



FIRST VOICE
Urban Indigenous Coalition

Building Trust, Restoring Confidence

Proposals for Strengthening Police Oversight
in Newfoundland and Labrador

Draft Report of the First Voice Working Group on Police Oversight

July 2022

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Executive Summary

This draft Report has been prepared by the First Voice Working Group on Police Oversight, a community-led project to review the system of police oversight in Newfoundland and Labrador and propose ideas for improvement. The purpose of this Report is to lay the groundwork for moving towards more effective and transparent civilian oversight of policing in Newfoundland and Labrador, including the implementation of **Calls for Justice 5.7 and 9.2(iii)** of *The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*. Both Calls urge all levels of government to establish robust and well-funded Indigenous civilian police oversight bodies.

This Report compares the current police oversight mechanisms in Newfoundland and Labrador to other jurisdictions in Canada, as well as other countries where appropriate. When compared to other jurisdictions, Newfoundland and Labrador has among the weakest and least effective models for transparency and accountability of police. Unlike numerous other jurisdictions in Canada, Newfoundland and Labrador does not have a civilian-led police oversight board that can engage proactively with the public to identify community policing priorities while also ensuring meaningful accountability from police leadership.

Although Newfoundland and Labrador has a public complaints commission that receives and investigates complaints concerning police misconduct, that complaints commission lacks impartiality and transparency. Newfoundland and Labrador also has a serious incident response team that investigates more serious police wrongdoing, such as when police officers' actions have led to the serious injury or death of an individual. Similar to the public complaints commission, however, the Serious Incident Response Team involves a self-investigative structure, which gives rise to serious concerns about impartiality. Furthermore, it is unclear whether either of these existing oversight bodies has the will – or even the legal authority – to investigate and address systemic problems in policing.

To address these problems with the existing system of police oversight in the province, this Report includes a detailed list of Proposals for Change for strengthening police oversight in Newfoundland and Labrador. The core changes that are being proposed include:

1. Establishing a new civilian-led Police Oversight Board (**Group 1 Proposals**) that is politically neutral, independent of police, and reflects the province's diverse communities (**Group 2 Proposals**);
2. Strengthening and streamlining the public complaints process (**Group 3 Proposals**); and

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3. Improving confidence in the Serious Incident Response Team (**Group 4 Proposals**).

In order to ensure effective and transparent policing services, it is critical that communities in Newfoundland and Labrador have a say in how mechanisms of police oversight are shaped and how they operate. The Working Group's overall objective is to build a broad, non-partisan consensus on the urgent need to take action to strengthen civilian oversight of police services in the province and to provide careful and considered advice directly to government in pursuit of that end. The more immediate goal of this draft Report is to help educate the public on the issues and possible solutions while at the same time encouraging and collecting community feedback from rights-holders, stakeholders, and members of the general public.

All such community feedback that is received will help inform the development of a final report, inclusive of specific recommendations for the Government of Newfoundland and Labrador to implement fully the two Indigenous-specific Calls for Justice.

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Introduction

This draft Report has been prepared by the First Voice Working Group on Police Oversight (the “Working Group”).¹ A collaborative project bringing together First Voice partners, contributors, and supporters with community members, government agencies, and other stakeholders, the Working Group aims to develop a provincial framework for implementing Calls for Justice 5.7 and 9.2(iii) of *The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*.² Those Calls for Justice can be found at **Appendix A** of this Report.

These two Calls for Justice urge federal, provincial, and territorial governments to establish robust and well-funded Indigenous civilian police oversight bodies within their own jurisdictions. They also call upon all actors within the justice system to work together to ensure adequate and appropriate Indigenous representation, including Indigenous women, Elders, youth, and 2SLGBTQIA+ people within all such oversight bodies.

While Calls for Justice 5.7 and 9.2(iii) are specific to Indigenous oversight and representation, this Report encompasses civilian-led police oversight more generally.³ This Report is not a standalone report; rather, it is intended to lay the foundation for building more effective and transparent civilian oversight of policing in Newfoundland and Labrador. The end goal of the Working Group is to develop a final report, inclusive of specific recommendations for the Government of Newfoundland and Labrador to implement the two Indigenous-specific Calls for Justice. As a first step, the Working Group has developed a detailed list of Proposals for Change for strengthening police oversight in Newfoundland and Labrador more broadly. These Proposals for Change can be found at **Appendix B** of this Report.

This draft Report has two primary purposes. First, it is meant to summarize the Working Group’s deliberations and conclusions with respect to the development of a set of specific recommendations to implement Calls for Justice 5.7 and 9.2(iii) in Newfoundland and Labrador.

¹ For more information on the Working Group, including its Terms of Reference, see: <https://firstvoicenl.ca/article/community-led-working-group-on-police-oversight-announced/>.

² *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, online: <https://www.mmiwg-ffada.ca/final-report/> [the “MMIWG Inquiry Report”].

³ One of the main themes throughout the MMIWG National Inquiry hearings was “the need for more responsive, transparent, and accountable policing: investigations and oversight”. See Theme 16 in the MMIWG Master List of Report Recommendations: <https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/National-Inquiry-Master-List-of-Report-Recommendations-Organized-By-Theme-and-Jurisdiction-2018-EN-FINAL.pdf>.

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Second, this draft Report is made publicly available to elicit community feedback with the objective of building a broad, non-partisan consensus on the urgent need to take action to strengthen civilian-led oversight of police services in the province.

Written comments will be accepted until **September 1, 2022**, and can be provided directly to policing@firstvoicenc.ca. First Voice is able to provide support to key stakeholders who may not have the necessary organizational capacity to develop written submissions on their own.

Background

In the summer of 2020, communities of colour led protests across North America – including here in Newfoundland and Labrador⁴ – against systemic racism in policing. The problem is well established and well documented. Senator Murray Sinclair, who served as the Chair of the Truth and Reconciliation Commission, defined systemic racism as: “when the system itself is based upon and founded upon racist beliefs and philosophies and thinking and has put in place policies and practices that literally force even the non-racists to act in a racist way.”⁵ Concerns about systemic racism within the policing organizations in Canada, along with repeated calls to address it, have been raised in communities across the country and even within some police services themselves.⁶

In Canada, the problem of systemic racism in policing is nearly as old as policing itself. In 1873, the North-West Mounted Police (“NWMP”) was created, which eventually became the Royal Canadian Mounted Police (“RCMP”). The NWMP was created to advance the agenda of the newly established colonial state:

For over a century, the central goals of Canada’s Aboriginal policy were to eliminate Aboriginal governments; ignore Aboriginal rights; terminate the Treaties; and, through a process of assimilation, cause Aboriginal peoples to cease to exist as distinct legal, social, cultural, religious, and racial entities in Canada. The establishment and operation of

⁴ CBC News. *Thousands come together for Black Lives Matter rally in St. John’s*. June 6, 2020. Online: <https://www.cbc.ca/news/canada/newfoundland-labrador/black-lives-matter-rally-st-johns-1.5601646>.

⁵ Murray Sinclair, as quoted by Sierra Bein, in “Morning Update: RCMP commissioner ‘struggles’ with definition of systemic racism, but denies it exists on force,” *Globe & Mail*. June 11, 2020. Online: <https://www.theglobeandmail.com/canada/article-morning-update-rcmp-commissioner-struggles-with-definition-of/>.

⁶ John McKay, *Systemic Racism in Policing in Canada*, House of Commons, June 2020, p 16: <https://www.ourcommons.ca/Content/Committee/432/SECU/Reports/RP11434998/securp06/securp06-e.pdf>.

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residential schools were a central element of this policy, which can best be described as “cultural genocide”.⁷

First the NWMP, and then the RCMP, helped assimilate and forcibly relocate Indigenous people onto reserves and settlements.⁸ From 1885 until the 1940s, for example, it enforced the Pass system, which restricted First Nations people to reserves without allowing them to leave unless they had permission from an Indian agent.⁹ Any disobedience would result in the RCMP assaulting, bullying, and jailing First Nations people.¹⁰ The Report of the Royal Commission on Aboriginal Peoples (“RCAP”) links reserves and the Pass system to early markers of prisons.¹¹ The RCMP also played a role in residential schools, including actively searching for Indigenous children and delivering them to residential schools, forcibly removing Indigenous children from their families, and were often required to act as truant officers.¹²

When questioned in 2020 the head of the RCMP, Commissioner Brenda Lucki, denied the allegation that there was systemic racism within the RCMP. (The Commissioner later retracted her statement and accepted that systemic racism does exist within the RCMP.)¹³ These issues are not new in Newfoundland and Labrador, which is policed by the RCMP and the Royal Newfoundland Constabulary (“RNC”).

The absence of any kind of civilian-led police oversight board in Newfoundland and Labrador makes it difficult if not impossible to address well known problems such as systemic racism in a responsible and proactive way. The Province’s ability to address other related issues is hampered as well, such as a lack of police accountability and widespread community mistrust of both the

⁷ Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future*, 2015, p. 1.

⁸ Truth and Reconciliation Commission of Canada: *Honouring the Truth, Reconciling for the Future*, 2015.

⁹ F. Laurie Barron, *The Indian Pass System in the Canadian West*, University of Saskatchewan: https://saskarchives.com/sites/default/files/barron_indianpasssystem_prairieforum_vol13_no1_pp25ff.pdf.

¹⁰ Marcel-Eugene Lebeuf, *The Role of the Royal Canadian Mounted Police During Indian Residential School System*, RCMP-GRC, 2011: https://publications.gc.ca/collections/collection_2011/grc-rcmp/PS64-71-2009-eng.pdf.

¹¹ RCAP - linking reserves to prisons.

¹² Marcel-Eugene Lebeuf, *The Role of the Royal Canadian Mounted Police During Indian Residential School System*, RCMP-GRC, 2011: https://publications.gc.ca/collections/collection_2011/grc-rcmp/PS64-71-2009-eng.pdf.

¹³ Palmater, Pam. *Brenda Lucki must go*. Maclean’s. June 18, 2020: <https://www.macleans.ca/opinion/brenda-lucki-must-go/> [“Lucki must go”].

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RNC and the RCMP. Together, this cluster of issues points to the urgent need to strengthen civilian-led police oversight mechanisms in the province.

The media has reported on stories involving members of the RNC and RCMP which contribute to community mistrust. Recently, for example, two RCMP officers entered a home in a community on the West Coast of Newfoundland while the family was asleep, and proceeded to question an 11-year old girl in the child's bedroom, while shining a flashlight in her face, all without parental notice or consent.¹⁴ Troubling allegations concerning operations within the RNC have also been reported on, including dysfunctional management practices such as favouritism when it comes to RNC officers getting promoted.¹⁵ Examples such as these are not isolated incidents; rather, they are a direct embodiment of the systemic policing issues in the province.

There has been, and continues to be, systemic issues within the RCMP, including decades of ongoing sexual harassment and racism.¹⁶ Recently, concerns of similar systemic issues within the RNC have also come to light. For example, more than a dozen women have come forward with allegations that they were sexually assaulted by on-duty RNC officers.^{17, 18} In response to the allegations, the Minister of Justice has initiated a workplace review of the RNC.¹⁹ While a positive step in the right direction, such a workplace review is inadequate on its own, especially given the

¹⁴ See CBC news article dated June 7, 2022, online: <https://www.cbc.ca/news/canada/newfoundland-labrador/cortney-pike-rcmp-daughters-bedroom-1.6480341>.

¹⁵ McLeod, James. *RNC needs fixing, politicians agree*. The Telegram. June 13, 2017. Online: <https://www.thetelegram.com/news/local/rnc-needs-fixing-politicians-agree-129923/>.

¹⁶ See *Broken Dreams, Broken Lives: The Devastating Effects of Sexual Harassment on Women in the RCMP*, Hon. M. Bastarache, Q.C.: Final Report of on the Implementation of the Merlo Davidson Settlement Agreement, online: https://www.callkleinlawyers.com/wp-content/uploads/2020/12/RCMP_Final-Report_Broken-Dreams.pdf; also see the detailed article by Pam Palmater titled *Canada should declassify, deconstruct and defund the RCMP* at: <https://canadiandimension.com/articles/view/declassify-deconstruct-and-defund-the-rcmp>.

¹⁷ See CBC news article dated July 22, 2021, online: <https://www.cbc.ca/news/canada/newfoundland-labrador/brazil-hogan-rnc-independent-review-1.6113045>.

¹⁸ A female officer with the RNC has also alleged she was raped by an off-duty colleague. See Sarah Smellie, *Lawsuit alleges Royal Newfoundland Constabulary officer raped off-duty colleague*, May 20, 2022, online: <https://atlantic.ctvnews.ca/lawsuit-alleges-royal-newfoundland-constabulary-officer-raped-off-duty-colleague-1.5912859>.

¹⁹ See CTV news article dated October 19, 2021, online: <https://atlantic.ctvnews.ca/n-l-government-orders-review-of-royal-newfoundland-constabulary-1.5629526>; it does not appear that public concerns surrounding management practices of the RNC are included in the workplace review initiated by the Minister of Justice.

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number of allegations that have been made as well as concerns about the potential for ongoing threats to the health and safety of community members, particularly women.

Given the troubling history of policing in the province, it is clear that the existing policing requirements and training standards are insufficient for addressing community concerns of police conduct and accountability. Without an adequate civilian-led police oversight body having the power to implement the necessary training standards and policies, and to provide oversight for compliance with such standards, examples of police misconduct such as those cited above are likely to continue. That does not need to be the case. Communities in Newfoundland and Labrador are able to access other public services through entities which are accountable to oversight bodies, and the police forces operating in the province should be no different.

Oversight bodies are common across various professions. Two examples of oversight bodies protecting the public in the province are that of the Newfoundland and Labrador Dental Board (NLDB) and the Law Society of Newfoundland and Labrador (LSNL). The NLDB investigates misconduct on behalf of dentists operating in Newfoundland and Labrador, and has the power to discipline dentists for misconduct. One recent case was that of Dr. Louis Bourget who allowed a prison guard to extract several teeth of a sedated prisoner who was receiving dental care from Dr. Bourget. Bourget was fined a total of \$25,500 and received a six-month suspension of his license to practice dentistry, with further disciplinary action pending the outcome of the criminal charges arising from the incident.²⁰

The LSNL is a similar type of regulatory body that is authorized by Newfoundland and Labrador's *Law Society Act* to regulate the practice of law and the legal profession in the public interest. The LSNL protects the public by regulating the legal profession in such ways as: acting as a gatekeeper to the legal profession by requiring that all lawyers are of good character and fit to practice law; maintaining a comprehensive directory which outlines contact information for all practicing lawyers; maintaining a law library available to the public; promoting lawyer competence by requiring that all practicing lawyers continue their legal education while practicing; conducting regular trust audits to ensure lawyers are compliant with the Law Society

²⁰ Canadian Press. *Dentist in NL let correctional officer pull 'one or more' teeth from sedated inmate*. Toronto Sun. February 9, 2022. Online: <https://torontosun.com/news/national/dentist-in-n-l-let-correctional-officer-pull-one-or-more-teeth-from-sedated-inmate>.

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Rules; conducting reviews of lawyers' practices; and receiving complaints about lawyers and ensuring that all complaints follow the appropriate disciplinary process.²¹

These are but two examples of professions in Newfoundland and Labrador where oversight can and does protect the public. It is time for policing in the province to face similar oversight and accountability.

Policing in Canada

In Canada, there are four levels of police services: federal, provincial, Indigenous,²² and municipal. At the federal level is the RCMP, which is responsible for enforcing federal laws. The RCMP also provides policing services, under contract, in all territories and provinces except Ontario and Quebec. Both of these provinces have their own provincial police forces, namely the Ontario Provincial Police ("OPP") and the Sûreté du Québec ("SQ"), which are responsible for policing all areas of their respective provinces except for towns and cities that have municipal police forces.²³

While provinces are responsible for public policing,²⁴ they often delegate responsibility to municipalities through provincial legislation – often called Police Acts. As a result, most cities and many large towns across Canada have their own municipal or city police forces.²⁵

Policing in Newfoundland and Labrador

Compared to the rest of the country, the policing context in Newfoundland and Labrador is somewhat different. With no municipal police, there are only two active police forces in Newfoundland and Labrador: the RNC and the RCMP. With approximately 400 members, the RNC

²¹ Law Society Newfoundland & Labrador. *For the Public*. Online: <https://lsnl.ca/public/>.

²² In Canada, First Nations and Inuit communities may implement their own police forces, pursuant to the First Nations and Inuit Policing Program (FNIPP). For more information on FNIPP, see: <https://www.publicsafety.gc.ca/cnt/cntrng-crm/plcng/brgnl-plcng/index-en.aspx>.

²³ See *Police resources in Canada, 2019* Statistics Canada, at: <https://www150.statcan.gc.ca/n1/pub/85-002-x/2020001/article/00015-eng.htm> ["*Police resources in Canada, 2019*"]; and Canadian Encyclopedia's *Police in Canada*, at: <https://www.thecanadianencyclopedia.ca/en/article/police>.

²⁴ Pursuant to the *Constitution Act, 1867*, 30 & 31 Victoria, c. 3. (U.K.), s. 92.

²⁵ See *Police resources in Canada, 2019*.

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provides police services in the St. John's metro region, Corner Brook, and Western Labrador. The RNC is established under, and governed by, the *Royal Newfoundland Constabulary Act*.²⁶ A single Chief of Police serves as the commanding officer for the RNC in all three regions in which the RNC provides police services.

Police services in all other parts of Newfoundland and Labrador are provided by the RCMP, which operates a force of approximately 550 members in the province. Although the *Royal Canadian Mounted Police Act* is the governing legislation for the RCMP,²⁷ pursuant to the *Agreement for Policing in the Province Act*, members of the RCMP stationed in the province are granted the same powers as members of the RNC, and the Commanding Officer of the RCMP is granted the same powers as the Chief of Police of the RNC.²⁸ The RCMP is headed by a single Commissioner, a position currently held by Brenda Lucki²⁹, who works under the direction of the federal Minister of Public Safety and Emergency Preparedness.³⁰

In addition to the Commissioner, who oversees RCMP operations in the country, there are also Assistant Commissioners that serve as the commanding officer for a particular region.³¹ Assistant Commissioner Jennifer Ebert is the commanding officer appointed for Newfoundland and Labrador, assuming that role in April 2022.³² The Governor in Council (the Governor General

²⁶ *Royal Newfoundland Constabulary Act, 1992*, S.N. 1992, c. R-17 [the "RNC Act"].

²⁷ *Royal Canadian Mounted Police Act*, R.S.C 1985, c. R-10 [the "RCMP Act"].

²⁸ *Agreement for Policing the Province Act*, R.S.N. 1990, c. A-5, section 3.

²⁹ RCMP executive, online: <https://www.rcmp-grc.gc.ca/en/rcmp-executive#lucki>.

³⁰ *RCMP Act*, s. 5; also see RCMP executive – Role and mandate, online: <https://www.rcmp-grc.gc.ca/en/rcmp-executive>.

³¹ *RCMP Act*, s. 6(1).

³² See: <https://www.rcmp-grc.gc.ca/en/nl/commanding-officer>.

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acting on the advice of Cabinet)³³ selects and appoints the Commissioner (i.e. Brenda Lucki)³⁴, Deputy Commissioners,³⁵ divisional and regional commanding officers of the RCMP (i.e. Assistant Commissioner Jennifer Ebert),³⁶ as well as members of the Civilian Review and Complaints Commission (“CRCC”).³⁷

The federal Cabinet³⁸ also appoints lieutenant governors for each province, as representatives of the monarch for their respective provinces. The Honourable Judy Foote is currently the Lieutenant Governor of Newfoundland and Labrador.³⁹ It is the Lieutenant Governor in Council (the Lieutenant Governor acting on the advice of Cabinet) who is empowered to appoint the commanding officer of the RNC, and has plenary power in relation to the RNC.⁴⁰ The RNC Chief of Police is responsible for the general control and administration of the RNC,⁴¹ but the Chief of Police is accountable to, and takes general direction from, the provincial Minister of Justice and Public Safety.⁴²

³³ Governor in Council appointments are made by the Governor General, on the advice of the Queen’s Privy Council of Canada (i.e., the Cabinet). See “Governor in Council appointments”, online: <https://www.canada.ca/en/privy-council/programs/appointments/governor-council-appointments/general-information/appointments.html>; the Governor General is the federal representative of the monarch and is the Commander-in-Chief of Canada, see: <https://www.gg.ca/en/governor-general/role/responsibilities>.

³⁴ *RCMP Act* section 5(1).

³⁵ *RCMP Act* section 5(3).

³⁶ *RCMP Act* section 6(1).

³⁷ *RCMP Act* section 45.29(1).

³⁸ The Governor General acting on the advice of Cabinet.

³⁹ See: <https://www.monarchist.ca/index.php/our-monarchy/viceregal-representatives/the-lieutenant-governors>.

⁴⁰ *RNC Act*, s. 4(1).

⁴¹ *Ibid.*

⁴² *RNC Act*, s. 6(2).

Civilian Oversight

Defining Civilian Oversight

Oversight is defined as “systems or actions to control an activity and make sure that it is done correctly and legally.”⁴³

In the context of policing, the term “civilian oversight body” generally refers to a person, board, agency, commission, or other organisation responsible for setting, monitoring, and enforcing standards that are in line with democratic expectations of how police officers ought to conduct themselves in the course of executing their duties. Some oversight bodies are also responsible for processing complaints concerning police conduct in a province or territory.⁴⁴ The overall goal of systems of civilian oversight of police is to build and maintain public confidence in the administration of justice.⁴⁵ The main benefit of civilian oversight of police services is that it helps to ensure public confidence in – and cooperation with – the police.⁴⁶

Put more simply, civilian oversight of police involves the setting and enforcement of standards that are in line with the democratic values of society, and expectations of how police officers are to conduct themselves.

Civilian Oversight Bodies

Given the broad policing powers afforded to officers, including powers of search and seizure, detention and use of force, it is critical that they be accountable to the communities they serve. To achieve this, each province and territory may implement their own civilian oversight bodies to establish and set policing standards, monitor and review police effectiveness, and to conduct inquiries and complaint hearings. There are variations in the types of civilian oversight bodies in

⁴³ Cambridge Dictionary, online: <https://dictionary.cambridge.org/dictionary/english/oversight>.

⁴⁴ *Police Act*, SNB 1977, c P-9.2 at s 1.

⁴⁵ Kent Roach, *Models of Civilian Police Review*, in *Issues in Civilian Oversight of Policing* (Toronto: Canada Law Book, 2014) at pg. 39, 46 [“*Models of Civilian Police Review*”].

⁴⁶ *Issues in Civilian Oversight of Policing* (Toronto: Canada Law Book, 2014), pg. 163; also see CBC News article, *Police accountability begins with proper civilian oversight*, dated June 12, 2020, online: <https://www.cbc.ca/news/opinion/opinion-police-oversight-1.5606047>.

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place across the country, as well as differences in their structure and operations, depending on the jurisdiction. Generally, oversight bodies in Canada fall into three categories:

- Provincial or municipal police boards;
- Public complaints commissions; and
- Independent investigatory bodies and/or units for serious incidents.

Each of these types of civilian-led police oversight bodies are considered in more detail in the sections that follow.

As is demonstrated in the next three sections of this Report, when compared to other jurisdictions across the country, Newfoundland and Labrador has among the weakest and least effective systems to ensure transparency and accountability of police. As such, the next three sections focus on the three core Proposals for Change: establishing a new civilian-led police oversight board; strengthening the public complaints commission process; and improving the Serious Incident Response Team.

Group 1 & 2 Proposals for Change

Establish a New Civilian-Led Police Oversight Board in Newfoundland and Labrador

While Newfoundland and Labrador has a public complaints commission and Serious Incident Response Team, the province has no comprehensive system of civilian oversight of police, such as a police services board or police commission. In light of this major gap in police oversight in Newfoundland and Labrador, this section explores various provincial and municipal police boards that exist across Canada, in order to identify both best practices as well as issues to avoid.

Newfoundland and Labrador does not have municipal police forces, and this Report does not propose that any be created. Nevertheless, the oversight mechanisms that are in place across the country, despite existing largely at the municipal level, are still instructive when it comes to identifying the benefits and challenges of improving police accountability within the provincial policing model that currently exists in Newfoundland and Labrador, which will likely continue into the foreseeable future.

Provincial and Municipal Police Boards: Options to Consider for Newfoundland and Labrador

Several provinces such as Ontario, Manitoba and Saskatchewan have provincial police oversight bodies. The Ontario Civilian Police Commission (“OCPC”) is a particularly interesting example of such an oversight body. The OCPC, like other police oversight boards, has the authority to conduct hearings into requests for the reduction, abolition, creation or amalgamation of police services; provides general enforcement relating to the adequacy and effectiveness of policing services; and conducts investigations and inquiries into the conduct of chiefs of police, police officers and members of police services boards.⁴⁷

Generally, the legislated mandate of municipal police boards is to provide civilian oversight and administrative direction regarding the enforcement of law, the maintenance of the public peace, and the prevention of crime in a particular city.⁴⁸ Board members are selected in a variety of ways, depending on the jurisdiction. For example, in Ontario, interested applicants may apply to become a provincially appointed member through listed vacancies on the Public Appointments Secretariat website.⁴⁹ Qualifications include being a resident of the municipal area served by the board, passing a comprehensive background check, and being involved in the local community.⁵⁰ Conversely, in Halifax, the City Council (and potentially the Solicitor General for the Province of Nova Scotia) appoints members to the Board of Police Commissioners for the Halifax Regional Municipality.⁵¹ In other jurisdictions, elected members of municipal councils may serve as *ex officio* members of their local police board. In British Columbia, for example, mayors are automatically appointed as Chair of their municipality’s police board, if one exists.⁵²

⁴⁷ The OCPC powers and duties come from the *Police Services Act*, R.S.O. 1990, c. P. 15.

⁴⁸ Winnipeg Police Board, “Overview of Mandate”, online:
<https://winnipeg.ca/clerks/boards/WpgPoliceBoard/overview.stm>.

⁴⁹ Ontario Ministry of the Solicitor General, “Police services boards”, online:
https://www.mcscs.jus.gov.on.ca/english/police_serv/PolicingServicesBoards/PSB.html.

⁵⁰ *Ibid.*

⁵¹ (HRM) Respecting the Board of Police Commissioners for the Halifax Regional Municipality, By-law No. P-100.

⁵² (BC) *Police Act*, RSBC 1996, c 367 at s 23(1)(a).

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Manitoba offers an instructive comparative model, particularly in light of MMIWG Call for Justice 9.2(iii).⁵³ In addition to having 11 municipal police boards, that province has also established the Manitoba Police Commission,⁵⁴ which consists of five to nine members appointed by the provincial Cabinet.⁵⁵ Further, *The Police Services Act* in Manitoba (“Manitoba PSA”) states that the provincial Cabinet must take into account the cultural and gender diversity of the province when appointing members to the Commission.⁵⁶ The Commission must also include at least one member of a First Nation and one Métis person, which are the two main Indigenous groups in the province.⁵⁷

The Manitoba Police Commission is responsible for various duties, including among others:

- Developing a policy and procedures manual for police boards and a code of ethical conduct for members of police boards;
- Arranging for training to be provided to members of police boards and civilian monitors; and
- Performing any other duties assigned by the Minister.⁵⁸

Section 26 of the Manitoba *PSA* states that every municipality that operates a police service must establish and maintain a police board.⁵⁹ Police boards work closely with the police chief in the

⁵³ That Call for Justice calls upon actors in the justice system to “ensure appropriate Indigenous representation, including Indigenous women, girls, and 2SLGBTQIA people.”

⁵⁴ The Manitoba Police Commission, “Police Boards”, online: <http://www.mbpolicecom.ca/programs/police.html>.

⁵⁵ It is the Lieutenant Governor in Council, which is the Lieutenant Governor acting on the advice of Cabinet, that makes the appointments.

⁵⁶ *The Police Services Act*, S.M. 2009, c. 32, s. 9(3) [“Manitoba PSA”].

⁵⁷ *Ibid*, at s 9(2).

⁵⁸ *Ibid*, s 7.

⁵⁹ *Ibid*, s 26.

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municipality to establish annual priorities and objectives for the police service that reflect the community's needs and values.⁶⁰ Specifically, a police board must ensure that:

- The police chief establishes programs and strategies to implement the priorities established by the board for the police service;
- Community needs and values are reflected in the policing priorities, objectives, programs, and strategies; and
- Police services are delivered in a manner consistent with community needs, values, and expectations.⁶¹

Finally, the municipal police boards in Manitoba must operate in accordance with the Police Commission's policy and procedures manual.⁶² Being able to establish policies and standards to ensure effective and accountable policing is critical. This includes ensuring appropriate requirements are in place for a person to become a police officer as well as the standards officers must adhere to after they complete their initial training and are posted to a detachment.

Policies and Standards

To become an RCMP officer, individuals must have a high school diploma (or equivalent such as a GED) and must attend a 26-week training course at the RCMP Depot in Regina, Saskatchewan.⁶³ To become an officer with the RNC, applicants are required to have completed at least one academic year of post-secondary education or one year of military service with the Canadian Armed Forces. The RNC then requires that officers attend a six-month program called the RNC Cadet Training Program at the RNC Provincial Headquarters in St. John's.⁶⁴

The requirements to become an officer with the RNC or RCMP fall far short when compared to some other countries. To become an officer with the Swedish Police Authority, for example,

⁶⁰ The Manitoba Police Commission, "Manitoba Police Boards: Policy and Procedure" (2018) at 8, online: <http://www.mbpolicecom.ca/pdf/Manitoba-Police-Boards-Policy-and-Procedure-Manual.pdf>.

⁶¹ Manitoba *PSA*, at s 28(2).

⁶² *Ibid*, s 35(1).

⁶³ RCMP official website: <https://www.rcmp-grc.gc.ca/en/qualifications-and-requirements>.

⁶⁴ RNC official website: <https://www.rnc.gov.nl.ca/join-the-rnc/application-and-selection-process/getting-started/>.

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requires 2.5 years of training at one of five Swedish Universities. Once accepted, police training focuses on conflict resolution and crisis management, with special attention paid to studying human behaviour and interpersonal communications. Usually this course of training amounts to 300 hours of experience in social science, human relations, and psychology. The final step in training consists of a 24-week-long Officer Trainee Program.⁶⁵ Going well beyond these already demanding requirements, nearly 45% of police chiefs in Sweden had a law degree as of 2013.⁶⁶ It is surely no accident that the Swedish Police Authority has some of the highest levels of trust among citizens when compared to other police services around the world.⁶⁷

Currently, in Newfoundland and Labrador, additional policies and standards governing the conduct of RNC police officers⁶⁸ may be established under the *RNC Act*. Under the Act, the Minister of Justice and Public Safety has authority to make further regulations that prescribe:

- Standards for police services;
- The RNC Public Complaints Commission's ("RNC PCC") procedures and rules of proceedings regarding complaints as well as the conduct of an investigation;
- Use of force by police officers;
- The required standards of education or training courses for police officers; and
- A code of conduct or other rules in which offences constituting misconduct are described.⁶⁹

⁶⁵ *Polisprogrammet*. Sodertorn University. Online: <https://www.sh.se/english/sodertorn-university/meet-sodertorn-university/this-is-sodertorn-university/organisation/police-studies>.

⁶⁶ Wahlberg S. *Poliser tränger undan juristerna på de högre tjänsterna - endast 44 procent har en jur kand.* 2013-02-12, Dagens Juridik. Online: <https://www.dagensjuridik.se/nyheter/poliser-tranger-undan-juristerna-pa-de-hogre-tjansterna-endast-44-procent-har-en-jur-kand/>.

⁶⁷ Statista Research Department. *Trust in the police worldwide 2021, by country*. November 23, 2021. Online: <https://www.statista.com/statistics/1274278/trust-in-police-worldwide-by-country/>.

⁶⁸ Section 2(l) of the *RNC Act* defines police in a way that excludes the RCMP.

⁶⁹ *Ibid*, at s 57.

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The *RNC Act* empowers the provincial Cabinet⁷⁰ to appoint the Chief of the RNC. Currently, the approximately 400 members of the RNC answer to the RNC Chief of Police, who is directly accountable to the Minister of Justice for the Province, as provided in the Act:

4. Chief of Police and commissioned officers

4(1) The Lieutenant Governor in Council shall appoint a commanding officer of the constabulary to be known as the Chief of Police, who, subject to the minister's direction, has the general control and administration of the constabulary and its members.

4(2) The chief and commissioned officers shall hold office during the pleasure of the Lieutenant Governor in Council.⁷¹

Given the political convention that the Minister of Justice – rightly – cannot give specific direction to the Chief of Police when it comes to the conduct of criminal investigations or other narrow operational matters, the existing chain of command has left the RNC's leadership with little in the way of accountability mechanisms.

Under the same Act, the Chief of Police is responsible for:

- Monitoring the constabulary to ensure that adequate and effective police service is provided in the province;
- Monitoring the constabulary to ensure that police officers and other constabulary employees comply with required standards of service and discipline;
- Administering discipline in accordance with the Act;
- Developing and promoting programs to enhance professional police practices, standards, and training;
- Conducting a system of inspection and review of the constabulary; and
- Developing and promoting programs for community-oriented police services.⁷²

⁷⁰ It is the Lieutenant Governor acting on the advice of Cabinet that makes the appointments.

⁷¹ *RNC Act*, s 4(1).

⁷² *RNC Act*, at s 6.

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Every provincial Police Act has its own provisions relating to police policies and standards as well as who sets them. In Nova Scotia, for example, the Minister of Justice is responsible for the *Police Act*.⁷³ In order to ensure that an “adequate and effective” level of policing is maintained throughout the province, the Minister may (among other things):

- Liaise, consult, and co-operate with similar bodies across Canada to encourage uniformity in procedures, proceedings, standards, and any other matters relating to police services;
- Provide information and advice to boards, chief officers, and other police authorities about the management and operation of police departments as well as training, etc.; and
- Develop, approve, or deliver police training.⁷⁴

However, it is the provincial Cabinet⁷⁵ that has the power to make regulations prescribing standards for the adequacy and effectiveness of policing services in Nova Scotia.⁷⁶

In British Columbia, by comparison, the Minister of Public Safety delegates responsibility for overseeing policing policies and standards to an appointed Director of Police Services.⁷⁷ This Director reports to the Minister and may establish standards for:

- The training of people to become officers;
- The training and retraining of officers;
- The use of force;
- The promotion of unbiased policing and law enforcement services delivery; and

⁷³ (NS) *Police Act*, SNS 2004, c 31 at s 4.

⁷⁴ *Ibid*, at s 6(a),(d) and (g).

⁷⁵ i.e. The Lieutenant Governor, acting on the advice of Cabinet.

⁷⁶ (NS) *Police Act*, s 97.

⁷⁷ (BC) *Police Act*, RSBC 1996, c 367 at s 39(1).

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- Community consultation regarding the priorities, goals, and objectives for policing and law enforcement.⁷⁸

Saskatchewan is an example of a jurisdiction that has delegated the power to set policies and standards to a commission. In that Province, both the Minister and the Saskatchewan Police Commission are empowered to “promote” adequate and effective policing throughout the province,⁷⁹ but it is the Commission that sets provincial standards for various aspects of policing, including training and discipline for all municipal police services in the province.⁸⁰

These examples from other jurisdictions provide a brief overview of who may be responsible for establishing policies and standards, as well as the scope of authority for what may be included in those policies and standards. They have informed the Proposals for Change that are put forward in this Report.

Reasons for Change

Without a police oversight board in Newfoundland and Labrador to address the glaring deficiencies in police accountability that are systemic in nature, the necessary change for building community trust in the police will be difficult, and perhaps even impossible, to achieve.

To ensure effective policing and public confidence, the proposed Police Oversight Board should be able, among other things, to set regulations in relation to (a) use of force by police; (b) education, training and standards of conduct for police officers; and (c) policies and procedures for investigating complaints of misconduct. It is vital that these powers be vested in the Police Oversight Board, as opposed to political actors, for several reasons.

First, as an elected official, the Minister of Justice and Public Safety is expected to make decisions based on his or her party’s strategic political interests, rather than the absolute public good. Second, the Minister of Justice and Public Safety is responsible for overseeing several complex branches of the Justice Department, including several non-police entities such as Family Justice Services, the Civil Division of the Department of Justice and the general administration of the courts. By contrast, a civilian-led Police Oversight Board would be politically neutral and focused

⁷⁸ *Ibid*, at s 40(1)(a.1).

⁷⁹ *The Police Act, 1990*, S.S. 1990-91, c. P-15.01, sections 18 and 19.

⁸⁰ *Ibid*. Also see: <https://www.saskatchewan.ca/government/government-structure/boards-commissions-and-agencies/saskatchewan-police-commission>.

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on a single set of issues and priorities while making sound decisions based purely in the public interest. In addition, as an institutional buffer between the Minister of Justice and Public Safety and the Chief of Police, the Police Oversight Board would be well positioned to address the challenges of accountability that exist within the current chain of command.

It bears emphasizing the importance of the Police Oversight Board having the authority to establish policies, standards and procedures for investigations into police misconduct, including as they relate to the Serious Incident Response Team. To ensure that such policies, standards and procedures are reflective of the different backgrounds and identities in Newfoundland and Labrador, any oversight body setting such standards also needs to have diverse representation.

The nature of the Police Oversight Board that is being proposed by the Working Group would allow for decisions about policing in the province to reflect the needs and priorities of the public, as the Board would reflect the diversity of the public that it serves. The composition of the Manitoba Police Commission can be regarded as a starting point.⁸¹ Decisions with respect to appointments to that Commission, for example, must take into account the cultural and gender diversity of the province; and the legislation specifically requires that at least one member of a First Nation and one Métis person be on the Commission.⁸²

Proposals for Change

The intent of the Working Group, as set out in the detailed list of Proposals for Change at page 48, is to address the serious issues surrounding the lack of police accountability and oversight in Newfoundland and Labrador.

To move towards effective and positive change, one of the core Proposals for Change calls for the establishment of a Board of Commissioners for Police Oversight (“the Police Oversight Board”) in Newfoundland and Labrador. The Police Oversight Board must be empowered by statute to provide independent, civilian-led, proactive oversight of, and high-level direction to, both police forces that operate in the province (see **Proposals for Change 1 to 1.2**).

⁸¹ The Manitoba Police Commission, “Police Boards”, online: <http://www.mbpolicecom.ca/programs/police.html>.

⁸² *The Police Services Act*, S.M. 2009, c. 32, s. 9(3) [“Manitoba PSA”].

Group 3 Proposals

Strengthen the Public Complaints Commission in Newfoundland and Labrador

When experts talk about civilian-led oversight for addressing police misconduct, they often focus on two types of civilian-led disciplinary mechanisms, which differ depending on the severity of police misconduct. The first receives complaints from the public concerning a police officer's non-criminal misconduct: these may be called complaints commissions, police commissions, or review boards, depending on the jurisdiction. The second investigates police officers whose actions have led to the serious injury or death of an individual, or when police officers are alleged to have committed a sexual offence, domestic violence, or any other matter of significant public interest: these are typically called serious incident response teams or independent investigative units.⁸³ It is the first type discussed in this section. (The second type is addressed in the **Group 4 Proposals**.)

In Canada, many police complaints bodies adopt an oversight and disciplinary model that is premised on police themselves investigating complaints about police misconduct within their own ranks. This self-investigative type of complaints body has drawn criticism because police may be unable to put aside biases when investigating fellow officers.⁸⁴ In some jurisdictions, however, there has been a shift towards more autonomy, with independent bodies increasingly conducting their own civilian-led investigations and hearing complaints about police conduct.⁸⁵ However, that is not the case for the public complaints commission in Newfoundland and Labrador.

An example of true civilian-led police oversight is the New Zealand Independent Police Conduct Authority (the "NZ Authority"). The website for the NZ Authority emphasizes that: "We are totally independent: We're headed by a Judge and don't answer to the police, the government or anyone else about our findings."⁸⁶ The NZ Authority does, however, have a blended team of investigators with both "policing and non-policing backgrounds". According to the *Independent Police Conduct Authority Act 1988*, the Commissioner of Police ("the Commissioner") must notify

⁸³ See Canadian Civil Liberties Association, *Who Polices the Police? Civilian Police Oversight in Canada* online: <https://ccla.org/get-informed/talk-rights/who-polices-the-police-civilian-police-oversight-in-canada/> ["Who Polices the Police?"]; also see *Issues in Civilian Oversight of Policing* (Toronto: Canada Law Book, 2014).

⁸⁴ *Ibid*, *Who Polices the Police?*

⁸⁵ *Models of Civilian Police Review*, at 58.

⁸⁶ New Zealand Independent Police Conduct Authority official website: <https://www.ipca.govt.nz/>.

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the NZ Authority of every complaint received by the police and of every police incident involving death or serious bodily harm.⁸⁷

Public Complaints Commissions in Newfoundland and Labrador

In Newfoundland and Labrador there are two separate complaints bodies: one for the RNC and one for the RCMP. The CRCC is the commission that receives and conducts reviews of civilian complaints concerning the conduct of RCMP officers.⁸⁸

The RNC PCC acts as a registrar for complaints made against members of the RNC and ensures that they are dealt with in accordance with the *RNC Act*.⁸⁹ Any person other than a police officer or a person employed in the RNC may file a complaint concerning the conduct of a police officer or the operational policies and procedures of the RNC.⁹⁰ In order to make a complaint, the person must have been directly affected by the conduct or policies and procedures in question.⁹¹

The RNC PCC consists of a Commissioner, appointed by the provincial Cabinet⁹² who supervises and directs Minister-appointed officers, investigators, and other employees.⁹³ Upon receiving a complaint, the Commissioner engages the Chief of Police to conduct an investigation in order to determine if the complaint has merit. If the complaint is found to be substantiated, the Chief or Deputy Chief may take any of the following actions:

- Settle the matter directly with the complainant;
- Discipline any police officers who are the subject of the complaint; or

⁸⁷ [NZ] Independent Police Conduct Authority Act 1988, ss 13, 15 [IPCA Act].

⁸⁸ Civilian Review and Complaints Commission for the RCMP: <https://www.crcc-ccetp.gc.ca/>

⁸⁹ *RNC Act*, at s 18(4)(a). More information on the RNC PCC can be found on the website at: <https://www.rncpcc.ca/file-a-complaint/>.

⁹⁰ *Ibid* at s 22(1). However, according to s 22(2), a police officer or person employed in the RNC may file a complaint if the matter giving rise to the complaint occurs *outside* the scope of the police officer's or person's employment.

⁹¹ *Ibid*.

⁹² *Ibid* at s 18(1).

⁹³ *Ibid* at s 18(2), 20(1).

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- Take any other action that is considered appropriate.⁹⁴

Alternatively, if the Chief or Deputy Chief determines that the complaint is not substantiated, then it may be dismissed without any further action being taken.

If either the Chief or Deputy Chief determines that it is in the public interest to do so, a complaint may be referred back to the RNC PCC to conduct its own investigation.⁹⁵ In the event that such a complaint cannot be resolved by the RNC PCC, the Commissioner may refer the matter to an adjudicator.⁹⁶ The same process may be used if a police officer appeals a disciplinary decision and the Chief or Deputy Chief has imposed a penalty that includes a suspension without pay for two weeks or longer, dismissal, or demotion.⁹⁷ Parties may appeal an order of the adjudicator or the RNC PCC to the trial division of the Supreme Court of Newfoundland and Labrador.⁹⁸

Complaints Commissions in Other Jurisdictions

In Nova Scotia, the Office of the Police Complaints Commissioner (“OPCC”) investigates complaints by citizens alleging misconduct by municipal police officers.⁹⁹ After its investigation, the OPCC decides either to discipline the officer or that no further action with respect to the complaint is necessary. If the complainant is not satisfied with the decision of the OPCC, the complainant can request to have the matter referred to the Nova Scotia Police Review Board (the “NS Review Board”); which is established under the provincial *Police Act* and is empowered to hear and rule on public complainant appeals.

The NS Review Board comprises at least three people who are appointed by the provincial Cabinet and who each hold office for one three-year term (members of the Board may be reappointed.)¹⁰⁰ The Chair or Co-Chair of the Review Board must hold a bachelor’s degree in law,

⁹⁴ *Ibid* at s. 25.

⁹⁵ *Ibid* at s. 24(5).

⁹⁶ *Ibid* at s. 28(2).

⁹⁷ *Ibid* at s. 28(3).

⁹⁸ *Ibid* at s. 36(1).

⁹⁹ See Office of the Police Complaints Commissioner mission statement: <https://novascotia.ca/opcc/>.

¹⁰⁰ (NS) *Police Act*, SNS 2004, c 31 at s. 13(1), (4).

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or an equivalent degree as determined by the Governor in Council.¹⁰¹ The Minister of Justice may direct the Review Board to investigate, inquire into, and report upon any matter relating to the extent, investigation, or control of crime; the enforcement of law; and the operation and administration of a police department.¹⁰² Any report issuing from any Review Board investigation must be presented to both the Minister and the municipal board of the police service concerned.¹⁰³

In Manitoba, The Law Enforcement Review Agency (“LERA”) receives and investigates public complaints concerning alleged misconduct of municipal police officers. The provincial Cabinet appoints a Commissioner who investigates all complaints made in accordance with the Manitoba *Law Enforcement Review Act*.¹⁰⁴ The Commissioner is permitted to use all necessary resources and persons for investigative purposes; however, no member of the police service against which a complaint is made may participate in the investigation. Where the Commissioner, during the course of an investigation, determines that a police service practice or policy was a contributing cause or factor to the alleged police officer wrongdoing, the Commissioner may make recommendations for change to rectify any flaws in the organizational or administrative practice or policy.¹⁰⁵

Reasons for Change

In Newfoundland and Labrador, the current mechanism for handling public complaints directly engages the RNC Chief of Police in receiving the complaints and deciding whether the complaint warrants investigation.¹⁰⁶ The very model that is meant to facilitate the accountability of police officers necessarily places the Chief of Police into an inherent conflict of interest, whether real or perceived, where he or she must always weigh the competing demands of justice against the likely desire to maintain a favourable public image of the force.

¹⁰¹ *Ibid* at s. 13(5).

¹⁰² *Ibid* at s. 19(1).

¹⁰³ *Ibid* at s. 25.

¹⁰⁴ LERA was established under *The Law Enforcement Review Act*, R.S.M. 1987, c. L75.

¹⁰⁵ *Ibid*, s. 22.

¹⁰⁶ See sections 18 to 25 of the *RNC Act*.

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The *RNC Act* places an uneven burden on complainants to file their complaint, requiring them to file a complaint within 6 months of the incident at issue. However, the *RNC Act* places no reciprocal timeline or burden on the RNC Chief of Police to address the complaint. This type of system is clearly ineffective. With respect to the RCMP, in some cases it took so long for complaints to be addressed that the complainants had already died or the officer involved had since retired.¹⁰⁷ With respect to the RNC, perhaps the most egregious example is that of a St. John's man who still had not received a decision on his complaint seven years after filing it with the RNC PCC.¹⁰⁸

It is hardly surprising, therefore, that the RNC has often failed when it has been tasked with policing the behaviour of its own officers. This is apparent in the disturbing example of Roxanne Greene, a resident of Labrador City whose ex-husband is a sergeant with the RNC. In August 2021, Greene shared with CBC that despite making multiple complaints over the course of several years about ongoing abuse by her ex-husband, no action was ever taken to protect her. On the contrary, as Greene shared with CBC, members of the RNC would gaslight her, denying that she was being stalked and harassed by her ex-husband. One senior officer even tried to dissuade her from making any complaints at all, accusing her of “messing with a man’s career”.¹⁰⁹ This example highlights the problematic nature of the RNC PCC, which does not provide an independent and safe process for members of the public to make a complaint.

Unfortunately, the RNC PCC has no jurisdiction to investigate complaints of misconduct made against members of the RCMP. Instead, this responsibility belongs to the CRCC, a federal organization.¹¹⁰ With more than half of all police officers in the province serving with the RCMP,

¹⁰⁷ Tunney, Catherine. *RCMP says it cleared its backlog of complaints – but not before some of the complainants died*. CBC News. December 30, 2021. Online: <https://www.cbc.ca/news/politics/rcmp-crcc-bill-1.6277711>.

¹⁰⁸ Gillis, Heather. *7 years after filing a complaint against the RNC, a St. John's man is still waiting for answers*. January 25, 2021. Online: <https://www.cbc.ca/news/canada/newfoundland-labrador/earle-rnc-public-complaint-mental-health-1.5843600>.

¹⁰⁹ Mullin, Malone. *Labrador woman says she was abused for years by cop ex-husband – and the RNC turned a blind eye*. CBC News. August 18, 2021. Online: <https://www.cbc.ca/news/canada/newfoundland-labrador/rnc-sexual-misconduct-allegations-1.6108930>.

¹¹⁰ Civilian Review and Complaints Commission for the RCMP official website: <https://www.crcc-ccetp.gc.ca/>.

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this means that no provincial public complaints body¹¹¹ plays any role in ensuring that they remain accountable to the communities they are meant to serve.¹¹²

When an individual has a concern about the conduct of an RCMP officer, the individual can make a complaint to the CRCC. The CRCC receives the complaint, ensures it is put in writing and then sends it to the RCMP for investigation. If a complainant is not satisfied with the RCMP's investigation, the complainant can request that the CRCC conduct a review of the RCMP's initial investigation. If it receives a request for review, the CRCC then requests from the RCMP all relevant information regarding the complaint; and then CRCC analysts examine the information from the complainant and RCMP. The CRCC may agree or disagree with the RCMP's initial findings. In its reports, the CRCC makes its own findings and may make recommendations aimed at improving RCMP conduct and national policing policies.¹¹³ In other words, when a member of the public submits a complaint about misconduct by an RCMP officer, the very first stage of the investigation is for the RCMP to investigate itself.

Further, the existence of two separate complaints commissions in the province adds an additional layer of bureaucracy that members of the public must navigate in order to file a complaint against a police officer for any alleged misconduct.

Proposals for Change

The Proposals for Change call for the procedure for public complaints against police officers to be strengthened and streamlined (see **Proposal for Change 3**).

The Proposals for Change seek to address the police oversight reform needed in Newfoundland and Labrador, which includes ensuring that police officers are held accountable for their actions, regardless of whether they serve as members of the RNC or the RCMP. To improve the process for filing complaints, the Proposals for Change call for complaints against members of the RCMP

¹¹¹ The Serious Incident Response Team Of Newfoundland and Labrador does have jurisdiction to investigate serious incidents involving members of the RCMP.

¹¹² For an overview of the jurisdiction of the CRCC, see Civilian Review and Complaints Commission for the RCMP: *Jurisdiction of the Commission*, online: <https://www.crcc-ccetp.gc.ca/en/jurisdiction>.

¹¹³ See the CRCC website: <https://www.crcc-ccetp.gc.ca/en/info-source-sources-federal-government-and-employee-information>.

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operating in Newfoundland and Labrador to be brought under the single jurisdiction of the RNC PCC (see **Proposal for Change 3.8**).

The Working Group understands that bringing the RCMP officers stationed in the province under the jurisdiction of the RNC PCC would require, at minimum, amendments to applicable federal and provincial legislation and the existing federal-provincial policing agreement.

Implementing the Proposals for Change would reform the public complaints process in Newfoundland and Labrador by eliminating the self-investigative type of process that is currently in place, and transition the RNC PCC to be more transparent and completely neutral and independent of police forces. The full list of **Proposals for Change** are at page 48.

Group 4 Proposals

Improving the Serious Incident Response Team in Newfoundland and Labrador

Independent investigative bodies (or units) are provincial entities that are responsible for conducting independent investigations into serious incidents involving the police.¹¹⁴ The purpose of these investigations is to determine whether an offence has occurred under federal or provincial law.

In Newfoundland and Labrador, serious incidents involving police are investigated by the Serious Incident Response Team (“SIRT-NL”).¹¹⁵ The *Serious Incident Response Team Act* (“SIRTA”) is the legislation governing SIRT-NL and applies to both the RNC and the RCMP.¹¹⁶ The provincial Cabinet appoints the civilian Director of SIRT-NL, who cannot be a current or former police officer

¹¹⁴ Kent Roach, “Models of Civilian Police Review” in *Issues in Civilian Oversight of Policing* (Toronto: Canada Law Book, 2014).

¹¹⁵ “Serious incidents” refer to incidents involving death, serious injury, sexual offence, domestic violence, or any matter of significant public interest that may have arisen from the actions of a police officer in the province (see section 2(f) of the *Serious Incident Response Team Act*, SNL 2017, c S-13.003) [SIRTA].

¹¹⁶ SIRTA, s. 2(a).

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in any jurisdiction, for a term not exceeding 5 years. The Director may be reappointed for one additional term.¹¹⁷ The Director is responsible to the Minister of Justice and Public Safety for:

- The direction of SIRT-NL as well as the police officers and other resources assigned to it;
- The direction of investigations and reporting of serious incidents involving police officers;
- The administration of SIRT-NL's budget; and
- The discharge of other duties and functions assigned under the *SIRTA* or its regulations.¹¹⁸

In consultation with the Director of Public Prosecutions, the Director has the authority under the *SIRTA* to lay charges against police officers when the evidence gathered during an investigation forms grounds to believe that an offence has been committed.¹¹⁹

The provincial Cabinet may, on the recommendation of the Director, appoint the investigators necessary for the purpose of assisting SIRT-NL.¹²⁰ Such investigators are a blend of both civilian investigators and investigators seconded from the RNC and the RCMP.¹²¹ Alternatively, the Minister may direct a chief officer to select qualified police officers and other resources from the RNC, the RCMP, or another police service, to assist SIRT-NL.¹²²

The Director has discretionary power to appoint a community liaison, or observer, to work with SIRT-NL during an investigation.¹²³ Newfoundland and Labrador has a diverse population and is the traditional territory of different Indigenous Peoples who still reside here. For these reasons,

¹¹⁷ *SIRTA*, s. 4.

¹¹⁸ *Ibid*, s. 6.

¹¹⁹ Government of Newfoundland and Labrador, "Justice and Safety: Serious Incident Response Team", online: <https://www.gov.nl.ca/jps/departament/agencies/serious-incident-response-team/> [Justice and Safety: SIRT].

¹²⁰ *SIRTA*, s. 7(1).

¹²¹ SIRT-NL, "Who we are", online: <https://www.sirtnl.ca/who-we-are/>.

¹²² *SIRTA*, s. 8(1).

¹²³ *Ibid*, s. 12(f).

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it should be mandatory for community liaisons to be appointed to monitor investigations whenever Indigenous people or communities are affected by a SIRT-NL investigation.

The Director and investigators acting under the *SIRTA* have all the powers, duties, and immunities of a peace officer and constable at common law or under any Act.¹²⁴ They also have jurisdiction throughout the province while conducting those duties and exercising those powers.¹²⁵ All investigative decision-making, including the decision to issue a public report, lay a charge, or refer a matter to Crown counsel, is made independently of the government.¹²⁶

Although SIRT-NL is less than 2 years old, it has already faced criticism from women's groups and others as being poorly equipped to conduct investigations into alleged sexual offences in particular.¹²⁷ For this reason, the Working Group has reviewed an independent investigation unit from another jurisdiction to help inform its Proposals for Change.

Independent Investigative Units in Other Jurisdictions

In 2021, the Government of Saskatchewan introduced *The Police (Serious Incident Response Team) Amendment Act, 2021*.¹²⁸ Those amendments ensure that the Saskatchewan SIRT includes Indigenous representation, by requiring the appointment of an Indigenous community liaison if the victim involved in the serious incident is of Indigenous ancestry. Such Indigenous liaisons will assist the executive director of the SIRT and assist with coordinating with the family of the victim. Those amendments also provide the option for the executive director to appoint an Indigenous community liaison in all other matters.¹²⁹ Recent changes to the independent investigative unit in Manitoba also offer guidance in strengthening accountability of, and trust in, SIRT-NL.

¹²⁴ *Ibid*, s. 9(a).

¹²⁵ *Ibid*, s. 9(b).

¹²⁶ *Justice and Safety: SIRT*.

¹²⁷ CBC News. *N.L. police watchdog vows to build trust, not force investigation into RNC allegation*. July 30, 2021. Online: <https://www.cbc.ca/news/canada/newfoundland-labrador/sirt-nl-trauma-informed-listening-sexual-assault-1.6114424> ["N.L. police watchdog vows to build trust"].

¹²⁸ That Act can be found online: <https://pubsaskdev.blob.core.windows.net/pubsask-prod/127585/Chap-22-2021.pdf>; also see: <https://pubsaskdev.blob.core.windows.net/pubsask-prod/126626/Bill-26-2021.pdf>.

¹²⁹ See: <https://www.saskatchewan.ca/government/news-and-media/2021/april/12/province-introduces-civilian-led-and-independent-model-for-police-oversight>.

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In 2015, Manitoba’s Independent Investigation Unit (“IIU”) became operative. That IIU is headed by a civilian director who cannot be a current or former police officer and is appointed by the provincial Cabinet. In addition, a civilian monitor may be appointed by the Manitoba Police Commission to oversee specific investigations. The civilian director is assisted by a group of investigators who may be current or former police officers or civilians with investigative experience who meet the following set of requirements. They must: (1) be a Canadian citizen or permanent resident; (2) have experience in major crime investigations, in the case of a person who is a current or former police officer; and (3) have experience in conducting and managing a wide range of complex investigations, in the case of a person who is not a current or former police officer.¹³⁰

Any civilian monitor appointed to oversee an IIU investigation must receive training, which is arranged by the Police Commission.¹³¹ (Neither the Act nor regulations indicate what, if any, training is provided to civilian investigators with the IIU.)

When an investigation is completed, the Crown prosecutor may be asked to provide an opinion on whether the officer should be charged. However, the civilian director may also lay charges. Although public release of the findings of investigations is not legally required, the IIU typically issues news releases advising on whether an investigation is underway and what the outcome of the investigation may have been. In the 2019-2020 fiscal year, the IIU opened 63 investigations and laid 17 charges. This means that 27% of the total investigations resulted in charges.¹³²

There have been criticisms made against the Manitoba IIU, including a lack of diversity, not enough transparency, and conflicts of interest when police investigate police.¹³³ Manitoba has

¹³⁰ *Man. Reg. 99/2015 – Independent Investigations Regulation*, s. 3.

¹³¹ *The Police Services Act*, S. M. 2009, c. 32, s. 69(2).

¹³² See Independent Investigation Unit of Manitoba website: <http://www.iiumanitoba.ca/media2016.html>.

¹³³ Carreiro, Donna. *Investigations into police-involved shootings not transparent enough, Murray Sinclair says*. CBC News. November 24, 2021. Online: <https://www.cbc.ca/news/canada/manitoba/murray-sinclair-independent-investigation-unit-1.6258741>.

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taken steps to address some of these issues with their IIU by bringing forward new legislation.¹³⁴ The following are some of the proposed changes:

- Establishing a position within the IIU to ensure Indigenous organizations, community leaders, and affected people and their family members are directly engaged throughout the course of an investigation;
- Replacing the Civilian Monitor Program with a Community Liaison Program to allow the appointment of designated individuals from affected communities or organizations to work with the IIU to provide a direct connection between the investigation and the community, and ensure the investigation is conducted with respect and sensitivity;
- Discontinuing the practice of seconding serving police officers to serve on the IIU while employed by a police agency;
- Implementing penalties for police officers that fail to comply with the legislation (duty to comply and notification obligations); and
- Enhancing transparency by prescribing IIU public reporting requirements.¹³⁵

Manitoba's proposed amendments to its IIU are an example that the Government of Newfoundland and Labrador can look to for guidance on how best to move forward with improving accountability and oversight mechanisms. Were similar changes to be implemented in this province, they would be closely aligned with the Proposals for Change that the Working Group is putting forward in this Report in relation to SIRT-NL.

Reasons for Change

The composition of SIRT-NL has recently been flagged by women who have come forward alleging they were assaulted by on-duty members of the RNC. According to media reports, survivors are hesitant to make formal complaints because they "don't want to take their allegations to police, and advocates for sexual assault survivors say there's no trust in SIRT-NL, as two of SIRT's three-

¹³⁴ See Bill 7 *The Police Services Amendment Act (Enhancing Independent Investigation Unit Operations)*: <https://web2.gov.mb.ca/bills/42-4/b007e.php>; that legislation has not received Royal Assent and is not yet in force – see: <https://www.gov.mb.ca/legislature/business/billstatus.pdf>.

¹³⁵ Manitoba News Release. *Province Introduces Amendments to Police Services Act*. November 29, 2021. Online: <https://news.gov.mb.ca/news/print,index.html?item=52784&posted=2021-11-29>.

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member team are seconded police officers.”¹³⁶ Under this approach, it is difficult to hold police accountable and maintain a sense of justice and safety in the community. Having trust in the oversight body that investigates police criminal misconduct is critical, otherwise complainants may not come forward with their allegations. Particularly in the case of sexual offences, there is a clear risk that different standards of justice will be applied to police officers if critical changes are not implemented.

Section 8 of the *SIRTA* seems to recognize the problematic nature of police investigating police. That section provides that if a police officer is assigned to assist in an investigation of a fellow officer from the same police force, the investigative officer shall not perform the role of lead investigator or team commander in the investigation. However, this restriction does not go far enough, as it still permits situations in which an officer can be investigated by a fellow officer from the same police force. It also does nothing to address the inherent problem of trust when it comes to seconded police officers.

The lack of diversity among independent investigation units is a problem across Canada. Independent research conducted by The Canadian Press found that of 167 members involved in provincial independent investigation units across the country, 118 are men (71%) and 111 are either former police officers or have had a working relationship with the police (66%). That research also revealed that only 20 of the 167 – a mere 12% – identify as a visible minority or person of colour.¹³⁷ Given Canada’s diverse population, the independent investigation units across the country do not adequately represent the communities they serve.¹³⁸ The same Canadian Press research also revealed that SIRT-NL has no people of colour working as investigators.¹³⁹

¹³⁶ See *N.L. police watchdog vows to build trust*.

¹³⁷ Kelly Geraldine Malone. The Canadian Press. *Most police watchdog investigators are white and former officers, Canadian Press tally finds* (2020). Online: <https://www.cbc.ca/news/canada/police-investigators-white-former-officers-majority-1.5620358> [the “Police Watchdog Tally”].

¹³⁸ See Statistics Canada Data Tables and Census: <https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/dt-td/Rp-eng.cfm?TABID=2&Lang=E&APATH=3&DETAIL=0&DIM=0&FL=A&FREE=0&GC=0&GID=1341679&GK=0&GRP=1&PID=110528&PRID=10&PTYPE=109445&S=0&SHOWALL=0&SUB=0&Temporal=2017&THEME=120&VID=0&VNAMEE=&VNAMEF=&D1=0&D2=0&D3=0&D4=0&D5=0&D6=0>; and <https://www12.statcan.gc.ca/census-recensement/2016/as-sa/fogs-spg/Facts-can-eng.cfm?Lang=Eng&GK=CAN&GC=01&TOPIC=7>.

¹³⁹ See *Police Watchdog Tally*.

Proposals for Change

Given the self-investigative structure of SIRT-NL and the public concerns that have been raised about it, the Proposals for Change aim to strengthen the public's confidence in SIRT-NL by ensuring its complete independence from police forces in the province (see **Proposal for Change 4**).

To achieve independence from the police forces in the province and to build trust and confidence with the public, SIRT-NL must immediately begin the transition to a civilian-led investigative team. This will mean moving away from the practice of seconding police officers to conduct investigations into serious incidents involving police. Wherever possible, SIRT-NL must favour the use of appropriately trained civilian investigators with no prior police experience, along with a minimum of former police officers needed to ensure investigative competence (see **Proposal for Change 4.1**).

Communities in the province deserve a model that suits our context in Newfoundland and Labrador, including Indigenous communities that deserve and require an investigative unit that reflects their unique cultures and needs.

To begin addressing the lack of diverse representation of SIRT-NL investigators, and to improve transparency, the Proposals for Change recommend that SIRT-NL immediately adopt a standard practice of appointing community liaisons to monitor and report on all investigations into police negligence and misconduct. As part of this, SIRT-NL needs to work with community organizations and stakeholders – particularly women; black, Indigenous and people of colour; and other marginalized groups – to develop and train a roster of readily available community liaisons that can facilitate this monitoring and reporting (see **Proposals for Change 4.2 and 4.3**).

Group 5 Proposals

Undertake a Review of All Other Oversight Mechanisms

Besides formally organized police forces, there are other public enforcement entities in Newfoundland and Labrador which exercise police-like powers, sometimes with deadly results. The Working Group recognizes that these other entities require robust oversight, including but not necessarily limited to: (a) correctional officers; (b) fisheries and wildlife officers; and (c) municipal enforcement officers (see **Proposal for Change 5.1**).

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These types of officials – some of whom have the lawful authority to exercise lethal force – must not be able to escape scrutiny and accountability for their actions. While this Report is directed at oversight mechanisms in the province related specifically to police forces, it is critical that the Province carry out a review of the oversight mechanisms that may be in place to regulate all other entities that are able to exercise police-like powers. Such a review should be done in parallel with the work required to address the oversight issues that have already been identified in this paper.

(a) Correctional Officers

Much like police forces, prisons in Canada tend to have challenges arising from jurisdictional division. There are correctional centres that fall within both federal and provincial jurisdictions, and each has their own complaints process. At the federal level there is the Office of the Correctional Investigator (“OCI”). That complaints process, however, does not deal with complaints from “provincial offenders”.¹⁴⁰

Provincial prisons are in dire need of oversight. Inmates in prisons in Newfoundland and Labrador have made allegations that guards regularly mete out summary discipline that goes well beyond their discretionary powers under the law, calling such disciplinary processes a “kangaroo court”.¹⁴¹ There were 254 hearings held in provincial jails over a three-month period in late 2021, with over 80% of the cases resulting in the inmate being found guilty. No lawyers were present at any of these hearings. In one example, prison staff refused an inmate his prescribed medications. After attempting to hoard his medicine, he received 30 days’ worth of sanctions, including segregation from other inmates and 20 days of lost privileges such as exercise and outdoor time.¹⁴²

The *Correctional Services Act*¹⁴³ provides few options for recourse, specifying only that the provincial Cabinet has the power to appoint a Chief Superintendent and Superintendents for

¹⁴⁰ *Making a Complaint to the Office of the Correctional Investigator*. Government of Canada. <https://www.oci-bec.gc.ca/cnt/complaint-plainte-eng.aspx>.

¹⁴¹ Smellie, Sarah. *NL inmates, official want oversight of “kangaroo court” disciplinary hearings*. CBC News. March 8, 2022. Online: <https://www.cbc.ca/news/canada/newfoundland-labrador/inmates-disciplinary-hearings-1.6376632>.

¹⁴² *Ibid.*

¹⁴³ *Correctional Services Act*, S.N. 2011, c. C-37.00001.

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prisons, who have plenary power over how the facility is run.¹⁴⁴ This lack of robust oversight can be lethal. Ten correctional officers working at Her Majesty’s Penitentiary in St. John’s recently faced charges ranging from manslaughter to criminal negligence causing death in the case of Jonathan Henoche, an Inuk inmate at the prison who suffered from fetal alcohol syndrome.¹⁴⁵ After Crown prosecutors failed to bring enough evidence, however, all ten correctional officers saw their charges dropped in relation to Henoche’s death.¹⁴⁶ His lawyer and family are now seeking a public inquiry and are suing the provincial government for negligence leading to his death.¹⁴⁷

(b) Fisheries and Wildlife Officers

The Department of Fisheries and Oceans Canada (“DFO”) has officers who enforce the *Fisheries Act*.¹⁴⁸ DFO describes itself as the federal institution “responsible for safeguarding our waters and managing Canada's fisheries and oceans resources [helping] to ensure healthy and sustainable aquatic ecosystems through habitat protection [...]”¹⁴⁹ They could be described as “Canada’s fishing police”.

Following the Supreme Court of Canada decision of *R v Marshall* in 1999,¹⁵⁰ the right to fish was recognized for the Mi’kmaq people. The decision led to conflict between non-Indigenous and Indigenous fishers in New Brunswick and Nova Scotia. Despite Indigenous people fishing within

¹⁴⁴ *Ibid*, sections 6, 17, 19, 48

¹⁴⁵ CBC News. *10 correctional officers face criminal charges in death of Indigenous inmate in St. John's*. December 22, 2020. Online: <https://www.cbc.ca/news/canada/newfoundland-labrador/jonathan-henoche-manslaughter-1.5851656>.

¹⁴⁶ Bradbury, Tara. *Court dismisses last remaining charge against Her Majesty's Penitentiary officer for death of inmate Jonathan Henoche*. Saltwire. February 23, 2022. Online: <https://www.saltwire.com/atlantic-canada/news/court-dismisses-last-remaining-charge-against-her-majestys-penitentiary-officer-for-death-of-inmate-jonathan-henoche-100697259/>.

¹⁴⁷ VOCCM News. *Lawyer, Family of Jonathan Henoche Calling for Public Inquiry into 2019 Death*. January 28, 2022. Online: <https://vocm.com/2022/01/28/lawyer-family-of-jonathan-henoche-calling-for-public-inquiry-into-2019-death/>.

¹⁴⁸ *Fisheries Act*, R.S.C., 1985, c. F-14.

¹⁴⁹ *Fisheries and Oceans Canada*. Government of Canada. <https://www.dfo-mpo.gc.ca/index-eng.html>.

¹⁵⁰ *R v Marshall*, [1999] 3 SCR 456.

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their legally recognized Treaty rights, conflict broke out between them and non-Indigenous fishers near Burnt Church¹⁵¹ First Nation. There, DFO officers used government vessels to ram and sink Indigenous fishing boats, seize traps, and run over Indigenous fishers who were in the water. In her documentary titled *Is the Crown at war with us?*, Alanis Obomsawin notes that despite video evidence showing these abuses of power, the RCMP investigation into DFO conduct found “no proof wrongdoing”.¹⁵²

There is currently no independent oversight of DFO. The only oversight that exists is the department’s own internal chain of command and the RCMP – mechanisms that were clearly insufficient for responding to the Burnt Church Crisis. Use-of-force issues, and any resulting complaints, face an internal DFO review conducted by individual supervisors, chiefs, directors-general, and the minister.¹⁵³

(c) Municipal Enforcement Officers

The Working Group has also identified Municipal Enforcement Officers as a group that requires stronger oversight. These officers act as public safety officers and, much like RCMP and RNC officers, there is often room for them to behave in ways that endanger the public they are charged to serve. Such is the example of one Happy Valley–Goose Bay officer who was seen in video footage violently throwing a handcuffed Inuk man to the ground, triggering outrage in the community.¹⁵⁴

In this specific instance, the town of Happy Valley–Goose Bay hired a law firm which then contracted an independent investigator to look into the arrest. The investigation found no

¹⁵¹ Now more commonly known as Esgenoôpetitj First Nation.

¹⁵² Obomsawin, A. *Is the Crown at war with us?* National Film Board of Canada. 2002. 1h 36m (1:31:50); Barnsley, P. *No charges against DFO officers who rammed boat*. Windspeaker Publication. 2002. <https://www.ammsa.com/publications/windspeaker/no-charges-against-dfo-officers-who-rammed-boat>.

¹⁵³ Personal conversation with a DFO Supervisor on June 28, 2022; and *Organizational structure*. Government of Canada. <https://www.dfo-mpo.gc.ca/about-notre-sujet/organisation-eng.htm>.

¹⁵⁴ APTN National News. *Enforcement officer put on administrative duties after arrest of Inuk man in Goose Bay*. October 19, 2020. Online: <https://www.aptnnews.ca/national-news/enforcement-officer-put-on-administrative-leave-after-arrest-of-inuk-man-in-goose-bay/>.

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wrongdoing on the part of municipal enforcement officer Larry Baker, but critics have been vocal about the lack of transparency in the investigation.¹⁵⁵

End Contract Policing by the RCMP

“The only way we are ever going to stop RCMP racism and brutality against Indigenous Peoples is to declassify, deconstruct and defund the institution itself.”¹⁵⁶
—Dr. Pam Palmater

It is well established that there has been and continues to be systemic issues within the RCMP, including decades of ongoing sexual harassment and racism.¹⁵⁷ The RCMP have been accused of historically behaving apathetically towards Indigenous victims of crime, which has added layers of injustice on top of the tragic pattern of missing and murdered Indigenous women and girls in Canada.¹⁵⁸ One former RCMP officer-turned-private investigator has detailed his concerns with the way Indigenous victims are stereotypically portrayed and stigmatized by the RCMP as drug addicts, prostitutes, and runaways, even when the RCMP has information that suggests otherwise.¹⁵⁹

¹⁵⁵ Careen, Evan. *Happy Valley-Goose Bay municipal enforcement cleared by investigation*. Toronto Star. December 23, 2020. Online: <https://www.thestar.com/news/canada/2020/12/23/happy-valley-goose-bay-municipal-enforcement-cleared-by-investigation.html>.

¹⁵⁶ Palmater, Pam. *Canada should declassify, deconstruct and defund the RCMP*. June 2020. Online: <https://canadiandimension.com/articles/view/declassify-deconstruct-and-defund-the-rcmp> [“Deconstruct the RCMP”].

¹⁵⁷ See *Broken Dreams, Broken Lives: The Devastating Effects of Sexual Harassment on Women in the RCMP*, Hon. M. Bastarache, Q.C.: Final Report of on the Implementation of the Merlo Davidson Settlement Agreement, online: https://www.callkleinlawyers.com/wp-content/uploads/2020/12/RCMP_Final-Report_Broken-Dreams.pdf; also see *Deconstruct the RCMP*.

¹⁵⁸ Morin, Brandi. ‘No one is going to believe you’: When the RCMP abuses Indigenous women and girls. Aljazeera. December 29, 2021. Online: <https://www.aljazeera.com/features/longform/2021/12/29/no-one-will-believe-you-when-the-rcmp-abuses-indigenous-girls> [“No one is going to believe you”].

¹⁵⁹ *Ibid*, *No one is going to believe you*.

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In Newfoundland and Labrador, one Indigenous woman, Deidre Michelin, repeatedly called the RCMP for help on the day she was murdered, but the nearest RCMP detachment was 160 kilometres away and help did not arrive in time.¹⁶⁰

The RCMP also faces criticism across the country stemming from its paramilitary style which works counter to building the community connections that are needed for effective and safe policing. Relatedly, the RCMP has frequently been criticized for abusing and intimidating Indigenous people. In the Labrador context, one Indigenous land protector has commented that peaceful protests were being met with heavy-handed and excessive police presence.¹⁶¹ Similar stories were submitted to the MMIWG Inquiry, detailing how RCMP officers – unprovoked – suddenly moved in and physically dragged away three Indigenous individuals that were peacefully protesting on their traditional territory.¹⁶² One of those people was a woman who was taken into custody, away from her community, without notice to her family and friends.¹⁶³

The inherent cross-jurisdictional challenges in these cases make such issues nearly impossible to resolve at the provincial level. Because the RCMP is a federal police force governed by federal legislation, any provincial civilian oversight body will be limited in its powers to hold the RCMP accountable, at least as compared to the RNC. This is but one reason why contract policing by the RCMP needs to be phased out in Newfoundland and Labrador following the full implementation of the Group 1-4 Proposals (see **Proposal for Change 5.2**).

¹⁶⁰ <https://www.cbc.ca/missingandmurdered/>; Deidre Marie Michelin, 21, was a mother of four from Rigolet, an Inuit community on the north coast of Labrador. She loved to make people around her laugh and she enjoyed cooking and learning traditional crafts. Michelin loved her children immensely. On January 20, 1993, she made a distressed call to the Happy Valley–Goose Bay RCMP, 160 kilometres from her home. On that same day, she was shot and killed in a murder-suicide by her domestic partner. In 2018 her mother spoke at the MMIWG Inquiry hearings in Labrador. She testified that her daughter had been calling the RCMP all day, but the remoteness of the community resulted in tragedy.

¹⁶¹ Sharpe, Kenny. *Tensions rise over Muskrat Falls project after jailing of Inuit activists*. Globe and Mail. July 27, 2017. Online: <https://www.theglobeandmail.com/news/national/tensions-flowing-high-over-muskrat-falls-after-jailing-of-inuit-activists/article35825541>.

¹⁶² Closing Submissions on Behalf of the NunatuKavut Community Council Inc. to the National Inquiry into Missing and Murdered Indigenous Women and Girls, online: <https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/NunatuKavut-Closing-Submissions.pdf>.

¹⁶³ *Ibid*, paragraph 41.

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There have been calls to deconstruct and defund the RCMP due to “the numerous investigations, commissions, inquiries, individual civil actions, class action lawsuits, and horrifying statistics [...]” that have not cured the systemic racism within the RCMP.¹⁶⁴ In 2019 the federal government created a new civilian advisory board, separate from the CRCC, for the purpose of advising the RCMP on how best to address problems within its own ranks, such as harassment and other systemic workplace culture and management issues. However, “like most of the other accountability mechanisms, it doesn’t have the power to compel the RCMP to make changes.”¹⁶⁵

The CRCC, which is the commission that receives and conducts reviews of civilian complaints concerning misconduct by RCMP officers, has raised concerns about the RCMP oversight mechanisms.¹⁶⁶ Whenever a member of the public raises concerns of misconduct by an RCMP officer, the local detachment investigates the complaint first. Only if the complainant is not satisfied with the findings of that initial investigation can the complaint then be turned over to the CRCC. In a report from late 2021, the RCMP announced that it had cleared its backlog of complaints, but not before some of the complainants had died.¹⁶⁷

In 2018 an Auditor General’s report¹⁶⁸ on the many lawsuits against the RCMP found that the RCMP is more concerned about protecting its image than it is dealing with abusers in the force. In that report, the Auditor General also noted that no RCMP officer has been dismissed for misconduct, despite 85 civil actions against the force.¹⁶⁹

Ultimately, the RCMP are unwilling to reform, and perhaps are not even capable of reforming, the systemic racism within itself as an institution. Promises to undertake reviews or to

¹⁶⁴ *Deconstruct the RCMP.*

¹⁶⁵ Gerster, Jane. *The Dark Side of the RCMP: The mystique that has helped cement the RCMP as a national symbol is also what renders it particularly, stubbornly difficult to reform*, The Walrus. October 2021. Online: <https://thewalrus.ca/can-the-rcmp-be-saved/#> [“The Dark Side of the RCMP”].

¹⁶⁶ *Ibid.*

¹⁶⁷ Tunney, Catharine. *RCMP says it cleared its backlog of complaints — but not before some of the complainants died*. CBC News. December 30, 2021. Online: <https://www.cbc.ca/news/politics/rcmp-crcc-bill-1.6277711>.

¹⁶⁸ Public Safety Canada, “Response to Report on Workplace Harassment in the RCMP and the Review of Four Cases of Civil Litigation against the RCMP on Workplace Harassment,” 2018. Online: <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2018-rspns-rcmp-wrkplc-hrsmnt/index-en.aspx>.

¹⁶⁹ *Deconstruct the RCMP.*

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implement piecemeal reforms are no longer acceptable. As Dr. Pam Palmater puts it: “No one has time for ‘important first steps’ or ‘best efforts’ anymore.”¹⁷⁰

DRAFT

¹⁷⁰ *Deconstruct the RCMP.*

Conclusion

This draft Report details critical flaws in the overall system of police oversight in Newfoundland and Labrador, including the public complaints process and the Serious Incident Response Team. This Report details the challenges in addressing such inadequacies through existing police oversight mechanisms, including systemic issues within the RNC and the RCMP. But it also proposes solutions, including the creation of a new civilian-led police oversight board in Newfoundland and Labrador.

This draft Report, and the Proposals for Change included herein, have been prepared by the First Voice Working Group on Police Oversight with a view towards laying the groundwork for implementing more effective and transparent civilian oversight of policing in Newfoundland and Labrador.

It is important that the communities in Newfoundland and Labrador, which are policed by these forces, have a say in the oversight mechanisms that are put in place to ensure effective and transparent police services. As such, the Working Group has made this Report publicly available and encourages community feedback with the objective of building a broad, non-partisan consensus on the urgent need to take action to strengthen civilian-led oversight of police services in the province.

Have Your Say

The First Voice Working Group on Police Oversight welcomes your views and input on the content of this draft Report. Written comments may be submitted to the Working Group at policing@firstvoicenl.ca. First Voice is able to provide support to key stakeholders who may not have the necessary organizational capacity to develop written submissions on their own.

Comments will be accepted until **September 1, 2022**.

Appendix A: Calls for Justice¹⁷¹

- 5.7** We call upon federal and provincial governments to establish robust and well-funded Indigenous civilian police oversight bodies (or branches within established reputable civilian oversight bodies within a jurisdiction) in all jurisdictions, which must include representation of Indigenous women, girls, and 2SLGBTQQIA people, inclusive of diverse Indigenous cultural backgrounds, with the power to:
- i. Observe and oversee investigations in relation to police negligence or misconduct, including but not limited to rape and other sexual offences;
 - ii. Observe and oversee investigations of cases involving Indigenous Peoples; and
 - iii. Publicly report on police progress in addressing findings and recommendations at least annually.
- 9.2** We call upon all actors in the justice system, including police services, to build respectful working relationships with Indigenous Peoples by knowing, understanding, and respecting the people they are serving. Initiatives and actions should include, but are not limited to, the following measures:
- i. Review and revise all policies, practices, and procedures to ensure service delivery that is culturally appropriate and reflects no bias or racism toward Indigenous Peoples, including victims and survivors of violence;
 - ii. Establish engagement and partnerships with Indigenous Peoples, communities, and leadership, including women, Elders, youth, and 2SLGBTQQIA people from the respective territories and who are resident within a police service's jurisdiction;
 - iii. Ensure appropriate Indigenous representation, including Indigenous women, girls, and 2SLGBTQQIA people, on police services boards and oversight authorities; and
 - iv. Undertake training and education of all staff and officers so that they understand and implement culturally appropriate and trauma-informed practices, especially

¹⁷¹ The full list of the National Inquiry's Calls for Justice can be found on the MMIWG National Inquiry website at: https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Calls_for_Justice.pdf.

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when dealing with families of missing and murdered Indigenous women, girls, and 2SLGBTQIA people.

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Appendix B: Consolidated Proposals for Change

The following consolidated Proposals for Change have been adopted by the Working Group on the basis of consensus. They are put forward here for public discussion and feedback:

1. Establish a Board of Commissioners for Police Oversight (“the Police Oversight Board”) in Newfoundland and Labrador.

1.1. The Police Oversight Board must be empowered by statute to provide independent, civilian-led, proactive oversight of, and high-level policy direction to, all police forces that operate in the province. This includes:

- (a) The Royal Newfoundland Constabulary (“the RNC”); and
- (b) Members of the Royal Canadian Mounted Police (“the RCMP”) operating in Newfoundland and Labrador

1.2. The Police Oversight Board must have all delegated authority commensurate with a regulatory tribunal, including the authority and the budgetary resources to retain, train, and terminate any staff that are necessary to fulfilling its statutory mandate.

1.3. The Police Oversight Board must have the power to establish, and the authority to allocate funding to, broad policing priorities, goals, and objectives, including the ability to conduct province-wide community consultations to gather input and feedback from the public.¹⁷²

1.4. The Police Oversight Board must have the exclusive statutory power to establish and maintain province-wide policies and standards in the following areas:¹⁷³

¹⁷² Adequate funding is a critical requirement for ensuring the effectiveness of any oversight body. The Alberta Serious Incident Response Team (ASIRT) serves as a prime example, as the executive director of the ASIRT recently resigned citing chronic underfunding as a main contributor to the ASIRT’s ineffectiveness. See: <https://www.cbc.ca/news/canada/edmonton/head-of-alberta-s-beleaguered-police-watchdog-agency-resigns-1.6261506>.

¹⁷³ For the RNC, the authority over these areas currently rests with the RNC Chief of Police or the Minister of Justice and Public Safety. See *RNC Act*, subsections 6(1)(d)(h) and (l) and subsections 57(a)(k)(l)(n) and (s). Any changes would require legislative amendments at the provincial level.

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- (a) Use of force by police officers;
- (b) Education, training, and re-training requirements for police officers;¹⁷⁴
- (c) Measures to eliminate discrimination by enacting anti-racist and anti-colonial approaches to policing;
- (d) Measures to improve the demographic diversity of police forces;
- (e) Minimum standards of conduct for police officers, including offences and disciplinary measures for misconduct;¹⁷⁵
- (f) Procedures and rules for processing, investigating, and responding to complaints of misconduct made against police officers; and
- (g) Other policies, standards, and procedures as necessary to carry out its statutory mandate.

1.5. The Police Oversight Board must have the statutory power to initiate and conduct broad investigations and reviews of systemic challenges related to policing in the province.

1.6. The Police Oversight Board must have the statutory power to refer complaints to the following bodies:

- (a) The Royal Newfoundland Constabulary Public Complaints Commission (“the RNC PCC”), for complaints relating to police misconduct; and
- (b) The Serious Incident Response Team of Newfoundland and Labrador (“SIRT-NL”), for complaints relating to police criminal misconduct.

1.7. The Police Oversight Board must have the power to hire, retain, and terminate the following officials:

- (a) The Chief of Police of the RNC;¹⁷⁶

¹⁷⁴ Manitoba and Saskatchewan set precedent for this with their police commissions, as both commissions develop policies/procedures, the code of conduct and the standard at which police officers are held. See: Manitoba’s *Police Services Act*, SM 2009, c 32 at section 7 & Saskatchewan’s *The Police Act, 1990*, SS 1990-91, c P-15.01 at section 12(1).

¹⁷⁵ For RCMP officers, the Governor in Council (i.e. the Governor General acting on the advice of Cabinet) can make regulations forming a Code of Conduct: see *RCMP Act*, s. 38. Any changes to this authority, at least with respect its application to Newfoundland and Labrador would likely have to be carved out from the *RCPM Act* itself, not simply the regulations, as it would affect who has the authority to determine these standards.

¹⁷⁶ There are precedents for oversight bodies to have such power. For example, the Ontario Civilian Police Commission has the power to suspend or remove the chief of police, other officers and even disband a whole

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- (b) The Commissioner of the RNC PCC; and
- (c) The Director of SIRT-NL.¹⁷⁷

2. Ensure the Police Oversight Board is politically neutral, independent of police, and reflects the province's diverse communities.

2.1. The Police Oversight Board must be empowered by statute as a regulatory commission, reporting directly to the House of Assembly through the Speaker, in order to guarantee its political neutrality and independence from both the police and the government of the day.

2.2. The Police Oversight Board must comprise a minimum of 7 and a maximum of 11 commissioners chosen by the Independent Appointments Commission, with a statutory obligation to ensure that the board reflects the province's diversity. This includes:

- (a) Gender identity and expression;
- (b) Sexual orientation;
- (c) Religious and racial identity;
- (d) Indigenous identity, including guaranteed representation by at least one member of an Inuit community and at least one member of a First Nations community;
- (e) Language communities, including English, French, and at least one Indigenous language;
- (f) Citizenship and residency status; and
- (g) Geography, including guaranteed representation for each of (i) Labrador, (ii) the West Coast of Newfoundland, (iii) Central Newfoundland, (iv) rural Newfoundland, and (v) the St. John's metro region.

2.3. In order to further safeguard the Police Oversight Board's neutrality, sitting commissioners may not be any of the following:

- (a) Current or former police officers;

police service. See *Police Services Act*, R.S.O. 1990, c. P. 15, s. 22, and the OCPC website: <https://tribunalsontario.ca/ocpc/>.

¹⁷⁷ The power to hire, retain, and terminate the Chief of Police of the RNC and the Complaints Commissioner currently lies with the Lieutenant Governor in Council of Newfoundland and Labrador. Changes to that power would require legislative amendments at the provincial level.

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- (b) Current or former publicly elected officials; or
- (c) Active members of any political party.

2.4. In order to further safeguard the Police Oversight Board’s independence while also ensuring continuity of policy and expertise, the term of service for all commissioners must be staggered and formalized in law at six years in length, without the possibility of extensions or renewals.

3. Strengthen and streamline the procedure for public complaints against police officers.

3.1. The Royal Newfoundland Constabulary Public Complaints Commission (“the RNC PCC”) must have the statutory power to initiate investigations into police misconduct, both on its own authority and in response to direct complaints filed with it by members of the public.

3.2. By no later than 2025, the RNC PCC must transition to leadership under a sitting judge, rather than a practising lawyer. This requirement must be formalized in statute.¹⁷⁸

3.3. The RNC PCC must be granted the statutory power to engage in alternative dispute resolution processes prior to launching a formal investigation into police misconduct, provided all parties to the complaint agree.

3.4. The RNC PCC must establish new procedures for investigating complaints about police misconduct in a way that is completely neutral and independent of police forces in the province. This includes:

- (a) Eliminating the practice of forwarding complaints to the RNC’s Director of Professional Standards to conduct initial investigations; and instead
- (b) Engaging one or more civilian investigators, who must be neither current nor former police officers, to establish the merits of all complaints.

3.5. The RNC PCC must establish new procedures for responding to substantiated complaints about police misconduct in a way that is completely neutral and independent of police forces in the province. This includes:

¹⁷⁸ New Zealand provides a model/precedent for this with their oversight body, the Independent Police Conduct Authority. See New Zealand’s *Independent Police Conduct Authority Act 1988* section 5A(2): <https://www.legislation.govt.nz/act/public/1988/0002/latest/DLM1111068.html>).

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- (a) Eliminating the practice of forwarding substantiated complaints to the Chief of Police of the RNC to determine appropriate disciplinary measures; and instead
 - (b) Engaging one or more civilian adjudicators, who must not be current or former police officers, to establish the facts of the case and determine appropriate disciplinary measures that are in line with existing policies.
- 3.6.** The RNC PCC's panel of adjudicators must be chosen by the Independent Appointments Commission, with a statutory obligation to ensure that the panel reflects the province's diversity. This includes:
- (a) Gender identity and expression;
 - (b) Sexual orientation;
 - (c) Religious and racial identity;
 - (d) Indigenous identity, including guaranteed representation by at least one member of an Inuit community and at least one member of a First Nations community;
 - (e) Language communities, including English, French, and at least one Indigenous language;
 - (f) Citizenship and residency status; and
 - (g) Geography, including guaranteed representation for each of (i) Labrador, (ii) the West Coast of Newfoundland, (iii) Central Newfoundland, (iv) rural Newfoundland, and (v) the St. John's metro region.
- 3.7.** The process of filing a complaint against a police officer must be made more accessible by creating a new systems navigator position. This position would be responsible for the following:
- (a) Helping members of the public understand and complete the paperwork required to file a complaint;
 - (b) Responding to questions from complainants about the status of their complaints; and
 - (c) Providing guidance to complainants in particular and members of the public in general about next steps in the complaints process.
- 3.8.** The process of filing a complaint against a police officer must be streamlined by amending the *Agreement for Policing in the Province Act, 1990*, in order to bring members of the RCMP operating in the province under the jurisdiction of the RNC PCC.

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The jurisdiction of the Civilian Review and Complaints Commission for the RCMP (the “CRCC”) in Newfoundland and Labrador must be abolished.¹⁷⁹

- 3.9.** The RNC PCC must be required by statute to file annual reports with the Police Oversight Board. At a minimum, these reports must include:
 - (a) Anonymized demographic information for all complainants;
 - (b) The number of new, ongoing, and closed investigations;
 - (c) The number and kind of disciplinary measures that have been imposed;
 - (d) Identification of systemic patterns of police misconduct, along with recommendations for eliminating them;
 - (e) Progress in addressing findings and recommendations; and
 - (f) Funding requirements to fulfill the RNC PCC’s mandate, including its duties to the community.

- 4. Strengthen the public’s confidence in the Serious Incident Response Team of Newfoundland and Labrador (“SIRT-NL”) by ensuring its complete independence from police forces in the province.**
 - 4.1.** SIRT-NL must immediately begin the transition to a truly civilian-led investigative team. This will mean moving away from the practice of seconding police officers to conduct investigations into serious incidents involving police. SIRT-NL’s investigative team must instead consist of trained civilian investigators, with no prior police experience, along with a minimum of former police officers needed to ensure investigative competence.
 - 4.2.** In the interest of transparency, SIRT-NL must adopt a standard practice of appointing community liaisons under section 12(f) of the *Serious Incident Response Team Act, 2017*, to monitor and report on all investigations into police negligence and misconduct, especially in cases involving racialized and other marginalized groups as well as cases involving sexual assault and/or domestic violence.
 - 4.3.** SIRT-NL must work with community organizations and stakeholders – particularly women; Black, Indigenous, and People of Colour (BIPOC); and other systemically marginalized groups – to develop and maintain a roster of readily available community

¹⁷⁹ The Working Group understands that bringing the RCMP officers stationed in the Province under the jurisdiction of the RNC PCC may also require amendments to other legislation.

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liaisons. All such community liaisons must be provided with appropriate training and receive fair compensation for their time.

4.4. SIRT-NL must be required by statute to file annual reports with the Police Oversight Board. At a minimum, these reports must include:

- (a) Anonymized demographic information for officers and complainants involved in complaints, incidents, and investigations;
- (b) The number of new, ongoing, and closed investigations;
- (c) The number of charges laid and convictions obtained;
- (d) Identification of systemic patterns of police misconduct, along with recommendations for eliminating them;
- (e) Progress in addressing findings and recommendations; and
- (f) Funding requirements to fulfill SIRT-NL's mandate, including its duties to the community.

5. Other Proposals.

5.1. The Province should immediately undertake a review of all other oversight mechanisms that currently exist for non-police organizations and personnel that are able to exercise police-like powers, with the goal of identifying regulatory gaps and proposing legislation to ensure full accountability. Such a review must include, without necessarily being limited to, the following:

- (a) Wardens, guards, and other prison officials;
- (b) Fisheries and wildlife officers; and
- (c) Municipal Enforcement Officers.

5.2 Provided the above measures are implemented, the Province should work to phase out contract policing by the RCMP in Newfoundland and Labrador by 2030.

Appendix C: Critical Background

The following select bibliography of recent news articles, grouped together into relevant thematic areas, is meant to lend additional context to police oversight in Newfoundland and Labrador.

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