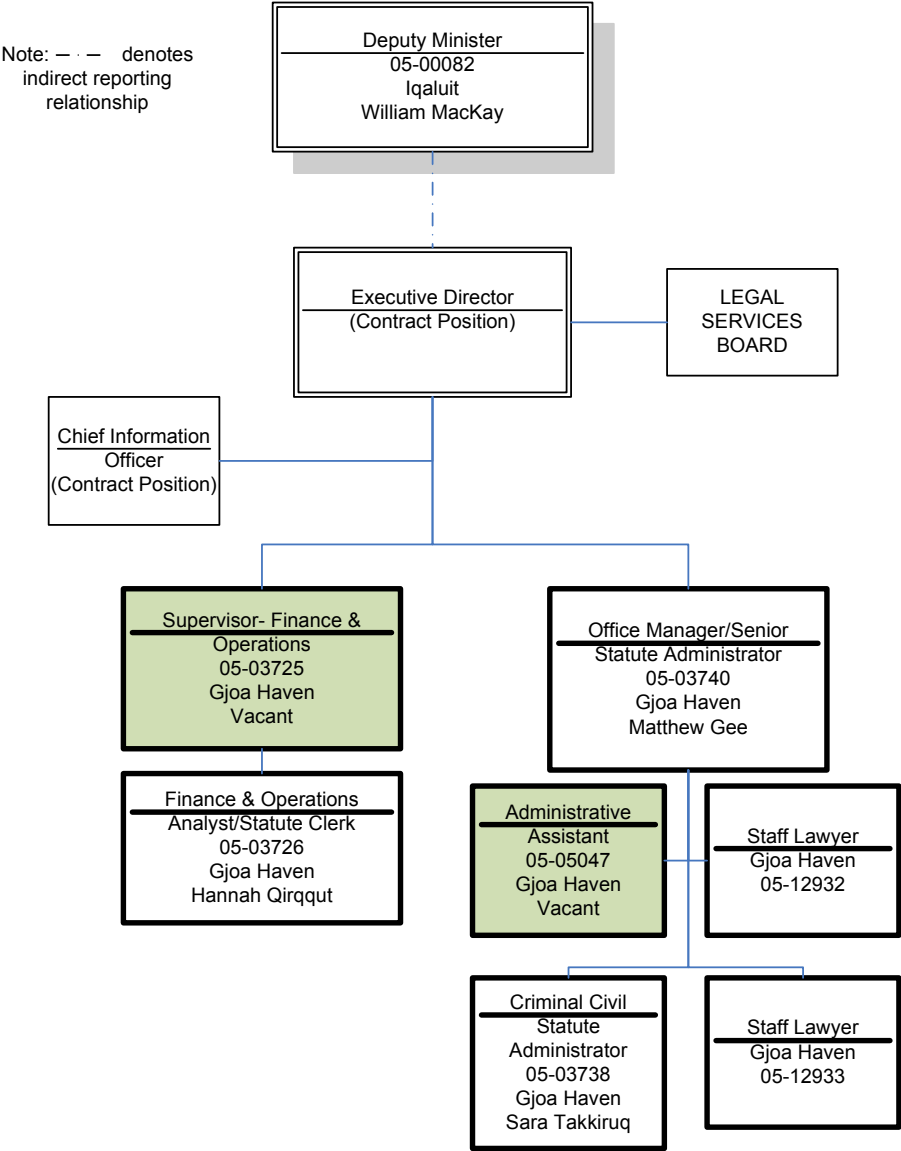
Response:

Financial eligibility is addressed in the coverage and eligibility policies that have been included with this report. Also attached to this report is the inquest participation policy. Legal Services Board informs us that the anti-harassment policy is in draft form and will be presented to the Board at the next meeting. Once it is ratified, the Legal Services

Board will be able to provide it to the Department which will then pass it on to the committee.

Nunavut Department of Justice
 Division 530
 Legal Services Board

PY's Total	
Departmental PY's	7.0
Internal PY's	0
Vote 2	0
Vote 4/5	0
Total	7.0
Direct Reporting	—
Indirect Reporting	- - -
Term Employment	- . - . -
Transfer Assignment
Casual Employment	- - - - -



April 11, 2016

PROTECTED A

MEMORANDUM OF UNDERSTANDING

THIS ARRANGEMENT, made in triplicate as of the day of 2015

Between

Royal Canadian Mounted Police "V" Division, "RCMP"
(Hereinafter referred to as the RCMP)

And

The Ottawa Police Service, "OPS"
(Hereinafter referred to as the OPS)

And

The Government of Nunavut as represented by the Minister of Justice, "GN"
(Hereinafter referred to as the GN)

ARRANGEMENT FOR INDEPENDENT EXTERNAL INVESTIGATIONS

1.1. Final Execution Version, February 17, 2015

1. PREAMBLE

- 1.1. The effectiveness of policing is dependent upon the level of trust and support the public has in its policing institutions. In order to continue to earn public trust and support, the Royal Canadian Mounted Police (RCMP) must strive to be as open and transparent as possible and fully accountable for our actions.
- 1.2. The RCMP is the Territorial Police Service of Nunavut pursuant to the agreement between Her Majesty the Queen in Right of Canada and the Government of Nunavut made on April 1 2012 pursuant to the *Royal Canadian Mounted Police Agreement Act*, R.S.N.W.T. 1988, c. R-8.
- 1.3. The RCMP and the GN have recognized the need to maximize transparency in relation to investigations into the actions of RCMP employees when those actions may have resulted in a major police incident.
- 1.4. Investigations of RCMP employees will be fair, effective, thorough, impartial and culturally sensitive, and will be conducted in a manner that promotes public confidence.
- 1.5. The intent of this Memorandum of Understanding is to ensure fair, effective, thorough and impartial investigations of RCMP employees through a combination of independent external investigation, observation and review.
- 1.6. The RCMP will request the Ottawa Police Service to conduct an investigation (independent external investigation) that the RCMP would otherwise conduct, wherever the actions of an RCMP employee have resulted in a major police incident.
- 1.7. The RCMP will inform the GN when it engages the services of the Ottawa Police Service.

2. DEFINITIONS

In this MOU:

"Chief of Police" means the Chief of the Ottawa Police Service.

"Commission for Public Complaints against the RCMP" or "CPC" means the Royal Canadian Mounted Police Public Complaints Commission or its successor.

"Community Liaison" means respected community members who have been chosen by the community to facilitate the link between the community, family and the police investigation.

"Coroner" means the Chief Coroner for Nunavut appointed pursuant to the *Coroners Act*, R.S.N.W.T. 1988, c. C-20.

"GN" means the Government of Nunavut, as represented by the Minister of Justice.

"Independent investigation" means where the RCMP would normally have investigative responsibility but has requested the OPS to conduct an investigation, and includes both the pre- and post-charge phases of such an investigation. When the OPS investigates a major police incident of an RCMP member or members, OPS agrees that it will participate in the overall investigation of the elements of the incident as the lead Agency.

"Independent Investigators" means investigators from the Ottawa Police Service sent to conduct an investigation of a major police incident under the terms of this MOU.

"MOU" means Memorandum of Understanding.

"OPS" means the Ottawa Police Service.

"OPS Liaison Officer" means the Executive Officer to the OPS Chief of Police.

"Participants" means the agencies that are participating in this MOU - the RCMP, Government of Nunavut and the OPS.

"*Police Services Act*" means the *Police Services Act of Ontario*.

"Major Case Management" is an approach to solving crimes and dealing with complex incidents. All of Ontario's police services use MCM to investigate certain types of serious crimes such as homicides, sexual assaults and abductions. MCM combines training and investigation techniques with a computer software called Powercase.

"Major Police Incident" means an incident where there is a serious injury or death of an individual involving an RCMP employee, or where it appears that an RCMP employee may have contravened a provision of the *Criminal Code* or other statute and the matter is of a serious or sensitive nature.

"RCMP" means Royal Canadian Mounted Police "V" Division.

"*RCMP Act*" means the *Royal Canadian Mounted Police Act*.

"Serious injury" shall include those that are likely to interfere with the health or comfort of the victim and are more than merely transient or trifling in nature and will include serious injury resulting from sexual assault. "Serious injury" shall initially be presumed when the victim is admitted to hospital, suffers a fracture to a limb, rib or

vertebrae or to the skull, suffers burns to a major portion of the body or loses any portion of the body or suffers loss of vision or hearing, or alleges sexual assault.

"Special Constable Status" means supernumerary status under the *RCMP Act*.

"Subject Member" means a RCMP employee whose duties or other actions, in the opinion of the on-scene supervisor or lead investigator, directly or indirectly contributed to a death or serious injury of a person or where it appears that an RCMP employee may have contravened a provision of the *Criminal Code* or other statute and the matter is of a serious or sensitive nature and whose conduct is the subject of an investigation under this MOU.

"Witness Member" means an RCMP employee involved directly or indirectly in a major police incident under investigation and who may have relevant information but is not a subject of an investigation under this MOU.

3. PURPOSE

- 3.1. The OPS will provide an independent investigation into the actions of the respective RCMP employees, when those actions may have resulted in a major police incident.
- 3.2. The purpose of this MOU is to establish a protocol, in which the OPS will investigate or provide oversight into the actions of the respective RCMP employees, when those actions may have resulted in a major police incident.
- 3.3. Pursuant to this Memorandum of Understanding, the OPS has no reporting obligations to the RCMP or the GN.
- 3.4. To initiate an independent external investigation, the RCMP Commanding Officer/delegate will make a written request to the OPS Chief of Police or designate either directly or pursuant to applicable established protocols and shall inform the GN Deputy Minister of Justice of the request.
- 3.5. The RCMP Commanding Officer/delegate will request confirmation from the OPS Chief of Police or designate of his acceptance to undertake the investigation and will also request the identity of the lead investigator.
- 3.6. Upon receipt of OPS' acceptance and the appointment of a lead investigator, the RCMP Commanding Officer/delegate will appoint a designated contact member within the RCMP to communicate with the OPS lead investigator as per sec. 4.6.
- 3.7. In order to preserve the independence of the investigation subsequent to the initial request for assistance and acceptance, any communication between the OPS and the RCMP division requesting the investigation (other than that which is required as part of the investigational process) will be restricted to the RCMP designated contact member, the GN designated contact person and the OPS lead investigator.

3.8. The OPS will:

- a) be free to engage or seek legal advice from Crown Counsel in a manner that is consistent with the practices of the jurisdiction.
- b) be free to initiate or recommend charges depending on the process in place in the jurisdiction and the available evidence.
- c) liaise with Crown Counsel as necessary so as to inform their decision to prosecute,
- d) provide routine investigative updates to the RCMP Commanding Officer/delegate, subject to paragraph 7.6. The RCMP shall provide these updates to the GN Deputy Minister of Justice upon request. In the event the update is in the format of a report and material has been severed from the report, the OPS shall indicate the reason for the severance.
- e) where the investigation involves a reportable death, provide a copy of any investigation and final reports to the Coroner pursuant to section 16 (3) of the *Coroners Act*, and in accordance with section 29 (1) of the *Interprovincial Policing Act*, S.O. 2009, c. 30. In the event that material has been severed from these reports, the OPS shall indicate the reason for the severance.
- f) Provide to the RCMP Commanding Officer/delegate briefings on the status of the investigation in order to meet reporting obligations under the Territorial Police Services Agreement, the *RCMP Act* and Regulations pursuant to said Act.

4. NOTIFICATION

- 4.1. The OPS reserves the right to decline a request made by the RCMP to investigate the actions of an RCMP employee. The OPS also reserves the right to decline a request made by the RCMP to investigate the actions of an RCMP employee and reserves the right to refuse to investigate an incident if the OPS decide, in their sole capacity that the incident does not meet the definition of "major police incident". In addition, the OPS reserves the right to terminate the investigation in their sole discretion at any point or to recommend its transfer to another police agency. The OPS will provide a rationale to the RCMP for their decision to terminate the investigation or transfer to another police agency.
- 4.2. Recognizing the importance of a timely commencement of an investigation under this MOU, the RCMP will make its request to the OPS Chief of Police or designate, in writing, as quickly as possible. It is understood by all Participants that any delay in requesting, may have a detrimental impact on the investigation. During this period, the RCMP will be responsible to assign personnel to ensure the scene(s) are controlled and secured.

- 4.3. The Request for an investigation from the RCMP to the OPS will include the following:
- a) Known background;
 - b) The nature of the incident;
 - c) The nature of any injuries (type of injuries) or deaths, if applicable;
 - d) The time the incident is believed to have occurred;
 - e) The location(s) of the incident;
 - f) The names and contact information of the RCMP employees involved;
 - g) The names of victims, if available;
 - h) The name of the RCMP designated contact member for the incident;
 - i) Any injuries or health issues related to the RCMP employees arising from the incident; and
 - j) Any other information which may be immediately needed by the OPS;
 - k) The names of witnesses, if available.
- 4.4. Upon making a notification, the RCMP will immediately liaise with the OPS Chief of Police or designate for priority travel arrangements, including where appropriate, travel by RCMP plane.
- 4.5. Upon receipt of a request under this MOU, the OPS Chief of Police or designate will immediately:
- a) Assess the resources needed for the investigation;
 - b) Determine OPS availability for the investigation and advise whether the OPS is available to conduct the investigation;
 - c) Work with the RCMP for travel arrangements; and
 - d) Ensure that appropriate steps are being taken to preserve the scene and the evidence.
- 4.6. The designated RCMP contact person will:
- 4.6.1. provide assistance to the OPS as required;
 - 4.6.2. not attempt to direct, influence, question or challenge the OPS external investigation;
 - 4.6.3. not be involved in any way in the matter being investigated, reviewed or observed and will be screened for any actual or perceived conflict of interest using the criteria set out in RCMP Operations Manual App. 54-1-1 (attached as Appendix 2);

- 4.6.4. keep confidential any information received from the OPS, except to the extent necessary to address their requests, or with their consent for status updates of investigations or reviews;
- 4.6.5. if required by the OPS, coordinate the provision of specialized RCMP resources and will ensure that any specialized resources are screened for any actual or perceived conflict of interest using the criteria set out in RCMP Operations Manual App. 54-1-1 and that any specialized resources do not direct or challenge the investigation or review.
- 4.7. The RCMP may contact families, victims or next of kin but will advise them only of the incident and that the OPS will commence an investigation. Where appropriate and available, the RCMP may apply victim support resources. Once the investigation has been commenced by the OPS, the OPS will maintain contact with families, victims and/or next of kin. Any other action by the RCMP will be taken only after consultation with the OPS.
- 4.8. The RCMP will advise the media only of the fact that a major police incident has occurred and of the OPS involvement. All other contact with the media should be referred to the OPS Media Section.
- 4.9. The RCMP will advise the GN contact person that a major police incident has occurred and that the OPS is investigating. The GN shall refer all other contacts with the media to the OPS Media Section.

5. INVESTIGATION

- 5.1. The OPS Chief of Police or designate will determine who and how many officers will be assigned to participate as investigator(s) in accordance with the terms of this MOU. From the time the OPS accepts to investigate the incident, the scene, the evidence and the investigation will be governed by the OPS. The RCMP will defer in all matters to the OPS.
 - 5.1.1. To avoid potential conflict and unsolicited intervention, all OPS communications and arrangements will be made through the designated contact member.
- 5.2. Upon arriving on the scene, the OPS will be the lead investigator and have priority over any other parallel police investigation. Without limiting the generality of the above, this will include:
 - a) The scene;
 - b) The evidence;
 - c) The witnesses;
 - d) Contact with family, victims or next of kin, etc;
 - e) Contact with media; and

I) Contact with Coroner or local officials

- 5.3. The RCMP will, to the extent operationally possible, ensure that all involved RCMP employees and witness RCMP employees are kept apart and separate from each other while awaiting instruction from the investigation team. It is incumbent upon the RCMP to immediately take measures to ensure the preservation of evidence and the identification of witnesses upon the occurrence of an incident that qualifies for independent external investigation. This duty remains in effect with the RCMP until formally assumed by the OPS.
- 5.4. The RCMP will not touch or remove any weapons or firearms at the scene of a qualifying incident, unless, in the opinion of the RCMP, there are exigent circumstances. In extenuating circumstances that warrant the touching or removal of firearms and/or weapons at the scene by the RCMP, the RCMP must photograph/ videotape and document the entire process of the RCMP's involvement with any weapons or firearms at the scene.
- 5.5. Unless otherwise arranged, and subject to sec 5.8, the RCMP will make available to the OPS, all involved RCMP employees and witness RCMP employees for the purpose of initiating a statement or a report of the incident prior to those members being relieved of duty.
- 5.6. The RCMP recognizes the possibility of deleterious effects on all involved RCMP employees and witness RCMP employees engaged in the use of force or other police activities which could result directly or indirectly in the death of, or serious injury to a person.
- 5.7. All involved RCMP employees and witness RCMP employees will have a reasonable opportunity to seek legal, medical, psychological, emotional or spiritual support and advice, if necessary, once the immediate police responsibility of safeguarding the public, obtaining preliminary notes and/or reports, securing evidence and preventing the continuation of offences has been discharged. However all involved RCMP employees and witness RCMP employees may be required to provide a preliminary report immediately or very soon after the major police incident in compliance with RCMP Operations Manual 54.3.5.
- 5.8. The RCMP designated contact members will:
 - a) Meet the OPS;
 - b) Facilitate transport and shall ensure appropriate communication between the OPS investigative team and the RCMP or RCMP designated contact at all times;
 - c) Brief the OPS investigators;
 - d) Provide local information;
 - e) Provide accommodations, including workspace, which if possible should be outside of RCMP facilities; and

D) Identify the community liaison.

- 5.9. The RCMP is also responsible to fulfill, in a timely manner, any reasonable administrative needs and requests made of it by the OPS.
- 5.10. The RCMP will ensure that the OPS team is provided access to all material files, documents and notes as well access to the material parts of all relevant police buildings and premises.
- 6. In keeping with the cultural values and needs of the people of Nunavut the OPS investigative team lead by the evidence will utilize the Community Liaison in support of these values, needs and investigation.

7. INVOLVED RCMP EMPLOYEES – INVESTIGATIVE PRINCIPLES

- 7.1. The OPS investigators will acknowledge that being involved in a major police incident can be difficult for RCMP employees.
- 7.2. The primary and overriding responsibility of the OPS is to lead and administer a bias-free investigation, in as much as is practically possible.
- 7.3. The speed, flow and direction of the investigation will be solely at the discretion of the OPS, and in keeping with the principles of Major Case Management.
- 7.4. The OPS will oversee media relations when conducting an independent investigation. The OPS will provide the RCMP Divisional Commanding Officer with advance notice of its intention to release information to the media. This notice should be provided in a timely fashion, sensitive to the communications requirements of the RCMP.
- 7.5. If applicable and while it is recognized that the Coroner will have already been notified, the OPS will be the investigative contact with the Coroner.
- 7.6. The RCMP may request that the OPS prepare and deliver a final report to the RCMP Divisional Criminal Operations Officer. The OPS reserves the right to refuse such a request. Where the OPS refuses a request, it shall provide its reasons for refusal in writing to the RCMP Divisional Commanding Officer and to the GN Deputy Minister of Justice.

8. ADMINISTRATIVE RESPONSIBILITIES

- 8.1. It is understood that the OPS investigation will require administrative support. Where necessary, the RCMP will assist in the provision of this support, if possible, by 3rd party persons.

- 8.2. At all times, OPS officers will remain employees of the OPS and will remain under the OPS chain of command.
- 8.3. Any disciplinary or performance issues related to OPS personnel are the responsibility of the OPS Chief of Police.
- 8.4. The OPS officers will remain subject at all times to the provisions of the *Police Services Act*, including Part VII and Part IX.
- 8.5. The OPS officers will use their individual uniform and equipment that is standard issue for their duties in Ottawa, including service firearms and protective vests, as appropriate for weather conditions. The RCMP will provide additional equipment if required and requested by the OPS.
- 8.6. The RCMP will appoint selected OPS officers as supernumerary constables under the *RCMP Act* prior to the officers leaving Ottawa, Ontario.
- 8.7. The RCMP, with the assistance of the GN where possible, will provide available cultural awareness orientation to OPS investigators upon enactment of this MOU and will provide such orientation on an annual basis and/or as required.

9. MEDIA

- 9.1. In an OPS lead investigation, the RCMP and the GN will not release information to the media prior to consultation with the OPS Liaison Officer. The RCMP and the GN will adhere to their respective media liaison protocols, but will limit media releases to the following items:
 - 9.1.1. The fact an incident has occurred;
 - 9.1.2. The OPS is investigating the incident that has occurred.
- 9.2. In all instances of an independent investigation involving the RCMP, OPS will provide the RCMP with advance notice of its intention to release information to the media. This notice should be provided in a timely fashion, sensitive to the communication requirements of the RCMP.

10. CONFIDENTIALITY AND USE OF INFORMATION

- 10.1. Authority for the Participants to share information is based in the *Privacy Act* (Canada), Section 8(2)(f) and the *Access to Information and Protection of Privacy Act* (Nunavut), section 48 (e), and the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario), section 32 (f) and (g). Information will be handled in a manner consistent with the policies of the Participants and applicable legislation and this MOU will not supersede any existing policy and/or legislation.

10.2. Each Participant intends to:

- 10.2.1. Use the information and/or documents provided by the other Participant solely for the purpose of conducting investigation(s) or oversight under the terms of this MOU.
- 10.2.2. Treat information and/or documents received from the other Participant as confidential and take all reasonable measures to preserve its confidentiality and integrity and to safeguard the information against accidental or unauthorized access, use or disclosure;
- 10.2.3. Mark the information and/or documents provided with the appropriated security classification;
- 10.2.4. Treat the information and/or documents received from the other Participant in accordance with the security markings on it and to undertake to provide equivalent protection to it while it is in the receiving Participant's possession;
- 10.2.5. Attach terms, conditions, or caveats to the information and/or documents supplied, as the supplying Participant deems appropriate;
- 10.2.6. Abide by all caveats, conditions or terms attached to the information and/or documents;
- 10.2.7. Maintain appropriate records concerning the transmission and receipt of information and/or documents exchanged;
- 10.2.8. Not disseminate the information and/or documents to any third party without the prior written consent of the supplying Participant (or agency from which the information originated, as appropriate), except as required by law. The OPS, the GN, and the RCMP will, where possible, provide notice to the other police force before any such disclosure required by law.
- 10.2.9. Limit access to the information and/or documents to those of its employees whose duties require such access, who are legally bound to keep confidences and who have the appropriate security clearance.
- 10.2.10. The Participants will ensure that OPS investigators comply with RCMP Security Policy and Treasury Board Secretariat of *Canada Policy on Government Security* with respect to processing PROTECTED and/or CLASSIFIED government information and/or assets.
- 10.2.11. The Participants will ensure that OPS investigators comply with the provisions of the *Coroners Act*.

11. INFORMATION MANAGEMENT

- 11.1. The information disclosed under this MOU shall be administered, maintained, and disposed of in accordance with the law that applies to record retention and personal information and all applicable policies and guidelines. In the case of the GN, this includes the *Access to Information and Protection of Privacy Act*, and the *Archives Act*. In the case of the RCMP, this includes the *Privacy Act*, the *National Archives of Canada Act* and Government Security Policy. In the case of the OPS this includes the *Police Services Act* and the *Municipal Freedom of Information and Protection of Privacy Act*.
- 11.1.1 Records Management Systems shall be administered and maintained in accordance with applicable legislation, policies and guidelines. In the case of CPIC, the RCMP 'V' Division will be responsible for the administration and maintenance of records.
- 11.2. Each Participant will:
- 11.2.1. Promptly notify the other of any unauthorized use or disclosure of the information exchanged under this MOU and will furnish the other Participant with details of such unauthorized use or disclosure. In the event of such an occurrence the Participant responsible for the safeguarding of the information shall take all reasonably necessary steps to prevent a re-occurrence;
- 11.2.2. Immediately notify the other if either receives a request under the *Privacy Act*, the *Access to Information Act*, and the *Access to Information and Protection of Privacy Act* or other lawful authority, for information provided under this MOU. If requested, the Participants shall endeavour to protect the information from disclosure to the extent permitted by law;
- 11.2.3. Return any information that should not have been provided to it by the other Participant.

12. ACCURACY OF INFORMATION

- 12.1. Each Participant will:
- 12.1.1. Use its best efforts to verify the accuracy and completeness of the information provided to the other Participant;
- 12.1.2. Promptly notify the other Participant if it learns that inaccurate or potentially unreliable information may have been provided or received and take all reasonable remedial steps.

13. FINANCIAL

13.1. The RCMP will pay all financial costs associated directly or indirectly with this MOU and each investigation there under. Without limiting the generality of the above, the RCMP will fund:

- a) Translators;
- b) Costs of disclosure;
- c) Transportation and accommodation costs (the RCMP agrees to pay to the OPS the per diem rate for each Independent Investigator as set out by the Treasury Board with respect to Northern allowances);
- d) Salaries;
- e) Benefits;
- f) Overtime;
- g) Costs of all investigative and evidentiary requirements;
- h) All court and travel costs, excluding the costs of travel medical insurance that includes medical evacuation coverage;
- i) Costs of all backfill employees in Ottawa to replace/cover the assigned independent investigators if such is required for OPS operational purposes;
- j) Cost of clothing and equipment will be in consultation with the RCMP; and
- k) Any other costs that have an indirect or direct connection to this arrangement.

13.2. OPS will submit claims for reimbursement in a mutually acceptable format that meets the Government of Canada's requirements for issuing payments.

14. INDEMNIFICATION

14.1. If any party to this MOU receives notice of a claim by a third party to this MOU for damages of any kind, causes by one of the parties or their respective employees or agents, arising out of, or in connection with, the implementation of this MOU, the receiving party will notify the other parties as soon as is practicable.

14.2. To the extent permitted by the *Financial Administration Act* (Canada), the RCMP shall indemnify the OPS for and against all damages, costs, disbursements, interests, losses, or expenses incurred as a result of third party claims (including third party claims, cross claims, and counter claims), demands causes of actions, actions, proceedings, or inquiries arising from,

or cases by, the conduct of OPS employees while carrying out his/her duties under this MOU, provided that the OPS employees acted honestly and without gross negligence or malice.

- 14.3. The RCMP shall not indemnify the OPS for and against all damages, costs, disbursements, interests, losses, or expenses incurred as a result of third party claims (including third party claims, cross claims, and counter claims), demands, causes of actions, actions, proceedings, or inquiries arising from, or caused by, the conduct of the OPS employees if the OPS employees acted outside the scope of their duties under this MOU, acted dishonestly or with gross negligence or malice.

15. REPRESENTATIVES

- 15.1. The OPS and RCMP representatives for this Arrangement are:

For the OPS:	For the GN:	For the RCMP:
Superintendent Don Sweet 474 Elgin Street, Ottawa, ON K1G 6H5 Phone: 613-236-1222 ext. 5792 Fax: 613-760-8122	Elizabeth Sanderson Deputy Minister of Justice PO Box 1000 Stn. 500 Iqaluit NU X0A 0H0 Phone: 867-975-6185 Fax: 867-975-6195	Superintendent Maureen Levy Bag 500 Iqaluit, NU X0A 0H0 Phone: 867-975-4665

- 15.2. Changes to the OPS, GN, and RCMP representatives will be upon written notice to the other Parties.

16. MONITORING

- 16.1. The OPS, GN, and RCMP representatives will meet, on a bi-annual basis, to review and assess its operation and effectiveness.

17. DISPUTE RESOLUTION

- 17.1. The OPS, GN and RCMP representatives will consult each other should there be any disputes arising from the interpretation or implementation of this Arrangement, and will attempt, in good faith, to resolve the matter. The OPS reserves the right to terminate the investigation in their sole discretion at any point or to recommend its transfer to another police force.

18. GENERALITIES

- 18.1. This Arrangement will commence on date of the last signature, and will remain in effect thereafter, unless extended or terminated in accordance with the provision below.
- 18.2. The Parties may terminate this Arrangement for any reason, at any time, upon providing a written notice to the other police force.
- 18.3. Termination of this Arrangement will not release the Parties from any obligation accrued during the term of this Arrangement.
- 18.4. This Arrangement may be amended upon mutual written consent of the Parties.
- 18.5. Nothing in this Arrangement will be construed as replacing or amending any obligation that either the Parties are bound to, or required to perform by law.
- 18.6. This Agreement shall be interpreted in accordance with the laws of Nunavut and Ontario and any applicable federal laws.

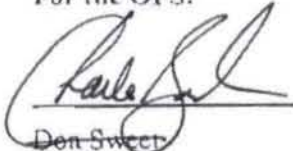
19. ENTIRE UNDERSTANDING

- 19.1. This Arrangement represents the entire understanding between the Parties, and supersedes all prior communications, negotiations, or arrangements, whether written or oral, concerning this Arrangement.

20. SIGNATURES

IN WITNESS WHEREOF THE PARTIES hereto have executed signatures in counterparts on the dates below:


For the OPS:


Don Sweet
Superintendent

Aug 13, 2015
Date

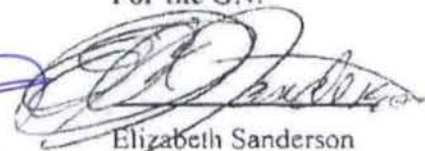
CHANCEZ BONDAREN
CHIEF OF POLICE

For the RCMP:


C/Supt. Michael Jeffrey
Commanding Officer

2015-08-21
Date

For the GN:


Elizabeth Sanderson
Deputy Minister

Feb 23, 2015
Date

This is Schedule "A" to an MOU

Between

Royal Canadian Mounted Police "V" Division, "RCMP"
(Hereinafter referred to as the RCMP)

And

The Ottawa Police Service, "OPS"
(Hereinafter referred to as the OPS)

And

The Government of Nunavut as represented by the Minister of Justice, "GN"
(Hereinafter referred to as the GN)

ARRANGEMENT FOR INDEPENDENT EXTERNAL INVESTIGATIONS

SCHEDULE "A"

Schedule "A" is comprised of the individual agreements between the RCMP and the Seconded Officers assigned to conduct an independent external investigation by the OPS pursuant to the this MOU.

APPENDICES INDEX

Appendix # 1 – List of First Contacts (TBA)

Ottawa Police Service.....	Supt. Don Sweet
RCMP "V" Division.....	C/Supt. Michael Jeffrey
GN Department of Justice.....	Elizabeth Sanderson

Appendix # 2 – RCMP Operations Manual Appendix 54-1-1

You have been assigned to conduct an investigation according to Part 54 of the Operational Manual and it is imperative that the investigators be impartial and unbiased. The purpose of this questionnaire is to ensure that any associations, whether professional or social, are disclosed at the outset of the investigation to the Team Commander.

The mere acknowledgment of a professional or social association would not necessarily preclude a member from participating in the investigative team. If an association exists, it is imperative that the member disclose the nature of the relationship so that an assessment can be made by the Team Commander. If you require clarification in completing this disclosure, please direct your questions to the Investigative Standards and Practices member on scene, or the Team Commander.

Member's Name:

Regimental Number:

Present Posting:

1) Have you ever worked with or been stationed at the same detachment or other location with any person subject to this investigation?

Yes ___ No ___

If so please explain.

2) Do you have or have you had any relationship, e.g. family, social, with any person involved in this matter that could be seen to impact on your impartiality?

Yes ___ No ___

If so please explain.

3) Did you attend training at Depot during the same period of time with any person involved in this matter?

Yes ___ No ___

If so please explain.

4) Have you ever been stationed or worked at the detachment in which this investigation is taking place?

Yes ___ No ___

If so please explain.

5) Are there any factors that would affect your impartiality or the perception of impartiality as it relates to your participation in this investigation?

Yes ___ No ___

If so please explain.

6) Team Commander Section

Date and Time Impartiality Questionnaire reviewed: _____

Comments and Recommendations:

Team Commander Signature _____



CALGARY
POLICE
SERVICE

Vigilance
Courage
Pride

2017 October 24

Ms. Terri Shea
RCMP "V" Division,
P.O. Bag 500
Iqaluit, Nunavut
X0A 0H0

Dear Ms. Shea,

RE: MOU RCMP, CALGARY POLICE SERVICE AND GOVERNMENT OF NUNAVUT

Enclosed, please find three (3) copies of the above-noted contract as signed by Chief Roger Chaffin.

Once executed, please return one (1) copy of this agreement to:

Bob Fenton
Legal Counsel, Office of the Chief
Calgary Police Service
5111 47th Street NE #900
Calgary, Alberta T3J 3R2

Please retain one (1) copy of this agreement for your records as well ensure one (1) copy will be retained by the Deputy Minister's office.

Should you have any questions, please do not hesitate to contact Mr. Fenton at 403-428-5900 or email: bfenton@calgarypolice.ca.

Sincerely,



Fara Vande Bunte
Assistant to Bob Fenton
Calgary Police Service

/Enclosure (3)

Memorandum of Understanding

THIS ARRANGEMENT, made in triplicate as of the ____ day of October, 2017

BETWEEN

THE ROYAL CANADIAN MOUNTED POLICE
(HEREINAFTER REFERRED TO AS THE “RCMP”)

AND

THE CHIEF OF POLICE
ON BEHALF OF THE CALGARY POLICE SERVICE
(HEREINAFTER REFERRED TO AS THE “CPS”)

AND

THE GOVERNMENT OF NUNAVUT
AS REPRESENTED BY THE MINISTER OF JUSTICE
(HEREINAFTER REFERRED TO AS THE “GN”)

(Each a “Participant” and collectively the “Participants”)

BACKGROUND

WHEREAS the RCMP has expressed the desire to utilize members of the CPS Criminal Investigation Branch, to act as independent investigators in circumstances where serious occurrences have taken place involving the actions of one or more members of the V Division of the RCMP, in the Territory of Nunavut, including instances of serious injury or death.

NOW THEREFORE THE PARTICIPANTS INTEND AS FOLLOWS:

1. DEFINITIONS:

In this Memorandum of Understanding the following terms, in singular or plural form according to the context, are defined as follows:

“ARRANGEMENT” means this Memorandum of Understanding;

“CORONER” means the Chief Coroner for Nunavut appointed pursuant to the Coroners Act, R.S.N.W.T. 1988. C. C-20;

“CPS” means the Calgary Police Service;

“CPS” Liaison Officer” means the Executive Officer to the CPS Chief of Police;

“GN” means the Government of Nunavut;

“MOU” means this Memorandum of Understanding; “RCMP” means the Royal Canadian Mounted Police;

“RCMP V Division” or “V Division” means the Royal Canadian Mounted Police Division operating in the Territory of Nunavut.

2. PURPOSE AND SCOPE:

- 2.1. The CPS intends to provide an independent investigation into the actions of the respective RCMP V Division employees, when those actions may have resulted in a major police incident. Investigations of RCMP V Division employees will be fair, effective, thorough, impartial, and culturally sensitive, and will be conducted in a manner that promotes public confidence.

3. OBLIGATIONS OF THE RCMP:

- 3.1. The V Division Commanding Officer/delegate will request confirmation from the Chief of the Calgary Police Service of his acceptance to undertake the investigation and will also request the identity of the lead investigator.

4. OBLIGATIONS OF THE CPS:

- 4.1. The CPS intends to supply an adequate number of experienced investigators, the actual number of investigators required will be the decision of the CPS, after determining the case facts through consultation with the RCMP V Division.
- 4.2. The CPS will take into consideration their capacity to take on additional workloads; priority will be given to CPS case files.

5. OBLIGATIONS OF THE GN:

- 5.1. The RCMP V Division will advise the GN contact person of any major police incident and that the CPS is investigating the matter. The GN will refer all contacts with the media to the CPS Media Relations Office.

6. FINANCIAL ARRANGEMENTS:

- 6.1. The RCMP intends to reimburse the CPS in an amount equal to the base salaries of the assigned investigators, including overtime authorized by the Chief of the CPS, for time spent conducting any such investigation.
- 6.2. The RCMP will reimburse the CPS for all transportation, accommodation and per diem living expenses, upon submission of original receipts, in accordance with CPS' Expenses Policy.
- 6.3. The RCMP will also reimburse the CPS for all reasonable direct investigational costs including telephone, photographic services, telecommunications, and all other reasonable expenses incurred in the course of the investigation upon submission of receipts.

7. INDEMNIFICATION:

- 7.1. If any party to this MOU receives notice of a claim by a third party to this MOU for damages of any kind, causes by one of the parties or their respective employees or agents, arising out of, or in connection with the implementation of this MOU, the receiving party will notify the other parties as soon as is practicable.
- 7.2. To the extent permitted by the *Financial Administration Act* (Canada), the RCMP shall indemnify the CPS for and against all damages, costs, disbursements, interests, losses, or expenses incurred as a result of third party claims (including third party claims, cross claims, and counter claims), demands, causes of actions, actions, proceedings, or inquiries arising from or by the conduct of any CPS employee or employees while carrying out their duties under this MOU, provided that the CPS employee or employees acted honestly and without gross negligence or malice.
- 7.3. The RCMP shall not indemnify the CPS for and against all damages, costs, disbursements, interests, losses, or expenses incurred as a result of third party claims (including third party claims, cross claims and counter claims), demands, causes of action, actions, proceedings, or inquiries arising from, or caused by, the conduct of the CPS employee or

employees if the CPS employee or employees acted outside the scope of their duties under this MOU, acted dishonestly or with gross negligence or malice.

7.4. The entirety of Section 7 shall survive the termination of this MOU.

8. TERM:

8.1. This MOU will commence upon execution by the Participants and will expire on March 1st, 2022.

9. MEDIA:

9.1. In a CPS lead investigation, the RCMP and the GN will not release information to the media prior to consultation with the CPS Liaison Officer. The RCMP and the GN will adhere to their respective media liaison protocols, but will limit media releases to the following items:

9.1.1. The fact an incident has occurred; and

9.1.2. The CPS is investigating the incident that has occurred.

9.2. In all instances of an independent investigation involving the RCMP, CPS will provide the RCMP with advance notice of its intention to release information to the media. This notice should be provided in a timely fashion, sensitive to the communication requirements of the RCMP.

10. CONFIDENTIALITY AND USE OF INFORMATION:

10.1. The Participants' authority to share information is based on:

10.1.1. Section 82(f) of the Privacy Act (Canada);

10.1.2. Section 48(3) of the *Access to Information and Protection of Privacy Act (Nunavut)*; and

10.1.3. Sections 40(1)(q) and (r) of the *Freedom of Information and Protection of Privacy Act (Alberta)*.

10.2. This MOU does not supersede any existing legislation, regulation, policy or other legal document by which the any or all of the Participants are bound.

10.3. Participants will hold information received from the other Participant in

confidence and take all reasonable measures to preserve its confidentiality and integrity and to safeguard the information against accidental or unauthorized access, use or disclosure.

- 10.4. The Participants will avoid storing confidential information on mobile computing devices such as, but not limited to, memory sticks, notebook computers, smart phones, tablet computers, and personal digital assistants. Where personal information must be stored on such devices, the Participants will store only a minimal amount of information for the minimal amount of time necessary to complete the work. Where personal information is stored on mobile computing devices or other vulnerable devices, the Contractor will use both strong password protection and strong encryption.
- 10.5. The Participants will ensure that data containing confidential information shall not be processed or stored outside of Canada without the express written approval of the other Participants.
- 10.6. Participants will mark the information provided with the appropriate security classification.
- 10.7. Participants will not disseminate the information to any third party without the prior written consent of the supplying Participant (or agency from which the information originated, as appropriate), except as required by law.
- 10.8. Participants will limit access to the information to those of its employees whose duties require such access, who are legally bound to keep confidences and who have the appropriate security clearance.
- 10.9. Participants will report any suspected or confirmed breach, as defined in the legislation referenced in section 8.1, to one another as soon as the breach becomes known. All Participants will comply with the other Participant's breach investigation, or any investigation initiated by the relevant Information and Privacy Commissioner.
- 10.10. The entirety of Section 10 survives the completion or early termination of this MOU.

11. INFORMATION MANAGEMENT

- 11.1. The information disclosed under this MOU will be administered, maintained, and disposed of in accordance with the law that applies to

record retention and personal information and all applicable policies and guidelines. In the case of the GN, this includes the *Access to Information and Protection of Privacy Act (Nunavut)* and the *Archives Act*. In the case of the RCMP, this includes the *Privacy Act (Canada)*, the *National Archives of Canada Act* and Government Security Policy. In the case of the CPS this includes the *Freedom of Information and Protection of Privacy Act (Alberta)*, the *Police Act (Alberta)* and applicable CPS policies and procedures including CPS' Records Retention Schedule.

12. ACCURACY OF INFORMATION

12.1. Each Participant will:

- 12.1.1. use its best efforts to verify the accuracy and completeness of the information provided to the other Participant;
- 12.1.2. promptly notify the other Participant if it learns that inaccurate or potentially unreliable information may have been provided or received and take all reasonable remedial steps.

13. DEPARTMENTAL REPRESENTATIVES

- 13.1. For the CPS:
Roger CHAFFIN, O.O.M.,
Chief of Police, Calgary Police Service
5111 47 St. NE, Calgary, Alberta, T3J 3R2
Tel: 403-428-5900
- 13.2. For the GN:
Deputy Minister of Justice William MACKAY
P.O. Box 1000, Station 500, Iqaluit, Nunavut, X0A 0H0
Tel: 867-975-6170
- 13.3. For the RCMP:
Chief Superintendent Michael JEFFREY
Commanding Officer “V” Division
960 Federal Road, Bag 500, Iqaluit, Nunavut, X0A 0H0
Tel: 867-975-4400

14. DISPUTE RESOLUTION:

- 14.1. The CPS, GN, and RCMP representatives will consult each other should there be any dispute arising from the interpretation of this MOU, and will attempt, in good faith, to resolve the matter. The CPS reserves the right to terminate the investigation in their sole discretion at any point or to recommend its transfer to another police force.

15. MONITORING:

- 15.1. The Participants will meet on an annual basis to review and assess the operation and effectiveness of this MOU.

16. TERMINATION:

- 16.1. This MOU may be terminated by either Participant upon thirty (30) days written notice. Termination does not release a Participant from any obligations which accrued while the MOU was in force.

17. GENERALITIES:

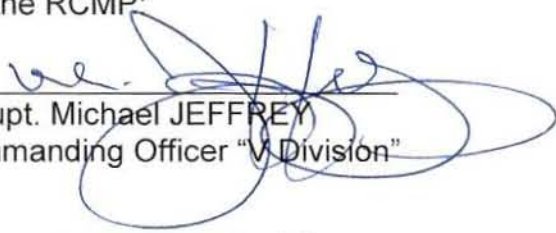
- 17.1. This agreement shall be interpreted in accordance with the laws of Nunavut and Alberta and any applicable Federal Laws;
- 17.2. The CPS will be free to engage or seek legal advice from Crown Counsel in a manner that is consistent with the practices of the jurisdiction;
- 17.3. The CPS will be free to initiate or recommend charges depending on the process in place in the jurisdiction and the available evidence.

18. AMENDMENT TO THE ARRANGEMENT:

- 18.1. This MOU may only be amended by the written consent of the Participants.


Signed by the authorized officers of the Participants:

For the RCMP:


C/Supt. Michael JEFFREY
Commanding Officer "V Division"


Date 2018-01-11

For the CPS:


Roger CHAFFIN, O.O.M.,
Chief of Police

Date 2017/10/23

For the GN:


Deputy Minister William MACKAY
Deputy Minister of Justice
Nunavut

Date July 11, 2018

Body Worn Video Feasibility Study Final Report

December 2015

National Criminal Operations
Royal Canadian Mounted Police



Executive Summary

In 2010, the Royal Canadian Mounted Police (RCMP) conducted a body worn video (BWV) pilot. Limited research data was obtained as a result of the implementation of a small number of devices. No technical evaluation of the camera equipment was conducted.

In October 2013, the current BWV project was initiated. Cameras were deployed due to exigent circumstances. There was no camera technical evaluation conducted. The Office of the Privacy Commissioner (OPC) was advised of this action before it took place.

The BWV feasibility study was undertaken to: confirm it is a sound investment; evaluate all issues to be addressed such as privacy and storage; confirm best evidence capture to support criminal investigations and court proceedings; and determine the viability of this technology for frontline operations. This study has included technical evaluations, a literature review and several small pilots. Trials have assessed potential impact to member safety, tactical considerations and evidentiary value for court proceedings.

Several limited pilots collected data on specific variables including audio and video quality; video data file size; mounting compatibility in various positions and officer safety. Cameras researched and tested had issues with battery life and durability. Additionally, cameras do not always adequately capture the incident due to mounting difficulties. To date, no camera has been identified that meets RCMP requirements for its diverse operational policing environment. As a result, a request for information (RFI) was prepared to determine industry feedback on BWV camera capability.

A privacy impact assessment (PIA) was prepared for BWV. It was received by the OPC who provided their comments and recommendations. The RCMP has worked closely with the OPC over the past 24 months on this study. Consultation is ongoing.

Storage and retention of BWV evidence will involve high maintenance costs and require massive capacity solutions. IT plays a critical role in the implementation of BWC technology. The RCMP Chief Information Officer (CIO) is researching the option of cloud storage. This will include evidence management and storage which will be hosted by external vendors. Server infrastructure must be physically located in Canada for RCMP video recordings.

Implementation of BWV involves significant consideration regarding the cost of data storage and management, technical shortcomings of camera equipment and privacy concerns. This report summarizes the RCMP's feasibility study on body cameras. It outlines the RCMP's initiative related to potential use of BWV technology and presents three recommendations for consideration.



As the policy centre, National Use of Force is seeking direction on possible implementation from a set of three options:

- A. Status quo – no implementation of BWV
- B. Force wide implementation
- C. Limited permanent implementation in a division.



Table of Contents

Executive Summary 1

Table of Contents 3

1 Chapter: Introduction 5

1.1 Background 5

1.2 Scope 6

1.3 Objectives..... 6

2 Chapter: Literature Review 7

2.1 Academic Studies 8

2.2 Force Science Institute 12

2.2.1 Publications 12

3 Chapter: Canadian and International Context 14

3.1 Canadian Law Enforcement BWV Landscape..... 14

3.2 Coroner’s Inquests..... 14

3.3 International Law Enforcement BWV Landscape 15

4 Chapter: Trials & Pilots..... 18

4.1 Depot trials 18

4.2 Operational trials 20

4.2.1 Deployment description:..... 21

4.2.1.1 E Division: Burnaby, B.C. November 19, 2014 to December 15, 2014. 21

4.2.1.2 E Division: Prince George, B.C. – Canada Winter Games 21

4.2.1.3 J Division: 2014 Mount Alison University Exercise 21

4.2.1.4 E Division: Kamloops, B.C..... 21

4.2.1.5 E Division: Houston, B.C. 22

4.2.2 Pilot descriptions: 22

4.2.2.1 2010 Codiac, New Brunswick & Kelowna, British Columbia..... 22

4.2.2.2 2013 Nanaimo, B.C..... 22

4.2.2.3 2013 November Codiac/Moncton, New Brunswick 22

4.2.2.4 2015 K & H Divisions 23

5 Chapter: Issues and Solutions 25

5.1 Evidentiary Issues 25

5.1.1 Camera Activation..... 25

5.1.2 Disclosure 25

5.1.3 Notetaking 25

5.2 Privacy..... 26

5.2.1 OPC Considerations 26

5.2.2 Video Retention & Purging 27



5.2.3	Video Vetting Redaction	28
5.3	IT	28
5.3.1	Storage	28
5.3.2	Data Management	30
5.3.3	Security	32
5.3.4	Camera Technology Findings	33
5.3.5	Cost	35
5.4	Communication Strategy	38
5.5	Training	38
6	Chapter: Conclusion.....	40
6.1	Assessment	41
6.1.1	Benefits	42
6.1.2	Risks/Drawbacks	42
6.2	Options	43
6.3	Recommendation	44
6.4	References	45

1 Chapter: **Introduction**

Body worn video (BWV) is defined as any device worn on a designated member's uniform in an overt capacity for the primary purpose of recording video and audio evidence. BWV cameras are used by law enforcement agencies to capture audio/video recordings of incidents in order to aid investigations and gather evidence. BWV adds value to evidence gathered during an investigation, however should not be relied upon as the sole source for evidence. The purpose of BWV use is to provide a recorded account of police actions when responding to calls for service from the public.

Technology brings with it tremendous opportunity as well as an equivalent amount of unparalleled questions to be answered. We are no longer looking at cameras as just a means to create a video recording of an incident or an event, but now as a method to record police interactions with the public in an evidentiary manner that must withstand judicial scrutiny. The BWV device itself now resembles a computer data stick given what it is able to record and how the recordings must now be managed within software. It now shares similar capabilities to a smart phone with: global positioning system (GPS) functionality to determine geographic coordinates of where an incident was recorded; wi-fi capability to potentially live stream video to command centers; and, some models offer facial recognition capabilities. BWV camera technology is evolving rapidly. Software is required to remove or upload the video recordings from the cameras and to manage the recordings for evidentiary purposes. BWV cameras are reliant on information technology (IT) infrastructure to support the management and storage of video captured on the device. Consequently, the camera is now part of a larger overall system requiring evidence management and ability to play back the recording in court without proprietary limitations and to meet disclosure obligations.

1.1 **Background**

Police in the United Kingdom first began using body worn cameras (BWC) in 2005. The technology has been available for ten years. Victoria Police Department began piloting this technology in Canada in 2009.

In 2010, the RCMP conducted a Tasercam pilot and BWV was added after the initial project was underway. The BWV camera chosen in a short time frame was the Vidmic model. Limited research data was obtained as a result of the implementation of a small number of devices. No technical evaluation of the camera equipment was conducted as they were acquired based on accessibility.

In 2013, an exigent operational need was identified where camera equipment was deployed on members. Three BWV camera models were chosen based on availability. There was no



technical evaluation of the camera conducted and the Privacy Commissioner's Office was advised of this action before it took place. The current BWV feasibility study was initiated in October 2013. On 2013-11-13 a communique from Contract and Aboriginal Policing (CAP) senior management was disseminated through Criminal Operations Officers containing the directive that BWV is not currently approved for use outside the national feasibility study.

In 2014, CAP National Criminal Operations (NCROPS) engaged external partner agency Defence Research and Development Canada – Centre for Security Science (DRDC-CSS) to assist with the feasibility study and camera evaluation. In January 2014, a workshop was held to begin the BWV feasibility study with stakeholders. Issues such as privacy, disclosure, data storage and retention previously identified by NCROPS were scoped. The issue of officer discretion to turn on the camera versus being dictated by specific instances listed in policy was identified as a significant factor, given that it will determine when an incident is recorded and will form the basis of how much data is stored. In June 2014, a technical and functional workshop was conducted to determine camera requirements in preparation for camera procurement.

1.2 Scope

The RCMP has undertaken the current BWV feasibility study to: confirm BWV is a sound investment; evaluate all issues to be addressed such as privacy and storage; confirm best evidence capture to support criminal investigations and court proceedings; and determine the viability of BWV technology for frontline operations. This project will provide evidence of the suitability of BWV for the RCMP and create a plan for its possible implementation.

1.3 Objectives

The objective of the feasibility study was to identify all potential challenges for implementing a BWV program within the RCMP and to provide viable solutions to either mitigate or address the issues such as privacy and data storage. Limited implementation pilots were conducted at Depot and in operational settings to determine requirements for the technology regarding court evidence, officer safety and any tactical considerations. The project established requirements that will assist in defining a solution. This study has included technical evaluations, a literature and case law review and several small pilots. Trials have assessed potential impact to member safety, tactical considerations and evidentiary value for court proceedings.



2 Chapter: Literature Review

A literature review was completed by researchers to provide a comprehensive evaluation of the impact and method of BWV use by law enforcement. The findings concluded: BWV aids in evidence collection; reduces misconduct charges and court time; and assists investigations. The literature review found the main limitation to be the cost of implementing BWV technology.

The Literature Review summarized the following:

“The various reports on BWV revealed that its use has produced a positive impact on law enforcement. It aids in the collection of evidence, the investigation of incidents, largely reduces the amount of misconduct charges, reduces court time, aids the trier of facts and the prosecution, and assists law enforcement in training and carrying out their duties. However, what is equally clear is that there are prohibitive factors to the use of BWV. The main limitation is cost. The amount of storage is large (i.e., petabytes worth of storage are required), and the costs are high in terms of being able to maintain the storage and retention that is necessary for BWV evidence. Other costs may include court transcriptions, which are time consuming as well as expensive. The operational costs alone could make the pursuit of BWV use challenging, if not unfeasible despite its numerous advantages. To ascertain the overall potential for BWV use in Canada, further investigation is needed to reveal any storage solutions, how to offset administrative demands, and clear policies that encompass privacy and disclosure issues, as well as procedures for usage. Below is a brief breakdown of the main advantages and disadvantages described in the BWV reports reviewed.

Advantages:

- *The main advantage appears to be a notable reduction in police misconduct complaints perhaps as a result of a better description of police officer action explanation*
- *Public Complaints are less*
- *Officers act in a more professional manner due to being more self-aware of their conduct when interacting with the public*
- *Officers are more cognizant about how they use force, although this could pose a potential risk to officer safety (i.e., second guessing, being too cautious)*
- *Public often becomes more civil when they become aware they are being recorded*
- *Aids in gathering evidence and offers a more accurate and fuller account of any incident recorded versus relying solely on eye witness or officer recall.*
- *When confronted with footage of their actions, defendants are pleading guilty earlier. This in turn leads to a decrease in court costs as fewer trials go to court due to early guilty pleas.*

- Overall, it appears to improve community relations as public opinion generally expresses a greater sense of trust and safety with use of BWV.
- Provides a great understanding of the realities of policing.

Disadvantages:

- Cost is the main disadvantage – cost of the actual devices is one issue, but there appears to be a much larger expense when it comes to making video transfers to hard copy, cost of personnel needed for storage and retention, cost of transcribers for legal use of BWV evidence, and potentially cost in time for officers using BWV for file work. However, evidence of longer time for reports is mixed, with some police departments reporting longer time writing up reports when using BWV, while other police departments have reported less time.
- Privacy issues
- Disclosure issues
- Officer acceptance issues
- Equipment compatibility with officer uniforms including their protective gear such as vests and utility belts (it should be noted however that technology in this area is constantly evolving so compatibility with uniforms and officer gear may no longer be an issue).
- Equipment comfort (i.e., the U.K. reported police officers had great discomfort using the headbands for the head cams)
- Criticism could arise over discretionary use of when officers decide to turn it on and turn it off. Justification may be required from members to explain the discretion of turning off the camera and its activation.”¹

2.1 Academic Studies

There is now significant interest in law enforcement use of BWV technology. Various academic studies are underway to begin to study the implications of this technology.

The Literature Review investigated results of the study conducted in 2012 with Rialto Police Department in California. This study indicated a statistical reduction in use of force incidents during public and police interactions as a result of BWV camera implementation. Other studies include United Kingdom (UK) police agencies and academic sources.

¹ Ellingwood, H. & Yamamoto, S. (2014) *Body worn video camera use by law enforcement: A critical review*. Ottawa, Ontario: National Criminal Operations, RCMP, unpublished.

The RCMP has been approached by students and faculty at Carleton University, Simon Fraser University and the University of Regina regarding the BWV feasibility study and possible avenues for further research.

Public Safety Canada (PSC) is also currently engaged in an independent evaluation of law enforcement use of BWV from a sociological perspective regarding the impact of cameras. In October 2015, NCROPS shared best practices with respect to the PSC study.

In January 2014, the International Association of Chiefs of Police (IACP) published the “IACP Technology Policy Framework” and concluded the following:

“Realizing the value that technology promises law enforcement can only be achieved through proper planning, implementation, training, deployment, use, and management of the technology and the information it provides. Like all resources and tools available to law enforcement, the use of new technologies must be carefully considered and managed. Agencies must clearly articulate their strategic goals for the technology, and this should be aligned with the broader strategic plans of the agency and safety needs of the public. Thorough and ongoing training is required to ensure that users are well versed in the operational policies and procedures defined and enforced by the agency. Policies must be developed and strictly enforced to ensure the quality of the data, the security of the system, compliance with applicable laws and regulations, and the privacy of information gathered. Building robust auditing requirements into agency policies will help enforce proper use of the system, and reassure the public that their privacy interests are recognized and protected. The development of these policies is a proven way for executives to ensure they are taking full advantage of the technology to assist in providing the best criminal justice services, while protecting the privacy, civil rights, and civil liberties of citizens.”²

In the February 2015 Issue of “The Police Chief” an article was published titled, “Police Body-Worn Cameras: An Overview” which concluded the following:

“Cameras help clarify many police and citizen interactions, improve the overall quality of police service and provide valuable evidence for prosecution. The available evidence related to using BWCs suggests they are here to stay, and more agencies will likely use them as circumstances allow. The benefits of using BWCs are numerous and most concerns related to BWCs can be managed effectively. It is important to note that BWCs are not a panacea in any respect. They can clearly help clarify many police and citizen interactions and improve the

² International Association of Chiefs of Police (2014). *Body-Worn Cameras Model Policy*. Alexandria, VA: IACP. Link: www.theiacp.org/policycenter

overall quality of police service, as well as provide valuable evidence for prosecution. Additional research is needed to more definitively identify the benefits and concerns of BWCs. Agencies implementing BWCs have an opportunity to collaborate with universities for structured research on BWCs, thus contributing to the advancement of knowledge in this growing area.”³

A noteworthy study was conducted by Harvard Law Review in April 2015. This study was conducted from a public and legal perspective regarding law enforcement use of this technology. The primary benefits documented were:

“to reveal instances of police misconduct, reform police (and civilian) behaviour, and build trust between the police and the community, all of which provide strong justifications for adoption.” The report cites the following drawbacks: “the adoption of such a pervasive, indiscriminate technology may have unintended negative consequences; how officers can circumvent the technology to insulate themselves from oversight; open-records laws in most states make it possible for departments to deny access indefinitely; raise the question of who stands to benefit most from this technology; privacy may be violated; the costs of storing and transmitting this data can be particularly staggering; officer mounted wearable cameras, paired with facial recognition, could easily become much like the current crop of automated license plate readers, constantly reading thousands of faces (license plates), interpreting identity (plate number), and cross-checking this information against national and local crime databases in real-time; & a final, fundamental concern regarding body cameras goes to the heart of their functionality: the reliability of the video footage they produce.” Harvard Law Review concluded: “balancing the benefits and drawbacks of this powerful new technology is not an easy task, and the decision to equip police departments with cameras should not be made lightly. Policymakers, citizens, and police departments must think carefully about these and other drawbacks to a body camera regime to make sure that, if this technology is to be adopted, it is used effectively and ultimately improves the quality of police services.”⁴

³ The Police Chief (February 2015). *Police Body-Worn Cameras: An Overview*. Alexandria, VA: IACP. Link: <http://www.policechiefmagazine.org>

⁴ Harvard Law Review. (April 10, 2015) *Considering Police Body Cameras*. Cambridge, MA. Link : <http://harvardlawreview.org/2015/04/considering-police-body-cameras/>

Police Executive Research Forum (PERF) published a report in 2014 titled, “Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned” which provides the policy recommendations. PERF concludes:

“The recent emergence of body-worn cameras has already impacted policing, and this impact will increase as more agencies adopt this technology. Police agencies that are considering implementing body-worn cameras should not enter into this decision lightly. Once an agency travels down the road of deploying body-worn cameras, it will be difficult to reverse course because the public will come to expect the availability of video records.

When implemented correctly, body-worn cameras can help strengthen the policing profession. These cameras can help promote agency accountability and transparency, and they can be useful tools for increasing officer professionalism, improving officer training, preserving evidence, and documenting encounters with the public. However, they also raise issues as a practical matter and at the policy level, both of which agencies must thoughtfully examine. Police agencies must determine what adopting body-worn cameras will mean in terms of police-community relationships, privacy, trust and legitimacy, and internal procedural justice for officers.

Police agencies should adopt an incremental approach to implementing a body-worn camera program. This means testing the cameras in pilot programs and engaging officers and the community during implementation. It also means carefully crafting body-worn camera policies that balance accountability, transparency, and privacy rights, as well as preserving the important relationships that exist between officers and members of the community.

PERF’s recommendations provide guidance that is grounded in current research and in the lessons learned from police agencies that have adopted body-worn cameras. However, because the technology is so new, a large body of research does not yet exist regarding the effects body-worn cameras have on policing. Additional research and field experience are needed before the full impact of body-worn cameras can be understood, and PERF’s recommendations may evolve as further evidence is gathered.

Like other new forms of technology, body-worn cameras have the potential to transform the field of policing. To make sure this change is positive, police agencies must think critically about the issues that cameras raise and must give careful consideration when developing body-worn camera policies and practices. First and foremost, agencies must always remember that the

ultimate purpose of these cameras should be to help officers protect and serve the people in their communities.”⁵

Various sources of academic research information were reviewed within the feasibility study by both the RCMP and independently by DRDC. Areas of study vary significantly and results are inconclusive based on evaluation criteria and methodology. Consequently, there is no consensus in the research to report on at this time.

2.2 Force Science Institute

2.2.1 Publications

The advancement of cameras such that they can now be worn by police officers impacts use of force investigations. The Force Science Institute (FSI) has developed several publications and established BWV camera education for law enforcement into their course offerings.

FSI published a report titled, News#265: “10 Limitations of body cams you need to know for your protection” as follows:

1. A camera doesn't follow your eyes or see as they see.
2. Some important danger cues can't be recorded.
3. Camera speed differs from the speed of life.
4. A camera may see better than you do in low light.
5. Your body may block the view.
6. A camera only records in 2-D.
7. The absence of sophisticated time-stamping may prove critical.
8. One camera may not be enough.
9. A camera encourages second-guessing.
10. A camera can never replace a thorough investigation.⁶

Camera limitations will need to be fully recognized and understood by the police officers deploying BWV devices. This FSI report #265 is significant as it identifies that BWV “*cameras have limitations which need to be fully understood and evaluated to maximize their effectiveness.*” (Lewinski, FSNews#265) Camera limitations must be conveyed to RCMP

⁵ Miller, Lindsay, Jessica Toliver, and Police Executive Research Forum. (2014) *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*. Washington, D.C.: Office of Community Oriented Policing Services, U.S. Department of Justice. Link:

<https://www.justice.gov/iso/opa/resources/472014912134715246869.pdf>

⁶ Force Science Institute. *FSNEWS#265:10 limitations of body cams you need to know for your protection*. Mankato, MN: FSI. Link: <http://www.forcescience.org/fsnews/265.html>

members in any deployment of this technology in an operational environment. Additionally, cameras may fail completely due to battery life, software and hardware issues. Camera limitations in any form must not impact member safety or the execution of their duties. Consequently, communication of camera limitations is essential.

A police officer's recollection of an incident is critical evidence in court testimony. Nevertheless, human memory is not perfect and the element of time may further wear away specific details of an event. BWV offers broad strokes of corroboration to an incident. An FSI article, identifies that there will be discrepancies between the footage from a camera and an officer's notes, reports and testimony due to human factors such as memory.

FS News#145: Do head cameras always see what you see in a force encounter?

"All things considered, this is the bottom line Lewinski believes is essential to recognize: "A camera will never represent precisely an officer's view of a scene or what an officer was thinking at any given instant or how he was interpreting what he was seeing, even if the camera is right beside the officer's eye. Ideally, a camera may help us understand why an officer acted as he did, but in some cases it may be only a start. Ultimately, we need to judge uses of force from the viewpoint of the officers involved rather than from the viewpoint of a camera. Otherwise, an officer reviewing a recording may be confused by discrepancies between what he remembers and what the camera shows, and persons judging the incident may inappropriately hold him accountable for actions and statements that don't appear to jibe with the filmed record." ⁷

⁷ Force Science Institute. (2010-03-12) *FSNEWS#145: Do head cameras always see what you see in a force encounter?* Mankato, MN: FSI. Link: <http://www.forcescience.org/fsnews/145.html>

3 Chapter: Canadian and International Context

3.1 Canadian Law Enforcement BWV Landscape

Other Canadian law enforcement agencies are also considering BWV. Victoria Police Department conducted a pilot in 2009. Edmonton Police Service concluded a three year feasibility study in December 2014. As reported by the Canadian Broadcasting Corporation, Hamilton Police Service had initially determined cost was prohibitive to start a pilot at an estimated \$1.3 million.⁸ Toronto Police Service began a one year pilot in May 2015. Open source reporting identified that TPS deployed 100 cameras within traffic, foot patrol and anti-violence units to determine feasibility. TPS deployed the Reveal Media and Panasonic camera models.

The two Canadian police services who have decided to implement BWV cameras to date are Calgary Police Service (CPS) and Amherstburg Police Service (APS). CPS held a Symposium in September 2014 to explore BWV cameras and identify key strategies toward implementation. Incident based camera activation was adopted by both agencies.

3.2 Coroner's Inquests

Coroners inquests received by the RCMP recommended use of body worn video mentioning use of BWV include:

1. Purdie, Zinser & Beddow:
In 2013, Adam Purdie, Brendon Beddow & Justin Zinser inquests in E Division recommend police recordings.
2. Matters inquest:
The Greg Matters inquest recommended that “for ERTs to wear audio-visual recording equipment upon deployment” in January 2014.^{9 10}

⁸ CBC News. (2015-11-20) *Hamilton puts off police body-worn cameras for 'foreseeable future'. Pilot would cost an estimated \$1.3 million in hardware, personnel costs.* Link: <http://www.cbc.ca/news/canada/hamilton/news/hamilton-puts-off-police-body-worn-cameras-for-foreseeable-future-1.3327947>

⁹ CBC News. (2014-06-30) *Jury makes 9 recommendations in Greg Matters inquest. Jury recommends audio-visual equipment, mental health training for RCMP emergency response teams.* Link: <http://www.cbc.ca/news/canada/british-columbia/jury-makes-9-recommendations-in-greg-matters-inquest-1.2517854>

¹⁰ CBC News. (2013-10-20) *Calls for 'cameras on cops' renewed in latest B.C. inquest. 7 coroners inquest juries in past few years recommended audio and video recording of police actions.* Link:

3.3 International Law Enforcement BWV Landscape

On November 24, 2015, Taser International announced they won “a major bid to outfit 22,000 London Metropolitan Police Officers with Axon Body Cameras. UK’s largest police force will deploy Taser’s Axon Body 2 cameras.”¹¹

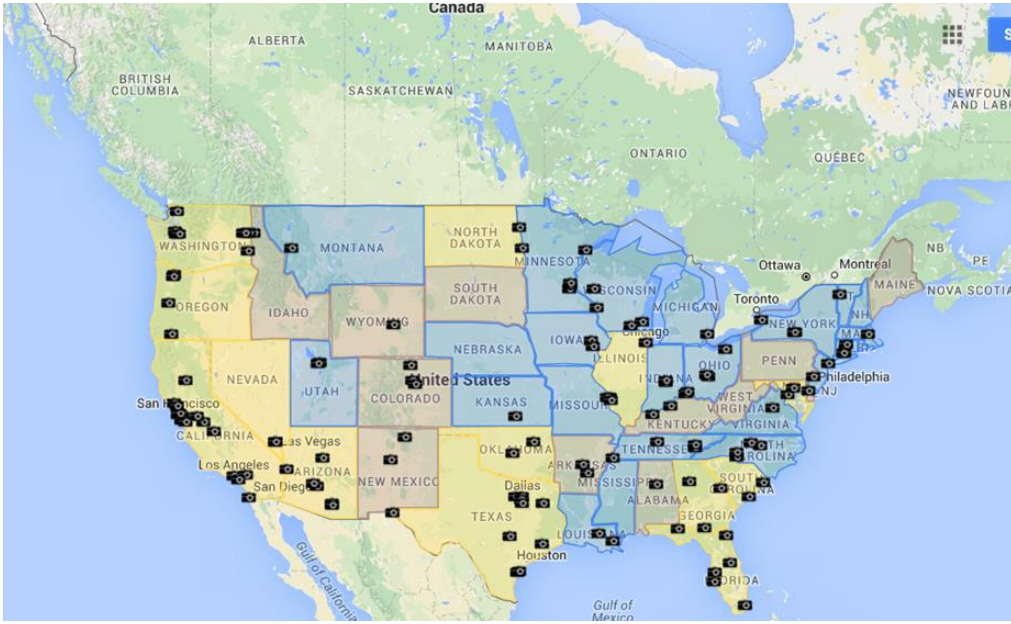
The London Met issued a one page summary of their trial results within their final BWV Report titled, “Police, Camera, Evidence: London’s cluster randomised controlled trial of Body Worn Video” in November 2015. The executive summary from this report is as follows:

Overall the findings suggest there are potential benefits of BWV, although those related to criminal justice outcomes were not fully realised during the timescales of the trial and need the support of criminal justice partners to be achieved.

- *BWV can reduce the number of allegations against officers, particularly of oppressive behaviour. Complaints related to interactions with the public also reduced and, although it did not reach statistical significance, the trend in overall complaints was consistent with these findings.*
- *There was no overall impact of BWV on the number or type of stop and searches conducted. In addition, there were no differences in officer’s self-reported behaviour relating to how they conducted stops.*
- *No effect was found on the proportion of arrests for violent crime. When an arrest had occurred, there was a slightly lower proportion of charges by officers in a BWV team.*
- *There was no evidence that BWV changed the way police officers dealt with victims or suspects.*
- *The Public Attitude Survey found, in general, London residents are supportive of BWV, with their opinions of the technology positively associated with their views of how ‘procedurally just’ the police are, and their confidence in the MPS.*
- *Officers reported a range of innovative uses of BWV, including professional development; use of intelligence; and sharing information with partners and the public.*¹²

<http://www.cbc.ca/news/canada/british-columbia/calls-for-cameras-on-cops-renewed-in-latest-b-c-inquest-1.2127500> & CBC News. (2014-11-28) *Solomon Uyarasuk inquest: Jury recommends reopening investigation* Link: <http://www.cbc.ca/news/canada/north/solomon-uyarasuk-inquest-jury-recommends-reopening-investigation-1.2853880>

¹¹ Taser International Announcement on 2015-11-24.

Country	International Law Enforcement BWV Landscape Police Agency BWC implementation list
UK	Too many agencies to list. Notables include: Hampshire Constabulary – Insp. Steve Goodier presented at Calgary Police Service’s 2014 Symposium London Metropolitan Police
Australia	South Australia Police South Melbourne Police
United States	Too many agencies to list. Notables include: Rialto, California LAPD NYPD
U.S. Interactive Map link	https://www.google.com/maps/d/viewer?mid=zm7Rb0jg6SZo.kYaxZ2qW64NY&hl=en_US  <p>“This map shows states and cities that have adopted laws and/or policies on access to videos from police BWC.”¹³</p>

¹² Metropolitan Police Service. (2015) *Police, Camera, Evidence: London’s cluster randomised controlled trial of Body Worn Video*. London, U.K.: London MPS. Link: https://www.london.gov.uk/sites/default/files/bwv_report_nov_2015.pdf

¹³ Reporters Committee for Freedom of the Press (2016) Washington, D.C. <https://www.rcfp.org/bodycams>. Link: https://www.google.com/maps/d/viewer?hl=en_US&mid=1AFuew5l-lqTDO4BQrajJpkoTw8E

Both domestically as well as internationally, police agency reporting indicates that there is no real quantifiable benefit of BWV camera implementation. Reduction in citizen complaints against officers is common which was identified in the Literature Review. *In 2011, a 50% reduction in the total number of use of force incidents compared to control conditions was captured by Rialto Police Department in California.*¹⁴ Academic reports indicate that statistically there is very little difference with camera implementation regarding use of force encounters. However, public pressure toward increased police transparency demands a resolution to one sided public recordings of police interactions. It is these citizen demands for police accountability which causes police agencies to consider and often implement new technology such as BWV cameras.

¹⁴ Farrar, W. & Ariel, B. (2013) *Self-awareness to being watched and socially desirable behavior: A field experiment on the effect of body-worn cameras and police use of force*. Washington, D.C.: Police Foundation. Link : <https://www.bja.gov/bwc/pdfs/130767873-Self-awareness-to-being-watched-and-socially-desirable-behavior-A-field-experiment-on-the-effect-of-body-worn-cameras-on-police-use-of-force.pdf>

4 Chapter: Trials & Pilots

Trials and pilots were conducted within the BWV feasibility study to provide an objective assessment of law enforcement use of the camera technology. Evaluation criteria allowed testing to focus on specific variables to identify any impact to officer safety, tactics and court evidence.

The most comprehensive research was conducted at the RCMP “Depot” Training Academy where cadets utilized cameras during scenario based training. Further examination was conducted during operational pilots and tactical deployments. For the purpose of this reporting: a trial is defined as a comprehensive evaluation of BWV technology conducted over a longer time frame; a pilot is defined as use within a specific jurisdiction to determine RCMP requirements for camera characteristics over a specified time frame; and a deployment is defined as an operational need or exigent circumstance where cameras were deployed quickly for a particular operation or event. Stakeholders such as the OPC were informed of each camera implementation. Data gathered from this research and assessment of experimentation results informed the viability of BWV technology related to: officer safety, tactical considerations and evidence capture for court.

4.1 Depot trials

Depot agreed to facilitate camera equipment evaluation trials during cadet training scenarios. This provided a substantial opportunity to evaluate camera functionality in a non-operational environment using structured scenario based training. Metrics evaluated elements such as what the camera was able to capture versus what the cadets reported they saw during scenarios. The Depot trials allowed camera characteristics to be accurately measured to support evaluation of RCMP requirements for the technology against repeatable incidents involving use of force interventions, ranging from lethal confrontations to low risk applications.

On June 26, 2014, National Use of Force (NUF) hosted a second workshop to assess user and technical requirements for BWV cameras and to review the draft plan for conducting experimentation at Depot. Technical specifications, user requirements and functionality necessary to assist front line uniformed officers in their duties were the focus of the workshop with the primary purpose of evidence capture. A features chart was established for camera requirements for the procurement process based on feedback from workshop participants and supplemental research.

On September 5, 2014, a request for proposal (RFP) was posted on the Public Works and Government Services Canada (PWGSC) website to purchase 24 cameras used in the Depot trials. Defence Research and Development Canada-Centre for Security Science (DRDC-CSS) funded this purchase. The RFP closed on September 22, 2014. The following camera models were deployed:





BodyCam by Provision



AXON Flex by Taser International



AEE AD76 by Compusult



PC-03 by Y&S Engineering

A troop of 32 cadets was designated to participate in the BWV trial. The troop start date was September 8, 2014 with a graduation date of February 27, 2015. Depot identified several weeks in which a cross section of scenarios would provide opportunities to include BWV cameras. Technical characteristics were measured by DRDC-CSS based on metrics derived from operational requirements.

The pilot at Depot provided a unique opportunity to collect considerable data in a low risk environment during active physical situations on a structured daily/weekly basis with a focus on repeatable testing. Months of pilots in the field would not provide the same number of incidents upon which to test cameras. Depot trials allowed camera characteristics to be accurately measured to support evaluation of RCMP requirements for the technology against repeatable incidents involving use of force interventions.

The pilot at Depot collected data on variables including audio and video quality; video data file size, mounting compatibility in various positions, and officer safety. The pilot revealed durability concerns, and the fact that cameras were not always capturing the incident due to mounting difficulties.

The final report detailing the results of the Depot evaluations from DRDC-CSS titled, *"Scoping, Technical and Operational Evaluation of Body Worn Video"* was published publically on their website in October 2015.¹⁵ The primary conclusion from this report is that "the evaluations showed that BWV cameras are technically capable of the required collection of video during realistic scenarios, but are currently subject to significant limitations of camera mounting, video quality, and user interface."

In addition, DRDC-CSS concluded that *"There are effects on officers in operations from: the physical operation of the camera; the awareness that it is on, in terms of officer behaviour; 'management' of the camera view and context; decisions about when to turn the camera on/off; and the effect on subjects with whom the officer is interacting. These effects should be considered when deciding whether to implement BWV."*

4.2 Operational trials

Several camera deployments were conducted throughout the project to provide evidence toward suitability of this technology for RCMP frontline operational policing. Camera features, performance, audio quality and the capacity to capture evidence were evaluated from each deployment. A brief questionnaire was prepared by DRDC-CSS to capture input from cadets during Depot trials and it was modified to include tactical experience for operational trial feedback from members in the field as well. The primary purpose of the questionnaire was to capture operational feedback to identify any officer safety concerns related to wearing BWV cameras, and the ability of the camera device to record the necessary elements and tactical considerations based on camera usage for the overall study. Operational deployments were conducted regularly within the BWV feasibility study. Evaluation of camera features, performance, audio quality and the capacity to capture evidence was conducted in an analysis of feedback after each deployment.

Interim policy guidelines were developed, in conjunction with OPC guidelines, to provide direction to members during operational deployment of cameras. Further policy development is contingent on legal opinion and direction from senior management. The interim guidelines were devised in conjunction with the OPC Guidance document released February 2015 and analysis of other police agency policy. The guidelines have not gone through the formal policy process and must be revised should national implementation occur.

¹⁵ Espenant, Mark; Murwanashyaka, Jean Nepo; De Gagné, Mathieu; & Wollbaum, April. Defence Research and Development Canada. (October 2015) *Scoping, Technical, and Operational Evaluation of Body Worn Video*. Scientific Report DRDC-RDDC-2015-R204. CSSP-2014-TI-2031 Final Report. Regina, Saskatchewan & Ottawa, Ontario: DRDC-CSS. Link: http://cradpdf.drdc-rddc.gc.ca/PDFS/unc199/p802456_A1b.pdf

4.2.1 Deployment description:

4.2.1.1 E Division: Burnaby, B.C. November 19, 2014 to December 15, 2014.

Description: eight cameras were deployed during an energy sector protest on Burnaby Mountain. Cameras were returned as the operational need diminished.

Burnaby Feedback: Mounting was an issue. Battery life was insufficient.¹⁶

4.2.1.2 E Division: Prince George, B.C. – Canada Winter Games

Description: eight cameras on designated regular members for the duration of the Canada Winter Games from February 13, 2015 to March 1, 2015.

Prince George Feedback: No criminal charges associated to video recordings for court proceedings. Members liked the concept of BWV but not specific camera model. They believe BWV is good but cameras pose a safety concern because if a member is down the evidence can be taken by a suspect. Suggestion was made that the camera should only be a lens and that a secure system could be located on the duty belt or in the car for footage. Comments included: “Officers will get used to the camera and grow to depend on the recordings to articulate what actions they used to bring a situation under control if needed with a few model changes” and “Camera was a distraction as its use diverted attention away from the incident.” This pilot showed BWV camera technology is improving but this model did not meet the operational needs of members who deployed these cameras.¹⁷

4.2.1.3 J Division: 2014 Mount Alison University Exercise

Description: A planned emergency response exercise was held on the Mount Alison University campus on Thursday, May 29, 2014. RCMP members, partnering first responders and university personnel tested evacuation and lock-down procedures during response to an active threat scenario.

Mount Alison Feedback: No feedback was collected from this deployment due to operational circumstances shortly thereafter. Nevertheless, the Exercise tested a fire/ambulance/RCMP response on a Canadian university campus. RCMP objectives included: to improve interoperability between partner agencies, test SAFE plans, IARD protocols, and Critical Incident Response procedures.

4.2.1.4 E Division: Kamloops, B.C.

¹⁶ Information from Burnaby Detachment was received in December 2014.

¹⁷ Information from Prince George Detachment deployment was received in March 2015.

Description: On May 14, 2015 from 1000 – 2000 hours an IARD exercise was held at Thompson Rivers University (TRU) campus to test: RCMP emergency response to an active shooter, communications between stakeholder agencies and TRU emergency and evacuation plan processes.

Kamloops feedback: “Camera fell off during intervention. The camera was too large and the mechanism securing it to the vest was insufficient.”¹⁸

4.2.1.5 E Division: Houston, B.C.

Description: the specific purpose was for two cameras to be used at a protest which had been ongoing for four or five years but saw tensions increase. Two members were designated to use the cameras when interacting with the protestors each day. Deployment from July 22, 2015 to September 30, 2015.

Houston detachment feedback: “It removes the need to wear another piece of equipment. The camera does not secure well to the uniform.”¹⁹

4.2.2 Pilot descriptions:

4.2.2.1 2010 Codiak, New Brunswick & Kelowna, British Columbia

Description: the RCMP conducted a national approved BWV pilot. Limited research data was collected without technical evaluation of the camera equipment. Evaluation was measured primarily on user feedback. Equipment did not meet needs and further testing was recommended.

4.2.2.2 2013 Nanaimo, B.C.

Description: Nanaimo detachment initiated a division approved pilot which ran four months from June to September 2013. Cameras were purchased based on availability and were not designed specifically for BWV. Pilot participants provided valuable strategic technical comments to the national BWV project manager for consideration in the development of BWV.

Nanaimo Feedback: Video data transfer was minute for minute so it took as long to upload as the actual video recording length.

4.2.2.3 2013 November Codiak/Moncton, New Brunswick

Description: A national approved pilot project in New Brunswick was initiated as part of the overall BWV project after an exigent operational need was identified. This pilot ran from

¹⁸ Feedback information from Kamloops received in May 2015.

¹⁹ Information received from personal communication in September 2015.

November 14 to December 7, 2013 and in several instances, BWV provided good evidence for trial. BWV was used during an energy sector protest to capture video of several arrests in which charges were laid.

J Division Feedback: Neither camera model has a battery life greater than 3-3.5 hours in standby mode. Members instructed to only activate device when needed to maximize battery life. Data management and storage quickly became challenges.

4.2.2.4 2015 K & H Divisions

Description: A national approved limited implementation pilot of BWV was conducted to expand pilot trials to an operational environment. Pilots ran from June 23, 2015 to October 15, 2015.

K Division: Wood Buffalo detachment in Fort McMurray, Alberta reporting included:

- some members liked opportunity to record/document the actions of them and the public;
- video & audio quality is good; opportunity to de-escalate situations;
- user friendly and affords member accountability.
- battery life is too short;
- the unit overheats;
- retention clips breaking caused camera to fall off members;
- subject turned off camera during struggle;
- seatbelt activated the camera; unit enters sleep mode and requires a reboot for activation before recording is possible;
- size of the unit is too large;
- “camera angle horizontal is good, vertical often a concern, angle of view- possible eyeglass mount” a future consideration;
- light on top of unit silhouettes members and impacts their night vision.

H Division: Windsor detachment:

- improved level of professionalism from members
- clients had an improved attitude change
- found BWV camera to be an invaluable tool
- battery life did not have longevity to last entire shift
- Software challenges experienced.

H Division: Indian Brook detachment:

- Chief and Band Council were notified of pilot
- cameras are a game changer as clients are less likely to fight officers once advised they were on camera
- battery life is problematic
- challenges included battery life and camera stuck in boot mode



The evaluation of cameras in the scenario based training environment at Depot as well as the operational trials in the field in E, K, J & H Divisions provided considerable evidence toward identifying equipment limitations and experimentation results toward camera functionality. BWC can capture police interactions with the public with a great degree of accuracy.



5 Chapter: Issues and Solutions

5.1 Evidentiary Issues

5.1.1 Camera Activation

The issue of camera activation was identified as a significant factor at the January 2014 workshop. Understanding that this will determine when an incident is recorded and will form the basis of how much data is collected; this decision will have significant storage and retention implications.

Activation was researched and three options were described in briefing material. Option 1 was to record a member's entire shift; option 2 was to record at member's discretion based on policy; and option 3 was to record during every public interaction. In May 2014, CAP Senior Management advised that the RCMP will activate the camera at a member's discretion based on policy to provide guidance around when to use the cameras. This decision is in line with Police Executive Research Forum (PERF) recommendations published in 2014.²⁰ Factors supporting this direction include: cost, privacy, storage and legal elements. Additionally, camera operation is limited by battery life which will be discussed in further detail in this report under Section 5.3.4.

5.1.2 Disclosure

Requirements for digital disclosure vary from province to province for video evidence. In some divisions it is accepted to burn video recordings onto a DVD for disclosure purposes. The difficulty with video evidence on DVD is that the audit trail must be proven to illustrate the recording is a copy of the original taken at the time of the incident. Proprietary video introduces difficulty with playback of recorded footage. Consequently, footage must be able to be viewed in a format that is acceptable within Canadian courts.

5.1.3 Notetaking

Whether to take notes before or after viewing video footage will need to be included in policy. At this point, the recommendation is that members write their notes in the same manner as any other investigation on their use of force incident before viewing the video recording. Once a member completes their initial notetaking of an incident they are then permitted to watch the

²⁰ Police Executive Research Forum (2014) *Implementing a body-worn camera program: recommendations and lessons learned*. Washington, D.C.: U.S. Department of Justice. Link: [http://www.policeforum.org/assets/docs/Free Online Documents/Technology/implementing a body-worn camera program.pdf](http://www.policeforum.org/assets/docs/Free%20Online%20Documents/Technology/implementing%20a%20body-worn%20camera%20program.pdf)

BWV recording. A member must then document in their notes that they watched the recording and any subsequent notes are a result of articulation of any discrepancy between the member's initial notetaking and what the member saw on the video recording. The subsequent notes should articulate the contextual factors and anything the member did not actually see during the incident but was captured in the recording. Anytime a camera is turned off, it must be documented in the member's notebook and include the rationale, such as 'discussion of police tactics'. Camera failures must also be documented in the member's notes.

Generally, it is recommended that officers review video but there are disadvantages. If a video does not depict what an officer remembers the officer will testify to his perceptions. The officer must articulate perception. However, if the officer articulates his perceptions which do not match the BWV content, this may be viewed as an inconsistency in the evidence. A critical disadvantage to an officer viewing video is that it can bias or influence an officer's memory or perception of their recollection. If the officer views the video it must be documented.

5.2 Privacy

5.2.1 OPC Considerations

The complexity of the initiative and the significant amount of research and consultation with stakeholders identified privacy as a critical element within the feasibility study. The BWV project was measured and assessed in the context of the potential impact on our democratic society, civil liberties and the fundamental right to privacy as recognized in Canadian law. Extensive research was conducted to provide justification for the RCMP to undertake this initiative as opposed to adopting other options with less impact on privacy.

Various sources have identified privacy considerations as a risk to BWV camera deployment by law enforcement. *"For the ACLU, the challenge of on-officer cameras is the tension between their potential to invade privacy and their strong benefit in promoting police accountability. Overall, we think they can be a win-win—but only if they are deployed within a framework of strong policies to ensure they protect the public without becoming yet another system for routine surveillance of the public, and maintain public confidence in the integrity of those privacy protections. Without such a framework, their accountability benefits would not exceed their privacy risks."*²¹

²¹ Stanley, Jay. (2013) *Police Body Mounted Cameras : With Right Policies in Place a Win For All*. Alexandria, VA: American Civil Liberties Union (ACLU). Link: <https://www.aclu.org/police-body-mounted-cameras-right-policies-place-win-all>

In February 2015, the Office of the Privacy Commissioner (OPC) published a guidance document to establish recommendations and ensure compliance with privacy legislation.²²

The RCMP has worked closely with the Federal OPC over the past 24 months during the RCMP's BWV feasibility study. Consultation was continuous and the OPC was updated on an ongoing basis regarding camera deployments.

The privacy impact assessment (PIA) identified privacy implications within legislation and provided mitigation strategies to support the use of cameras for specified time periods during technology pilots. In July 2015, the RCMP's PIA was completed and sent to the OPC as per federal requirements. The OPC guidance document was referenced in the creation of the RCMP's PIA for BWV.

Police interaction with members of the public may be recorded during routine investigations. Any person within range of the video and audio recording including suspects, victims, witnesses and bystanders may have their personal information impacted as a result of evidence capture. Canadians value their privacy and we must develop policy to respect that fundamental right.

The first individuals likely to experience an invasion of their privacy will be RCMP members. Surveillance of members has been raised as a concern. Research has suggested BWV cameras may improve the level of professionalism when police are dealing with the public.

5.2.2 Video Retention & Purging

During pilots and trials all recorded footage was uploaded onto an approved secure storage device for disclosure, retention and purging purposes at the end of each shift. Any video management and storage system must have a mechanism for purging.

*The Privacy Act requires personal information that is used for an administrative purpose be retained for a 2 year period, in order to allow individual access, and it is not necessary to retain transitory records for this period of time.*²³ However, further business requirements identified by the RCMP Information Management Branch (IMB) and Access to Information (ATIP) Unit dictate records must be retained for two years after the last administrative action.

²² Office of the Privacy Commissioner of Canada. (February 2015). *Guidance For the Use of Body-Worn Cameras by Law Enforcement Authorities*. Ottawa, Ontario: OPC. Link: https://www.priv.gc.ca/media/1984/gd_bwc_201502_e.pdf

²³ Treasury Board of Canada Secretariat. (2014) *Policies, directives, standards and guidelines*. Link: <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=16557#cha5>

In the BWV Interim Guidelines, a transitory record is defined as follows: *Information sources that are only required for a limited period of time to ensure the completion of a routine action or the preparation of a subsequent record. Transitory records which do not contain personal information; ie. video of a person, must be disposed of or deleted once they have served their purpose and no longer have value to the organization after thirty days... recordings containing personal information must be retained for [a minimum of] two years.*²⁴

5.2.3 Video Vetting | Redaction

Video redaction is necessary for both disclosure purposes as well as for ATIP requests. Personal information must be protected of those not subject to disclosure but who are captured on a video recording in an incident. Personal identifiers such as faces, one of a kind tattoo or any other distinctive features must be blurred out if they are not part of the investigation or ATIP request.

There are various commercial software programs available for video redaction. Currently, the RCMP does not have access to this type of software.

Access to Information (ATIP) requests for BWV footage will become a demand on resources and will require redaction software to protect the privacy of Canadians. BWV footage will have to be reviewed for personal information and potentially redacted consistent with the requirements of the ATI Act. This will require additional resources to review and redact recordings.

5.3 IT

5.3.1 Storage

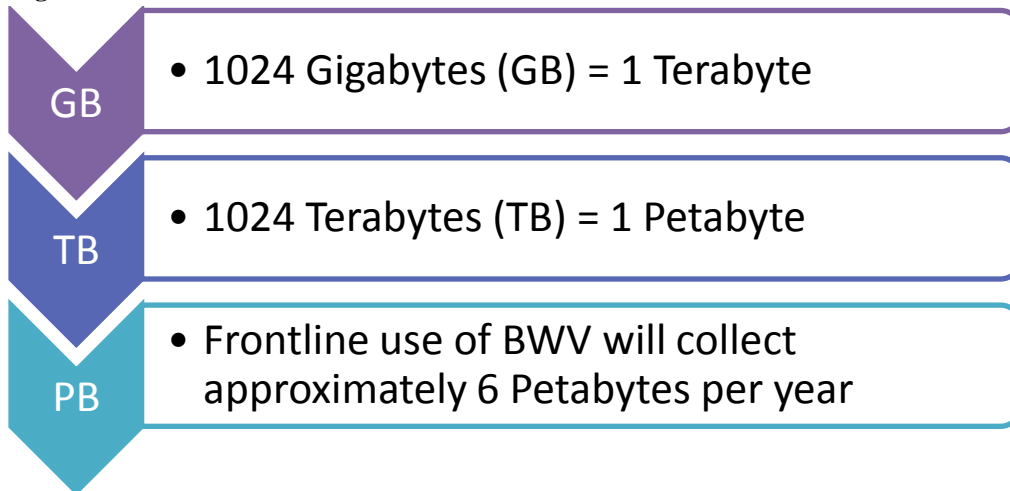
National Criminal Operations (NCROPS) has worked closely with the Chief Information Officer Sector (CIO) regarding the long term storage and management of video data with respect to the BWV project requirements. CIO participants attended the initial workshop in January 2014. The long term storage solution was identified as a significant issue early in the BWV feasibility study. The in-car video (ICV) storage requirements also became part of the overall storage requirement. The CIO was asked to determine storage options that would be able to

²⁴ Information Commissioner of Canada. (2014) *Records Management and You!* Unpublished PowerPoint Presentation from the Information Commissioner of Canada. Link: http://www.oic-ci.gc.ca/eng/rr-sl-odi-adi_2010_education-site-education_records-management-gestions-documents.aspx#link0

accommodate the massive amount of video data to be accumulated and to address storage challenges such as slow upload speeds in Northern and rural detachments.

The average video collected during a shift amounts to approximately one and a half-hours or approximately three gigabytes (GB) of data. Based on 10,000 frontline members, the RCMP will collect approximately six petabytes (PB) of BWV data per year. One PB of storage capacity is equivalent to a volume of one million GB of data. The cost of management and storage of this amount of video data is enormous and may be estimated in the ten million dollar range annually.

Figure 1 - Data Size



This is a crucial element of the project as storage requirements and data management, i.e. court disclosure, downloading etc. will have the most significant impact on the organization, through added cost and person hours.

Storage and retention of BWV evidence will involve high maintenance costs and require massive capacity solutions. Costing estimates are significant for storage of recordings and comprise the majority of costs if BWV is implemented. The CIO is developing a strategy based on a platform for the storage and sharing of digital data files that will enable the RCMP to achieve full integration and interoperability.

The RCMP is in a difficult position when it comes to implementing technology as it operates in geographic regions that are remote, which creates the challenge of fractional bandwidth and very limited connectivity. Fractional T1 lines compound this limitation as the infrastructure is not robust enough to push the data through as it currently exists. Logistically, the RCMP would have to request cache servers at each detachment to improve management of video due to network capability and restrictions of the physical infrastructure. Redundancy must be incorporated into a video system to safeguard against power outages and malicious attacks.

In June 2014, the CIO actively researched possible storage. The key requirement for the RCMP with respect to video data and digital assets is the ability to store, manage and share information in a safe manner which will ensure consistent standards across the Force, thereby reducing cost. This transformation initiative was a component of the Information Management Renewal (IMR) Program. In August 2015, the strategy changed to Cloud as an option. Outsourcing to an off the shelf Cloud product does not require internal resources as the RCMP would employ consultants and the requirement is network connectivity.

When considering cloud storage, it is essential that server infrastructure for RCMP video recordings be physically located in Canada. It must be determined exactly where data is being held. The United States (U.S.) Patriot Act was enacted by Congress in 2001. The acronym USA PATRIOT Act: Preserving Life and Liberty is defined as “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism.”²⁵ It demands that any data or information crossing US borders belongs to the Department of Homeland Security (DHS). This data and information is subject to DHS access without notice. Canadian law enforcement data on a cloud hosted infrastructure would not be exempt from the U.S. Patriot Act. This poses a significant risk which can be reduced by an American company hosting with server infrastructure on Canadian soil. Additionally, if a vendor host goes out of business or becomes bankrupt, it must be contractually documented as to the process of how to retrieve the RCMP data. The issues of where to place the volume of data and how to access it will also become problematic. Finally, a third party auditing function must be factored into a cloud strategy according to the CIO Architecture Office. An audit process will ensure that infrastructure is located upon Canadian soil and meets the security standards in contractual obligations.

Further research and policy development is required whether an on premise or cloud service option is pursued for video management and storage. The RCMP is not close to fielding either storage solution at this point, as a financial business case will be required for each option in order to make evidence based decisions on video storage enterprise solutions.

5.3.2 Data Management

Digital evidence is not new to the RCMP as we have technical experts who are able to identify a video recording as the original and can admit it into court in their testimony. However, this is a massive tasking for all frontline video recordings. A key finding was the ability to track video recordings by metadata which essentially is a unique marker of the time and date stamp.

²⁵ Department of Justice. (October 2001) *The USA PATRIOT ACT: Preserving Life and Liberty. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism*. Washington, D.C.: DOJ. Link: <http://www.justice.gov/archive/ll/highlights.htm>



Metadata is fundamental to illustrating that a recording is in its original form. Recordings should be incident specific and distinguishable accordingly. Automatic video tagging from the recordings' metadata will safeguard the digital data as an exhibit that can be accessed and searched in a records management system. Evidentiary requirements demand that an original image be preserved such that it can be demonstrated the video recording is the original capture of an incident. Digital exhibits must be logged in the same manner as physical exhibits to ensure the preservation of evidence; consequently, the metadata of each video be tracked to provide an audit trail of the recording and who viewed it. The audit trail based on metadata of the video recordings would be equivalent to an exhibit log for physical evidence. An audit trail is mandatory as well to preserve the chain of custody for video recordings. Data management must include the video's metadata and an audit trail for the recording to stand up to court scrutiny. Evidentiary rules exist and must be applied to video recordings for chain of custody and redundancy. The recording must be available for court and catalogued for efficient retrieval.

“Annotation of video recordings must be automatic to separate one incident from another for retention and purging purposes. Tagging and categorization of videos must not become an administrative burden for members”²⁶

RCMP video management is significantly larger than just BWV data. Data includes other video sources such as: interview room, cell block, in-car systems, unmanned aerial vehicles and seized recordings from the public. Video units with necessary personnel may be required to support detachments. Administrative support will be required to maintain new systems and the demand for approved methods for video management, retrieval and storage.

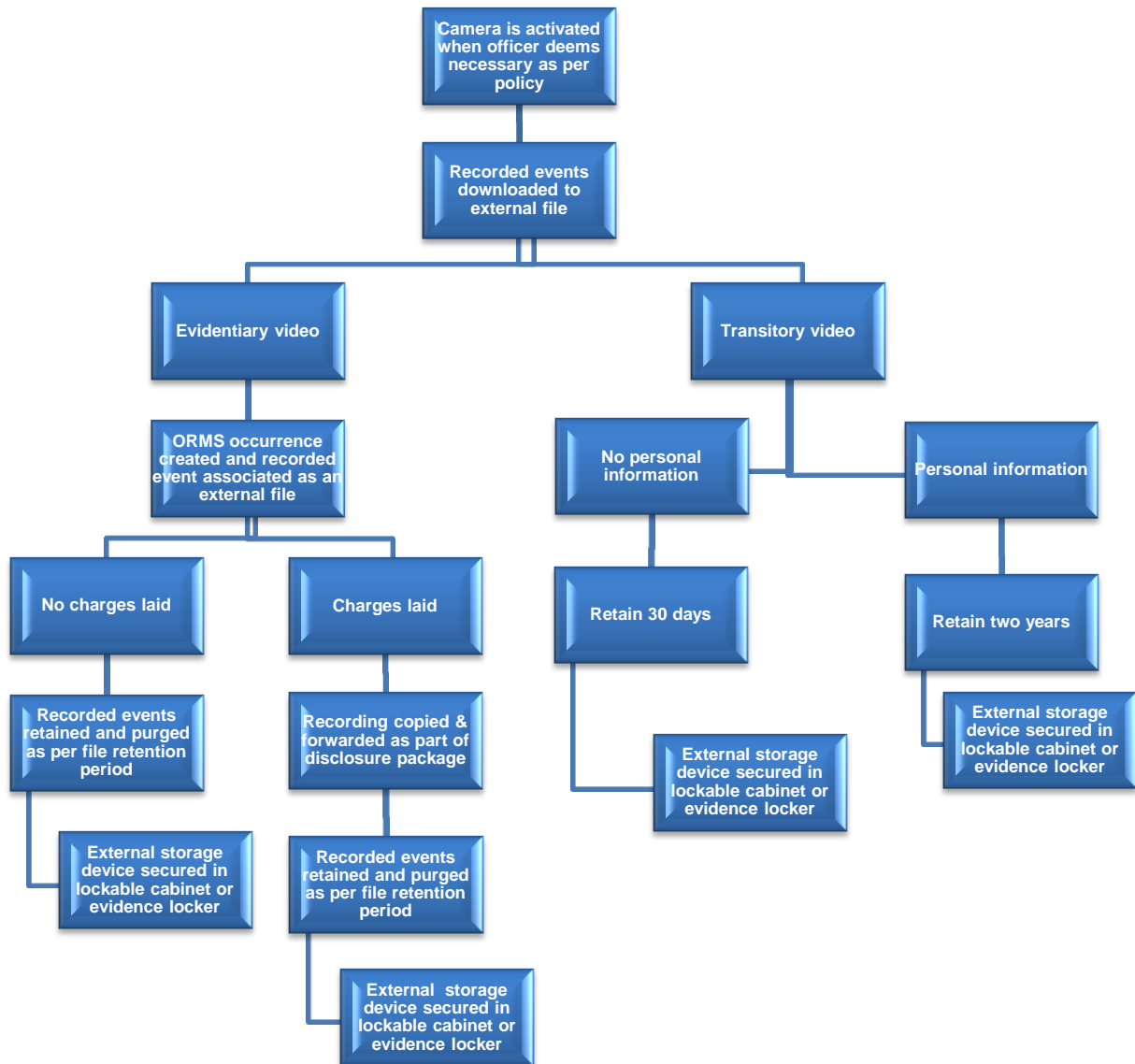
Video data transfer must be automatic within the software. A dock and go feature is extremely beneficial given that video transfer would otherwise cause an enormous time burden to members at the end of their shift. Pulling members off the road to transfer operational video footage does not add value to adoption of this technology. Any future procurement of cameras should include software to transfer video from the camera to data management systems automatically.

The amount of data must also be manageable. Video data may have financial restrictions going forward as the cost of retaining it will be significant. IT plays a critical role in the implementation of video storage.

²⁶ Police Executive Research Forum. (2014) *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*. Washington, D.C.: U.S. Department of Justice. page34.



The following process map illustrates the two streams of information to be collected from BWV recordings:



5.3.3 Security

Departmental Security Branch (DSB) was consulted during the project, specifically for the security level of the technology. DSB personnel assisted NCROPS with the Statement of Sensitivity (SoS) for BWV. The sensitivity of BWV video recordings is within the range of routine operational data, with an expectation of privacy for the personal information. This resulted in a classification of Protected B which will demand that all video recorded must be encrypted at the source (on the camera), in-transit when the recording is removed from the

camera, and at rest in storage. Two-factor authentication or equivalent will be required for BWV data. Each video is a digital exhibit for which the audit trail must be proven using its metadata; it must be evident in court that it is an original video taken at the time of the incident.

DSB advised that Treasury Board Secretariat (TBS) requires all IT systems which process data for production to be accredited by the Departmental Security Officer (DSO). Accreditation assists in controlling disparate systems. Nevertheless, BWV technology overall is too vague to conduct a Threat & Risk Assessment (TRA) as a specific camera is required for evaluation of its precise requirements for a TRA. Should an implementation plan be approved for BWV it would then be a candidate for accreditation independently from any other system. The enterprise video storage system would need to conduct its own TRA as a separate entity given that it has its own set of requirements regardless of any dependencies. The purpose of a TRA is to identify risk and set a mitigation strategy to reduce the risk.

Another consideration is that malware can be embedded onto the camera devices themselves which will allow a computer virus to relay any footage to the originator when the device is connected to a computer. This may further cause problems for the internal network used to manage recordings. Another potential way to compromise police recordings may be with software updates or upgrades. An auditing process, vigilance and attention to contract detail may mitigate concerns related to spyware, malware or viruses.

5.3.4 Camera Technology Findings

Several limited pilots collected data on specific variables including audio and video quality; video data file size; mounting compatibility in various positions and officer safety. The feasibility study and related trials revealed that to date there was no camera identified that meets all of the RCMP's requirements. The cameras that have been researched and tested have issues with battery life and durability. Additionally, the cameras do not always adequately capture the incident due to mounting difficulties. Significant limitations were identified in the areas of camera mounting, video quality and user interface.

As a result of these limitations, a request for information (RFI) was prepared. The results of the RFI responses did not provide new technology from that studied during the feasibility study.

Several camera models have a setting to allow lights and sounds to be diminished during situations in low light to reduce risk to officers wearing the camera and not become a target from camera usage at night.

Cameras must not have ability to see beyond the capability of the human eye. Additionally, a removable memory card will not be authorized for cameras deployed in the field as operational

data must have an audit trail and must not be removed from the device without an audit trail for evidentiary purposes in court disclosure.

The cameras used in the K & H Division pilot projects were purchased after the six month technical evaluations conducted at the RCMP Training Academy in Regina, SK and were a different model than those used at Depot. Unfortunately, similar issues were encountered during the pilot as during the technical evaluations at Depot in that there were numerous technical malfunctions. The manufacturer replaced all of the cameras with an 'upgraded version'; however this did not remedy all of the technical issues. Additionally, during the RCMP feasibility study issues with battery life and recording capability of the cameras have been identified as problematic. To date, no camera has been found that meets all of the RCMP requirements.

Mounting and battery life were determined to be the two most restricting components to camera operation during feasibility study evaluation. Currently camera vendors are actively looking at improving battery life. Industry is willing to adapt to client needs to develop better mounting options. However, battery life is a more unattainable solution as supply will dictate the price and research to improve this key element.

A further restriction identified was software failures. Software drives camera operation and video evidence management which includes the automatic processes of tagging and logging recordings. It is essential to include data management in any future RFP to ensure audit trails and logs can be presented in court as evidence of an original recording.

BWV technology has now evolved into second generation cameras. Second generation systems offer capabilities beyond point and record functionality. Capabilities now include wi-fi, streaming, GPS and facial recognition technology. First generation cameras tested had both hardware and software failures. Second generation BWV cameras are more complex, although battery life is still not meeting needs of an entire shift. These capabilities will result in an increased drain on battery life of the cameras. Technical issues may have implications on member attitude and acceptance of BWC due to the level of frustration from not having confidence in the operation of the device.

A BWV camera must be easy to operate such that a member does not have to take their eyes off a subject or situation to activate the device. Battery life must sustain a shift as we cannot place ourselves in a position to be asked by the courts why the camera was not activated when the technology was available and thereby have charges dismissed. Mounts must securely attach the camera to a police officer without concerns of the device falling off during a use of force interaction. It is in these situations we must rely on the camera to operate appropriately when we need it the most. The image quality must be stable and not blurry from movement. Image

stabilization is not currently available to contend with motion. Redaction software is essential to prepare BWV recordings for court disclosure and ATIP requests.

It is essential that camera technology meet RCMP requirements. More importantly though is that the procurement process identify a vendor who can provide a reliable software management and who will support a back end storage system in the long term. A system which has capability to store other sources of video would be highly beneficial. Data must be easily shared with prosecutors. Proprietary restrictions embedded within software would impede ease of sharing for disclosure and we cannot resort back to copying DVDs. It is the video management and storage systems that are more valuable than the camera itself. Vertical integration with the back end system is essential going forward. A key strategy will be to procure a vendor who has been managing police evidentiary video for a long time. An established vendor will continue to be around in ten years. A vendor must also be highly invested in BWV cameras and systems as we will require long term support for the management of recordings. A vendor who does not have a primary focus on BWV devices and systems may not determine this to be profitable and decide not to support it over time.

5.3.5 Cost

Cameras deployed at Depot, purchased by DRDC, ranged in price from \$256 to \$650 per unit. The SoS requires BWV footage to be classified at a Protected B level for this information which demands encryption for both camera hardware and software. Encryption necessitates increased cost for cameras which can encrypt video data at the appropriate level. Cameras to date which have encryption capability are in the higher price range of \$800 to \$1300.

Cameras typically come with a one year warranty which may result in substantial replacement costs due to typical wear and tear on the device. There may be options for extended warranties at an additional cost however; some types of breakage may not be covered.

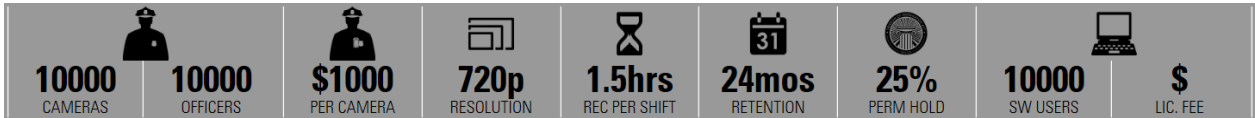
Video, audio and digital asset data storage will involve substantial cost. A digital evidence management system is required for BWV implementation. Moreover, a national video management and storage solution is necessary whether or not the Force decides to implement BWV. Full production for a national storage solution may take years due to processes, logistics, funding, procurement and personnel requirements.

An internal server infrastructure requires additional equipment, management of the data, technical employees and systems to secure the data collected. Logistically, technicians must visit each site to maintain these servers and their connectivity.



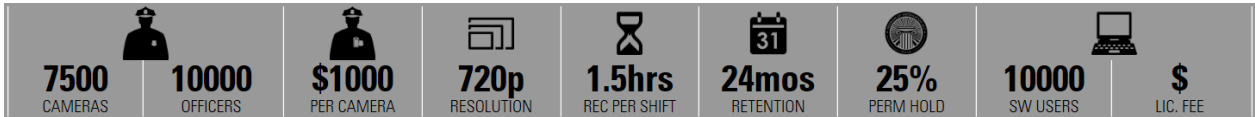
Cloud hosting by a third party vendor requires an online database, adequate bandwidth to access the database, management of the data, technical assistance and forensic auditing. There are financial and staffing ramifications with each storage option.

Various industry providers offer pricing on cloud storage based on a range of fees for service. Current research of providers with infrastructure in Canada includes vendors such as Taser International (TI). For example, TI offers Evidence.com pricing in the United States on their website²⁷ ranging from applicable basic packages at \$39 per user/month including redaction software to \$79 per user/month including camera upgrade every 2.5 years and unlimited data storage for Axon cameras. At the low end, estimates for only the software as a service portion and no annual licensing fees, would be approximately \$7,956,000 per year. At the high end, costing would be approximately \$16,116,000 per year. Another vendor who provides similar service is Motorola Solutions with their cloud service product called Command Central Vault. Based on the cost estimates provided on Motorola’s website,²⁸ the estimated cost for digital evidence management and storage would be:



This estimate is for individual issue of cameras which requires 37,125 Terabytes at a calculated initial equipment cost of \$10,000,000. Total licensing fees are in addition to this estimate.

A second estimate for shared issue of cameras is as follows:



Shared issue results in an estimate of the same 37,125 Terabytes requirement at a calculated initial equipment cost of \$7,500,000. Total licensing fees are in addition to this estimate.

The video resolution does not appear to impact the cost from 720p to 1080p even though this should increase the amount of storage.

²⁷ AXON. (2015) Web link. *Evidence.com Pricing*. Seattle, WA: Taser International. Link: <http://www.axon.io/pricing>

²⁸ Motorola Solutions. (2015) *Digital Evidence Management Solution: Calculator*. Web link. Schaumburg, IL: Motorola Solutions, Inc. Link: https://www.motorolasolutions.com/en_us/solutions/digital-evidence-management-solution/calculator.html

Cloud service results in considerable operating expenses but does not require capital investment or life cycle management of hardware. The CIO's Architecture Services advises that third party auditing function costs must be factored in as this does not exist yet. Additionally, CIO Sector indicates that users should not expect cloud storage to save them money, but users can expect agility.

Should the CIO decide detachment servers are the best way forward, then costing can be determined based on usage and size of each of the 700+ RCMP detachment locations. Ongoing discussion with the Divisional Information Officers will reflect costing based on volumetric numbers for requirements.

These municipal examples provide a glimpse into requirements for a large, medium and small infrastructure base. The number of cameras in use at each site directly impact the volume of data storage required.

BWV life cycle costs must be further analyzed to determine an ongoing equipment replacement and update estimate. Camera technology typically comes with a one year standard warranty. Deployment of equipment to date involved routine breakage of mounting systems, preventing the camera from attaching to the member's uniform. Breakage rates of equipment must be factored into estimates as mounting was found to be a significant consideration during the feasibility study. Additionally, accessory costs for various charging stations, vehicle mounts, wires to offload the recordings and mounting options are contingent on the specific camera model procured. Hardware re-capitalization will require a consensus on an amortization schedule. BWV cameras are now essentially data sticks and are similar to laptop equipment which would demand a three year lifecycle.

Financial cost is a significant impediment to implement BWV cameras for a police agency. The initial purchase of cameras, accessories and storage is a significant investment. Price varies considerably due to camera functionality, storage capacity and battery life. The range of camera prices currently is \$256 to \$1500 and the operable average is \$800 to \$1300 for cameras which meet RCMP technical and functional requirements. Costs related to maintaining camera equipment, repairing technical problems, reviewing and categorizing footage, and responding to ATIP requests are all contributing factors toward ongoing financial budgets. Storage is the most onerous financial factor. Storage costs are fluid and depend on internal infrastructure or cloud-based third party vendor pricing. It must be defined in contractual agreements with third party cloud vendors that the police must own their data within the hosted holdings.

Video management requires additional person hours where jobs do not currently exist. Additional resources will be necessary to inventory recordings as exhibits for court disclosure purposes. Administrative resources will be required to assist with the technical component as



well as the physical infrastructure piece. There are already extreme demands on resources regarding video requirements to ensure video is available for court and to prevent accidental loss.

5.4 Communication Strategy

There has been significant interest in the RCMP's BWV feasibility study over the past two years. Several examples include: CBC Radio interviews, technology interest requests, routine media requests and procurement based requests. In September 2014, National Communications published an InfoWeb posting on the Rotator to inform RCMP members internally of this initiative. NCROPS worked closely with the RCMP's National Communication Services (NCS) to respond to numerous media requests for information regarding the BWV project.

Public perception of RCMP use of this technology must be measured in a national communications strategy. A communication strategy is a key component prior to implementation as it will provide insight into the realities of a police officer's job that must be considered. NCS is currently working on a communications strategy that will deal with adoption or non-adoption of BWV technology. It is expected that any decision made by the RCMP with regards to BWV will generate internal and external interest.

5.5 Training

It is essential for our members to really understand how to use and understand BWV technology to collect evidence. Training and policy guidance must address BWV usage to provide clear direction to frontline members. Articulation is essential to provide context to video evidence. Context is comprised of a combination of situational factors, officer perceptions and risk assessment. Perception, ability to predict an action, threat recognition and decision process will not show on video; yet these factors impact an officer's reaction capability. Human performance and timing must be understood to articulate an officer's actions and explain memory discrepancies. Updated training on camera limitations and articulation will be critical to describe officer perception and memory during post-incident investigations and court testimony. Policy and training will be required to assist members in their abilities to narrate video and articulate it under court scrutiny. Training should also ensure members understand BWV policy and how to apply it appropriately.

A transition period is necessary for new equipment and anything that may involve such as mounting options, wires, battery charging and overall operation of equipment. Infrastructure may differ between divisions and at the detachment level but must accommodate video transfer for members. Roles and responsibilities must be identified to avoid any assumptions. Most camera vendors offer specific camera model operation and video software usage in essentially a train the trainer format. A need to know may exist for viewing video recordings for training and perhaps



de-identifying data for training may mitigate this risk. Most members conduct their duties as though they are being recorded already as this is a reality with the prevalence of camera phones. However, members must ensure they are not placing themselves in danger during interactions by not applying an appropriate use of force.



6 Chapter: Conclusion

This study has included technical evaluations, a literature and case law review and several small pilots. Trials have assessed potential impact to member safety, tactical considerations and evidentiary value for court proceedings. BWV cameras are able to record police interactions with the public to an accurate degree. Software management can provide necessary audit trails to allow recordings to become evidence for court.

BWV cameras are a tool which can be leveraged by frontline uniform members to record supplementary evidence during public encounters to afford greater transparency and accountability. Primary evidence must always come from the officer.

Police encounters with the public are oftentimes conducted in highly dynamic and tense situations and video evidence can provide an accurate account of events. Discrepancies will exist between the actions shown in the video recording and the context which is comprised of an officer's perception and memory. Updated training and policy on camera limitations and articulation will be critical to describe officer perception and memory during post-incident investigations and court testimony. Communication strategies will further inform camera limitations and RCMP usage internally to RCMP employees as well as externally to Canadians.

There are significant factors that must be considered prior to implementing BWV, including cost of data storage and management, technical shortcomings of camera equipment, privacy considerations and the lack of case law in Canada regarding this technology.

Storage and retention of BWV evidence will involve high maintenance costs and require massive capacity solutions. Data storage is directly dependent on the number of video recordings produced, the length of time videos are kept and the location of data storage. This will include evidence management and storage which will be hosted by external vendors. Server infrastructure must be physically located in Canada for RCMP video recordings. The CIO is working towards an enterprise level storage solution for video that will include storage requirements for BWV recordings. They are in the research and business case development stage of this initiative. Fielding a national enterprise solution is still a long way from completion. The cost of implementing BWV camera technology varies depending on whether the RCMP stores video on servers locally at detachments or decides to implement cloud storage with a third party vendor. Expenditures for video storage requirements are approximations based on costs at the time of writing as both pricing and technology changes rapidly causing these estimates to be very fluid. A financial business case will be necessary to further quantify cost and determine overall savings for each storage enterprise option.



Several limited pilots collected data on specific variables including audio and video quality; video data file size, mounting compatibility in various positions and officer safety. Industry is not yet where we need it to be with police requirements of battery life, tamperproof audit trails and mounting capabilities. To date, no camera has been identified that meets all of the RCMP's requirements for its diverse operational policing environment. The cameras researched and tested identified limitations specifically with battery life and durability. Additionally, the cameras did not always adequately capture the incident due to mounting difficulties. As a result, on 2015-11-26 a request for information was published on the Public Works and Government Services Canada website to request industry feedback on BWV camera capability.

This feasibility study revealed evidence toward the suitability of BWV technology for RCMP frontline usage. Significant factors continue to exist such as: cost of data storage and the management of evidentiary data, technical shortcomings of camera equipment, privacy considerations and the lack of case law in Canada regarding this technology. However, these factors can be successfully addressed with policy guidance, training and sufficient data storage.

6.1 Assessment

Forecasting technical innovation and how trends will dissipate or expand is difficult particularly from a policing perspective. Strategically an educated approach must determine whether the overall benefits outweigh the risks and address potential liability of implementing BWV cameras. Police can effectively leverage BWC to illustrate improved accountability and transparency. A probable return on investment could improve officer and citizen behaviour. Members may become more professional during public interactions with the use of BWV cameras to document evidence of an encounter. BWV cameras improve police transparency which could result in increased public trust for the RCMP.

BWV is not a panacea. It is a good tool as it offers broad strokes of corroboration but it may not provide an unequivocal account of what happened. The camera may fail, capture a partial recording or only capture audio of an incident if it is not pointed in the direction of the event. Camera technology is evolving at a rapid pace and may improve to meet the needs of law enforcement usage. Video will not capture context and this must be articulated by an officer. Discrepancies will exist between an officer's notes and the video recording of an incident. Articulation will be critical to describe officer perception and memory during post-incident investigations and court testimony.

Expectations must be managed. Internally, it will be critical to train our members to understand BWV camera functionality as another tool on their belt and identify limitations in that it cannot capture context. Training and policy will assist in maintaining tactics and improve articulation. Externally, a communications strategy may enhance public comprehension of BWV

cameras use in the execution of police duties conducted in highly dynamic and tense situations. Additionally, education of the courts during trial will be necessary to illustrate that primary evidence must come from officer testimony and video is secondary evidence capture. Key to this education process will be having clear policy and training guidance available for members to explain their decisions to the courts. Finally, oversight bodies must be educated on the limitations of video.

The feasibility study provided evidence toward law enforcement use of BWV technology with an advisory that this technology is currently at early stages and is continually evolving. Independently funded research was conducted by DRDC to conclude that *"the evaluations showed that BWV cameras are technically capable of the required collection of video during realistic scenarios, but are currently subject to significant limitations of camera mounting, video quality, and user interface."*²⁹ Operational field trials found that cameras had difficulty with battery life, durability and mounting which did not meet requirements. Camera technology requires software to digitally manage recordings which also resulted in technical difficulties for members in the field. An enterprise solution may resolve similar challenges going forward. Volumetric calculations based on assumptions for retention schedules and current technologies are extremely large and result in the ten million dollar range for the initial equipment purchase in addition to the ongoing maintenance and data storage cost per year.

6.1.1 Benefits

- Improved transparency and accountability for police leading to increased public trust and improved public confidence in police.
- Evidence gathering ability is increased.
- Improved prosecutions of investigations such as domestic assault.
- Encourage improved police and public behaviour.
- Encourage early guilty pleas.
- Improve future quality of service.
- Reduce the number of frivolous public complaints or false allegations against police.

6.1.2 Risks/Drawbacks

- Appropriate storage must be established for video recording data. A requirement for storage is directly dependent on implementation of BWV camera technology.

²⁹ Espenant, Mark; Murwanashyaka, Jean Nepo; De Gagné, Mathieu; & Wollbaum, April. Defence Research and Development Canada. (October 2015) *Scoping, Technical, and Operational Evaluation of Body Worn Video*. Scientific Report DRDC-RDDC-2015-R204. CSSP-2014-TI-2031 Final Report. Regina, Saskatchewan & Ottawa, Ontario: DRDC-CSS.

- Cost is a major factor as management and storage of video recordings comes with significant expense.
- Privacy concerns exist
- Courts may become too dependent on video evidence rather than officer testimony.
- Possibility of trend to continue where charges are thrown out due to lack of video evidence in court.
- Unrealistic expectations (BWV cameras are not a panacea)
- Vulnerability of public analysis of video for police actions as this leaves it open to interpretation (DRDC).
- Cameras have limitations.
- BWV offers broad strokes of corroboration. Discrepancies will exist between an officer's notes and the video recording of an incident. Articulation will be critical to describe officer perception and memory during post-incident investigations and court testimony.
- Identifying a camera that meets all requirements with respect to battery life and durability has been the main issue to date.
- Camera device is subject to viruses and malware which can infect our network systems and compromise privacy through inadvertent release of footage.
- Further considerations include, the camera does not follow an officer's eye; some danger cues may not be captured on video; a camera may see better than the officer in low light; the camera only records in 2-D, which is not equal to the human eye; and the camera lens may be blocked during a recording.

6.2 Options

A. **Status quo** - continue frontline policing without implementing body cameras.

Benefit is no cost incurred as a result of not implementing a BWC program. Risk is that RCMP may be seen negatively for not adopting new technology to increase transparency and accountability. Also, several coroner inquests received by the RCMP recommended use of body worn video.

B. **Force wide implementation** - full RCMP deployment of a BWV camera program.

Benefits include: improved transparency and accountability for police leading to increased public trust and public confidence in police; evidence gathering ability is increased; victimless prosecutions of investigations such as domestic assault; encourage improved police and public behaviour; encourage early guilty pleas; improve future quality of service; reduce the number of frivolous public complaints or false allegations against police.

Risks include: a requirement for storage is directly dependent on implementation of BWV camera technology; cost is a major factor with initial and on-going significant initial and ongoing expenses; privacy concerns exist; courts may become too dependent on video evidence rather than officer testimony; financial loss, injury to reputation or competitive disadvantage to those subjects implicated by BWV footage; & unrealistic expectations exist as BWV cameras have limitations.

C. Limited permanent implementation in a division - offer BWV cameras to be available to divisions as an approved item.

Benefit is this will allow contract provinces to decide whether or not they want to fund specific deployments of this technology. It provides an opportunity to permanently deploy BWV cameras in a controlled approach. For example, a small, medium and large detachment deployment in one division would provide operational data necessary to support a larger deployment within the division over time. The primary risk is that legal challenges could arise regarding why cameras were available in certain jurisdictions and not others. Further, if the technology was available then why was this incident not recorded?

6.3 Recommendation

Recommendation is option C: Limited permanent implementation in a division as the most viable option. Factors supporting this recommendation include cost, privacy, storage and legal elements.

Assessment of BWV is based on projections from RCMP trials and data collected from other police agencies in North America and abroad (U.K.). Permanent limited implementation in an RCMP Division will satisfy the public's demand for accountability while remaining fiscally responsible until the predictions for storage, cost and reliability can be confirmed. Interim policy can be adapted in a division with limited exposure to the courts during criminal trials to improve a larger deployment at a later time. This limited implementation approach decreases the risk of creating bad case law with respect to law enforcement use of this technology in Canada. Several provincial governments have established Steering Committees on BWV cameras involving Crown Prosecutors, Executive Officers and Chiefs from police agencies to create standards and recommend operating procedures. Limited implementation in a division would evaluate camera technology and effectiveness in this dynamic and rapidly evolving sector. Battery life, storage and durability can be addressed in a wide variety of applications given the three detachment sizes and applied to future implementations.

6.4 References

AXON. (2015) Web link. *Evidence.com Pricing*. Seattle, WA: Taser International. Link: <http://www.axon.io/pricing>

CBC News. (2013) *Calls for 'cameras on cops' renewed in latest B.C. inquest. 7 coroners inquest juries in past few years recommended audio and video recording of police actions*. Link: <http://www.cbc.ca/news/canada/british-columbia/calls-for-cameras-on-cops-renewed-in-latest-b-c-inquest-1.2127500>

CBC News. (2014) *Jury makes 9 recommendations in Greg Matters inquest. Jury recommends audio-visual equipment, mental health training for RCMP emergency response teams*. Link: <http://www.cbc.ca/news/canada/british-columbia/jury-makes-9-recommendations-in-greg-matters-inquest-1.2517854>

CBC News. (2014) *Solomon Uyarasuk inquest: Jury recommends reopening investigation*. Link: <http://www.cbc.ca/news/canada/north/solomon-uyarasuk-inquest-jury-recommends-reopening-investigation-1.2853880>

CBC News. (2015) *Hamilton puts off police body-worn cameras for 'foreseeable future'. Pilot would cost an estimated \$1.3 million in hardware, personnel costs*. Link: <http://www.cbc.ca/news/canada/hamilton/news/hamilton-puts-off-police-body-worn-cameras-for-foreseeable-future-1.3327947>

Department of Justice. (2001) *The USA PATRIOT ACT: Preserving Life and Liberty. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism*. Washington, D.C.: DOJ. Link: <http://www.justice.gov/archive/ll/highlights.htm>

Ellingwood, H. & Yamamoto, S. (2014) *Body worn video camera use by law enforcement: A critical review*. Ottawa, Ontario: National Criminal Operations, RCMP, unpublished.

Espenant, M; Murwanashyaka, J, N; De Gagné, M; & Wollbaum, A. Defence Research and Development Canada. (2015) *Scoping, Technical, and Operational Evaluation of Body Worn Video*. Scientific Report DRDC-RDDC-2015-R204. CSSP-2014-TI-2031 Final Report. Regina, Saskatchewan & Ottawa, Ontario: DRDC-CSS. Link: http://cradpdf.drdc-rddc.gc.ca/PDFS/unc199/p802456_A1b.pdf

Farrar, W. & Ariel, B. (2013) *Self-awareness to being watched and socially desirable behavior: A field experiment on the effect of body-worn cameras and police use of force*.



Washington, D.C.: Police Foundation. Link : <https://www.bja.gov/bwc/pdfs/130767873-Self-awareness-to-being-watched-and-socially-desirable-behavior-A-field-experiment-on-the-effect-of-body-worn-cameras-on-police-use-of-force.pdf>

Force Science Institute. (2010) *FSNEWS#145: Do head cameras always see what you see in a force encounter?* Mankato, MN: FSI. Link: <http://www.forcescience.org/fsnews/145.html>

Force Science Institute. *FSNEWS#265: 10 limitations of body cams you need to know for your protection.* Mankato, MN: FSI. Link: <http://www.forcescience.org/fsnews/265.html>

Harvard Law Review. (2015) *Considering Police Body Cameras.* Cambridge, MA. Link : <http://harvardlawreview.org/2015/04/considering-police-body-cameras/>

Information Commissioner of Canada. (2014) *Records Management and You!* Unpublished PowerPoint Presentation from the Information Commissioner of Canada. Link: http://www.oic-ci.gc.ca/eng/rr-sl-odi-adi_2010_education-site-education_records-management-gestions-documents.aspx#link0

International Association of Chiefs of Police (2014). *Body-Worn Cameras Model Policy.* Alexandria, VA: IACP. Link: www.theiacp.org/policycenter

Metropolitan Police Service. (2015) *Police, Camera, Evidence: London's cluster randomised controlled trial of Body Worn Video.* London, U.K.: London MPS. Link: https://www.london.gov.uk/sites/default/files/bwv_report_nov_2015.pdf

Miller, L., Toliver, J., & Police Executive Research Forum. (2014) *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned.* Washington, D.C.: Office of Community Oriented Policing Services, U.S. Department of Justice. Link: <https://www.justice.gov/iso/opa/resources/472014912134715246869.pdf>

Motorola Solutions. (2015) *Digital Evidence Management Solution: Calculator.* Web link. Schaumburg, IL: Motorola Solutions, Inc. Link: https://www.motorolasolutions.com/en_us/solutions/digital-evidence-management-solution/calculator.html

Office of the Privacy Commissioner of Canada. (February 2015). *Guidance For the Use of Body-Worn Cameras by Law Enforcement Authorities.* Ottawa, Ontario: OPC. Link: https://www.priv.gc.ca/media/1984/gd_bwc_201502_e.pdf

Operational Evaluation of Body Worn Video. Scientific Report DRDC-RDDC-2015-R204. CSSP-2014-TI-2031 Final Report. Regina, Saskatchewan & Ottawa, Ontario: DRDC-CSS.

The Police Chief (February 2015). *Police Body-Worn Cameras: An Overview*. Alexandria, VA: IACP. Link: <http://www.policechiefmagazine.org>

Police Executive Research Forum (2014) *Implementing a body-worn camera program: recommendations and lessons learned*. Washington, D.C.: U.S. Department of Justice. Link: http://www.policeforum.org/assets/docs/Free_Online_Documents/Technology/implementing_a_body-worn_camera_program.pdf

Reporters Committee for Freedom of the Press (2016) Washington, D.C. Link: <https://www.rcfp.org/bodycams>.

Stanley, J. (2013) *Police Body Mounted Cameras : With Right Policies in Place a Win For All*. Alexandria, VA: American Civil Liberties Union (ACLU). Link: <https://www.aclu.org/police-body-mounted-cameras-right-policies-place-win-all>

Treasury Board of Canada Secretariat. (2014) *Policies, directives, standards and guidelines*. Link: <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=16557#cha5>

this will be part of policy 2.4 civil coverage

INQUESTS

Except in very limited circumstances, there is no legal aid for an inquest.

The purpose of an inquest is to investigate a death that might have been preventable, and make recommendations that might prevent future similar deaths. It does not lay blame. Sometimes there is no blame – accidents do happen - and the recommendations are about preventing similar accidents.

The inquest might uncover facts that could be the basis for criminal or civil proceedings, but by itself an inquest decides nothing. No individual's liberty or property is affected by an inquest. It is not an adversarial process, where an individual has to be represented by a lawyer to protect themselves.

There are times that the subject matter of an inquest - and the institutions that are under consideration - are at the heart of LSB's justice mission. Two are:

- A death in custody, and
- The death of a child who is legally a ward of the state (that is, in foster care or similar)

Providing legal aid to the family of the deceased in these circumstances is protecting the interests of a client (an apprehended child, a prisoner) who was alive at the time under consideration - and by doing is protecting the interests of all prisoners and all children in care in the future. If the justice system is not involved prior to the death, (for example, if the death occurred after a vehicle accident) the inquest will not generally be suitable for legal aid.

When legal aid is granted for an inquest, it may be for full attendance, as at a trial, or it may be partial attendance, or an office consultation.

No legal aid will be provided for an inquest without a memo from counsel¹ setting out:

¹ **Legal Services Act**

45. (1) Legal aid consisting of the commencement, defence or continuation of proceedings in a civil matter shall not be authorized unless a lawyer supplies a written opinion stating that it is reasonable in the circumstances for the proceedings to be commenced, defended or continued.

Legal Services Regulations

24. Subject to these regulations and except where the circumstances of the case necessitate an immediate authorization, legal aid for civil and appellate matters shall not be authorized unless

- (a) the application with the materials required by section 45 of the Act and section 23 of these regulations has been received;
- (b) the Executive Director considers that it is reasonable that the appeal or action be commenced, defended or continued; and
- (c) the application is approved by the Board.

- The purpose of providing legal aid in this case, bearing in mind that there must be some implication for justice system; and
- The proposed services to be provided, including LSB lawyer and staff time, and expense if any.

In considering the memo, the ED will bear in mind the mandate and resources of LSB², the specific tasks a lawyer is trained to do that will advance the justice mission in the case, and this question: In this case, what legal services would a reasonable family of modest means retain and pay for?

Any approval of legal aid for an inquest will be strictly limited to:

- Specific tasks that a lawyer is trained to do, and
- The approved budget of time and expense;

and the lawyer with conduct of the case will not exceed that approval except by a written request and approval.

Financial eligibility will be presumed.

² Legal Services Regulations

25. In determining the reasonableness of any proposed appeal or action, the Executive Director shall consider the matter from the standpoint of a usual solicitor and client relationship, taking into account the possibility of success, the cost of the proceedings in relation to the anticipated loss, remedy or relief and the likelihood of enforcing judgment, where applicable.

The Legal Services Board of Nunavut

Criminal Law Coverage and Eligibility Policy



2014

This Policy was ratified by the Legal Services Board of Nunavut on September, 2014



LEGAL SERVICES BOARD OF NUNAVUT

Box 125, Gjoa Haven, Nunavut. XoB-1Jo
(867) 360-4600 Telephone (867) 360-6112 Fax

Criminal Law Coverage and Eligibility Policy

1.0 Policy Statement

The Nunavut Legal Services Board (the “LSB”) provides, based upon the presumption of eligibility, legal aid coverage for every person charged with a criminal, statutory or regulatory offence in Nunavut through the first stages of the criminal law process. The coverage offered under the presumption of eligibility is limited to the provision of legal advice on a Charter of Rights and Freedoms 10(b) call, representation at a show cause hearing and the entering of a plea at a first appearance. Should a plea of guilty be entered at a first appearance, legal aid coverage extends to representation for the purposes of the making of submissions on sentencing on the basis of presumed eligibility.

Once an individual has passed the preliminary stages of the court process, criminal law legal aid coverage is offered to individuals who are deemed eligible based upon financial need.

The LSB aims to provide clarity to criminal law clients, lawyers, the judiciary and the public at large regarding what criminal legal aid services are covered based upon presumed eligibility and when an individual needs to satisfy financial criteria to receive criminal law legal aid past the first stages of a criminal file.

2.0 Definitions

“Eligible Person”	<p>An eligible person for criminal law legal aid is an individual who:</p> <p>(1) Has been charged with a criminal, statutory or regulatory offence in Nunavut;</p> <p>(2) receives all or most of his or her income from social assistance or falls within the financial eligibility criteria as per the financial eligibility grid.</p>
“Eligible Offence”	<p>an offence as articulated under Section 44 of the <i>Legal Services Act</i>, R.S.N.W.T. 1988</p>
“Gross income”	<p>total personal income before the payment of taxes</p>
“Net income”	<p>total personal income after the payment of taxes</p>
“Presumed Eligibility”	<p>An individual is presumed eligible, and will receive legal aid coverage from the LSB, when that individual has been charged in Nunavut with an eligible offence. Coverage will include the provision of legal advice on a Section 10B Charter call, at a show cause hearing and at a first appearance to enter a plea. Should a plea of guilty be entered at the first appearance, coverage will</p>

be extended to allow for the making of submissions on sentencing.

3.0 Policy Objectives

- To provide individuals who have been charged in Nunavut with an eligible offence, with criminal law legal aid services through a fair and transparent assignment process.
- To ensure eligible persons are assigned criminal law counsel in an expedient manner.
- To identify which judicial proceedings are covered for individuals under the presumption of eligibility and which are subject to eligibility criteria prior to the assignment of criminal law files to counsel.
- To establish an income grid defining financial eligibility criteria for criminal legal aid clients.

4.0 Coverage Criteria

4.1 Pursuant to Section 44 of the Act, once the presumption of eligibility is no longer relevant, criminal law legal aid is available where financial eligibility is met to eligible persons for proceedings and matters preliminary to anticipated proceedings:

- a) In respect of an offence under an Act of Canada which is or may be proceeded with by way of indictment;
- b) Under the *Extraction Act* (Canada)

- c) Under the *Fugitive Offenders Act* (Canada)
- d) In respect of an offence under an Act of Nunavut or an Act of Canada or regulations made under an Act of Nunavut or an Act of Canada that is proceeded with by way or summary conviction where
 - i) The accused is liable to imprisonment or to another punishment that, in the opinion of the CEO or a person designated by the CEO, would prejudice the livelihood of the accused, or
 - ii) Prescribed circumstances exist that warrant the provision of legal services to the accused;
- e) Under the *Young Offenders Act* or the *Youth Criminal Justice Act* (Canada) where circumstances referred to in subparagraph (d)(i) or (ii) exist;
- f) In respect of any offence or matter not referred to in paragraphs (a) to (e) if, in the opinion of the CEO or a judge, the accused is
 - (i) Incapable of making an informed decision as to his or her proper course of action,
 - (ii) Liable to a punishment that would prejudice the livelihood of the accused;
- g) Constituting an appeal by the prosecution in any preliminary proceeding or matter;

h) Constituting an appeal by the accused in any preliminary proceeding or matter where

- (i) A lawyer advises the Board in writing that the appeal has merit and the Board agrees, or
- (ii) The appellate court or a judge of the appellate court requests the provision of legal services for the conduct of the appeal; or

i) In respect of any prescribed offence or matter.

5.0 Choice of Counsel

5.1 Due to the lack of a resident, private criminal defence bar in Nunavut, the LSB is currently unable to fulfill its obligations under Section 40 of the Act.

5.2 Until there is a satisfactory increase in the number of resident, criminal law lawyers willing and able to take on Section 40 files, which would enable the LSB to meet its statutory and common law choice of counsel commitments, the CEO is provided with the sole authority and discretion to assign counsel to those accused facing the possibility of life imprisonment.

6.0 Financial Eligibility Grid

6.1 To determine if an applicant is financially eligible for criminal law legal aid, the LSB uses the following financial eligibility guideline

Based on an applicant's gross income

Household Size	Annual Gross Income Level
1 person	\$50,400.00
2 persons	\$62,400.00
3 persons	\$88,800.00
4 persons	\$96,000.00
5 persons	\$103,200.00
6 persons	\$110,400.00
7 persons	\$117,600.00
8 persons	\$124,800.00
9 persons	\$132,000.00
10+ persons	\$139,200.00

6.2 Any person with a gross income exceeding the financial eligibility guideline amount for the number of persons in her/his household will be deemed financially ineligible to receive legal aid. Such an individual will consequently have their legal aid application to receive legal representation or services denied.

- 6.3 Those individuals who are not presumed eligible and do not meet the requirements articulated below, will not be approved to receive criminal law legal aid from the LSB. The act of completing and submitting a legal aid application does not constitute a solicitor client relationship.
- 6.4 A person deemed ineligible on financial grounds to receive legal aid will be given the contact information for The Law Society of Nunavut (the “Law Society”). Through the Law Society, the individual will be able to obtain a list of practicing Nunavut lawyers within the private bar who may be able to assist them with their matter.

7.0 Real Property and Liens

- 7.1 In the event an applicant falls within the financial eligibility guideline but is registered on title as owner of real property, the LSB reserves the right to place a lien on title to that property in the initial amount of \$5,000.00. The lien will be used to secure a contribution payment to recover part or all of the cost of the legal services provided to the client.
- 7.2 If a client, who has had a lien placed title, has a file that is of particular severity and complexity necessitating significant legal resources costing more than \$5,000.00, the LSB reserves the right to increase its security by placing additional liens on title in \$5,000.00 increments.
- 7.3 At the conclusion of the file belonging to a client with real property, an accounting of the services rendered and

The Legal Services Board of Nunavut

Family Law Coverage and Eligibility Policy



2014

This Policy was ratified by the Legal Services Board of Nunavut on April 10, 2011.
Amended September, 2014.



LEGAL SERVICES BOARD OF NUNAVUT

Box 125, Gjoa Haven, Nunavut. X0B-1J0
(867) 360-4600 Telephone (867) 360-6112 Fax

Family Law Coverage and Eligibility Policy

1.0 Policy Statement

The Legal Services Board (the “LSB”) provides family law legal aid for certain family law issues for eligible Nunavummiut.

The LSB aims to provide clarity to family law clients, lawyers, the judiciary and the public at large regarding what areas of family law are covered by legal aid. This policy also outlines when an individual will be eligible to receive family legal aid based on merit and financial need.

2.0 Definitions

“Eligible Person” An eligible person for family law legal aid is an individual who:

- (1) is resident in Nunavut;
- (2) has a meritorious case based upon the legal opinion of family law counsel; and
- (3) receives all or most of his or her income from social assistance or falls within the financial eligibility criteria as per the financial eligibility grid.

In certain instances, the LSB and/or Court may provide a child with their own family legal aid lawyer.

“Meritorious claim”	if, in the opinion of the lawyer reviewing the file, the legal issue(s) in question can be deemed to be reasonable and arguable, the claim is meritorious.
“Gross income”	total personal income before the payment of taxes
“Net income”	total personal income after the payment of taxes
“Dependant”	an individual who depends upon another for financial support.
“Child”	a person who is, or in the absence of evidence to the contrary, appears to be under the age of 18.
“Matrimonial Home”	the primary residence owned by spouses during the course of their spousal relationship.
“Spouse”	either a man or a woman who are a) married to each other, b) have together entered into a marital relationship that is void or voidable under the <i>Family Law Act</i> , or c) have lived together, without being married, if they have done so i) for at least two (2) years or ii) for some period of time and are the natural or adoptive parents of a child.

“Lien”	the legal right and mechanism to retain or claim possession of another’s property pending the discharge of a debt.
“Chief Executive Officer”	The Chief Executive Officer (CEO) of the LSB or her/his designate.
“Resident”	a person who lives or ordinarily resides in Nunavut.

3.0 Policy Objectives

- To provide “eligible persons” with specific and pre-approved family law legal services through a fair and transparent assignment process.
- To ensure eligible persons are assigned family law counsel in an expedient manner.
- To articulate the family law coverage areas and priority in the assignment of family law files to counsel.
- To prioritize the assignment of family law counsel in child apprehension cases or other files deemed “urgent” by the CEO.
- To establish an income grid defining financial eligibility criteria for family legal aid clients.

4.0 Coverage Criteria

- 4.1 Family law legal aid is available where financial eligibility is met to eligible persons for claims of custody, access, child support, spousal support, child welfare, child protection, exclusive possession of a matrimonial home if the applicant has children residing or will reside in the matrimonial home, restraining orders pursuant to the *Children's Law Act* and the *Family Law Act* and proceedings under the *Maintenance Orders Enforcement Act*.
- 4.2 Legal aid is also available for certain proceedings pursuant to the *Adoption Act*, the *Aboriginal Custom Adoption Recognition Act* and in child representation matters.
- 4.3 Legal aid is not provided to those seeking redress under the *Family Abuse Intervention Act* ("FAIA"). The LSB reserves the right to provide representation under FAIA in the event the client has been pre-approved for family law legal aid and relief under FAIA becomes necessary.

5.0 Financial Eligibility Grid

- 5.1 To determine if an applicant is financially eligible for family law legal aid, the LSB uses the following financial eligibility guideline:

Based on an applicant's gross income

Household Size	Annual Gross Income Level
1 person	\$50,400.00
2 persons	\$62,400.00
3 persons	\$88,800.00
4 persons	\$96,000.00
5 persons	\$103,200.00
6 persons	\$110,400.00
7 persons	\$117,600.00
8 persons	\$124,800.00
9 persons	\$132,000.00
10+ persons	\$139,200.00

5.2 Any person with a gross income exceeding the financial eligibility guideline amount for the number of persons in her/his household will be deemed financially ineligible to receive legal aid. Such an individual will consequently have their legal aid application to receive legal representation or services denied.

5.3 Those individuals who are not presumed eligible and do not meet the requirements articulated below, will not be approved to receive family legal aid from the LSB. The act of completing and submitting a legal aid application does not constitute a solicitor client relationship.

- 5.4 A person deemed ineligible on financial grounds to receive legal aid will be given the contact information for The Law Society of Nunavut (the “Law Society”). Through the Law Society, the individual will be able to obtain a list of practicing Nunavut lawyers within the private bar who may be able to assist them with their matter.

6.0 Real Property and Liens

- 6.1 In the event an applicant falls within the financial eligibility guideline but is registered on title as owner of real property, the LSB reserves the right to place a lien on title to that property in the initial amount of \$5,000.00. The lien will be used to secure a contribution payment to recover part or all of the cost of the legal services provided to the client.
- 6.2 If a client, who has had a lien placed title, has a file that is of particular severity and complexity necessitating significant legal resources costing more than \$5,000.00, the LSB reserves the right to increase its security by placing additional liens on title in \$5,000.00 increments.
- 6.3 At the conclusion of the file belonging to a client with real property, an accounting of the services rendered and corresponding value will be invoiced to the client. The lien will be discharged from title when the client has paid the LSB, in full, the amount invoiced and any administrative costs incurred by the LSB through the registration and discharge of the lien(s).

- 6.4 The CEO has the discretion to decrease the invoiced amount after taking into account the services rendered, the results achieved and the appropriateness, based upon standard legal practice, of the time spent on a particular file. The CEO may also take into consideration the financial status of the client
- 6.5 All liens will be registered on title under the authority of the CEO on behalf of the LSB.
- 6.6 A client who contributes to the cost of his or her legal aid will not be given priority of service over others. Nor will a contribution entitle a client to a choice of counsel.

7.0 Presumed Eligibility for Child Welfare Matters

- 7.1 There is presumed eligibility for clients involved in child welfare proceedings. In such cases, the requirement for a legal opinion may be waived.

8.0 Priority of Files - Child Apprehension/Urgent/Discretionary Cases

- 8.1 In exceptional cases, where urgency requires the immediate retention of family law counsel, such as in matters dealing with the apprehension of a child or where there is the threat of a *status quo* being established against the client's interests, the CEO has the discretion to deem a person eligible for imminent and necessary court proceedings.

- 8.2 The continued solicitor/client relationship will be reviewed by the CEO at a point when the urgency has been addressed. At this time a determination regarding lien requirements or the necessity of the client retaining private counsel will be looked into.
- 8.3 It is within the discretion of the CEO to waive any residency requirement for an individual applying for legal aid. Such discretion will be exercised in limited situations where extenuating circumstances exist. Such circumstances may include, but are not limited to, significant ties to Nunavut inclusive of been born or raised in the Territory, having familial or cultural connections and or being a long term Nunavut resident who lost residency unintentionally or through circumstances beyond their control.
- 8.4 In the event a client has had a child, who is ordinarily resident in Nunavut, removed from his or her care through abduction, an apprehension or a failure to return a child after a custody or access visit, the application will be given priority over other non-urgent family law applications.
- 8.5 Where a client alleges a set of facts in which the passage of time is likely to create a *status quo* contrary to the client's interests, the application may be given priority over other family law applications. An opinion letter must outline in detail the particular facts and the basis upon which priority is being requested.
- 8.6 Where an eligible client has been served with a Court document, the application will be given priority over other family law applications.

9.0 General Family Law Legal Aid Services

- 9.1 Family law legal aid services include the provision of general advice, initiating and conducting court proceedings and the provision of independent legal advice and mediation. Which services are provided to each client will be decided by the CEO on the advice of family law counsel who are required to submit legal opinions with each legal aid application.
- 9.2 Legal Aid is only available for divorce claims, separation issues between non-married spouses or limited property related matters when there are outstanding issues relating to a child of the relationship. The CEO will undertake a review of ongoing coverage if the issues relating to the children are resolved.
- 9.3 The LSB reserves the right to terminate representation in the event a client insists on taking an unreasonable and/or unwinnable position, against the advice of counsel, in relation to a divorce, separation issues between non-married spouses and/or a property related matter.
- 9.4 In the event a lawyer with carriage of a file is contemplating terminating representation and the solicitor/client relationship due to an unreasonable and/or unwinnable position taken by the client, the lawyer will advise the CEO who will review the matter and make a recommendation of how best to proceed. The CEO's

position will be provided to the client in addition to options the client has in the face of the chosen position. The final discretion as to what options are offered and the terms for the continued legal aid representation always remains with the LSB unless the client chooses to terminate the solicitor/client relationship.

- 9.5 It is in the discretion of the CEO to decide whether legal aid coverage may be available to initiate or respond to a contempt application.
- 9.6 No contempt application may be commenced without a full opinion letter setting out all relevant circumstances of the matter, the facts which justify the bringing of such an application and the steps taken previously to attain the desired result.

- corresponding value will be invoiced to the client. The lien will be discharged from title when the client has paid the LSB, in full, the amount invoiced and any administrative costs incurred by the LSB through the registration and discharge of the lien(s).
- 7.4 The CEO has the discretion to decrease the invoiced amount after taking into account the services rendered, the results achieved and the appropriateness, based upon standard legal practice, of the time spent on a particular file. The CEO may also take into consideration the financial status of the client
- 7.5 All liens will be registered on title under the authority of the CEO on behalf of the LSB.
- 7.6 A client who contributes to the cost of his or her legal aid will not be given priority of service over others. Nor will a contribution entitle a client to a choice of counsel.



The Legal Services Board of Nunavut

Poverty and Civil Law Coverage and Eligibility Policy



2014

This Policy was ratified by the Legal Services Board of Nunavut on September 17, 2014

LEGAL SERVICES BOARD OF NUNAVUT

Box 125, Gjoa Haven, Nunavut. X0B-1J0
(867) 360-4600 Telephone (867) 360-6112 Fax

Poverty and Civil Law Coverage and Eligibility Policy

1.0 Policy Statement

The Legal Services Board (the “LSB”) provides poverty and civil law legal aid for certain legal issues for eligible Nunavummiut.

The LSB aims to provide clarity to clients, lawyers, the judiciary and the public at large regarding what areas of civil law are covered by legal aid. This policy also outlines when an individual will be eligible to receive poverty and civil legal aid based on merit and financial need.

2.0 Definitions

Eligible Person – An eligible person for poverty and civil law legal aid is an individual who:

- (1) is resident in Nunavut;
- (2) receives all or most of his or her income from social assistance or falls within the financial eligibility criteria as per the financial eligibility grid; and

- (3) has a meritorious case based upon the legal opinion of LSB counsel.

Meritorious claim- if, in the opinion of the lawyer reviewing the file, the legal issue(s) in question can be deemed to be reasonable and arguable, the claim is meritorious.

Gross income - total personal income before the payment of taxes

Net income - total personal income after the payment of taxes

CEO - The Chief Executive Officer of the LSB or her/his designate

Resident - a person who lives or ordinarily resides in Nunavut.

3.0 Policy Objectives

- To provide “eligible persons” with specific and pre-approved poverty and civil law legal services through a fair and transparent assignment process.
- To ensure eligible persons are assigned poverty and civil law counsel in an expedient manner.
- To articulate the poverty and civil law coverage areas and priority in the assignment of files to counsel.

- To establish an income grid defining financial eligibility criteria for poverty and civil law legal aid clients.

4.0 Coverage Criteria

- Poverty and civil law legal aid is available where financial eligibility is met to eligible persons for matters relating to poverty & related social issues, including but not limited to human rights, landlord and tenant, employment law and police misconduct files.
- Legal aid is available to individuals facing eviction proceedings under the *Residential Tenancies Act*, R.S.N.W.T. 1988, and c. R-5 (Nu) on a presumed eligibility basis.
- In certain and limited circumstances, and on a case by case basis, legal aid may be available for assistance and/or proceedings deemed to be in the public interest, or in matters where access to justice limitations present a real and substantial risk of an individual suffering an unreasonable pecuniary loss due to the unavailability of private counsel. Approval for coverage in such cases lies solely in the discretion of the CEO of the LSB; such discretion to be utilized while taking into consideration Section 45 of the *Legal Services Act*, economic and resource limitations of the LSB in addition to the in-house expertise of legal aid staff and their ability to adequately represent the applicant in a particular matter.
- Pursuant to Section 45(4) of the LSA, the LSB is statutorily prohibited from providing legal services as they relate to:

- defamation;
- matters respecting the estates of living or deceased persons;
- the incorporation, formation or dissolution of companies, corporations societies or partnerships;
- real property transactions;
- relator or representative actions, arbitrations or conciliations in respect of any matter; or
- proceedings relating to elections and any prescribed matter

5.0 Financial Eligibility Grid

5.1 To determine if an applicant is financially eligible for poverty and civil law legal aid, the LSB uses the following financial eligibility guideline: *Based on an applicant's gross income*

Household Size	Annual Gross Income Level
1 person	\$50,400.00
2 persons	\$62,400.00
3 persons	\$88,800.00
4 persons	\$96,000.00
5 persons	\$103,200.00
6 persons	\$110,400.00
7 persons	\$117,600.00
8 persons	\$124,800.00
9 persons	\$132,000.00
10+ persons	\$139,200.00

- 5.2 Any person with a gross income exceeding the financial eligibility guideline amount for the number of persons in her/his household will be deemed financially ineligible to receive legal aid. Such an individual will consequently have their legal aid application to receive legal representation or services denied.
- 5.3 Those individuals who are not presumed eligible and do not meet the requirements articulated herein, will not be approved to receive poverty and civil law legal aid from the LSB. The act of completing and submitting a legal aid application does not constitute a solicitor client relationship.
- 5.4 A person deemed ineligible on financial grounds to receive legal aid will be given the contact information for The Law Society of Nunavut (the “Law Society”). Through the Law Society, the individual will be able to obtain a list of practicing Nunavut lawyers within the private bar who may be able to assist them with their matter.

6.0 Real Property and Liens

- In the event an applicant falls within the financial eligibility guideline but is registered on title as owner of real property, the LSB reserves the right to place a lien on title to that property in the initial amount of \$5,000.00. The lien will be used to secure a contribution payment to recover part or all of the cost of the legal services provided to the client.
- If a client, who has had a lien placed title, has a file that is of particular severity and complexity necessitating significant legal

resources costing more than \$5,000.00, the LSB reserves the right to increase its security by placing additional liens on title in \$5,000.00 increments.

- At the conclusion of the file belonging to a client with real property, an accounting of the services rendered and corresponding value will be invoiced to the client. The lien will be discharged from title when the client has paid the LSB, in full, the amount invoiced and any administrative costs incurred by the LSB through the registration and discharge of the lien(s).
- The CEO has the discretion to decrease the invoiced amount after taking into account the services rendered, the results achieved and the appropriateness, based upon standard legal practice, of the time spent on a particular file. The CEO may also take into consideration the financial status of the client
- All liens will be registered on title under the authority of the CEO on behalf of the LSB.
- A client who contributes to the cost of his or her legal aid will not be given priority of service over others. Nor will a contribution entitle a client to a choice of counsel.

7.0 Priority of Files - Urgent/Discretionary Cases

- In exceptional cases, where urgency requires the immediate retention of poverty and civil law counsel, such as in matters dealing with an eviction, the CEO, or its designate, has the

discretion to deem a person eligible for imminent and necessary court proceedings.

- Once the urgency has passed, and initial proceedings have been completed to the extent necessary, the person shall submit application for review and approval. The Interim representation shall not affect the usual considerations or outcome of the approval process.
- It is within the discretion of the CEO to waive any residency requirement for an individual applying for legal aid. Such discretion will be exercised in limited situations where extenuating circumstances exist. Such circumstances may include, but are not limited to, significant ties to Nunavut inclusive of being born or raised in the Territory, having familial or cultural connections and or being a long term Nunavut resident who lost residency unintentionally or through circumstances beyond their control.

8.0 General Poverty and Civil Law Legal Aid Services

- Poverty and Civil law legal aid services include the provision of general advice, initiating and conducting court or similar proceedings and the provision of independent legal advice and mediation. Which services are provided to each client will be decided by the CEO based on the advice and recommendation of counsel who is required to submit legal opinions with each legal aid application.
- The LSB reserves the right to terminate representation in the event a client insists on taking an unreasonable and/or unwinnable position, against the advice of counsel.