

Police Oversight and the Search for Justice in British Columbia

By

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We acknowledge and respect the Ləkʷəŋən (Songhees and Xʷsepsəm/Esquimalt) Peoples on whose territory the university stands, and the Ləkʷəŋən and W̱SÁNEĆ Peoples whose historical relationships with the land continue to this day.

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## **Abstract**

In BC, the civilian-led police oversight system responsible for incidents of serious harm and death was created to advance the interlinked goals of delivering accountability while increasing transparency and public trust and confidence in policing and oversight. The system is simultaneously heralded as exemplary and decried as protecting criminal police, but little is known about the tangible outcomes of charges, prosecutions and convictions of police officers, allowing the concerns and experiences of marginalized people and communities to be labelled as anecdotes or “one-offs” caused by a few “bad apples”. This thesis utilizes a mixed methods approach to evaluate the system’s achievement of its goals, layering the quantitative analysis of the outcomes of investigations and prosecutions of police with a qualitative examination of the sociopolitical context as well as the lived realities of people caught up in this system through an interview with the former head of the Independent Investigations Office, three case studies and a jurisdictional scan. The research uncovers a system unexpectedly focused on driving-related crimes, comprising 78.5% of the convictions secured between 2014 and 2021, rather than the high-profile, controversial, trust-undermining allegations, such as excessive use of force, that it was created to address. Upon closer examination, a myriad of problem spots emerged that call into question the system’s impartiality and, in its current structure, its ability to hold police to account and achieve its goals.

*Keywords:* policing, oversight, accountability, police oversight system

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## **Table of Acronyms**

<b>AP</b>	Affected Person
<b>APD</b>	Abbotsford Police Department
<b>ASIRT</b>	Alberta Serious Incident Response Team
<b>BCPS</b>	British Columbia Prosecution Service
<b>BEI</b>	Bureau des enquetes independantes
<b>CCD</b>	Chief Civilian Director
<b>CRCC</b>	Civilian Review and Complaints Commission for the RCMP
<b>IIO</b>	Independent Investigations Office
<b>IUM</b>	Independent Investigations Unit of Manitoba
<b>MVA</b>	<i>Motor Vehicle Act</i>
<b>NPF</b>	National Police Federation
<b>NWPD</b>	New West Police Department
<b>OHRC</b>	Office of the Human Rights Commissioner (BC)
<b>OPCC</b>	Office of the Police Complaint Commissioner (BC)
<b>PD</b>	Police Department
<b>PPSC</b>	Public Prosecution Service of Canada
<b>RCMP</b>	Royal Canadian Mounted Police
<b>SCORPA</b>	Special Committee on Reforming the Police Act
<b>SIRT</b>	Serious Incident Response Team (Nova Scotia and New Brunswick)
<b>SIRTS</b>	Serious Incident Response Team (Saskatchewan)
<b>SIRTNL</b>	Serious Incident Response Team (Newfoundland and Labrador)
<b>SIU</b>	Special Investigations Unit (Ontario)
<b>SO</b>	Subject Officer
<b>Vic PD</b>	Victoria Police Department
<b>VPD</b>	Vancouver Police Department
<b>WO</b>	Witness Officer

## **Dedication**

This work is dedicated to the people, families and communities devastated by acts of police violence and abuse of authority.

This research brought me up close to the horrific violence inflicted on Myles Gray, Jared Lowndes and Dale Culver, and the traumatizing, results-less oversight processes that ensued and continue to grind forward. I grieve with their families and communities and echo their calls for justice.

In solidarity,

LLL

## Acknowledgements

When I moved to the West Coast in 2015, I did not realize the impact this land would have on my worldview, wellbeing, and life. Since time immemorial, these unceded, ancestral lands have been protected and shaped by First Nations, and it is with immense gratitude and respect that I acknowledge the x<sup>w</sup>məθk<sup>w</sup>əyəm (Musqueam), S<sup>k</sup>wxwú7mesh (Squamish) and səlilwətał (Tsleil-Waututh) Nations, on whose land I have lived for three years. I also recognize and thank the Lək<sup>w</sup>əŋən (Lekwungen) Peoples of the Songhees, WSÁNEĆ and Esquimalt Nations on whose beautiful land I formerly lived for seven years. Finally, I thank the Haudenosaunee on whose land I was born and raised, acknowledging the Six Nations of the Grand River and uplifting their ongoing efforts to hold colonial governments accountable for their consistent violation of the Haldimand Treaty since its signing in 1784.

I did not get here and become the person I am today on my own, and I would like to thank all those who shaped me, especially those who supported me these last years. The words of the late Octavia E. Butler (1993) ring true:

*All that you touch  
You Change  
All that you Change  
Changes you  
The only lasting truth  
Is Change*

My dear sister Allyssa, your friendship and support means the world to me. Whether we are picnicking on top of a mountain, drafting RFPs, panicking in the ER, roadtripping at the speed of light, or snacking on charcuterie, my life is better with you in it. Thank you for being my biological and chosen family.

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To Merry, my guardian and pride and joy, and Pippin, supervisor of my life and tiny best friend, I would not have made 23, nonetheless this degree, without you. Thank you for being my consistency.

Finally, my heart goes out to teenage Lydia Lukas; confused and angry but never backing down. You were right. I am so proud of you.

With gratitude,

LLL

## **Chapter 1: Introduction**

### ***1.1 Introduction***

In 2020, the Wet'suwet'en First Nation's resistance to the Coastal GasLink Pipeline and the resulting Shut Down Canada country-wide solidarity protests, and the murder of George Floyd and the subsequent widespread Black Lives Matter protests, changed many Canadians' perception of the world, as many learned – some for the first time – about abuse of power by police and the extensively documented targeting of predominantly non-white and socioeconomically disadvantaged people (Canadian Museum for Human Rights, 2025; Environics Institute, 2021). Many Canadians watched graphic videos of people dying at the hands of police and First Nations land defenders being violently displaced but struggled to reconcile with the reality that racism and police brutality is not just an “American” problem. This reality that there are multiple Canadas – the safe, polite, free, decidedly not USA country with barely a hint of racism and helpful police, and the Canada where police bring fear, violence, displacement and even death – continues to sink in. Despite ongoing backlash, there has been a noticeable shift in mainstream, predominantly white perceptions and narratives, but, in 2025, there have not been substantial policy changes or reforms to policing in BC to address systemic issues, such as racism, violence or the lacklustre transparency and accountability. Instead, “police-involved” deaths continue to increase, along with law enforcement's budgets.

In some ways, British Columbia's Independent Investigations Office (IIO), a core component of BC's police oversight system, is like Canada; there are two drastically divergent narratives about the organization. The IIO and police oversight in BC has been heralded as a shining example of independent, external, civilian-led system that protects against brutality, over-reach, and other wrongs; yet, individuals and organizations, especially those from and working with marginalized communities, have raised concerns over the lack of justice and accountability. This thesis is an exploration of the search for justice when police wrongfully kill or seriously harm people in BC, layering quantitative analysis of the outcomes of the police oversight system with qualitative examination of the context in which they occur. This examination of the police oversight system responsible for incidents of serious harm and death exposes a myriad of problem spots that call into question its impartiality and, in its current structure, its ability to hold police to account and achieve its goals, highlighting the urgent need for reforms both within the organizations that make up this system and by the provincial government, which bears ultimate responsibility for this police oversight.

### ***1.2 Problem Statement, Significance and Objective***

In Canada and even more so in BC, there is a glaring lack of literature on police oversight and accountability. Although the IIO has operated since 2012, there is a complete dearth of literature or analysis on outcomes or its ability to provide effective oversight and bring meaningful justice to those harmed by the police. The sparse peer-reviewed content available on IIO does not focus on the outcomes of investigations or effectiveness in providing meaningful accountability and justice to those caught up in this system, but administrative considerations, such as cost-savings and efficiency. In this context, opinions can be and often are polarized – IIO is exemplary or IIO is part of a system that enables police violence – and lack tangible data to draw upon.

Even more starkly, there is also a complete absence of peer-reviewed literature examining the outcomes for cases that IIO refers to Crown Counsel and proceed through the legal system. This gap ensures that no one really knows how often and in what circumstances police face legal consequences for causing serious harm or death in BC. It also relegates the statements and experiences of marginalized communities and those harmed by police to the realm of anecdotal, unreliable, and – most importantly – ignorable. This lack of basic information about outcomes is not only troubling but undermines any attempts to reform or improve the system. How can a society improve that which it does not understand? This thesis will seek

to begin to fill this gap through quantitatively and qualitatively analyzing the system and outcomes of police oversight when officers are involved in incidents of serious harm or death. It is foundationally driven by the question – what really happens when police break the law?

This thesis is inspired by the 2021 peer-reviewed analysis of Kate Puddister and Danielle McNabb which explored this question in Ontario, tracing outcomes through Ontario’s police oversight system over a fifteen-year period and providing an empirical analysis of the realities faced by police officers in the justice system when they are criminally charged (2021, 2022). Like Puddister and McNabb, this thesis will trace cases from their origin with the independent oversight body through the court system, largely utilizing publicly available documents, such as IIO reports, published legal decisions, and media articles. While this thesis is guided by Puddister and McNabb’s ground-breaking work in a drastically under investigated area of Canadian research, their work is based in a different jurisdiction with a different oversight body, the Special Investigations Unit, which has different authorities, including the power to lay charges, and data-sharing practices. In the BC context, the oversight system also includes the BCPS, which determines whether to lay charges following IIO’s recommendation. The IIO less readily and reliably shares information on all cases on their website and required a data request to ensure that all investigations within the study period were captured. While there are notable differences between the BC and Ontario oversight systems, this thesis will utilize Puddister and McNabb’s work as a model as well as a comparison point for outcomes, contrasting Ontario and BC’s police oversight systems.

It is important to note that the perspective of oversight and accountability for police in BC being desperately inadequate is considered fact in many communities, such as racialized and marginalized populations (Kwon & Wortley, 2022; Schulenberg et. al, 2017; Martens, 2023; Human Rights Watch, 2013; Office of the Human Rights Commissioner, 2021, p. 7), but they are often not the communities that have held power or influence over this system. The inequitable grounding of these divergent perspectives is evident in calls for reform which often come from highly marginalized individuals and communities, as well as non-profits and academics, while police and their allies, such as police unions, often argue the opposite; that the current system is too cumbersome and holds police to unreasonable standards (Roach, 2022, pp. 70-73). As the literature review will show, police have powerful allies and immense independence which advantages their claims of sufficient oversight. This thesis will seek to shine an empirical light in this dark space of allegations and unknowing and rigorously analyze the outcomes of the police oversight system within their broader context with qualitative methods that examine the systemic factors that underpin the system’s quantitative results.

### ***1.3 Terminology***

Terminology is not neutral. This thesis will replicate two key terms used in IIO and BC Prosecution Service reports for consistency, but, in general, will evaluate word choices and seek to use clear, descriptive language that provides all available details. The replicated terms are:

- Subject Officer(s): the officer(s) under investigation, abbreviated as SO
- Affected Person(s): the individual(s) harmed or killed while police were present, abbreviated to AP
- Witness Officer(s): officer(s) that witnessed the incident, abbreviated to WO

In the context of police violence, officers’ actions are often veiled behind passive language that can unnecessarily obscure basic information about the police’s role in an incident. When someone is fatally shot by police, media statements typically refer to a “police-involved shooting,” which can add unnecessary uncertainty, as the reader cannot determine if the gunshot was self inflicted or fired by police or an involved civilian. While this vague language may be appropriate or necessary in some cases, its use for all incidents must be questioned.

The IIO closely mirrors the police language in many cases, although some more active language is used. For example, on May 5, 2022, the Vancouver Police Department (VPD) announced that “a man died following a police-involved shooting” where “an altercation ensued and shots were fired” (VPD, 2022a). This language obfuscates and creates a passive narrative about an active, violent situation in which VPD’s role is unclear. The IIO information release for the same incident closely mirrors VPD’s language in the title and first sentences, although somewhat more active language is used in the details of the release, including “shots were fired by police. The man sustained gunshot injuries and was pronounced dead at the scene” (IIO, 2022a). In contrast, the BC Prosecution Service typically uses more descriptive language, but does revert to passive language at times.

This thesis will utilize some terminology used by police departments and the oversight system for consistency and will use terms such as “police-involved shooting” when the details of the incident are unclear. At the same time, word choices must not be replications, but conscious decisions based on available information. This thesis will strive to use precise, active language that portrays the relevant information in a concise, accurate manner, rather than defaulting to a replication of the language used by any of the involved organizations.

Finally, when this thesis refers to the police oversight system, it is specific to the process for incidents when a person seriously harmed or killed with “police involved.” This process begins with an investigation by the IIO, which decides whether to refer the case to Crown Counsel for potential charges and excludes investigations into misconduct and injuries that do not rise to the level of serious harm, which are the jurisdiction of the Office of the Police Complaint Commissioner and the RCMP’s Civilian Review and Complaints Commission.

#### ***1.4 Research Questions***

This thesis’ research includes both qualitative and quantitative exploration, with an overarching question encapsulating both lines of inquiry:

- The police oversight system responsible for investigating incidents of serious harm and death was created to achieve specific goals; what does a mixed methods analysis reveal about its achievement of these goals and are there opportunities for the system to more effectively realize them?

While this research is guided by the overarching question, the evaluation of the police oversight system’s achievement of its goals and potential paths forward requires the answering of several quantitative and qualitative inquiries. Specifically, Chapter 5 will focus on the overarching question directly.

The following qualitative sub-questions serve to answer the overarching question:

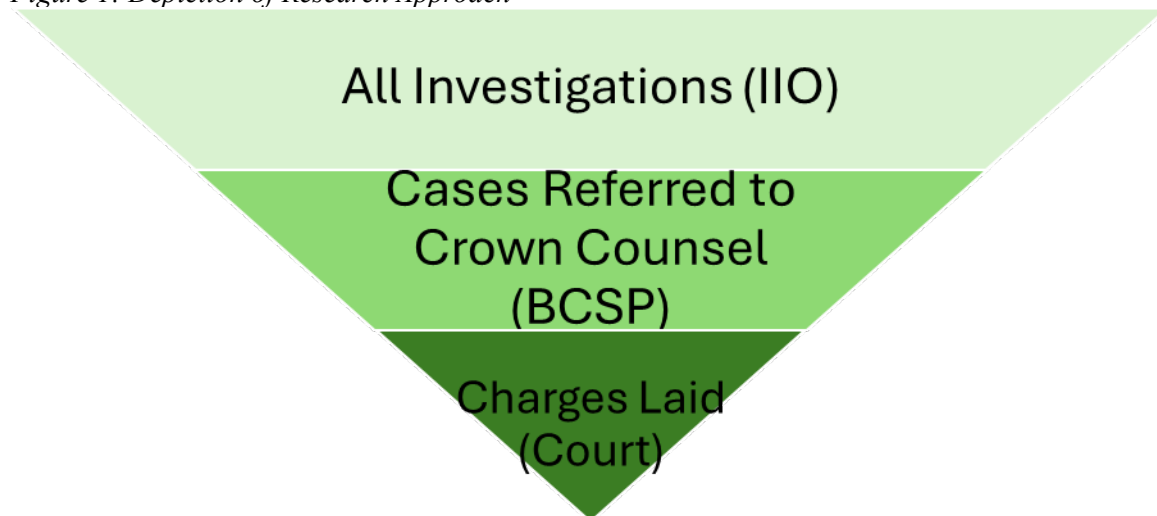
- What are the goals of the police oversight system in BC and motivated the creation of this system?
- Are there ways in which the structure, mandate and operational realities of the police oversight system hinders its ability to meet its goals?
- Are there opportunities for reforms to the police oversight system that could improve its ability to achieve its goals and address concerns about the system, particularly from the perspectives of the individuals, families and communities caught up in this system?

Three questions guided the quantitative basis for evaluation, matching the stages of the cycle that an investigation into incidents of serious harm and deaths can pass through, which are the IIO, BC Prosecution Service (BCPS), and court system. The quantitative questions are, for incidents of police-involved serious harm and death occurring between January 1, 2014, and December 31, 2021:

- How many IIO investigations resulted in a referral to Crown Counsel and were there patterns evident in referred and unreferred incidents?
- In what percentage of cases referred by IIO did the BC Prosecution Service lay charges and what were the characteristics in the cases where charges were laid and those where BCPS declined to lay charges?
- How often did the BC courts find police officers investigated by IIO guilty of a criminal act and what were common themes of these cases?

The quantitative component of this thesis will take a broad to narrow approach, as depicted in the graphic below. It begins with an exploration of all IIO investigations, then delves into limited cases referred to Crown Counsel where the BCPS is responsible for determining if and what charges may be laid and finally traces the outcomes for cases where charges are laid. This structure promotes a more in-depth analysis of cases that proceed further through the police oversight system and focuses in on key decisions points and decision makers in the process. This allows the research to consider not only how often any cases proceed beyond IIO investigation, but also the characteristics of cases that commonly progress through the police oversight system – an essential component of a holistic mix-methods evaluation. To support this analysis, this thesis will garner information about the investigation, affected person(s) and subject officer(s) within all three stages.

*Figure 1: Depiction of Research Approach*



### ***1.5 Scope***

Scope must be clearly defined to ensure the feasibility and relevance of analysis. This thesis will trace investigations into serious harm or deaths by police and exclude misconduct and other allegations of police wrongdoing that are the jurisdiction of the Office of the Police Complaint Commissioner (OPCC) and the RCMP’s Civilian Review and Complaints Commission (CRCC). This is intended to retain focus on allegations of criminal conduct, specifically police actions that result in serious harm or death and increase the feasibility of the research by limiting the number of involved organizations and investigations. This scope will increase comparability, as all studied cases involved alleged criminal conduct, avoiding the risk of misleading comparisons between criminal and non-criminal acts.

The second key area of scope is the timeframe. January 1, 2014, to December 31, 2021, was selected to balance the two priorities of up-to-date and complete outcomes. Recent incidents of death and serious harm provide more relevant insights on the current realities of police oversight, but it can take years for investigations to weave their way through this system. A brief review of investigations shows immense

variation in the process from IIO investigation to BCPS decision and, in some cases, the conclusion of a trial. For court cases, this variation is most significant, with some cases completed in a year and a half from the original incident, while others continue with no end in sight six years after the incident. To balance these priorities, the time frame of January 1, 2014, to December 31, 2021, was selected, with the qualification that some investigations within the study period may be ongoing without a final outcome to analyze (e.g., IIO decision on referral, BCPS decision to charge, or court verdict). Ultimately, decisions around study period can have a significant impact on the results. For this research, this period was determined to best balance the two risks of incomplete or out-of-date results, providing insights that are recent and relevant, while clearly identifying the outstanding, unresolved investigations and their potential implications for broader conclusions. Further discussion on scope can be found in the Limitations section.

### ***1.6 Positionality***

I exist on the spectrum of privilege. I am white and able-bodied, and was raised in an English-speaking, Christian community whose religiosity, beliefs and practices were perceived as odd but not threatening by mainstream society. My family struggled financially but held Canadian citizenship. Although at times well-intentioned, my birth family and community of origin indoctrinated me in racism, sexism, homophobia, and other forms of discrimination. A result of this upbringing is my internalization of a “savior complex,” which encouraged me to assume that I was qualified or the right person to “help” marginalized populations. This is the same mentality used to justify and rationalize colonialism, both historic and today. Perpetuating harm may not be my intention, but it does not erase the impact of my actions or mindset, which have upheld systemic power imbalances and inequality.

As an adult, I have had diverse experiences and opportunities in my work, travel, and personal life for which I am immensely grateful. I live today as a non-binary, queer, non-religious, and (I hope) anti-racist person, but my journey to unlearn is lifelong. I have not arrived; I will never arrive, and I embrace this continual evolution. My journey has not been easy, but I still experienced and continue to experience privilege, power, and opportunities than others do not.

My limited and privileged experiences with police in the first 25-years of my life led me to believe that I could turn to them for help and expect to receive it. The last ten years have shown me otherwise, but in many ways, this was my choice; if I had not worked, volunteered, aligned, or openly identified myself with marginalized populations, I might still feel safe with the police. I come to this thesis with the knowledge that police inflict harm and often face no consequences. I first learned this through research and experience of others, but this knowledge was most powerfully impressed in me by the police themselves. My hope for this research is to uplift the truths shared by victims of police violence – that our current system of police oversight does not typically result in justice or systemic change, and our society, but especially the individuals and communities marginalized by the current system of policing and state control, deserve better.

### ***1.7 Structure of Thesis***

This thesis’ structure builds in progressive layers, beginning with the literature review (Chapter 2), which provides a foundation and contextual understanding for the research methods. Chapter 3 outlines the methodology and methods used in this research, including discussion of the reliability and validity as well as the strengths and limitations of any results. Chapter 4.1 begins with the jurisdictional scan, providing insight into the operations of police oversight bodies across Canada and offering a comparison point to identify differences and similarities into both why IIO operates in the current manner and how it could evolve. Chapter 4.2 delves into the quantitative analysis, which explores the tangible outcomes of the police oversight system in BC between January 1, 2014, to December 31, 2021. Chapter 4.3 explores three case studies, adding a qualitative component to the thesis and providing an in-depth examination of common narratives around and barriers for investigations that proceed through the oversight system. Chapter 4.4 provides the final layer of the research with an interview with the former head of the IIO,

Ronald MacDonald, to unpack the dynamics, realities and inner workings of the system from the perspective of the individual responsible for all IIO decisions between October 2017 and May 2024. Chapter 5 is dedicated to discussion and analysis, answering the research questions and reviewing the unexpected findings, themes and ideas discovered through the process. Finally, Chapter 6 concludes the thesis by discussing the implications, limitations and potential for further research as well as final reflections and recommendations for the future of police oversight in BC.

## **Chapter 2: Literature Review & Framework**

### ***2.1 Background***

Independent police oversight bodies in Canada are typically created as a response to high profile and controversial acts of police violence (Roach, 2022, p. 63). BC is no different, with the origins of the IIO stemming from two inquiry commissions: the death of Frank Paul, an Indigenous man, who was left to freeze to death by the Vancouver Police Department in 1998, and the killing of Robert Dziekanski at Vancouver International Airport by the Royal Canadian Mounted Police (RCMP) in 2007 (Roach, 2022, p. 63). Stelkia identifies three major types of civilian oversight models, based on the degree of civilian involvement. The categories include those where civilians review the outcome of police-led investigations, civilian-led investigations where police may still play a role, and civilian-only model where police do not participate in the investigations at all (2020, pp. 1-2). The IIO is a civilian-led model, where the Chief Civilian Director (CCD) evaluates evidence gathered during investigations and decides whether there are reasonable grounds to refer the case to Crown Counsel (IIO, 2019a).

When it was created, the IIO was intended to be a completely civilian body. Its goal was to be staffed entirely with people who have never worked in policing or law enforcement (British Columbia, 2015, p. 5). A public consultation by a Committee of the Legislative Assembly in 2015 on complete civilianization reported mixed results from stakeholders. Interestingly, in its summary, the Committee does not list a single law enforcement stakeholder in favour of complete civilianization, or a single civilian organization that did not support full civilianization (British Columbia, 2015, pp. 12-13). In 2021, the BC Office of the Human Rights Commissioner's (OHRC) report, *Equity is Safer: Human Rights Considerations for Policing Reform in British Columbia*, recommended the complete civilianization of not only IIO, but also the two other oversight bodies responsible for police in BC (p. 10). Currently, IIO does not hire anyone who has worked as a BC police officer in the past five years, but the former Chief Civilian Director recommends removing this restriction due to staffing issues (Follett Hosgood, 2023). Even with this requirement, approximately 50% of IIO investigators are former police (IIO, 2019a). Additionally, although the IIO is civilian-led, police still play a role in investigations, as the local police agency liaison officer or a senior officer who was not involved in the incident is responsible for securing evidence and the scene and providing key information and context to IIO (IIO, 2019a).

The IIO is not the only oversight body in BC dedicated to policing as, like other Canadian jurisdictions, multiple agencies operate with unique oversight mandates. In BC, these organizations are the IIO, the OPCC and the RCMP's CRCC. The IIO only investigates incidents where serious harm or death occurs, while allegations of police misconduct and other concerns that do not involve serious harm or death are dealt with by the OPCC and the CRCC (IIO, 2019a). While misconduct is not the focus of this thesis, it is important to understand the other organizations operating in this space of police oversight.

The OPCC provides a civilian review model of oversight and has jurisdiction over allegations of misconduct by municipal officers (OPCC, 2017). When a complaint is made, an officer from the Professional Standards Unit of the subject officer's police department investigates, while the OPCC provides oversight and review (Stelkia, 2020, p. 2; OHRC, 2021, p. 62). For the RCMP, misconduct allegations are first addressed by the RCMP Professional Standards Unit, through an internal process that does not have civilian involvement (Stelkia, 2020, p. 2; OHRC, 2021, p. 62). This process often defaults to informal resolution, depending on the type of complaint, followed by an investigation, if deemed necessary (Stelkia, 2020, p. 2). If complainants are dissatisfied with the outcome of this process, they can request an external review by the CCRC, a civilian led body (Canada, 2021). Any disciplinary action recommended by the investigation is at the RCMP's discretion and are not binding, with this system most heavily relying on police investigating police (Stelkia, 2020, p. 2).

In addition to the exclusively policing focus mandates of the IIO, CRCC and OPCC, the BC Coroner's Service is responsible for inquests when people die while under the control of police (OHRC, 2021, p. 62). These inquests are formal court proceedings that include a jury, are held publicly and witnesses are subpoenaed (BC, 2024b). Although these inquests result in a verdict, which includes recommendations on how to prevent similar deaths and the classification of the death (e.g. natural, accidental, homicide, etc.), they are fact-finding and do not rule on guilt (BC, 2024b). Similarly, other organizations may, at time, undertake inquiries into policing and oversight in BC, including the BC Human Rights Tribunal (OHRC, 2021, p. 62). In January 2024, BC's Office of the Human Rights Commissioner launched an inquiry into police use of force, which aims to quantify use of force against racialized people and those with mental health issues (OHRC, 2024).

Currently, policing and oversight in BC are in a period of transition and modernization, including through updating or replacing the 1996 *Police Act*, which currently governs policing. In December 2020, BC's Legislative Assembly appointed the Special Committee on Reforming the *Police Act* (SCORPA) to examine and make recommendations in four key areas: reforms regarding the modernization and sustainability of policing, including independent oversight, governance, training and funding; the role of police in complex social issues, such as mental health and substance use; systemic racism within BC's police agencies; and consistency with the *United Nations Declaration on the Rights of Indigenous Peoples* (BC Legislative Assembly, 2022, p. 5). SCORPA's 2022 report, *Transforming Policing and Committee Safety in British Columbia*, made 11 recommendations, including calls for the creation of a new BC police force governed by new legislation, which would transition BC away from the RCMP as the contract policing provider for much of the province (pp. 10, 78). The report also included recommendation nine, which called for the establishment of a single, independent, civilian-led oversight agency responsible for overseeing all investigations and disciplinary matters for police and public safety personnel in BC (BC Legislative Assembly, 2022, pp. 11-12). Further, recommendation nine called for the creation of stand-alone police oversight legislation; the agency to reflect the diverse population and cultures within BC; services to assist complainants through the system; a multi-stream approach that offers multiple resolution pathways and expedites minor matters; updating the definition of misconduct to include discriminatory and demeaning behaviors; and "establishing a duty to cooperate with investigations and a duty to report misconduct" (pp. 11-12).

The former Minister of Public Safety and Solicitor General, Mike Farnworth, responded favourably to SCORPA's report and the Policing and Public Safety Modernization Initiative (PPSM) was subsequently created to roll out further engagements and consultations and begin implementing the recommendations through a multi-phase approach (BC, 2022; BC 2024c). In April 2024, phase one resulted in the passing of amendments to the *Police Act*, which addressed smaller aspects of select recommendations such as new requirements for police board members and an expanded definition of misconduct to include discriminatory behaviours, but significant work lies ahead to realize the full scope of SCORPA's calls (UBCM, 2024). Phases two and three include further consultation and engagement, and co-development of new legislation with First Nations and municipalities, but Minister Farnworth has stated that the move to a BC police force is not "on the front burner" (Hoekstra, 2023), raising questions about the political will to fully implement SCORPA's recommendations. If implemented, the broad scope of the recommendations will have far reaching implications for oversight and drastically change the current landscape in which three bodies operate with unique mandates and authorities, but a high degree of commitment would be required from government to holistically transform and modernize policing and oversight in BC.

## **2.2 Literature Review**

There is a lack of peer reviewed literature on the IIO and police oversight in British Columbia. Existing works have a markedly different focus than this thesis. To fill this gap, this literature review will draw on research from across Canada, as well as investigative news media stories, to explore key themes which

will provide context and support a framework for analysis. Across Canada, there is a dire lack of research into the outcomes or effectiveness of police oversight systems, although some works exist. This review will consider existing works, and, to support analysis of this under-studied topic, delve into foundational questions about police oversight and the multitude of factors shaping the current status quo. These foundational questions will begin to unpack society's expectations for police, the role of police oversight and definitions of success to begin to understand the intentions of the current system, which will later be compared with the outcomes it achieves.

In order to develop a foundation to support this research, the researcher searched with curiosity and an open mind for literature broadly relevant to police oversight in Canada. For academic literature, this required the use of diverse search terms in the University of Victoria library database, including both overarching terms, such as policing, justice and accountability, and specific queries linked to relevant considerations of police oversight, such as police independence, police culture and public perceptions of police. The search for relevant literature was expanded, as needed, to relevant legal concepts, laws, regulations and policies, such as the Canadian *Charter of Rights and Freedoms*, specific court cases that have ruled on elements of policing, legal concepts like the Rule of law, BC's *Police Act*, and the *Police Act's Code of Professional Conduct Regulation*, given their essential role in shaping and outlining the expectations, rights and responsibilities of police in BC and Canada.

Additionally, when relevant, the literature review search expanded to grey literature, especially government reports, on policing. This was most pertinent around issues of racism and sexism, given the focus on these concerns in recent years by governments across Canada. Finally, creating the basis for this thesis required a broad search of news media, utilizing both the University of Victoria's databases and the Google search engine, to identify articles and investigative pieces relevant to police oversight and the current state of policing in Canada. News media filled a crucial gap in this under-studied, under-published area, bringing to light both broad concerns, such as an investigative journalist piece on reasons for Ontario police officers' suspension over a multiyear period, to case and location specific articles, such as an article on an internal probe regarding the group chats between several RCMP officers in the lower mainland. Ultimately, the development of the foundation for this research required creativity and broad scanning to explore the context, relevant factors and considerations, and key issues that surround police oversight, a drastically under-studied topic in BC. This literature review strives to build from core concepts, such as the goals of police oversight and expectations of police, and subsequently layers in more specific considerations, such as police culture, and concludes with highly specific topics, such as excited delirium, a condition that is referenced in some of the reports of the police oversight system. This approach permits the researcher to develop a holistic and intersectional understanding of the police oversight system, despite the lack of peer-reviewed, BC-specific research in this area.

### ***2.2.1 The Underpinnings of Oversight: What's it all for?***

The Merriam Webster dictionary defines democracy as “government by the people” (2024) and democracies require “democratic institutions must be transparent, accountable, legitimate, and subordinate to civil authority and the rule of law” (Pino & Wiatrowski, 2006, p. 81). Despite their unique independence, discussed below, democracy demands that police cannot be “a law on to themselves” (Roach, 2008, p. 3) and “their actions must be consistent with this higher authority of democratic values and human rights” (Pino & Wiatrowski, 2006, p. 78). Although abuses of police authority are corrosive to democracies (Pino & Wiatrowski, 2006, p. 77), “no democracy promises to end wrongdoing on the part of state actors. However, democracy does promise to place significant checks on state power” (Bonner, 2018, p. 253).

Oversight, which the Merriam Webster dictionary defines as “watchful or responsible care” or “regulatory supervision” (2024), is a commonly utilized check on state power in democracies, such as BC's Representative for Children and Youth, an oversight body that monitors, reviews and publicly reports on

the child welfare system, including the scandal ridden Ministry of Children and Family Development (2023). Likewise, the police oversight system operates as a key check and balance to police authority and plays a crucial role in upholding policing aligned with democratic values or “democratic policing.” According to Bonner, democratic policing “can be understood as when elected political leaders are able to effectively use police to uphold the rule of law and that the police, as public servants, respond to citizen complaints, are accountable, use a minimal level of coercion, and respect human rights and notions of justice and equality” (2020, p. 1045).

The rule of law is one of the foundational concepts of the democratic model of policing, which sets it apart from authoritarian policing (Puddister, 2023, p. 392). The rule of law traces its origins back to ancient Greece and insists that the law applies equally, and all people are subject to it, including politicians, police officers and others with significant power in society (Law Society of BC, 2021). The rule of law is embedded in the Canadian Constitution, with the *Charter of Rights and Freedoms* opening with the statement that “whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law.” Section 15(1) of the Charter further clarifies that “every individual is equal before the law and has the right to the equal protection and equal benefit of the law without discrimination” (1982). The rule of law requires oversight to ensure that the police are also bound by the law and that their unique powers and authorities are not misused or abused. In doing so, the rule of law creates two tensions for democratic policing, as it must safeguard “police independence from partisan interests, while ensuring that the police are answerable to elected officials,” and balance “crime control and the requirement that law enforcement respect due process and legal rights” (Puddister, 2023, p. 392).

The tension between independence and accountability for police has not been fully resolved in Canada. While elected leaders do not have a role in specific, day-to-day decision-making, such as laying of charges, the concept that elected leaders and the public have no role in governing police is questionable, especially in terms of high-level guidance around acceptable actions and public safety goals (Roach, 2022, p. 74). In 1999, the Supreme Court of Canada’s (SCC) ruling in *R. v. Campbell* cemented the importance of police independence, stating that “police are independent of the control of the executive government,” and that they must “not be considered a servant or agent of the government while engaged in a criminal investigation. The Commissioner [of the RCMP] is not subject to political direction” (1 SCR 565). Although the SCC’s ruling did protect police independence in investigations, it did not establish an absolute independence of law enforcement in all matters or clearly articulate the boundaries of that independence (Roach, 2022, pp. 76-77, 92-93, 97-99). In this context of unclear boundaries on police independence, which complicates political intervention, police oversight strives to mediate the tensions between independence and accountability.

Although there are various types of police oversight with different levels of independence, as described by Stelkia (2020, pp. 1-2), “independent oversight of the police has emerged as a core principle of democratic policing” (Smith, 2013, p. 92). Originally associated with English-speaking democracies, independent oversight has become a norm, with countries around the world going through waves of reforms and modernization efforts that center on or integrate efforts to bolster independence of and civilian involvement within police oversight (Smith, 2013, p. 92). For example, in 1977, following scandals and a “perceived lack of independence in the existing complaints process” the Police Complaints Board for England and Wales was established, and, after several more scandals, inquiries and reforms to strengthen oversight, lives on in 2025 as the Independent Office for Police Conduct (IOPC) (IOPC, 2023). In this way, police oversight is not a static concept, and systems continue to transform to meet the evolving societal standards of and expectations around human rights, accountability and oversight (Pino & Wiatrowski, 2006, p. 78).

### 2.2.2 Expectations of Police

The police have authorities beyond those of most Canadians, such as the legal use of deadly force, but there are limitations, boundaries and accountability mechanisms for these powers, including the IIO. Within Canadian society, there are collective expectations surrounding policing and the mechanisms intended to ensure the appropriate use of police power, but what are these expectations, and do they match with the reality of the police oversight system? The standards around police powers and actions are evident in laws, regulations, codes of conduct, and political mandates, which together act as an expression of the current societally agreed upon baseline expectations for police behaviour. This section will unpack the core expectations of policing, which include fairness, trustworthiness, and only stepping outside the law (e.g., causing bodily harm) in situations where it is essential to protect themselves or others, and with the least amount of harm caused as possible.

The BC *Police Act's Code of Professional Conduct Regulation* outlines foundational expectations for police and includes a statement of core values which affirms that all police officers must act without favour or personal advantage, treat all people or classes of people equally, and uphold the rights and freedoms guaranteed or protected by law (1998, s. 3). The *Police Act* also provides insight into actions that do not meet expectations, including a public trust offence, which it defines as “an offence under any enactment of Canada, or any province or territory in Canada” (s. 77(2)), and details twelve prohibited behaviours, such as abuse of authority, which includes unnecessary force (1998). The Regulations clarify that one of the purposes of the Code of Professional Conduct is to “maintain public confidence in the police by ensuring that police are accountable to the public in a way that is fair to police officers and to members of the public” (S. 2(d)). Similarly, the *RCMP Act's Code of Conduct of the Royal Canadian Mounted Police*, which is found in the Commissioner’s Standing Orders (Conduct) Regulation (2014), outlines the expectations of officers, including treating all people with respect and courtesy, not engaging in discrimination or harassment, respecting the law and rights of all individuals, acting with integrity, fairness, impartiality, and not compromising or abusing their authority, position or power (s. 2-3). It also clearly states that officers must “only use as much force as is reasonably necessary in the circumstances” (2014, 4.6).

While the *RCMP Act* and the *Police Act* clarify that police are not given free reign to harm or kill, they do have protections and powers beyond ordinary citizens. The *Criminal Code* explains that police use of force is justified, if it meets standards – that the force is authorized or necessary, the officer is acting on reasonable grounds, and only to the degree of force required or proportionate to the situation (1985, 25(1)(9)). These concepts of necessity, proportionality and reasonableness are difficult to evaluate, especially given the complex, rapidly evolving dynamics in which police use of force often occur. Necessity questions whether the officer’s actions, like apprehending a subject, were necessary and, in the context of use of force, that other “intervention tactics” have either been tried, are unsuitable or are impractical (Cyr, 2016, p. 666). The concept of necessity is not static, as society and the legal system increasingly expects police to utilize de-escalation tactics, rather than rapidly resorting to physical and violent interventions (Cyr, 2016, pp. 666-668). Assessing proportionality is exceedingly complex and does not require the least amount of force necessary, but hinges on the difficulty of attaining the desired compliance and the potential consequences if the officer is not successful with a less forceful approach (Cyr, 2016, pp. 670-672). Finally, reasonableness considers both the objective facts of the scenario, such as that an individual is visibly armed, and the officer’s subjective beliefs about the situation, such as that the individual intends to use their weapon and is a threat to the lives of others (Cyr, 2016, pp. 674-675). Together, the *Criminal Code*, *RCMP Act*, and the *Police Act* outline the boundaries or limitations on police use of force, but they are always not easily evaluated both in dynamic situations and retroactively by the oversight system.

While laws codify and detail expectations around police conduct, the maintenance of public trust is crucial. In 2022, BC’s Legislative Assembly formed the Special Committee on Reforming the Police Act,

with the intention of providing recommendations on four topics, which included reforms to independent oversight and “the scope of systemic racism within British Columbia’s police agencies... and its impact on public safety and public trust in policing” (p. 5). Although the Committee noted that the IIO “appears to be working well” (p. 84), it recommended a single, independent, civilian-led organization rather than the current mix of bodies (see *Background* for more information on other police oversight bodies in BC) with its guiding approach based on “accountability for actions, repairing relationships, and trust in the system” (p. 84). Mike Farnworth, Minister of Public Safety and Solicitor General, responded to the Committee’s report, stating “the recommendations... echo our government’s belief that everyone deserves equal treatment by the police. This has not always been the case for many Indigenous, Black and other people of colour. Public trust requires that the delivery of police services is fair, equitable and responsive to all British Columbians” (British Columbia, 2022).

Together, these laws, regulations, codes, and ongoing political work to reform policing detail the expectations placed on police, especially in circumstances where they exercise their unique powers, such as the legal use of force. While the expectations on policing are longstanding, largely based in decades old legislation, society continues to consider and further nuance these standards, including through the current reforms of the *Police Act*. Ultimately, while police have unmatched powers, they are – at least theoretically – bound by the law. This thesis will explore whether these expectations align with the reality of police oversight in BC, including whether police are charged and found guilty when they violate these expectations and commit unjustified criminal offences.

### **2.2.3 Roles and Goals: The Functions of Police Oversight and Definitions of Success**

The concepts and driving principles that underlie the justice system in Canada are not neutral or objective; they are culturally situated and founded in the mainstream or dominant worldviews. Harold Johnson’s work *Peace and Good Order* provides a starting point to unpack the western concepts that underlie the justice system but may be assumed and largely unquestioned by society and those who write, teach, and interpret the law (2019, pp. 20-21). For example, deterrence remains a driving purpose of the Canadian justice system, despite established evidence regarding its limited effectiveness (National Justice Institute, 2014), with Canada’s *Criminal Code* defining the purposes of criminal sanctions as denouncing illegal behaviour, deterrence, separation of offenders from society, rehabilitation, reparations, and a sense of responsibility and acknowledgement for the harm (R.S.C., 1985, s. 718). Johnson’s inquiry into the foundations of Canadian conceptions of justice inspires many essential questions about the role of police oversight, such as what are the markers of success in investigating police? Is success defined as weeding out “bad apples”? Could success be measured in high charge rates of officers? Do the established processes contribute to systemic change or improvement and reduced deaths and serious harm at the hands of police over time? In which ways does this system support the victims, families and communities harmed by police criminal conduct?

Kent Roach (2022), and John Sewell and Christopher Williams’ (2021) critiques of the current system expand on and begin to answer the questions raised by Johnson’s work. Police oversight in Canada exclusively focuses on whether police committed a crime, rather than whether alternative approaches could have led to a better outcome for the affected person or why the current trainings and policies failed prevent the incident (p. 64; pp. 40-42). This basis for investigations ignores the contexts in which serious harm and deaths occur, individualizing the circumstances and disregarding the structural forces at play (Roach, 2022, p. 73). In this context, the IIO, BCPS and courts decisions hinge on the justifiability of the subject officer’s actions, and the investigations by IIO and BCPS only focus on whether it was a criminal act and, in the case of the BCPS, whether there is a substantial likelihood of conviction (2021, p. 2), not whether it was the “right” choice (Sewell & Williams, 2021, pp. 41-42). Police oversight in BC does not consider or seek to address systemic issues or solutions, indicating that success in the current context can only be defined on a case-by-case basis, considering the system’s effectiveness at weeding out criminal officers, deterring other officers from criminal behaviour, and providing consequences for lawbreaking.

As a primary purpose is deterrence, the outcomes of the investigations into alleged police wrongdoing are a critical indicator of success. This raises the question, have incidents of death and serious harm at the hands of police decreased with the advent of civilian-led, more independent oversight? In 2022, 64 people in BC died as the result of police actions, which is eight times higher than when the IIO was created – an increase that drastically outpaces population growth in the province (Follett Hosgood, 2023). It is not only police-involved deaths that are increasing, the former Chief Civilian Director (CCD) of the IIO, MacDonald, reported that the portions of deaths (30%) to serious harm (70%) cases have remained static (Follett Hosgood, 2023), indicating that reports of serious harm at the hands of police are also increasing. The IIO initiates investigations in all cases of where deaths occur or the definition of serious harm is met and these investigations are triggered by police agencies, so this rise cannot be explained by increased reporting by the public. According to Tracking (In)Justice, a project focused on data transparency in law enforcement and the criminal legal system in Canada, police-involved deaths have drastically increased in the past twenty years, including a 66.5% increase between 2011 and 2022, and BC has the third highest rate of police-involved deaths, exceeded only by Ontario and Alberta (2023a; 2023b). An international comparison of ten wealthy democratic countries by the Prison Policy Initiative found that Canada has the second highest rate of civilian deaths at the hands of police at 9.8 per 10 million, with only the USA (33.5) having a significantly higher rate and Australia (8.5) ranking as the only other country with a rate of over 2.5 per 10 million (Jones & Sawyer, 2020). Canada performs poorly in international comparisons of police-involved deaths, police-involved deaths are rising across the country, and deaths and serious harm at the hand of police in BC continue to rise indicating that the oversight system may not be deterring similar conduct, but the lack of rigorous research in this area undermines any conclusive determination and obscures the factors that may contribute to this reality.

The outcomes of the police oversight system are also critical factor of analysis in determining the effectiveness in weeding out and punishing criminal officers. Although there is limited research analyzing these outcomes, evidence from Ontario indicates that even when there is sufficient evidence to charge an officer, the outcomes significantly vary from charges laid against civilians. Between 2005 and 2020, 25% of all charges laid by Ontario's Special Investigations Unit against officers were withdrawn and 33% resulted in convictions (Puddister & McNabb, 2021, pp. 387-388, 397-398). This is drastically different in both case outcomes and sentencing than the public, who are found guilty in 56% of cases. Police officers overall in Ontario are more likely to receive non-custodial sentences and receive notably less severe sentences for some convictions, such as assault (Puddister and McNabb, 2021, pp. 397-398). The limited analysis available in BC has found that between 2014 and 2017, IIO referred 35 cases to the Crown, but only five resulted in charges being laid (Brend, 2020). Similarly, analysis by the Canadian Press found in police oversight agencies across Canada charges were laid or referred to Crown prosecution in three to nine percent of all cases in 2018 and 2019 (Smart, 2020). The limited information available on the outcomes of police oversight raise doubts about the current system's achievement of its purposes of weeding out criminal officers, deterring criminal behaviour among police, and providing consequences for lawbreaking.

A key consideration in understanding the goals of the police oversight system is the rationale for the creation of the IIO, as achieving its intended purpose would indicate at least a degree of success. According to the IIO, it was established to increase public confidence, accountability, and transparency in policing in British Columbia, following the public inquiries into the deaths of Robert Dziekanski and Frank Paul (IIO, 2019a). These goals were repeatedly raised by the Davies Commission Inquiry into the death of Frank Paul as the cornerstones of oversight, highlighting that these were also the goals underlying BC's legislative reforms to the Office of the Police Complaints Commission (Davies, 2009, p. 271) how police investigating police is "fundamentally flawed due to conflict of interest" (p. 218), and that increased independence will lead to more public confidence (p. 219). The goals of accountability, transparency and public trust are not unique to the Davies Commission or BC and form the vision and

mission of Canada's oldest civilian-led police oversight body, the Special Investigations Unit in Ontario, which was established in 1990 (SIU, 2024i).

The goals of police oversight were once again publicly discussed in 2022, when SCORPA released its report on transforming policing in BC after extensive public and stakeholder engagement through submissions, presentations and a survey. SCORPA outlined the vision for policing oversight in BC that "all police and public safety services are accountability to the communities they serve and to each other and are held to high standards that are consistent across the entire profession" (BC Legislative Assembly, p. 84). SCORPA recommended that the new single oversight body's approach to complaints centres "accountability for actions, repairing of relationships, and trust in the system," which hinges on transparency and accessibility and strives to build public trust (p. 84). While these goals are similar to those that underpinned the creation of IIO, SCORPA's desired approach includes repairing relationships, which the current system struggles to meaningfully incorporate.

Ultimately, the police oversight system is not designed to achieve certain outcomes, such as reparations, systemic change or support for the victims, families and communities harmed by police actions. Instead, the system is hyper focused on individual circumstances rather than systemic issues or reoccurring dynamics that may indicate practical problems, such as inadequate training and protocols. In this context, the outcomes that the system could aim to achieve are removal of convicted officers from positions of power, and deterrence and punishment of criminal acts by police, but the limited available data indicates that very few officers face criminal charges or sanctions, raising questions about the system's success in achieving these outcomes.

In the context of this research, the role of police oversight is to determine whether an officer committed a crime (Roach, 2022, p. 64; Sewell & Williams, 2021, pp. 40-42), which is less straightforward with police, as it is dependent not on the outcome or action, such as the fatal shooting of an AP. Instead, the oversight system, from IIO to the courts, evaluate whether the SO's actions were justifiable, which hinges on an evaluation of their necessity, reasonableness and proportionality, as required by the *Criminal Code*. While the purposes of criminal sanctions for police share some overlap with those for civilians, such as deterrence and punishment, as outlined by the *Criminal Code*, the goals of this system are unique, reflecting the unmatched powers of police and the need for ongoing public trust and accountability to maintain a democratic model of policing.

As evident in IIO's creation, the work of SCORPA and the goals of other oversight bodies, the goals of police oversight are demonstrating police accountability to consistent standards and expectations, increasing the transparency of police oversight and boosting public confidence and trust in both the police and oversight. Given the roles and goals of police oversight, the crux of the system's success and effectiveness hinges on its outcomes, which are intended to publicly and transparently verify and demonstrate either why the police's actions were justifiable or that they are being held accountable for causing unjustifiable harm.

#### **2.2.4 Police Culture and the Role of Outsiders**

A critical question that any analysis of police oversight must consider is why the issues within these systems have persisted. The IIO, like most civilian-led investigative bodies across Canada, was created in response to public outcry over police violence and tensions between police and marginalized communities. Despite existing for over a decade, evidence indicates that police violence has not decreased and relations with marginalized communities have not improved. To understand some of the reasons that civilian-led oversight has not resulted in the intended outcomes of accountability, transparency and public trust, it is important to consider the institutional cultures of law enforcement and police oversight, and the factors that empower and constrain civilians' impact within these systems.

Holly Campeau (2017) draws on 100 interviews and observational data from a medium sized Ontario city to outline the “cultural inertia” pervasive in policing, which is defined as a reluctance to adapt to changing conditions, despite the current demographic, policy, and practical pressures (pp. 69, 76). The study unpacks aspects of police culture that maintain this inertia, including an outward facing presentation of responsiveness to calls for change from external bodies, such as oversight agencies, delicately balanced with the internal resistance to change and protection of the status quo (pp. 72, 80). The impact of police culture is also explored by Sewell, who outlines how characteristics of police culture, such as its strictly hierarchical structure and authority over civilians, can feed a sense of isolation from mainstream society as well as strong bonds and solidarity with other police, which strengthen the idea that the public does not understand the realities of policing (2010, pp. 61-63). This can amplify a perception of police as the “thin blue line protecting society from mayhem and anarchy,” with police preserving social values as they understand them, which are often “a conservative view of life, politics, and society” (Sewell, 2010, p. 63). These components of police culture hold to potential of nurturing opposition to civilian oversight, as organizations unequipped to understand or evaluate police behaviour, and threatening to upend the status quo.

The established cultural norms and protection of the status quo are explored from a different angle with consideration of race by Johnson (2019) and Jeffery Monaghan (2022). Monaghan considers the alignment of police cultures with conservative politics and core characteristics, such as “opposition to social change, a worldview that assumes the violent state of nature, an assumption that violence is necessary to uphold social order against threats of chaos, and hostility toward outsider groups” (2022, p. 12). Monaghan proposes that the norms or status quo that police uphold and enforce are “derived predominantly from the experiences of white, settler, consumer classes” (2022, p. 13). This perspective highlights the longstanding tension between law enforcement and minority communities in Canada, especially Indigenous and Black people, which will be explored in-detail in a later section. While diversity and bringing “outsiders” within the established system is commonly proposed as a route to meaningful change and a core rationale of the civilian led oversight system, Johnson shares how in his experience individuals do not change the system, but the system changes those inside of it (pp. 39, 94).

In one of the few BC-specific, peer-reviewed articles on police oversight, Stelkia’s 2020 study draws on 13 semi-structured interviews with insiders to police oversight and finds that police oversight continues to be fraught with issues, but focuses on administrative concerns, such as slow processing time and return on investment. Interestingly, these insiders repeatedly emphasized police resistance to oversight, especially any form of civilian oversight, with police interviewees insisting that only police are qualified to understand and investigate police (p. 8). This perspective was echoed by the previous Chief Civilian Director of the IIO, who reported to a Legislative Committee tasked with reviewing the IIO about a “cultural conflict between employees having backgrounds in police culture and staff from a public service culture” (British Columbia, 2015, p. 8). The Committee’s final report stated that there were “IIO investigators who were former police officers who believed that civilians cannot be competent investigating police-related critical incidents” (British Columbia, 2015, p. 8). These glimpses into the realities of civilian-led oversight indicates a tension both between the police and oversight bodies, as well as between former police and civilian members of these organizations, which may complicate their ability to fulfill their mandate and provide effective, independent oversight.

The resistance to civilian oversight has, at times, resulted in refusals to cooperate with police oversight bodies. A February 2023 analysis by the Globe and Mail raised serious concerns about police officers’ resistance to and interference in investigations by oversight bodies, providing examples from across Canada. In Winnipeg, the Chief of Police refused to share materials and questioned the Manitoba oversight body’s mandate, while the former head of Alberta’s Serious Incident Response team alleged that Calgary Police Department was actively shielding officers by providing them with witness testimony and trading information (MacDonald, 2023). Meanwhile, in 2017, Vancouver Police Chief Adam Palmer

accused the IIO of “lacking investigative competence” and the IIO had to petition BC’s Supreme Court twice to compel the cooperation of some officers (MacDonald, 2023). The former head of the IIO, Chief Civilian Officer MacDonald has also commented to the media about difficulties in civilian investigations of police, including situations of failure to proactively provide evidence, “vague and inconsistent reports” with “implausible gaps” (Canadian Press, 2023) and officers’ resistance to participating in IIO investigations (Brunoro, 2018).

Concerns about police culture were central to the work of the Special Committee on Reforming the Police Act, with SCORPA acknowledging the connection between police culture, systemic racism and a pervasive lack of trust in police and stating that police culture is “at the core of the Committee’s recommendations” (BC Legislative Assembly, 2022, pp. 6, 9). SCORPA called for enhanced and standardized training, both for recruits as well as long-standing members, grounded in key values and competencies to shift police culture, including mandatory psychological assessments for all officers, mandatory education on anti-racism, cultural competency and trauma-informed practice, and trainings developed and delivered in consultation with communities that reflect the local historical, cultural and socioeconomic realities (2022, p. 11). Although SCORPA was not tasked with evaluating the current state of police culture, they acknowledged that it is a critical component to successfully modernizing and transforming policing in BC.

In this system, where police may feel isolated from mainstream society and believe that “outsiders” cannot understand or evaluate the realities of policing, some of the factors that undermine the effectiveness of civilian-led police oversight become clear. The documented resistance to oversight bodies is not conclusive, but it does indicate the potential limitations of this system and highlights the need for clear accountability and governance to ensure the effectiveness of oversight.

### ***2.2.5 Public Perceptions of Police and Oversight Systems***

As civilian-led police oversight systems, including the IIO, are typically created to respond to public backlash over police violence, perceptions of these systems and law enforcement are key contextual factors. In *Policing the Police: Public Perceptions of Civilian Oversight in Canada*, Jihyun Kwon and Scot Wortley examine results from a survey of Toronto residents and find that while most respondents would file a formal complaint if they experienced police misconduct, many did not believe their complaint would be treated fairly (2022, p. 651). Only a majority of white respondents trusted that their complaint would be treated fairly, while Chinese and Black respondents did not (2022, p. 651). The majority of all respondents believe that complaints should be investigated by independent and non-police investigators, revealing a seeming contradiction with few respondents likely to report their complaints to a civilian oversight agency, despite believing that they are best suited to investigate (2022, pp. 653, 658-659). Likewise, in a review of stakeholder perceptions of police oversight for misconduct allegations in Ontario, findings suggest high levels of distrust in the investigations process, low confidence in the independence of the oversight and fear of reprisals, especially in high risk and marginalized populations (Schulenberg et. al, 2017, p. 779).

As civilian-led oversight and other reforms to police accountability were the result of public outcry over police actions, one of the goals of organizations such as the IIO is to increase public trust in the police (IIO, 2019b). Despite these reforms and increasing civilian-led oversight across Canada, statistics indicate declining trust, with the Angus Reid Institute finding a 20% drop in public confidence in the RCMP between 2014 and 2022 and British Columbians having below average confidence compared to Canadians overall (2022, pp. 12-13). While Angus Reid found that overall Canadian confidence in the RCMP was 47% in 2022, this was noticeably lower for visible minorities and Indigenous respondents, with only 33% of Indigenous respondents expressing confidence in the RCMP (2022, p. 13). Similarly, Statistics Canada survey results in 2019 showed that confidence in police was lower for Indigenous and other visible minority populations, as well as those with a physical or mental disability and younger

Canadians (2020). This trend appears to be continuing in recent years, as the Royal Canadian Mounted Police's internal polling showed a significant drop in the trust in the integrity, transparency, and honesty of RCMP officers between 2021 and 2022 (Boutilier, 2022). Despite reforms across Canada in recent decades to increase the independence of police oversight, public confidence in police oversight and the police themselves appears to continue to decline.

### ***2.2.6 Home Court Advantage: Police within Oversight Systems***

For analysis of police oversight, it is vital to consider the unique aspects which complicate investigations into and prosecutions of police. Police officers have advantages as insiders of the criminal system that insulate them from risk and position them to protect their rights more effectively than civilians. In jurisdictions across Canada, police officers commonly refused to cooperate with interviews or provide information to investigators (Sewell & Williams, 2021, p. 40; Roach, 2022, pp. 51, 64). Officers use the Charter as a basis to not engage with the investigation (Sewell & Williams, 2021, p. 40; Puddister & McNabb, 2021, p. 398), a protection that also exists for civilians, but this raises questions about the extent of this protection and whether police are on equal footing with the public within the justice system.

A February 2023 analysis by the Globe and Mail found that officer participation in IIO investigations is almost nonexistent in BC with under 2% of subject officers fully cooperating with IIO in the last five years and undermines the ability of oversight bodies to carry out their role effectively (Macdonald, 2023). The article explains that police have the same rights to silence as anyone else, but this equal standing does not reflect the differences between police and citizens in terms of power and responsibility, such as the legal use of deadly force and detainment. The fact that police do not have to explain their actions undermines the ability of the police oversight system to investigate and for those harmed by police to attain justice. This begs the question whether the public can truly only expect the police not to “unjustifiably” break the law, rather than being held to a higher standard and the expectation of serving and protecting all civilians and prioritizing the safety of the public (Roach, 2022, p. 69).

Trials of police also highlight potential areas of police advantage. Although the rise of cellphones has increased the commonality of civilian evidence against police (Campeau, 2019, p. 78), many cases still rely heavily on the testimony of police, as both subject and witness officers, and pits their testimony against that of the affected person – if they are alive and willing to testify. In this way, trials against police, like many criminal trials, “often amount to credibility contests” (Moran, 2018, p. 1339), with judgements hinging on interpretations of “competing accounts about the same event that are presented as truth” (Nave, Meehan & Dennis, 2024, p. 2440). Police are often assessed as more credible by the courts, and officers' records are often compared with complainants, which can provide an advantage in a career that is often seen as a public service that supports the community (Roach, 2022, p. 400; Puddister & McNabb, 2021, p. 398). Despite their perceived credibility, Moran notes that “the phenomenon of police officers lying at trial is so well documented that it has its own euphemism, ‘testilying’” (2018, p. 1342). Furthermore, unlike trials against civilians, where the Crown often unearths and exhibits a civilians' history of interactions with the law and law enforcement before the court to undermine their credibility and claims to be innocent of the alleged crime, police misconduct records are confidential and evidence of any previous “testilying” are not consistently documented and maintained (Moran, 2018, p. 1339).

Trials against police often also have components that are not typical in trials against civilians and may further embed police privilege. An example of this is the frequent involvement of use of force experts, who are not formally accredited or trained by an independent body, but who's claims are given a “scientific” veneer and are “interwoven in ways that (attempt to) create an “objective” explanation of a subjective experience” (Nave, Meehan & Dennis, 2024, pp. 2446-2447). In fact, use of force experts prior experience in law enforcement and as expert witnesses in other cases are viewed as critical in establishing their credibility, rather than the “scientific merits of their credentials or claims” (p. 2448) and the opinions of these experts can extend beyond the scientifically provable (p. 2453). Nave, Meehan and Dennis

consider this as a component in the development of “police logic” that is used to rationalize force decisions by integrating ““scientific” and organizational claims about police-specific ways of conducting and interpreting an interaction with the public” and prioritizing the officer’s perspective, including physiological factors, decision-making processes, training and policy, above those of citizens, victims and the jury (2024, p. 2460). Roach also found that police training is frequently leveraged as a justification for their actions, which is rarely critically questioned, such as the practice always aiming for the centre of a person’s body when shooting (2022, pp. 65-66). Despite these issues, police continue to typically be viewed as credible by judges and courts often defer to their expertise (Moran, 2023, p. 96).

Some research has also critiqued the close working relationships between police and prosecutors as a potential conflict of interest that could undermine the impartiality of charge assessments and prosecutions (Levine, 2016, pp. 1449-1451). The BCPS appears to have considered this, and the Crown Counsel Policy Manual requires the prosecutor to not be from the same region as the officer, unless “there is no personal, professional, or physical connection to, or relationship with, the officer that could give rise to any objectively reasonable perception of conflict of interest (2018a, p. 4).” But, given police culture and allegiance to the “thin blue line,” it is unclear if this is sufficient to fully insulate prosecutors from the risks of challenging police, including potentially compromising their ability to rely on other officers to testify in cases against civilians.

Even when there is reliable evidence and charges are laid, police officers’ outcomes in the legal system are drastically different than civilians, with lower conviction rates (Roach, 2022, p. 65). Puddister and McNabb (2021) analyzed all completed investigations of the SIU in Ontario between 2005 and 2020, tracing the process through the justice system to find the outcomes for 143 charged officers (pp. 387-388). They found that the charges were withdrawn by the Crown in 25% of the cases, while, for those that made it to trial, the most common outcome was acquittal and for convicted officers the most common sentence is a conditional or absolute discharge (pp. 397-398). This starkly contrasts with the outcomes of the public, with 33% of charged officers and 56% of charged Ontario civilians found guilty in the same period, with police more likely to receive non-custodial sentences and receiving more minor punishments for assault convictions (Puddister & McNabb, 2021, pp. 397-398).

Another possible contributor to the variation in outcomes for police and civilians in the criminal system is police unions, which act as powerful lobbies and individual support for officers under investigation, ensuring access to free and highly skilled legal support (Puddister & McNabb, 2021, p. 398; Roach, 2022, p. 51). In following cases through the trial process, Puddister and McNabb found that when judges consider mitigating and aggravating circumstances for police officers, they often focus on police work and training, the offense committed and the public response (2021, p. 399). When police are found guilty and serve custodial sentences, they often are kept in solitary confinement for their own protection, which some judges cite as a reason to avoid incarceration as punishment, even when mandated under mandatory minimum sentencing requirements (Roach, 2022, p. 66).

This exploration of officers’ advantages within this system again raises the question, how would effective police oversight balance the protection of officers’ rights with the higher standard of accountability for public employees that have unmatched powers over civilians and are advantaged with the criminal justice system? The current system appears to provide police with advantages in the criminal justice system that are not accessible for most civilians, and do not adequately account for the immense powers held by law enforcement, including the legal use of deadly force. Roach summarizes these trials of police as “divisive and no-win new political trials that pit the due process and rights of accused and offenders against the equality rights of disadvantaged groups that are disproportionately victimized” (2022, p. 65). In 2021, the Office of the Human Rights Commissioner of BC’s report raised the difficulties for complainants against the police, recommending that the Ministry of the Attorney General provide for legal advocacy programs for people with complaints or investigations against police through the CRCC, OPCC, BC Human Rights

Tribunal and IIO (p. 10). Although there is no simple solution to address this tension between the undeniably vital legal rights of officers accused of a crime and the urgent need to hold police to a higher standard of accountability that matches their immense powers and authority, the yet unrealized recommendation of the OHRC offers a potential path forward to begin levelling the playing field for those caught up in this system.

### ***2.2.7 Charge Assessment Standards***

While IIO is responsible for investigating incidents of serious harm or death and referring cases for consideration of charges, it is the BCPS is responsible for determining whether charges will be laid and prosecuting police. The charge assessment standard is a two-part test that is used to evaluate all relevant information, both in laying charges and throughout the prosecution, to ensure that only cases grounded in evidence proceed (BCPS, 2021a, pp. 1-2). The two-part test asks, “whether there is a substantial likelihood of conviction; and, if so, whether the public interest requires a prosecution” (BCPS, 2021a, p. 2). The charge assessment guidelines elaborate that Crown Counsel must consider the likely admissibility and availability of evidence at trial, the “objective reliability of the admissible evidence” and “whether there are viable defences, or other legal or constitutional impediments to the prosecution” (p. 2). The guidelines also outline a lower evidentiary test – reasonable prospect of conviction – to be used in exceptional circumstances where “public interest factors weigh so heavily in favour of prosecution that it is necessary to resort to a lower criminal standard in order to maintain public confidence in the administration of justice” (p. 6). The guidelines also elaborate on the public interest test by outlining factors that weigh in favour of prosecution, including the “alleged offender’s position of authority or trust in relation to the victim (BCPS, 2021a, p. 3)” and if the “offence is one that affects the integrity, safety or security of the justice system or its participants” (BCPSa, 2021, p. 4).

BC’s charge assessment standard is unique from other Canadian jurisdictions (see Chapter 4.1) and has been the topic of multiple inquiries and reviews, both in its application to the public and specific to the police oversight system. In 1990, an Inquiry was struck on prosecutorial discretion, with Commissioner Stephen Owen recommending that the charge assessment standard be updated to a reasonable likelihood of conviction (p. 105). Owen stated “while ‘substantial’ may be defined simply as being ‘of substance rather than an illusion,’ it is clearly interpreted much more significantly as it is used in British Columbia charging decisions” (p. 103). In the Reid Case, which sparked the Review, the police Inspector MacAulay “agreed that substantial likelihood for conviction was the appropriate threshold test to apply for charging decisions, he thought that it interpreted by Crown Counsel to mean a ‘virtual certainty’ of conviction” (p. 103). Owen elaborated that “evidence cannot be effectively weighed until it is tested, under oath, in a court through cross-examination and against contrary evidence. It is also clear that as any charge approval process requires a stricter standard of likelihood of conviction, it becomes necessary to assess and weigh the evidence with increasing precision” (p. 103). He concluded that “the use of a ‘reasonable’ likelihood’ standard as a threshold test could clarify the intention of the Attorney General’s Ministry and safeguard against an unwarranted intrusion into the role of the court (p. 104).” Owen’s also recommend that “the prosecution of an indictable offence should not be left in private hands... this is necessary to ensure that a single standard of charge approval is applied, and that prosecutorial power is exercised only in the public interest” (p. 93).

Following the 2011 Vancouver Stanley Cup riot, BC appointed Gary McCuaig, Q.C., a senior Alberta prosecutor, to carry out a Charge Assessment Review, after public criticism around the delays in laying charges against hundreds of accused rioters and the decisions to not prosecute in some cases (McCuaig, 2012, p. 9). In the review, McCuaig noted that the BC standard is intentionally unique from other jurisdictions and that there is an “articulable difference and that ‘substantial’ connotes a higher or stricter test than ‘reasonable’” (p. McCuaig, 2012, p. 13). Still, he questioned if substantial or reasonable likelihood of conviction would impact the assessment of a case, concluding “if there is in fact a practical difference, the cases where there would be a difference in the charging decision would be few” (p. 14),

despite the engagement showing that there was not a consensus on this perspective and some respondents believed that it would impact the assessment of charges (p. 14). Although he did not believe changing the assessment standard would have a significant impact, he posited that it could have negative consequences, as the Crown in BC has worked with the substantial standard for decades, Crown may have “less confidence in their own decisions with resulting potential delays in making charge decision,” and it could potentially lower the evidential bar over time and reduce the quality of police investigations and reports” (p. 14). He concludes, “this would be change for the sake of change” (p. 14).

The charge assessment standard was also a topic explored by the Davies Commission Inquiry into the death of Frank Paul, one of the police-involved deaths that sparked the creation of the IIO. Although the Inquiry did not make a recommendation on the future of the standard, Gregory Fitch, Q.C., a Crown Prosecutor and judge of the Supreme Court of BC and Court of Appeal for BC, stated that BC’s standard of substantial likelihood of conviction is the highest in Canada, and is higher than the reasonable prospect of conviction (2011, p. 42). Fitch continued that BC “took into account the reputational damage that can be caused to people, especially in high-profile cases, when charges cannot be substantiated at trial,” when establishing the standard (p. 42). Throughout this research charge assessment standards will be explored, by contrasting standards between jurisdictions (Chapter 4.1), comparing standards utilized within BC in the case studies (Chapter 4.3) and examining the perspective of the former head of the IIO, MacDonald (Chapter 4.4). Ultimately, these standards appear to have a noteworthy impact on the operations and outcomes of the police oversight system in BC.

### **2.2.8 (De)Escalations: Mental Health, Substance Use and Police**

Deinstitutionalization of mental healthcare began in Canada during the 1960s with the intention of moving treatment from institutional to community settings, which was proposed as a method to decrease stigma and isolation and save money, but the shift was never back by increased capacity and funding for community-based supports and services (Spagnolo, pp. 41-42). Decades later, the challenges of this under-funded shift have not been resolved, with an ongoing lack of integration of mental health within the larger health system, insufficient services and supports to meet demand and persistent stigma (Spagnolo, pp. 43-44; Schulenberg, 2016, p. 464; Center for Addiction and Mental Health [CAMH], 2020, pp. 6, 8). In this vacuum, police have become the default front-line response to mental health and substance use crises, with VPD noting that, in 2015, 30% of their calls for service involved mental health and/or substance use (Brend, 2016). With police placed in the role of first responder, many interactions between police and people experiencing mental health or substance use crises do not stem from alleged criminal acts, and police are often called to address concerns around health and safety, especially given their role in apprehensions under the *Mental Health Act* (Huey, Schulenberg & Koziarski, 2022, p. 15). In 2015, Statistics Canada noted that mental health or substance use related calls comprised approximately one in five contacts by police, and that people with mental health or substance use disorders had higher odds of police contact, even when controlling for other factors (2015). Statistics Canada also acknowledged that research does not indicate that this higher level of contact stems from higher incidents of criminal behaviour, but that “contact with police is common in this population” (2015).

Across the board, research has found that, despite being more commonly victims than alleged offenders, “mentally ill persons have higher rates of police contacts, arrests, and criminal charges for minor offenses and noncriminal behavior,” indicating that “an indirect procedural bias exists due to situational constraints, a disjuncture between policy and police culture, and limited mental health resources that lead to response strategies that contribute to criminalization of the mentally ill” (Schulenberg, 2016, p. 459). A 2021 examination of racial disparities in BC police statistics supported this conclusion and found that Black and Indigenous people were greatly or significantly over-represented in mental health incidents in the majority of studied police departments (Wortley, p. 245). This increased contact with police appears to result in higher exposure to violence at the hands of police. In 2021, the RCMP noted that of all incidents that involved “interventions,” such use of force and discharge of weapons, *Mental Health Act*

occurrences were the second most common at 12%, following only incidents of assault on a police officer, and that in BC “emotionally disturbed persons” made up 35.4% of individuals facing interventions, while those perceived to be under the influence of substances comprised 68.1% of subjects (RCMP, 2021b).

Research has also shown that people living with mental health and/or substance use struggles are disproportionately likely to die in their interactions with police. A study on the administrative records on deaths in police custody from the Office of the Chief Coroner of Ontario between 1996 and 2010 found that “approximately half of all deaths in custody occurred among those with a history of mental illness or substance use” (Vaughan, Zabkiewicz & Verdun-Jones, 2017, p. 1). The disproportionate deaths are not limited to police custody, with a *CBC* analysis of 461 police-involved deaths, primarily fatal shootings, across Canada between 2000 and 2017, finding that 70% of the victims lived with mental health and substance use issues (Marcoux & Nicholson, n.d.). In 2022, SCORPA recommended changes to improve the safety of people experiencing mental health crises during interactions with emergency services, including the implementation and enforcement of new standards, policies and expectations for police responding to these calls, and the creation of a continuum of response to mental health, addictions and other complex issues that does not hinge entirely on the police (BC Legislative Assembly, pp. 10-11).

Although de-escalation training has become increasingly common within Canadian policing in recent years and became mandatory for RCMP officers in 2016, research on the effectiveness of these trainings remains limited and inconclusive, although there is some evidence from the USA indicating that they may support a low to moderate improvement in outcomes (Public Safety Canada, 2020; Engel, McManus & Herold, 2020, p. 721). These trainings were discussed during the SCORPA engagements, with the BC Association of Chiefs of Police stating that that “all police officers in BC are well-trained in crisis intervention and de-escalation techniques” (BC Legislative Assembly, 2022, p. 27), but that many of “their members share the view of many others that police tactics appear to be unnecessarily violent and militaristic” (p. 28). A former police officer disagreed and shared with SCORPA that tactics are 80% of training, while skills such as de-escalation make up a small component and are devalued (2022, p. 33). SCORPA recommended the creation of “a continuum of response to mental health, addictions and other complex social issues with a focus on prevention and community-led responses and ensuring appropriate first response” (2022, p. 10). Although SCORPA’s recommendations were made in 2022, immense work is needed to provide mental health specific emergency services and create a holistic continuum of responses for people in crisis. Ultimately, with research indicating that interactions between police and people in mental health crises are increasing (CAMH, 2020, p. 8), the high proportion of police-involved deaths in this population and the calls for change from BC’s own Legislative Assembly (2022, p. 10), this is a highly relevant consideration for any study of the police oversight system.

### ***2.2.9 We Cannot Talk of Policing Without Considering Race***

IIO began collecting data on the ethnicity of APs in March 2020, but according to recent annual reports, this data is voluntary and significant percentages of APs declined to provide it, with only 67 of 201 APs sharing this information in 2021-2022 (IIO, 2022g, p. 23; IIO, 2023c, p. 24). This information is also not available for individual investigations online, but these limitations around data collection and sharing is not unusual, with Ontario’s SIU also not publishing race-based data (Puddister & McNabb, 2021, 389). This is an issue across many jurisdictions, where research shows the disproportionate harm caused to Black and Indigenous people by police, but law enforcement organizations and oversight bodies only recently began to track and, through annual reports, publish this information.

Although there are limits on this thesis’ ability to evaluate the impact of ethnicity on exposure to harm by police or the search for justice in the oversight system, the evidence surrounding disproportionate harm remains a vital contextual factor. Abundant literature establishes that Black and Indigenous people are over-represented in police interactions and criminal charges. Although Black and Indigenous people in Canada consume illegal substances at a lower rate than white people, they are disproportionately

represented in drug arrests and charges (Maynard, 2017, pp. 99-100). Both groups are also disproportionately stopped in street checks or carding and other discretionary police interactions (Sewell & Williams, 2021, pp. 86-87, 99). For example, in Vancouver, between 2008 and 2017, Indigenous people made up 15% of street checks, while comprising less than 2% of the population, while Black people made up 5% of the stops and only 1% of the population (Sewell & Williams, 2021, p. 99). A 2021 examination of the arrest statistics across five BC police departments found that Indigenous people were grossly or significantly over-represented in all departments, while Black people were over-represented in three of the five (Wortley, 2021, p. 245). The study also examined their representation in strip searches and found that Black people were over-represented in all five police departments' statistics, while Indigenous people were over-represented in three of five (Wortley, 2021, p. 245).

Reports also confirm the increased brutality and violence that Indigenous and Black people face at the hands of police; yet until recently, the body responsible for investigating the police did not track ethnicity, and it still does not appear to be integrated as a relevant and unique consideration in their investigations. Across Ontario, Black people are ten times more likely to be fatally shot by police and comprise over a quarter of all deaths caused by police and over a third of all fatal shootings by police (Maynard, 2017, pp. 106-107). For deaths by police shootings, analysis shows that from 2007 to 2017, Indigenous people made up a third of those shot and killed by RCMP across Canada, while making up only 4% of the population (Sewell & Williams, 2021, p. 102). An investigation into the Toronto Police by the Ontario Human Rights Commission found that, between 2013 and 2017, a Black person in Toronto was approximately 20 times more likely to be fatally shot by the police than a white person. (Sewell & Williams, 2021, p. 111).

Although most independent investigative bodies in Canada do not publish data on race or ethnicity, research indicates that racialized people are overrepresented in cases referred to these bodies. A rare analysis of Ontario's Special Investigations Unit investigations of police use of force from 2000-2006, completed for the Ipperwash Inquiry, found that both Indigenous and Black people are drastically over-represented in investigations, with Black people over-represented by 3.3 times and Indigenous people at 4.3 times, while white people were under-represented (Wortley, 2006, p. 37). This over-representation increased in more serious cases, with Black people comprising 3.6% of the provincial population, 12% of all SIU investigations, 15.8% of use of force investigations, and 27.4% of investigations into police shootings (Wortley, 2006, p. 41). For shootings, Black people were over 10 times, and Indigenous people were over four times more likely to be shot by the police than white people (Wortley, 2006, p. 41). Despite the disproportionate harm by police and over-representation in SIU investigations, Wortley found that officers were rarely charged, and the lowest charge rates involved cases with Indigenous affected persons (2006, p. 50).

Although brief insights into race and police oversight in Canada are available, such as perceptions of police oversight by different groups (discussed above in *Public Perceptions*), they are limited and out-of-date, and no BC specific research explores race as a factor in the outcomes of the oversight system. Although limited research is available, there is significant "anecdotal" or one-off evidence that indicates that racism remains common within BC police agencies. In 2024, *CBC News* released an investigative article on an internal probe of RCMP officers in the lower mainland, which centered on group chats on messaging applications, such as Signal and Whatsapp, and the RCMP's internal mobile chat logs (Proctor, 2024b). Three officers are undergoing code of conduct hearings, but at least seven other officers took part in the chats between 2019 and 2021, including two supervisors (Proctor, 2024b). The search warrant, obtained by *CBC*, details how the group "belittled Indigenous people, talking about how they were 'stupid' or 'drunk' and saying they have 'unfortunate bodies' and all have fetal alcohol syndrome" (Proctor, 2024b). The chats included officers bragging about racially profiling people and rampantly using racist slurs, but multiple Code of Conduct alleged violations were stayed by the RCMP Conduct Board because they exceeded the one-year limitation period (Proctor, 2024b). This investigation follows another

in 2023 into eight officers of the Nelson Police Department for sharing racist comments and memes in a group chat between 2018 and 2020 (Harper, 2023).

In addition, during the trial of Sleydo, also known as Molly Wickham, of the Wet'suwet'en Nation for breaching an injunction in her land defence efforts, recordings were provided as evidence of the RCMP officers referring to her and other defenders as "orcs," allegedly referring to the red handprints painted over their mouths that signify the missing and murdered Indigenous women and girls, and "ogres" while they joked about "beat[ing] the shit out of" a male land defender and grabbing and twisting his testicles" (McKay, 2024). Also in 2024, the Heiltsuk Nation, located in a small, remote community near Bella Bella, went to the media after identifying the racist social media posts of a local RCMP officer charged with serving the First Nation community, which display colonial symbols and refer to "pesky natives" (Meissner, 2024). Although these "isolated incidents" cannot be used to make conclusive inferences about the current state of racism within BC policing, they do indicate a troubling pattern and highlight the need for research and systemic reforms to address the long-standing concerns raised by marginalized communities.

The pattern of racism in policing and need for systemic reform was core to the mandate of SCORPA, which was tasked with examining and making recommendations into the "the scope of systemic racism within British Columbia's policing agencies... and its impact on public safety and public trust in policing" (BC Legislative Assembly, 2022, p. 5). SCORPA concluded that systemic racism exists in policing in BC, stating that it was "evident in the experiences shared with us and reflected in the recommendations we received" (p. 6). This acknowledgement of racism in policing, "which consists of organizational culture, policies, procedures and practices that create and maintain the power of certain racial groups over others or reinforce the disadvantage of certain groups" (p. 6), is pervasive throughout the Committee's 11 recommendations, including the calls for new legislation to "govern the provision of policing and public safety services based on the values of decolonialization, anti-racism, community and accountability" (p. 10).

Despite the gaps in research around police accountability and race, available evidence clearly shows that Black and Indigenous people are disproportionately targeted, charged and harmed by the police, and are over-represented in arrests, discretionary interactions, and deaths at the hands of police (Maynard, 2017; Sewell & Williams, 2021; Wortley, 2006). Despite some recent improvements to IIO's data collection in 2020, the failure of police oversight bodies to collect data on race until recent years created a blind spot of deniability, complicating any attempts to hold these systems accountable for problems that are not clearly documented, despite evidence of abundant "isolated incidents". Johnson aptly states, "race is so fundamental to our existence that the refusal of the justice system to consider it means that the system has closed its mind to our reality" (2019, p. 87). Given the motivating factors behind the creation of civilian-led, independent oversight bodies, which include improving police-minority relations and responding to high-profile brutality against marginalized individuals, more work is needed to address this gap in data from oversight agencies and better understand the over-representation of marginalized populations within the police oversight system.

### ***2.2.10 Excited Delirium: Race and Rationalizations***

Excited delirium, a medical term that is strongly associated with police, experienced a rapid rise in diagnoses in the USA in the 1980s and has become increasingly controversial in recent years, although civil rights attorneys and activists have long noted that the diagnosis is used to rationalize police use of dangerous restraint (Rimmer, 2021, p. 1; McGuinness & Lipsedge, 2022, pp. 1602, 1604). In 2009, when excited delirium was formally recognized by the American College of Emergency Physicians as a syndrome, the College's taskforce noted that the term "had been used to refer to a subcategory of delirium that has primarily been described retrospectively in medical examiner literature" (Rimmer, 2021, p.1). The taskforce also found that it typically occurs during "a struggle with law enforcement that involves

physical, noxious chemical, or [electrical control device] use followed by a period of quiet and sudden death” (Rimmer, 2021, p. 1) and that stimulant use is involved in most cases. Common symptoms attributed to excited delirium include hyperaggressive and combative behaviour, a lack of pain sensitivity, superhuman strength, bizarre behaviour, confusion, hyperthermia, lack of compliance with directions, and tachycardia (Rimmer, 2021, p.1; McGuinness & Lipsedge, 2022, p. 1602). Excited delirium is not recognized by the American Medical Association, the World Health Organization (McGuinness & Lipsedge, 2022, p. 1602) or the American Psychiatric Association, which noted in 2020 that the term has been “invoked in a number of cases to explain or justify injury or death in police custody and that the term was disproportionately applied to Black men,” as well as being too non-specific and lacking in clear diagnostic criteria (Rimmer, 2021, p.1).

In recent years, research has (re)examined evidence of the syndrome and questioned whether restraint-related asphyxia is a more probable cause of death in cases where excited delirium is cited (Rimmer, 2021, p.1). Across North America, excited delirium has been raised in court cases around police use of force, including in the trial of Derek Chauvin for the murder of George Floyd, with Chauvin’s lawyer noting in his closing statement that the jury must be convinced beyond a reasonable doubt that excited delirium did not contribute to Floyd’s cause of death (McGuinness & Lipsedge, 2022, p. 1601). In BC, during the Inquiry into the death of Robert Dziekanski at the hands of the RCMP at the Vancouver International Airport in 2007, Justice Braidwood noted that excited delirium is a controversial term and warned against reliance on such terms that may obscure the causative role of restraints (McGuinness & Lipsedge, 2022, p. 1606). In another Canadian Inquiry regarding the death in police custody of Howard Hyde in 2007 in Nova Scotia, Judge Derrick rejected the claim that the cause of death was excited delirium and recommended that it be removed from Nova Scotia’s policies and trainings for first responders (McGuinness & Lipsedge, 2022, p. 1607). Derrick noted that “the use of excited delirium to explain sudden death with no anatomic findings implies that the person had something wrong with them that caused their inexplicable death” and inappropriately allow them to be classified as “natural” (McGuinness & Lipsedge, 2022, p. 1607). Similarly, in the UK, the Royal College of Pathologists and the Forensic Science Regulator published joint guidance in 2020, advising that it should not be used as a sole cause of death and that it has been applied in circumstances where positional asphyxia or trauma would be more accurate descriptions (Rimmer, 2021, p.1). Despite these persistent and mounting challenges to excited delirium as a cause of death in incidents with police, it continues to be utilized as a defence before judges and juries in Canada, fermenting reasonable doubt about the role of police actions in fatal, often violent incidents (McGuinness & Lipsedge, 2022, p. 1608).

### **2.2.11 Sexual Violence**

The IIO does not investigate allegations of sexual assault by police. Despite calls dating the origins of IIO, its mandate is limited to investigating “incidents where serious harm or death has occurred” (IIO, 2019a), with serious harm defined by the decades old *Police Act* as an injury that may cause death, serious disfigurement or substantial loss or impairment of mobility of the body as a whole or of the function of any limb or organ (Police Act, 1996). In 2021, the call for the inclusion of sexual assault within IIO’s mandate was echoed by the OHRC, with its report noting the longstanding concerns about police perpetrating sexual violence against Indigenous women, girls and children (pp. 10, 61).

While sexual violence by police is out of scope of IIO and therefore the research of this thesis, research from Ontario found that sexual assault comprised 26% of all charges laid against police by SIU between 2005 and 2020 (Puddister and McNabb, 2021, p. 390). Puddister and McNabb’s further research found that of the 689 cases of police sexual assault, charges were laid in 51 of the 689 cases, and 11 cases resulting in a conviction and sentence for a total rate of 1.59% of all sexual assault reports made to SIU between 2005-2020 (2022, p. 15). When contrasted with the outcomes of sexual assault by non-police allegations against police were categorized as “unfounded” in 40% of investigations, while the general population rate across Ontario is 10.5%, and only 7% of investigations into police resulted in charges,

while 43% of cases involving civilians resulted in charges (2022, p. 15). The exclusion of sexual assault from IIO's mandate ensures that those who experience sexual violence at the hands of police are forced into a less independent investigative process, with fewer recourses. This exclusion is especially egregious in light of the public confirmation of sexual assaults committed by police, often of Indigenous women and girls, in BC (see Mulgrew, 2023). While this topic is beyond the scope of this thesis, this is an area that urgently requires further research in BC. A more detailed discussion can be found in Appendix A.

### **2.2.12 Main Themes and Conclusion**

This literature review has explored aspects of police oversight systems in Canada, considering available information and posing questions to delve deeper into the foundations and nuances of these systems. Despite immense gaps in available research, the literature review has identified many themes and unpacked contextual factors that impact the effectiveness of the current system. In BC, the police oversight system is not equipped to achieve certain outcomes, such as systemic change, while the legal process emphasizes wrongdoing and punishment rather than support or reparations for the victims, families and communities harmed by police actions. The system is hyper focused on individual 'wrongdoing' and turns a blind eye to systemic issues, including racism, and practical problems, such as protocols and trainings. While the court system and individual judges may refer to these practical problems or systemic issues during individual cases, they do not have the authority to compel change and are tasked with deciding whether a person's guilt or innocence of a particular offense – not these larger questions.

The focus on individual cases could theoretically enable a restorative process that unpacks and seeks to address the loss experienced by the victim, family, and community, but the Canadian legal system is founded on concepts of punishment and deterrence and is not well suited to restorative justice. While victims and families may be 'helped' in terms of closure if the perpetrator is punished, this does little for the tangible impacts of the crime, such as a disabled or deceased family member. Furthermore, key concepts within the Canadian legal system, such as innocence until proven guilty, may result in those or the communities of those harmed or killed by police feeling that they are on trial, as the courts seek to ascertain whether the violence they experienced was justifiable under Section 25 of the *Criminal Code*, which requires the officer's actions to be necessary, reasonable and proportionate. In this context, cases against police often focus on whether the officer felt threatened and the circumstances of the affected person(s), such as their mental health or prior criminal record, that may contribute to the perception of them as a threat and justified the officer's response.

Harold Johnson aptly describes the contrast between many Western and Indigenous responses to wrongdoing, stating:

[western] justice never resolves the problem it adjudicates... One community member might be gone for a few months or years, but they will come back, probably worse than when they left. Other than that, the sentencing decision, no matter how severe, has not had any positive effect on the community. It has not deterred anyone from committing a similar offence. It has not reduced the crime rate. It has not addressed any of the underlying factors that result in crime. Redemption, on the other hand, is focused on solving the problem and making things right again (Johnson, pp.128-129).

Despite this hyperfocus on individual cases, the oversight process functions within the Canadian criminal legal system, which emphasizes punishment of the 'wrongdoer' rather than reparations, healing or restoration for the victim and impacted communities.

Due to this limited focus, the role of this system is to determine whether an officer committed a criminal act, unjustified by the *Criminal Code*, and the outcomes the system could achieve are the removal of convicted officers from positions of power or the weeding out of "bad apples" and deterrence and punishment of criminal conduct by police. The literature review identified that the goals of the police

oversight system are unique from that of the criminal justice system as a whole and center on demonstrating police accountability to consistent standards and expectations, increasing the transparency and accessibility of police oversight and boosting public confidence and trust in both the police and oversight. The roles and goals of the police oversight system provide a benchmark against which to critically evaluate the success and effectiveness of this system.

The limited available data currently available on police oversight in Canada indicates that very few officers face criminal charges or sanctions, raising questions about the system's success in achieving its intended outcomes, but no holistic evaluation has occurred. Despite this seeming lack of sanctions or other punishment for police, the Rule of law and concept of democratic policing require that police are subject to the law and, while they do have powers and privileges not afforded to the public, they are only permitted to exceed legal behavior in specific circumstances to the least degree possible. The laws, regulations, codes, and ongoing reform of BC's *Police Act* detail these expectations on policing, but whether BC's oversight system can provide the necessary accountability remains to be seen.

Civilian-led oversight is intended to increase the independence of oversight, as well as accountability, transparency and public trust, but aspects of police culture nurture a sense of separation from mainstream society and the perception that civilians are unable to understand the realities of policing. These beliefs seem to bolster resistance to civilian-led oversight bodies, potentially limiting this system's ability to achieve its goals. Further complicating any attempts to change the status quo, police independence is poorly defined in Canada and there appears to be gaps in the current governance structure, such as a lack of overarching guidance to shape and limit day-to-day practice. Although civilian-led oversight was introduced to bolster trust in police, public perceptions of police continue to decline, while scepticism about oversight systems appears to be common. Furthermore, while police have the same legal protections as civilians, they experience notable advantages in the criminal justice system and are better positioned to protect their rights. The current dynamic arguably does not account for the immense powers held by law enforcement, including the legal use of deadly force, as police are not held to a higher standard in the justice system and, in fact, are often able to strategically use their role to increase their credibility and justify their actions. In this context, BC's charge assessment standards are a critical consideration, as they outline the BCPS' requirements to lay charges, as well as the public interest factors that may result in a lower standard in certain cases.

Finally, this literature review considered de-escalation, excited delirium, race, and sexual violence, with police as the default first-responders for people experiencing mental health crises and under the influence of substances. While there has been an increase in police de-escalation training in recent years, people in crisis continue to be over-represented in police contacts, arrests, charges and deadly interactions with police. It also highlighted the lack of available data on race and ethnicity, despite the immense research that has established that Black and Indigenous people are disproportionately targeted, charged and harmed by the police, and are over-represented in arrests, discretionary interactions, and deaths at the hands of police. In this context, the term excited delirium is often applied retroactively and is racialized and disproportionately applied, in the USA at least, to Black people. Excited delirium is a non-specific, controversial term that lacks a strong medical and scientific basis but has been used to foment reasonable doubt when people died during police interactions that utilized restraints and high levels of force. The failure of police oversight bodies to collect or publish data on race creates a blind spot of deniability, complicating any attempts to hold these systems accountable for problems that are not clearly documented and, again, undermining the ability of this system to meet its original goals. Similarly, although sexual assault comprises 26% of all charges laid against police by the SIU in Ontario, the IIO's mandate does not include sexual violence, and turns a blind eye to this serious harm, instead requiring those that have been sexually mistreated by law enforcement to participate in less independent processes.

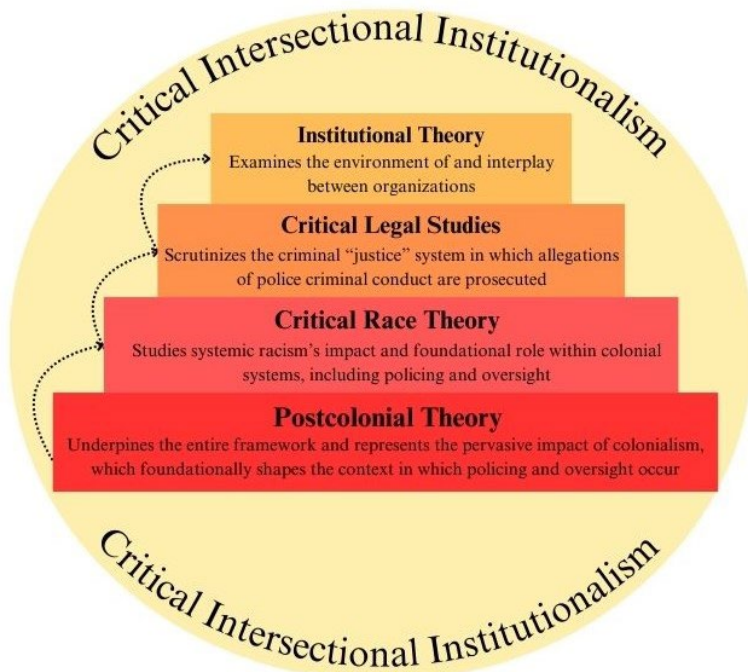
While this review was inhibited by the lack of peer reviewed literature on the police oversight system in BC, research from across Canada has provided insight into themes and contextual factors that impact the effectiveness of the current system. The work of Puddister and McNabb in Ontario specifically provides a comparison point and guide, as this thesis explores the same questions in BC’s similar, but unique system. Ultimately, despite the gaps in research, this thesis integrates and builds upon the work of many academic fields, activists, and the lived experience of marginalized communities.

**2.3 The Framework: Critical Intersectional Institutionalism**

This section outlines the thesis’ novel Critical Intersectional Institutionalism (CII) framework, which reflects the intersectionality of the research and incorporates perspectives and concepts from Institutional Theory (IT), Critical Legal Studies (CLS), Critical Race Theory (CRT), and Postcolonial Theory (PCT). These theories were chosen for their relevance to the complexities of the police oversight system, the dynamics between law enforcement and communities, and the broader implications for justice and accountability. By layering concepts from these diverse theories into a holistic approach and weaving together inter- and intra-organizational considerations with critical analysis of the systemic and structural contexts in which oversight occurs, the framework of CII takes shape.

As displayed in the literature review, police oversight is immensely complex. Holistic research in this space must integrate theories that are institution-focused and delve into the practical and tangible, like mandates and organizational dynamics, and are oriented towards reforms and improved outcomes as well as critical theories, which situate the research within its systemic and conceptional contexts, like racism and a western legal system, and are orientated towards justice and transformation. In this way, CII’s intersectional approach recognizes the role of and need for institutional reforms, while examining the ways in which this system perpetuates social inequalities and reinforces existing power structures. As shown below, the four theories build off one another to create CII and provide a strong basis for this research.

*Figure 2: Depiction of the Framework: A Holistic Foundation for Analysis*



IT, as articulated by Meyer and Rowan (1977), centres the role of external influences on the founding and

evolution of organizations and explores how these organizations “reflect the myths of their institutional environments instead of the demands of their work activities” (p. 341). IT contributes to CII by combining analysis of organizational elements with consideration the social structure, relationships, and organizational context in which the institution is embedded. It lends concepts essential for analysis of the organizations, IIO and BCPS, that comprise the police oversight system, such as “rational” myths, perceptions of legitimacy and institutional logics, and encourage the researcher to examine the beliefs, values, rules and societal norms that underlie organization’s creation story and functioning (Meyer & Rowan, 1977, pp. 340-343, 360). In BC, the IIO was founded in response to two high profile deaths, with the intention of increasing public confidence in police oversight (IIO, 2019b). CII calls into question whether the apparent outcomes of this system thus far, including consistently rising deaths and serious harm at the hands of police and low public confidence, call into question whether this system can achieve these outcomes and effectively balance police power, or if it was established to bolster claims or “myths” of police accountability without the ability to meaningfully meet the demands of its mandate.

CLS, as exemplified by the work of Unger (1983), questions the perspective of the law and legal institutions as objective, and instead explores how they perpetuate social inequalities and reinforce existing power structures (pp. 564-566, 575-576, 583-587). CLS contributes to CII by highlighting the importance of exploring how legal processes and rights may reinforce systemic biases and hinder efforts to achieve accountability and justice for victims of police violence. It bolsters CII with analytical concepts, such as the social construction of law, law as a tool of oppression and the indeterminacy of law, that unpack and critique conceptions of the law as rational, impersonal, apolitical and objective (Unger, 1983, pp. 564-567). The contributions of CLS were evident in the literature review, where research shows the “home court advantage” police have when they are investigated, charged, or tried for a crime (Sewell & Williams, 2021, p. 40; Puddister & McNabb, 2021, p. 398; Roach, 2022, pp. 51, 400). The role of the oversight system in enforcing existing power structures and perpetuating social inequalities was highlighted by the case where a man died in police’s hands, but the involved officers’ statements drastically changed over time and although the IIO referred the case for charges, the BCPS stated that it could not lay any charges due to the contradictions and inconsistencies in the involved officers’ stories (MacDonald, 2023). Despite clear evidence of criminal wrongdoing and the immense physical violence the victim experienced before dying of his injuries, the oversight system was unable to fulfill its intended function of balancing police powers and instead reinforced the notion that police can commit crimes, and (blatantly) lie about them, without repercussions or accountability.

The final contributory theories, PCT and CRT, are essential for understanding the racial and colonial dimensions of policing and accountability, which cannot be discounted in British Columbia, a former colony where the national police force, known at the time as the North West Mounted Police, was created to clear land for settlers and, often forcefully, displace Indigenous peoples (Paradis, 2023). CRT, conceived by thinkers such as Bell, Crenshaw and Delgado in the 1960s, examines how race and racism intersect with law, institutions, and society. By emphasizing the structural and systemic nature of racial oppression and the ways in which power dynamics shape legal and policy frameworks, CRT calls on CII to question “the very foundations of the liberal order” (Delgado & Stefancic, 2017, pp. 3-4). Decades later, in 1989, Crenshaw expanded the lens of CRT through the inclusion of intersectionality, highlighting the interplay of axes of oppression and privilege by examining the marginalization of Black women within feminism and anti-racism (Carbado, Crenshaw, Mays & Tomlinson, 2013, p. 303). Intersectionality continued to grow and evolve as a method, disposition and tool (p. 303), and is integrated in this framework not only as a call to consider the intersection of race and gender among APs, but “as a prism linking and engaging scholarly subfields, research methodologies, and topical inquiries” (Carbado, Crenshaw, Mays & Tomlinson, 2013, p. 307).

Through concepts, such as racism as ordinary and systemic, the social construction of race and the intersectionality of oppression, CRT requires CII to question foundational assumptions, such as how

crime is defined and who benefits from society's norms, legal structures, and standards (pp. 8-10, 120-124). As discussed in the literature review, the Canadian legal system is founded on the concept of the Rule of law, which lays the expectation of equal treatment before the law (Law Society of BC, 2021), but abundant research has established that Black and Indigenous people are over-represented in police interactions and criminal charges and, where data is available, are drastically over-represented in police-involved deaths (Maynard, 2017, pp. 99-100, 106-107; Sewell & Williams, 2021, pp. 86-87, 99). Despite the disproportionate harms experienced by Black and Indigenous people, the police oversight system does not effectively track data on ethnicity, race, and Indigeneity, aligning with lofty concepts of equality before the law, but failing to address the reality of inequality that pervades the entire "justice" system.

PCT analyzes the enduring effects of colonialism on contemporary societies and lends to CII essential concepts, like orientalism, knowledge production, stereotyping and the role of representation and discourse in reinforcing patterns of power, which expose how colonialism justifies and bolsters its domination of cultures and peoples deemed backwards and inferior (Said, 1993, pp. 108, 119-120, 194; Said, 2018, p. 65-66, 78-80). Said, an early leader of PCT, highlighted how colonialism is not merely focused on acquisition, but is also "supported and perhaps even impelled by impressive ideological formations which include notions that certain territories and people require and beseech domination" (1993, p. 8). Throughout the literature review, PCT illuminated how colonial histories continue to influence law enforcement practices and the very foundations of the oversight system. Despite Indigenous people comprising a third of all those shot and killed by the RCMP across Canada between 2007-2017 (Sewell & Williams, 2021, p. 102), the current conception of police oversight is not designed to address or even holistically consider the impact of longstanding, systemic injustices. Instead, its hyper-individualistic approach and potential outcomes disregard the structural factors at play, acting as though there is an even playing field and no communities or populations are disproportionately harmed by police, and instead individualizes the circumstances, limiting even the conceptualization of "justice" that could be achieved through this system (Roach, 2022, pp. 2, 73).

By layering these theories into the analysis of the police oversight system through the framework of Critical Intersectional Institutionalism, this study seeks to develop a more comprehensive understanding of the institutional dynamics, power relations, structural inequalities and colonial legacies that shape policing practices and accountability mechanisms in 21<sup>st</sup> century BC. This multidimensional approach allows for a nuanced and intersectional examination of the complexities and challenges inherent in efforts to promote transparency, accountability, and justice. The Critical Intersectional Institutionalism framework highlights the need for this research, with the literature review exposing the stark dissonance within the oversight and criminal legal systems, such as lofty ideals about equality before the law contrasting with the reality of inequality and injustice, which are evident in available research on race and policing, and manifest in the outcomes of the police oversight system from other jurisdictions. While the police oversight system is grounded in admirable goals, it is founded on a western conception of justice and struggles to address the complexities of responding to police wrongdoing. By employing a framework grounded in a diverse set of theories, this thesis seeks to address the gaps in literature and contribute to a deeper and intersectional understanding of how the oversight system operates, its impact on communities, and the ways in which it may evolve to better meet the needs of stakeholders, particularly marginalized groups.

## **Chapter 3: Methodology & Methods**

### ***3.1 Methodology***

This thesis explores the outcomes of IIO investigations and prosecutions of police, within the larger context of police oversight across Canada, and the sociocultural realities that underpin this system. It utilizes a mixed methods research design, combining empirical research and qualitative analysis, to better understand “the inherent complexities and contingencies of human phenomena” (Greene & Hall, 2010, p. 120). Mixed methods research designs rose to prominence in the late 20<sup>th</sup> century through the works of scholars such as John W. Creswell and Jennifer Greene, and subsequently developed into methodology, which is often valued for its conceptual and practical approach (Greene & Hall, 2010, p. 120). Greene aptly describes the value as of mixed methods beyond research design, as

A mixed methods way of thinking is an orientation towards social inquiry that actively invites us to participate in dialogue about multiple ways of seeing and hearing, multiple ways of making sense of the social world, and multiple standpoints on what is important and to be valued and cherished. A mixed methods way of thinking rests on assumptions that there are multiple legitimate approaches to social inquiry and that any given approach to social inquiry is inevitably partial. Better understanding of the multifaceted and complex character of social phenomena can be obtained from the use of multiple approaches and ways of knowing (2008, p. 20).

This thesis utilizes an intersectional mixed methods methodology, which arose organically from the research itself, which is common for a methodology that “follows from the inquiry purpose and questions” (Greene, 2008, p. 13). The addition of intersectionality to this mixed methods methodology reflects the framework and approach to this research, which establishes intersectionality as a cornerstone and layers institutional and critical perspectives to develop a holistic understanding of both the outcomes and contextual realities of the police oversight system. In this way, intersectionality operates as a “prism” linking and engaging methods, approaches and ways of thinking (Carbado, Crenshaw, Mays & Tomlinson, 2013, p. 307), and underlies both the framework and methodology, which both seek to provide a broader, though still partial, grounding for this research.

This intersectional methodology ensures that the investigations and prosecutions of police are studied within their relevant context, so that the exploration of both quantitative outcomes and qualitative perceptions are appropriately situated. To support this mixed methods analysis, this methodology takes a five-stage approach:

1. A literature review sets a foundation for analysis, providing critical contextual information and framing the research within larger societal realities. Civilian-led police oversight began as a response to public dissatisfaction and allegations of discrimination and brutality. It is critical for this thesis to explore the established literature relevant to police oversight, considering aspects such as the purposes of oversight, the differential impacts of policing on racialized populations, and complexities of this system.
2. A jurisdictional scan is scoped to Canadian police oversight bodies responsible for police-involved deaths and *Police Act* defined serious harm, rather than misconduct and other criminal allegations. The goal of the scan is to provide insight into both why IIO operates in the current manner and how it could evolve, offering comparison points to identify the similarities and differences between IIO and other police oversight bodies. The jurisdictional scan provides valuable insight into the institutional factors that shape this system and details about the origins, mandate, authorities and scope of civilian-led police oversight bodies across Canada. In a policy context, governments are often reluctant to step into the unknown; the scan provides context to support the interpretation of other findings and the development of policy considerations and recommendations that build upon approaches in other jurisdictions.

3. The quantitative analysis takes a broad to narrow approach. It traces all IIO investigations and then focuses specifically on those investigations that resulted in a referral to Crown Counsel. Of those referred, there will be a further narrowing to a specific examination of the referrals that resulted in charges being laid. This analysis draws on the IIO's data, combining publicly available information and data accessed through a data request, which was made in late February 2023. The request for information was made for all investigations in the period, including the investigation outcome (e.g., referred to Crown Counsel), gender and ethnicity of the affected person(s) as well as how many open or ongoing cases remain for each year in the research period. For cases that proceed past IIO, this research will utilize information available from the BC Prosecution Service, Court Services, and the media. The quantitative analysis is essential to answering the research questions, as it will provide the data necessary to evaluate the results of key decision points and decision-makers in the police oversight system. This aspect of the research is foundational to answering the question of how the police oversight system, as a whole, responded to cases where civilians were seriously harmed or died in interaction with police between January 1, 2014, and December 31, 2021.
4. The case studies offer a qualitative component of this thesis, providing an in-depth exploration of common narratives around police violence in BC society and the justice system. By tracing the public and oversight system's responses to select cases, from the original incident and through the entire oversight system, these case studies will consider sociocultural components of this process, considering aspects such as how police and their victims are portrayed in the media, and what elements or individual traits, such as mental health, are considered relevant to determination of guilt and appropriate punishment. The case studies will give a granular perspective on the institutional and systemic realities for subject officers and affected persons caught up in these situations. While quantitative data is invaluable, this qualitative approach hones in on the lived realities of people caught up in this system and provides in-depth answers to the research questions about the circumstances and factors that underlie IIO referrals to Crown Counsel, BCPS decisions to press charges, and court verdicts.
5. An interview will provide a final qualitative component to this thesis. In October 2024, the researcher interviewed Ronald MacDonald, the Chief Civilian Director of the IIO from October 2017 to May 2024. MacDonald was the individual ultimately responsible for all IIO decisions in this period and presided over the only organization in BC which claims to provide civilian-led, independent investigations of police in cases of serious harm or deaths. A short list of open-ended questions was used to explore his experience within IIO, including working with police on investigations, the relationship with the BCPS, and the outcomes of the police oversight system.

### ***3.2 Methods and Data Analysis***

This thesis utilizes mixed methods to achieve the thesis objective, combining quantitative analysis with qualitative case studies. The quantitative component of this analysis relies on public and requested information from the IIO as well as public information from BCPS, and Court Services, supplemented with news media for the confirm specific facts (e.g., outcomes of trials). Likewise, the case studies utilize all available public and requested information from the IIO, BCPS, Court Services and news media, but will focus on how the cases are portrayed and the common narratives around police violence and oversight in BC.

The results of the data request to IIO are analyzed to determine the percentage of investigations that resulted in a referral to Crown Counsel. Data is categorized based on outcome to determine how often the IIO deems the police's actions to be criminal. Additional quantitative analysis will be done on key demographic characteristics, including sex, age and race or ethnicity of alleged victims, and how often the officer(s) under investigation provide evidence to the IIO.

For cases referred to Crown Counsel by IIO, this thesis uses publicly available information by the BC Prosecution Service, including media and clear statements. In cases where the BCPS does not press charges, a “clear statement” is released providing the rationale and in-depth information on the case. For cases where charges are laid, a brief media statement is released, providing key information, such as the subject officer’s name, rank and the charges laid. In these cases, this thesis utilizes a combination of sources to determine the outcomes of the case, including BC Court Services and newspapers.

BC Court Services Online is a database that is searchable by name, location, and other criteria. For charged officers, this database provides information about the charges, case progression, and, in some cases, the outcome. For gaps in this system, such as omitted information or delayed updates, the researcher used the search engine “Google” to find newspaper coverage of the case, searching for the individual officers by name to ensure accuracy. In some cases, coverage is limited to the local community, and this broad search method ensured that information in community newspapers were not omitted. As police are not commonly before the courts, these cases tend to draw media attention, providing an additional information source to fill any gaps in BC Court Services information.

Three case studies were selected from IIO investigations to enable in-depth analysis of the processes, considerations and outcomes of the police oversight system. The preliminary research showed that the vast majority of IIO investigations do not result in a referral to Crown Counsel, that many referrals to Crown Counsel do not result in charges, and that cases are frequently abandoned when charges are laid. When identifying potential case studies, the researcher eliminated cases where no charges were recommended, due to the lack of publicly available information on these incidents. The researcher then prioritized cases that were subject to intense media and public scrutiny and had high level of information availability to allow for in-depth analysis. The case studies provide context and in-depth exploration of the realities of the police oversight system for both affected persons and subject officers. While these case studies may illustrate the quantitative results, they will not be used independently as the basis for any conclusions. Although a random selection of case studies may have been more representative, there is limited information available about the majority of IIO investigations, including essential information such as the names of APs and SOs, which would have restricted the depth of analysis as well as the insight into the functioning of the oversight system.

Finally, the interview followed a semi-structured format to promote an open-ended discussion with the former head of the IIO, Ronald MacDonald. The interview was recorded and detailed notes were taken, which were subsequently analyzed and grouped by topic to cohesively present the feedback and recommendations of MacDonald.

### ***3.3 Reliability and Validity***

The premise of this thesis appears to have strong reliability, which is the ability of other researchers to repeat or replicate this work and arrive at the same outcomes. For the quantitative component of this research, much of the data for this research is publicly available, while the rest can be accessed through a similar data request to IIO, allowing other researchers to confirm or replicate these outcomes. As much as possible, this thesis shares the data that underlies any conclusions to further bolster its reliability. For the qualitative components, much of the information is also publicly available, including all the information presented in the case studies and jurisdictional scan. While the interview itself is not publicly available, MacDonald has spoken about the discussed topics in the media and in other public forums, such as conferences, on a multitude of occasions.

To ensure the validity of any results, this thesis carefully crafts questions to ensure that they can be answered by the available data and will avoid broad conclusions that cannot be fully supported by the data. Many of the questions that guide this research are quantitative and the results can only conclusively speak to the question at hand. For example, if this research shows that IIO refers few cases to the BCPS,

the BCPS infrequently lays charges, and charged officers are rarely found guilty, the thesis cannot conclusively state that this system is ineffective – only that this system only rarely results in criminal charges for officers that cause serious harm or death in BC. For the validity of conclusions based on the qualitative research, caution is exercised, and the research declines to make sweeping, definitive statements, especially based off one method. For example, while the interview with MacDonald provided invaluable insight, his perspective cannot and is not cited as fact but is considered in the context of all the findings of this research, including the literature review.

Finally, a key measure to bolster the reliability and validity of this thesis' findings is the combination of both qualitative and quantitative methods. Through combining methods, a more balanced perspective can be provided, investigating both empirical outcomes as well as the contexts in which these results occur. Purely data driven work can overlook critical factors, such as culture and racism, and result in misinterpretation of the outcomes, while exclusively qualitative analysis is unable to identify and confirm larger trends and patterns.

### ***3.4 Ethics***

As this thesis is grounded in data analysis, with case studies providing a qualitative component and a jurisdictional scan offering contextual and contrasting information. The ethics of these components primarily required conscientious, cautious, and clear presentation of the objectives, scope, and interpretation of the research to avoid any misrepresentation, misinterpretation, or bias. A key protective factor is the participation of the professor and second reader who can provide the perspective of seasoned academics and support the identification of any logical gaps or weakness as well as bias in the questions and analysis.

Although originally no components involving human participants were proposed, in summer 2024, the thesis was expanded to include one interview with Ronald MacDonald, who was head of the IIO from 2017 to 2024. This required ethical review and approval from the University of Victoria's Human Research Ethics Board prior to official recruitment of MacDonald and completion of the interview. In July 2024, the ethics application was submitted by the researcher and thesis supervisor, Robert Lapper. In September 2024, the Board requested several revisions and clarifications, and following the re-submission, the application was approved on October 4, 2024. Following approval, the interview consent form was distributed to and signed by MacDonald, along with a thorough explanation of the objectives of the study and clarification of his rights and a request to avoid case-specific details prior to, during, and after the interview. In the consent form, and confirmed through verbal discussions and over email, MacDonald waived his right to confidentiality, consenting to be credited in this work and have his responses attributed to him by name.

### ***3.5 Strengths and Limitations***

As a drastically under-studied area of work, there are several limitations for this thesis. A critical limitation is the lack of peer-reviewed literature, which reduces the contextualization of the data and ability of the researcher to compare outcomes. An established evidence base can provide a knowledge base to build upon and touch point for the researcher to spot flaws in the work and identify common pitfalls. Without this, additional caution must be exercised. At the same time, the gap in literature can also be interpreted as a strength, as there is no risk of duplicating existing work on BC's police oversight system or struggling to identify a research need in an oversaturated area of study. Research in an under-studied area requires thoughtful consideration, analysis, comparison, contextualization, and conclusions, to ensure accuracy and create opportunity for others to replicate and build off to continue addressing this research void.

Another key limitation is the timeframe, as regardless of the chosen study period, not all cases can be followed through to a conclusive outcome. There is no limit on the duration of IIO investigations and

BCPS decisions, or the time that the court cases, appeals, and other legal processes can take, creating a massive time range with no reliable average. In determining the timeframe, the researcher considered that a large percentage of open investigations could limit the analysis from more recent years, as complex cases, and investigations initiated later in the timeframe may not be reflected in the results. Although this limitation could be reduced by curtailing the study period further in the past, this would undermine the applicability of the results, as more recent outcomes may be more reflective of the current reality. This limitation is judged to be a reasonable risk that balances the need for conclusive results and current information on the outcomes of the police oversight system in BC. Ultimately, no matter what study period was selected, there would likely be outstanding cases.

The researcher determined that August 2024 was the appropriate cut off time, where no outstanding cases would be included in the research, as the project could not wait indefinitely for them to be concluded. As of August 2024, there were four outstanding, open IIO investigations (2020-047, 2021-137, 2023-005, 2023-045) and IIO confirmed that no information is provided on open investigations. These investigations include two initiated in 2023 for incidents of serious harm that occurred in 2021 and 2018, but investigations were not instigated at that time, either because IIO was unaware of the nature of these incidents or additional information was brought forward, resulting in the investigations being launched in 2023. While there were minimal open investigations remaining for the study period, several were finalized prior to August 2024 while the research was ongoing. The researcher maintained close communication with IIO's Media Liaison and added investigations to the dataset as they became available.

Similarly, BCPS charge decisions are outstanding in four cases (2021-332, 2021-097, 2020-138, 2019-201), including one incident that occurred in 2019 and was referred by IIO for consideration of charges in December 2021. Given the extended investigation and charge evaluation periods, including the case from 2019 still pending a BCPS decision, it is possible that these are highly complex cases that may impact the findings of this research. Additionally, there is one outstanding sentencing (2017-083) for a convicted SO that is for the only conviction in a contested case during the study period. It is also one of the three convictions that are not under the *MVA* and is currently being contested due to the delayed proceedings. Finally, there are two court cases currently ongoing for investigations 2020-110 and 2021-012, and, due to the severity of the allegations, which include use of force, firearm, negligence and driving related charges, the outcome of these court proceedings could impact the results of this study. For this reason, key information about these incidents and the court proceedings are included in Chapter 4.2. All outstanding investigations, charge assessments and court cases will be explored in-depth in the analysis of the data and discussion of portions of the thesis, including their potential implications for broader conclusions, to ensure that the final product clearly identifies all gaps and their implications for the interpretation of the data. While this is a limitation, it also provides opportunity for future research to build upon this data to continuously expand the quantitative evidence base on the outcomes of police oversight systems in BC.

This thesis' scope is contained to investigations of serious harm or deaths by police and exclude misconduct and other allegations of police wrongdoing that are the jurisdiction of the Office of the Police Complaint Commissioner (OPCC) and the RCMP's Civilian Review and Complaints Commission (CRCC), which is an additional limitation. While limiting the scope to serious harm and death, the domain of the IIO, was necessary to retain focus on allegations of criminal conduct and for feasibility to reduce the number of involved organizations and investigations, it limits a full consideration of the realm of police wrongdoing and oversight. Also excluded are other accountability mechanisms for police, such as public inquires, civil lawsuits, class actions, and internal disciplinary proceedings. These are also scoped out to maintain focus on allegations of criminal behaviour, the criminal justice system, and the standardized process through which all cases of serious harm or death proceed, rather than more sporadically utilized mechanisms of seeking accountability, which will allow for a more in-depth focus and more precise comparisons within the results. Additionally, this research did not have direct input from

the BCPS, although the findings implicated the organization extensively. Future research would massively benefit from the perspective of BCPS, especially in areas such as resourcing and the application of public interest, as well as an in-depth examination of all BCPS policies, standards and documents that are relevant to the prosecution of police.

A key strength of this research is the simplicity of the main quantitative questions regarding how often IIO investigations result in a referral to Crown Counsel, the frequency of these referrals resulting in charges, and how often charges result in a finding of guilt. While answering these questions will not be simple, they are straightforward, with traceable, empirical answers that can be utilized to support policy reforms. The empirical nature of this thesis also presents a limitation, as this research will only be able to speak to the outcomes of these investigations and cannot draw definitive conclusions regarding the effectiveness or fairness of the police oversight system. While infrequent charges or legal consequences for police indicate potential issues within the oversight system, many factors could contribute to the infrequency of police being found guilty of criminal offenses, such as high rates of falsified allegations or that officers' actions are almost always justified. For this reason, the quantitative results must be situated and contextualized within the current sociocultural, political, and economic realities. The case studies and interview are also an opportunity to reduce this limitation by providing a qualitative, narrative component, exploring the details of individual cases to shed light on the factors that may influence legal outcomes.

There were also several unpredicted limitations in the data provided by IIO, as information of the ethnicity of APs and whether the subject officer(s) provided evidence were only available for 1.75 years of the total study period. IIO did not gather this data prior to March 2020 and, unexpectedly, the largest racial demographic category for APs in the 1.75 years available was "unknown" and there were inconsistencies and overlap in the categorizations and a lack of clear definition, including for terms like white, European, Eastern European. This shrunken time horizon of 1.75 years of data provides less information for analysis on ethnicity and SO evidence and limits the strength of any conclusions drawn from it. While this data remains important, these limitations will be discussed through Chapter 4 and 5, where appropriate. While future research may be able to analyze a longer time horizon, recent IIO annual reports demonstrate that the ongoing prevalence of "unknowns" or APs without available data continues, comprising 27.3% in 2022-2023 and 18.8% in 2023-2024 (IIO, 2023a, p. 24; IIO, 2024b, p. 25). Likewise, data on SO provision of evidence suffers from the same condensed timeframe in this research and requires nuancing in future studies to ensure precise definition and understanding of the types and degrees of evidence provided.

Additionally, there were changes to IIO practices during the study period, including an update to the definition of an investigation and a change to the referral standard that provides the benchmark for passing cases to BCPS for consideration of charges. IIO's updated definition of an investigation included all cases where investigative work is completed, rather than only lengthy investigations, which likely impacted the overall number of IIO investigations. The referral standard change created a potential limitation, as statistics for the whole study period, such as the percentage of IIO investigations referred or referrals that result in charges, may obscure the variation between pre- and post-referral change. To protect against misinterpretation and over-simplification, key comparison points are examined both for the full study period and pre- and post-referral change to ensure that the impact of this variation is understood. These changes to IIO's practices are discussed in detail at the start of Chapter 4.2.

## **Chapter 4: Research Findings**

This chapter shares the findings of this research, including the jurisdictional scan, quantitative analysis, case studies and interview. This layering of quantitative and qualitative research promotes the development of a deeper, more holistic and intersectional understanding of the context and outcomes of the police oversight system. Chapter 4.1 has an institutional focus and overviews the police oversight bodies in Canadian provinces and analyzes their mandates, level of civilian involvement, public reporting and authorities. Chapter 4.2 analyzes all IIO investigations, referrals to BCPS and court cases to identify the themes in the characteristics, such as police agencies and AP gender, and the outcomes of the system. Chapter 4.3 delves into three case studies regarding the deaths of Myles Gray, Dale Culver and Jared Lowndes, which supports exploration of common structural and systemic barriers and insights into the experiences of the families and communities of APs. Finally, Chapter 4.4 shares the interview with Ronald MacDonald, the former head of the IIO, and his insights into the current state of and recommendations for the future of police oversight in BC.

### ***Chapter 4.1: Canadian Jurisdictional Scan***

This scan provides an overview of police oversight bodies in Canadian provinces, analysing their mandates, level of civilian involvement, public reporting, and authorities, with more information provided in jurisdictions where it is available. While all complaints against police deserve a rigorous, reliable investigation and response, this thesis cannot capture the immense diversity in types of complaints and investigations, and this scan is scoped to match the thesis' focus on incidents of serious harm and deaths investigated through civilian-led oversight, while bodies responsible for other allegations, such as misconduct, are excluded. Certain Canadian jurisdictions, including the Territories and PEI, are excluded as their police oversight is provided by organizations in other provinces. For example, Alberta's Serious Incident Response Team (ASIRT) has a Memorandum of Understanding with the Yukon government and completes investigations for officers in that jurisdiction.

Overall, this scan shows variation in the mandate and powers of civilian-led police oversight bodies across Canada. In some provinces, these bodies are well-established, such as Ontario's Special Investigations Unit which began operating in 1990, while others are very recently established, such as Saskatchewan's first civilian oversight body which began operating in 2023. Like BC, most of these bodies documented origin stories stem from responses to a highly controversial, publicized death due to police actions or inactions, and there is a noticeable lack of analysis on the outcomes of these systems. As noted by Puddister, only ASIRT is mandated to conduct systemic reviews and recommend policy and procedural changes, and only Saskatchewan's Serious Incident Response Team can recommend disciplinary action against officers (Puddister, 2023, pp. 396-397), highlighting the limited scope of many of these agencies and the complex landscape with multiple agencies responsible for aspects of police oversight in each jurisdiction.

Table 1, below, provides an overview of the police oversight bodies operating across Canada, including whether they are civilian led, are authorized to lay charges, a mandate to investigate allegations of domestic violence and sexual assault, and accept complaints from the public. Aside from Quebec, all examined agencies are civilian-led, but only three – Ontario, Nova Scotia and Newfoundland and Labrador – accept complaints from the public. Of the eight agencies, only three do not have the authority to lay charges and instead must refer or recommend them – BC, Saskatchewan and Quebec. BC is one of three jurisdictions that do not have a mandate to investigate allegations of domestic or intimate partner violence by police, while Manitoba has the discretion to assume jurisdiction over these cases. Finally, BC stands alone as the only jurisdiction with no mandate for sexual assault allegations, although Manitoba's IIU also has discretion to assume jurisdiction in these cases and is not the default body responsible for investigation.

Table 1: Police Oversight Across Canada

Jurisdiction	Civilian Led	Lays Charges	Sexual Assault Mandate	Domestic or Interpersonal Violence Mandate	Complaints from Public
BC	Yes	No	No	No	No
Alberta	Yes	Yes	Yes	Yes	No
Saskatchewan	Yes	No	Yes	Yes	No
Manitoba	Yes	Yes, or refer	Discretionary	Discretionary	No
Ontario	Yes	Yes	Yes	No	Yes
Quebec	No	No	Yes	No	No
Nova Scotia	Yes	Yes	Yes	Yes	Yes
Newfoundland & Labrador	Yes	Yes	Yes	Yes	Yes

\*Citations available below

Another area for comparison in the scan was the charge assessment standard, which is used to evaluate whether charges should be laid. For this item, the federal charge approval was also included, as the charge standards in each jurisdiction are the same for police and members of the public so although the Public Prosecution Service of Canada (PPSC) is not part of the police oversight system, the charge standard is a relevant reference point to better understand standards throughout Canada. While the charge standards are similar across Canadian jurisdictions, as shown below in Table 2, the slight variations, such as between reasonable and substantial likelihood of conviction, can significantly impact the way that charges are evaluated. As discussed in BC’s Charge Assessment Guidelines, “substantial refers not only to the probability of conviction but also the objective strength or solidity of the evidence” (2021, p. 2). The reasonable prospect of conviction standard utilized by Ontario and Canada does not require a probability of conviction, while the reasonable prospect of conviction requires the charges to be more likely than not to convict (PPSC, 2023; BC, 2012, p. 24). Overall, all charge standards require prosecution to be in the public interest, but BC stands alone as the only jurisdiction that requires a substantial likelihood of conviction, while all other jurisdictions default to lower charge standards, with four jurisdictions utilizing a reasonable or realistic prospect of conviction and a reasonable likelihood of conviction in the remaining four.

Table 2: Charge Assessment Standards by Jurisdiction

Jurisdiction	Charge Assessment Standard
Canada	<u>Reasonable prospect of conviction</u> and prosecution serves public interest (Public Prosecution Service Canada, 2023)
BC	<u>Substantial likelihood of conviction</u> and public interest requires prosecution
Alberta	Evidence to justify charges, providing a <u>reasonable likelihood of conviction</u> , and prosecution in public interest (2022, pp. 4-6)
Saskatchewan	<u>Reasonable likelihood of conviction</u> and public interest to proceed
Manitoba	<u>Reasonable likelihood of conviction</u> and public interest to proceed
Ontario	<u>Reasonable prospect of conviction</u> and prosecution is in public interest
Quebec	Sufficient evidence for <u>reasonable prospect of conviction</u> and public interest (2023, pp. 4-6)
Nova Scotia	Sufficient evidence, providing a <u>realistic prospect of conviction</u> , and prosecution in public interest (2021, pp. 1-2)
Newfoundland and Labrador	Sufficient admissible evidence, demonstrating a <u>reasonable likelihood of conviction</u> , and prosecution serves public interest (2021, pp. 1-2)

\*Citations for provinces are available below

During the scan, it was observed that some jurisdictions have a “flexible” mandate, such as Manitoba’s Independent Investigations Unit (IIUM), which is mandated to investigate alleged police involvement in a “death, serious injury or contravention of federal or provincial law” (IIUM, 2023c). Similarly, in Alberta, ASIRT’s mandate includes death, serious injuries and serious or sensitive allegations of police misconduct, such as sexual assault and perjury (Alberta, 2024a). These mandates provide some flexibility, but also create vagueness and uncertainty around the standard operating procedures within these investigative bodies and the regularity at which they utilize this flexibility. In BC, the *Police Act* also grants IIO the mandate to investigate when officers violate a prescribed provision of the *Criminal Code* or other federal or provincial enactments, but this flexibility has not been utilized by BC’s government to extend IIO’s mandate to investigations of sexual assault allegations, despite being a clear, trust-shattering violation of Canadian law (*Police Act* 38.09(1)(b); Brend, 2020). The researcher reached out to IIO for clarification and Media and Communications Liaison, Rebecca Whalen, clarified that although the *Police Act* allows for IIO to investigate other prescribed provisions, “to date, no contraventions have been prescribed” and that any contraventions would have to be prescribed by the provincial government (Personal Communications, October 24, 2024). While this scan identifies jurisdictions with “flexible” mandates, it does not detail the in-practice implementation of this flexibility, which would require outreach to each jurisdiction.

Table 3: Mandate Flexibility by Jurisdiction

Jurisdiction	Flexible Mandate
BC	Yes, contravention of <i>Criminal Code</i> or other federal or provincial enactment
Alberta	Yes, sensitive and serious allegations of misconduct
Saskatchewan	Yes, public interest
Manitoba	Yes, contravention of federal or provincial law
Ontario	No
Quebec	Yes, when requested by the Minister, criminal allegations, and all criminal allegations with First Nations or Inuit APs
Nova Scotia	Yes, public interest
Newfoundland and Labrador	Yes, public interest

\*Citations for provinces available below

Another notable area of divergence is that in some jurisdictions oversight bodies draw their legislative authority from stand-alone legislation, while others are a component of the province’s policing legislation. According to the Honourable Justice Michael Tulloch, who completed the 2017 review of Ontario’s police oversight system, separate legislation serves a dual purpose of confirming the independence and separation of oversight from police and making the systems easier for people to understand (p. 36). Tulloch echoed a recommendation of a 2008 investigation of the Special Investigations Unit (SIU) by Ontario’s Ombudsman, Andre Marin, for a new, stand-alone legislative structure to improve police compliance, mandate clarity and independence (pp. 4-5, 58-59, 114-116). Although stand-alone legislation affirms these bodies **independence**, it is the exception rather than the rule across Canadian jurisdictions, with only two of the eight jurisdictions having oversight specific legislation, as shown below in Table 4. As with many aspects of this scan, this may be an opportunity to apply the learnings of other jurisdictions, especially those with long-standing civilian-led oversight, to BC’s context.

Table 4: Stand Alone Oversight Legislation by Jurisdiction

Jurisdiction	Stand Alone Oversight Legislation
BC	No, created under BC's <i>Police Act</i>
Alberta	No, created under Alberta's <i>Police Act</i>
Saskatchewan	No, created under Saskatchewan's <i>Police Act</i>
Manitoba	No, created under Manitoba's <i>Police Services Act</i>
Ontario	Yes, Ontario's <i>Special Investigations Unit Act</i>
Quebec	No, created under Quebec's <i>Police Act</i>
Nova Scotia	No, created under Nova Scotia's <i>Police Act</i>
Newfoundland & Labrador	Yes, the <i>Serious Incident Response Team Act</i>

\*Citations available below

While it was not one of the intended purposes of the jurisdictional scan, over the course of the research the researcher observed immense variation between jurisdictions in both the level of information available to the public, such as public reports on completed investigations and overviews of types of cases, case loads and the outcome of prosecutions, as well as the ease of accessibility, including the ability for affected persons and witnesses to contact the organization, acceptance of complaints from the public and a modern website design that supports ease of access through mechanisms like embedded links and searchable data and reports. For example, Saskatchewan's newly created Serious Incident Response Team commits to releasing public reports within 90 days of closing any investigation, but it remains to be seen how well it will carry this out. Alberta's Special Incident Response Team has flexibility on what information it is required to publicly share and when, leaving it to the discretion of the team's Executive Director and resulting in inconsistent and less detailed information sharing with the public (Alberta, 2024f). Although this was not a key element of analysis or a structured stand-alone evaluation, cursory review of these oversight bodies showed that, overall, Ontario's SIU provides easy access to detailed information, while BC and Quebec are relatively accessible, and Alberta, Saskatchewan, Manitoba, Nova Scotia and Newfoundland and Labrador have limited information available to the public. Further research would benefit from an in-depth review of all police oversight bodies' information sharing and accessibility to better inform system improvements and meet the calls for transparency.

Finally, a researcher in Ontario, Puddister, analyzed and compared the complaint substantiation rate for investigated incidents between seven of these eight oversight agencies included in this scan and noted immense variation. Puddister's analysis found BC's rate in the middle of the other agencies, with a rate of 12.77%, while Alberta (3.6%), Ontario (4.2%) and Quebec (3.6%) had lower rates and Nova Scotia (16.7%), Newfoundland and Labrador (22%) and Manitoba (22%) had higher rates of substantiation (2023, p. 401). Although these rates must be interpreted with caution, given the multitude of factors that may influence them, they provide insight into BC's performance in comparison with similar oversight bodies. This section will now explore the oversight agencies individually to provide more context on police oversight across Canada.

#### **4.1.1 Alberta**

Just east of BC, the Alberta Serious Incident Response Team (ASIRT) is civilian-led body responsible for investigating police-involved serious injuries or death as well as "serious or sensitive allegations of police misconduct," which may include sexual assault, domestic violence and perjury, involving municipal or Indigenous police services as well as the RCMP (Alberta, 2024a). ASIRT was created by Alberta's *Police Act*, is civilian led, blends civilian investigators with "seconded police officers," and has the power to lay criminal charges after consulting with the Alberta Prosecution Service (Alberta, 2024a). ASIRT does not accept complaints about police from the public (Alberta, 2024h), and, unlike most other Canadian jurisdictions, ASIRT was lobbied for by the Alberta Association of Chiefs of Police, rather than being created as a response to high profile policing killings (Wakefield, 2018). Alberta's charge assessment standard requires evidence to justify charges, providing a reasonable likelihood of conviction, and that

prosecution be in public interest (Alberta, 2022, pp. 4-6).

Some public information is available for ASIRT, including the number of charges laid per year, which have ranged from 1-7 between 2015 and 2024, with five officers charged by August 2024 (Alberta, 2024d). In addition to investigations into deaths, serious injuries and sensitive allegations involving Alberta officers, ASIRT assists in and reviews investigations in other jurisdictions for police oversight bodies in Ontario, Saskatchewan, Newfoundland, and Manitoba (Alberta, 2024b; Alberta, 2024c). Between 2015 and 2022, investigations into “sensitive allegations,” which include sexual offences and domestic violence as well as allegations related to corruption/integrity, controlled substances and “use of force – public confidence,” were the most common type of file for ASIRT, sometimes exceeding all death and serious harm investigations in a year (Alberta, 2024b). While ASIRT most commonly investigates the RCMP, followed by the Calgary and Edmonton police services, they also investigate smaller police services in Alberta, First Nations police services and support with investigations in other jurisdictions. (Alberta, 2024c). While ASIRT does provide information online, there is significant flexibility in what and when information is shared, it is not easily searchable and appears to be infrequently updated. ASIRT typically issues a news release or tweet when a file is assigned and at the conclusion of the investigation, but this appears to be at the discretion of the Executive Director (Alberta, 2024f).

ASIRT is currently in a period of change. In 2022, Alberta passed the *Police Amendment Act*, which seeks to improve accountability and oversight, and give communities a greater role in setting policing priorities and performance goals, by creating the Police Review Commission as well as civilian governing bodies for communities with the RCMP and expanding the mandate of ASIRT to investigate peace officers and Sheriffs, while integrating it as part of the new Commission (Alberta, 2023e). While the new Police Review Commission is intended to encompass complaints about RCMP officers, misconduct complaints are currently the jurisdiction of the CRCC, the RCMP has not committed to the new body, and negotiations are ongoing – an interesting moment in the evolution of RCMP oversight (Lachacz, 2022; Alberta, 2024g). The overhaul of Alberta’s police oversight system is also raising concerns from opposition parties, which have raised concerns about politicization, interference and expanded powers for Ministers (Lachacz, 2022). Overall, Alberta’s police oversight system is in a period of change but is shifting towards the centralization of misconduct and serious incident investigations in one body.

#### **4.1.2 Saskatchewan**

In 2021, Saskatchewan announced the *Police (Serious Incident Response Team Amendment) Act*, which amended the province’s *Police Act* to introduce civilian-led oversight for investigations into allegations involving RCMP, municipal police and some special constables, including serious injury, death, sexual assault and interpersonal violence as well as incidents of public interest (Saskatchewan, 2021; s. 91.08(3)). While the Serious Incident Response Team (SIRTS) was planned to begin operations in fall 2021, it was delayed until January 2023 (Hunter, 2023). Like BC, the *Act* does not empower SIRTS to lay charges, but SIRTS’ Executive Director is responsible for referring cases to the Attorney General of Saskatchewan or Canada, depending on the case, if the investigation indicates that an offence may have been committed (Saskatchewan, 2024b). Saskatchewan’s charge assessment standard requires a reasonable likelihood of conviction and that it be in public interest to proceed (Saskatchewan, 2024, p. 1).

As a new organization, little information is available about SIRTS’ outcomes, but SIRTS’ mandate is to increase public confidence in Saskatchewan’s police through accountability and transparency although it does not investigate complaints by the public and only initiates investigations when notified by police of the incident (Saskatchewan, 2024a). As of August 2024, there were five final reports available and SIRTS commits to releasing reports publicly within 90 days after the completion of an investigation (Saskatchewan, 2023a). According to the Civilian Executive Director, SIRTS’ role begins when a police agency calls about an incident and they decide what SIRTS’ role will be (Hunter, 2023). The single access point raises questions that the police’s perspective of a serious incident may differ from the affected

person(s) and about the process for cases of sexual assault, as it appears to rely on police reporting on police to initiate any investigation.

#### **4.1.3 Manitoba**

Following an inquiry into the death of Crystal Taman, who was killed by a drunk driving, off-duty police officer, Manitoba introduced the *Police Services Act* in 2009 to modernize the province's policing and fulfill the inquiry's recommendation of creating an independent unit to investigate allegations of criminal activity by police (Independent Investigations Unit of Manitoba [IIUM], 2024a). The legislation created the Independent Investigations Unit, with authority over all police in the province (IIUM, 2024a). Like Saskatchewan, IIU does not take complaints from the public and only gets involved after being notified by a police agency and does not investigate allegations about police conduct or performance (IIUM, 2024b). IIU investigates allegations of death, serious injury or contravention of federal or provincial law, the definition of which does not explicitly include sexual assault, but sexual assault and sexual misconduct investigations are noted in its annual reports although case-specific reports are not published due to privacy concerns (IIUM, 2024c; IIUM, 2022, pp. 8, 10).

The researcher sought clarification from the IIUM on the investigative process regarding allegations of sexual assault and domestic violence, and the Unit explained that although sexual assault and domestic or intimate partner violence are not one of the prescribed offences that IIUM is mandated to investigate, the civilian director has discretion to assume jurisdiction as a matter of public interest (McCulloch, L., Personal Communications, October 1, 2024). In these cases, allegations of domestic violence or sexual assault must be reported to the local police agency, which is required to notify IIUM as soon as practical and police agencies are the only ones that can report any cases to IIUM (McCulloch, L., Personal Communications, October 1, 2024). Following an investigation, if the Civilian Director of the IIU determines that an officer has committed an offence, they may lay charges or refer the matter to the Manitoba Prosecution Service (IIUM, 2024c). Manitoba also utilizes the charge assessment standard of reasonable likelihood of conviction, meaning conviction is the more likely outcome, and that it is in the public interest to proceed (Manitoba, 2017, p. 1).

In 2022, Manitoba amended the Act to strengthen the role of the IIU, including the introduction of fines and jail for some officers who do not comply with its requests, barring the Unit from hiring active police officers as investigators, increasing requirements for police services to notify IIU, and requiring a public report into each investigation (Legislative Assembly of Manitoba, 2022). Public reports are available online, but the overall lack of information online (e.g., can't search within reports) seems to be common among provinces where organization and website were established in earlier years. The IIU does not consistently posted public reports, as a variety of rationales are available for not providing a public report, such as charges still before courts and balancing public's right to know with accused's right to a fair trial (IIUM, 2024c).

#### **4.1.4 Ontario**

In 1990, the Special Investigations Unit (SIU) was formed in Ontario, as a response to police shootings of multiple Black men and became a model of oversight that spread across Canada and internationally (Roach, 2022, p. 63). The SIU is a civilian law enforcement agency that is responsible for determining if there is evidence of criminal wrongdoing, rather than issues like professional misconduct, and has the power to lay charges (SIU, 2024a). SIU has jurisdiction over municipal, regional and province officers as well as some special constables and peace officers (SIU, 2024b). SIU's mandate includes investigations of incidents involving serious injury, death, allegations of sexual assault or discharge of a firearm at a person (SIU, 2024b). Like Canada, Ontario utilizes the charge assessment standard of reasonable prospect of conviction and that prosecution must be in the public interest, elaborating that "the standard does not require a 'probability of conviction,' that is, a conclusion that a conviction is more likely than not" (Ontario, 2017, pp. 15-16).

In 2008, the Ombudsman of Ontario, Andre Marin, released an investigative report into SIU, which revealed numerous barriers and issues with its operational effectiveness and credibility. The report made 46 recommendations, including those aimed at increasing police compliance and SIU's credibility and improving resourcing (Marin, 2008, pp. 109-116). 13 of the recommendations centered on the creation of a new legislative structure with stand-alone legislation to improve clarity of mandate, police compliance, reporting and the overall independence of SIU (Marin, 2008, pp. 4-5, 58-59, 114-116). In 2017, a review of Independent Police Oversight in Ontario was completed by the Honorable Micael H. Tulloch and echoed the recommendation for stand alone legislation for civilian oversight bodies to make their operations clearer for the public and to "confirm their importance and independence" (2017, p. 9). He called for more clarity in SIU's mandate and extending its jurisdiction to any criminal matter of public interest (p. 10). Tulloch emphasized transparency as a key component in public trust throughout the report and recommended that SIU release a detailed report for all full investigations where charges are not laid, so that the public can "carefully examine a decision not to charge to assure themselves that the investigation was effective and impartial" (p. 10).

In 2019, over a decade after the Ombudsperson's call and two years after Tulloch's report, SIU achieved statutory independence and its the legislative framework was updated through the *Special Investigations Unit Act*, which made a variety for changes, including the creation of a "duty to comply" with SIU investigations, breach of which is a provincial offence, a requirement for SIU to publish reports of all investigations that did not result in criminal charges except for those related to sexual assault, and expanded the mandate to include all instances where an officer discharged a firearm regardless of the outcome (SIU, 2024a). The legislative update did not expand SIU's mandate to encompass incidents that undermine public trust. Like BC, Ontario's police services are obligated to report any relevant incidents to SIU and the SIU website also provides contact forms for people who have been seriously harmed by police or witnessed an incident (SIU, 2024a; SIU, 2024c).

A unique feature of SIU, when compared with the IIO and the other oversight bodies in this scan, is their approach to public reporting. While SIU does not release public reports for all investigations, such as those involving sexual assault or where charges are laid, it provides a wealth of searchable, publicly available information on investigations, and publishes news releases and summaries, such as yearly breakdowns of caseloads and Director's Reports (SUI 2024e, f, g & h). Overall, SIU has the most accessible website of police oversight agencies in this jurisdictional scan, providing detailed information, in an easily searchable database, and embedding links to other public documents about incidents and, for ongoing cases, "I have witnessed a case" buttons, assumably to promote witnesses coming forward with additional information (SIU, 2024f). Ultimately, this easily accessible, searchable, and comparable information drastically increases the transparency of SIU, which is foundational to public trust. In the click of a few buttons a researcher or member of the public can determine the percentage of total cases where SIU lays charges. For example, SIU's case status database shows that there were 314 investigations in 2019, including those that were terminated as well as charges laid or not, and charges were laid in 13 cases.

#### **4.1.5 Quebec**

The Bureau des enquetes independantes (BEI) was created in 2013 through the *Act to Amend the Police Act as Concerns Independent Investigations* and is described as an independent agency with the status of a specialized police force that reports to the Minister of Public Security (BEI, 2024a). As such, BEI is not civilian led, as employees hold status of peace officers. BEI's mandate includes serious injury or death that involves police, as well as sexual offences, all criminal allegations against officers where the AP is First Nations or Inuit and, when requested by the Minister, any allegations of criminal offences by officers, and does not involve police misconduct (BEI, 2024a). The BEI does not lay charges but submits its final report to the Directeur des poursuites criminelles et penales, who decides whether charges will be

laid (BEI, 2024a). Although BEI completes a final report, it is not publicized, due to the sensitive information, although (French only) press releases are sometimes published (BEI, 2024b). The charge assessment standard in Quebec requires sufficient evidence for reasonable prospect of conviction and that prosecution be in public interest (Quebec, 2023, pp. 4-6)

In 2019, Bill 107 amended the Police Act, and broadened BEI's mandate and strengthened its autonomy, including provisions that require police forces to notify BEI directly about potential incidents rather than communicating with the Minister of Public Security (BEI, 2024c). Although final reports are not publicly available, BEI does provide a searchable database of investigation with limited information available, such as location and status, as well as key statistics on investigations (BEI, 2024d).

#### **4.1.6 Nova Scotia and New Brunswick**

Nova Scotia's Serious Incident Response Team began operating in 2014 and investigates deaths, serious injuries, domestic violence, sexual assault and other matters deemed to be in public interest, providing some flexibility in its mandate (SIRT, 2024a). SIRT investigations can be instigated by referrals from heads of police agencies, the Minister of Justice, the public or SIRT's own decision. SIRT determines whether criminal charges are appropriate and, after charges are laid, turns the investigation over to Crown prosecution (SIRT, 2024b). Nova Scotia's charge assessment standard requires sufficient evidence to provide a realistic prospect of conviction, and that prosecution be in the public interest, clarifying that if "the prosecutor concludes that an acquittal is clearly more likely than a conviction, the case should not be prosecuted" (Nova Scotia, 2021, pp. 1-3). The standard elaborates that realistic was chosen, in part, to distinguish Nova Scotia's threshold from that of a reasonable prospect of conviction, which is used by Canada and Ontario and "may mean a 51% likelihood," and is "arguably lower than the Nova Scotia threshold, but not as high as the "substantial likelihood of conviction" threshold used in BC" (Nova Scotia, 2021, p. 4).

SIRT is required to issue public summary of investigations within 3 months of completion and often publishes news releases, announcing the start or conclusion of an investigation (SIRT, 2024b; SIRT, 2024c). While reports are released, the website is not highly accessible, as reports and news releases cannot be search or categorized and are simply listed by year from 2013-2023 (SIRT, 2024c). The website also does not provide a statistical overview or any other summary to support public accessibility (SIRT, 2024c). As of February 2023, Nova Scotia's Serious Incident Response Team (SIRT) provides oversight for serious incidents involving police in New Brunswick as well as Nova Scotia (New Brunswick, 2023). This agreement was first struck in 2021 but implemented in 2023. Previously, out of province agencies investigated serious incidents involving police in New Brunswick, with SIRT often responding – the agreement formalizes this relationship and establishes a SIRT office in New Brunswick (Urquhart, 2023).

#### **4.1.7 Newfoundland and Labrador**

Newfoundland and Labrador has an independent, civilian-led police oversight agency called the Serious Incident Response Team (SIRTNL), which was mandated through the *Serious Incident Response Team Act* in 2017, beginning operations in 2019 and becoming fully operational in 2021 (SIRTNL, 2024a). SIRTNL investigates deaths, serious injury, sexual assault, domestic violence, or "any matter of significant public interest" (SIRTNL, 2024b). SIRTNL can lay criminal charges and utilizes the charge assessment standard of sufficient admissible evidence that demonstrates a reasonable likelihood of conviction, and the prosecution serves public interest (Newfoundland and Labrador, 2021, pp. 1-2; SIRTNL, 2024b). The standard elaborates that a conviction must be more than technically or theoretically possible and "the prospect of displacing the presumption of innocence must be real" (Newfoundland and Labrador, 2021, p. 2). SIRTNL releases a publicly available report, but in cases where charges are laid, this is after the completion of court processes (SIRTNL, 2024b). While SIRTNL does provide Director's Reports and publishes News Releases, these documents are not easily searchable or sortable, and no annual or summarizing information, statistics or reports are available.

SIRTNL investigations can be instigated by police agencies, the Minister of Justice and Public Safety, or the public. When SIRT receives a complaint, it can decide to investigate, refer to a police force for investigation, contract the investigation to an oversight agency from another province or take other steps, such as referring to the RCMP complaints process or oversee another agencies investigation of the complaint (SIRTNL, 2024b). It appears that SIRTNL often refers to another agency or jurisdiction to investigate, as it has released a total of 30 Director’s Reports between August 2021 and May 2024, (SIRTNL, 2024c).

#### ***4.1.8 Conclusion***

The jurisdictional scan of police oversight bodies across Canada revealed significant patterns as well as areas of divergence between jurisdictions. Across jurisdictions, it is a time of evolution for police oversight, with many provinces overhauling or updating existing bodies or creating new agencies in recent years. Several of these changes increased the authority of oversight bodies to compel police participation and expanded their scope. Additionally, most independent, civilian led oversight agencies for cases of serious harm or death are rooted in responses to egregious, publicized cases of police violence. In these contexts, many oversight bodies were established with the explicit intention of increasing transparency, accountability and public confidence in policing. Although many agencies are rooted in similar concerns, there is immense variation in how long jurisdictions have had these oversight bodies, ranging from the 1990s to the 2020s. Despite the desire to increase public confidence in policing, the majority of jurisdictions do not accept complaints from the public, with only Ontario, Nova Scotia and Newfoundland and Labrador open to public complaints.

In terms of mandate, sexual assault and domestic violence are commonly included, but there is a lack of clarity in many jurisdictions with flexible mandates and future research is needed into the application of this flexibility to investigations of alleged sexual assault and domestic violence by police as well as the overall utilization of this flexibility and how public interest is understood and applied. Shockingly, BC is the only oversight body that explicitly excludes sexual assault from its mandate (IIO, 2019a), raising concerns about the consequences for victims and questions about why this mandate has not been expanded, despite the legislative authority in place to do so. BC is one of three jurisdictions where the oversight body is not able to directly lay charges and must instead refer the case, which, as noted by Puddister, can undermine public confidence and the independence of the oversight system (2023, pp. 399-400). In terms of mandate, Quebec’s BEI is unique in its jurisdiction in all cases where the AP is Indigenous, a potential response to the disproportionate harms experienced historically and today by Indigenous peoples at the hands of police that other jurisdictions could also apply.

Finally, there was significant variation among the charge assessment standards between jurisdictions, with BC’s standard standing out as the highest and most difficult. While this standard applies to all people in BC, not just police, its application in all police cases raises questions given the difficulties of prosecuting police and unique advantages they hold in the criminal justice system, as discussed in the literature review, especially as BCPS has the option to resort to a lower standard in cases that have significant public interest. The role of charge standards and public interest will be discussed in more detail in Chapters 4.3, 4.4 and 5. Overall, this scan provides critical contextual information about the operation of police oversight across Canada and will support analysis of BC’s system and recommendations for the future.

#### ***Chapter 4.2: Tracing Cases Through the Police Oversight System***

This section explores the findings of the quantitative analysis, which traces incidents from IIO investigations, Crown Counsel's decision to lay charges on referred investigations, and the Courts findings for charged officers. This chapter begins by exploring the data on all IIO 963 investigations during the study period, then delves deeper into the 95 cases referred to Crown Counsel, the 29 incidents with charges laid against officers as well as six cases awaiting BCPS decision, and the court outcomes for charged SOs. While this section will analyze a broad array of factors, such as AP gender and SO' police agency, to provide a foundation of knowledge for future research, it will focus in on key areas that support the overall evaluation of the oversight system. Additional analysis is presented in Appendix C, providing a robust foundation of research that goes beyond the scope of the research questions.

Before delving into the data, contextual information provided by IIO, including variations between the requested and received data, clarifications and changes to IIO practices over the study period, are discussed, with further details available in Appendix B. There were two variations between the requested and received data from IIO. First, although the researcher had requested information on the age of APs, IIO redacted this data, resulting in age being excluded from the analysis. Second, two data points – the ethnicity of APs and whether the SOs provided evidence – were not collected until March 2020 and are therefore only analyzed for this period. As IIO gather data on ethnicity, the term ethnicity, rather than race, will be used.

Over the course of the research, the researcher exchanged several emails with IIO's Media and Communications Liaison, Rebecca Whalen IIO, seeking clarifications on several points. Two clarifications were provided about IIO's sequential numbering of cases (e.g., 2019-001, 2019-002, etc.), as advice files are given a number but do not meet IIO's threshold for an investigation and investigations are occasionally initiated in a later year, after new information comes to light. Additionally, for investigation 2020-077, the CDD determined that no information would be provided to the public and this case has therefore been excluded from the dataset (Whalen. R, personal communication, May 22, 2024).

There were several notable changes in IIO practices over the study period, which IIO's liaison, Whalen, also flagged over email exchanges. Despite carrying out fewer investigations in 2014-2016 than more recent years, the number of referrals to Crown Counsel for consideration of charges were higher in those years, due to two changes. First, the definition of an investigation was updated, as previously only lengthy investigations were counted, but in 2017/2018, the definition was updated to include any incidents where investigative work is completed; advice files continued to be excluded. Second, IIO's standard for referring cases to the BCPS changed as,

The *Police Act* previously stated that the CCD must refer a file to Crown if it is determined that an officer may have committed an offence under any enactment. The past interpretation of this referral standard by the IIO resulted in some cases being referred to Crown where there was no likelihood of charges being approved and resulted in significant delays and an increased workload for the IIO. Following consultation with Crown and other stakeholders and drawing on his extensive experience in the criminal justice system, the CCD implemented a practical interpretation of the referral standard which is consistent with the referral standard used by police. The goal is to refer those cases where the likelihood of charge approval is reasonable (Whalen. R, personal communication, September 15, 2023).

This change was codified in the *Police Act* in 2019 and resulted in a decrease in the number of cases being referred to Crown Counsel, as cases where IIO evaluated the likelihood of charge approval to be low are no longer referred. Due to this change, some data will be analyzed pre- and post-referral change to highlight its impacts on the system's outcomes.

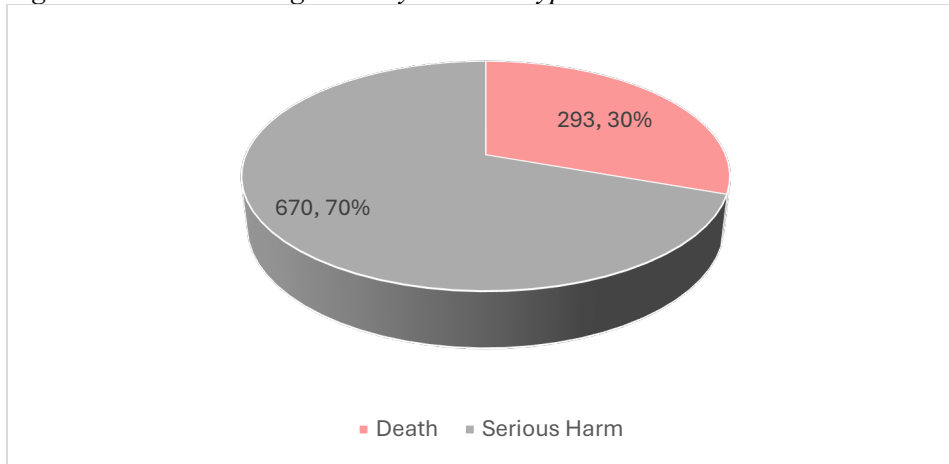
Finally, IIO clarified that information is not provided on open investigations. As of August 1, 2024, there

were four open cases for the study period, all for incidents occurring in 2020 and 2021. These cases – 2020-047, 2021-137, 2023-005 and 2023-045 – are excluded from this research. Additionally, there are six investigations that IIO referred to Crown Counsel but is awaiting decision on – 2019-201, 2021-097, 2021-100, 2021-171, 2021-256 and 2021-332. These investigations are noted as a separate category – Referral to Crown Counsel (RTCC) – in the analysis.

#### 4.2.1 Unpacking the Data: All IIO Investigations

During the study period from January 2014 to December 2021, IIO completed 963 investigations. Of these investigations, 30.4% (293) were for deaths, while 69.57% (670) were for incidents of serious harm, as shown in Figure 3, below.

Figure 3: All IIO Investigations by Incident Type



A year-by-year examination is critical to better understand IIO’s investigations. As shown in Table 5 below, the rate of serious harm to death varied throughout the study period, with the most notable fluctuation of 20% occurring between 2014 and 2016.

Table 5: IIO Type of Investigation by Year

Type of Incident	2014	2015	2016	2017	2018	2019	2020	2021	Total
<b>Death</b>	12	12	16	31	33	60	74	55	<b>293</b>
<b>Serious Harm</b>	40	20	21	79	81	133	149	147	<b>670</b>
<b>Total (% of Death)</b>	<b>52 (23%)</b>	<b>32 (37%)</b>	<b>37 (43%)</b>	<b>110 (28%)</b>	<b>114 (28%)</b>	<b>193 (31%)</b>	<b>223 (33%)</b>	<b>202 (27%)</b>	<b>963 (30%)</b>

#### Agencies Under Investigation

The RCMP comprised the majority of all IIO investigations, totalling 633 or 65.7%, while the Vancouver Police Department (VPD) accounted for 192 investigations or 19.9%. The Victoria Police Department (Vic PD) accounted for 40 investigations (4.15%), while Abbotsford Police Department (APD) had 35 investigations (3.63%) and New West Police Department (NWPD) accounted for 10 (1.03%). The remaining police agencies under IIO’s mandate in BC accounted for less than 10 or 1% of all IIO investigations over the study period, likely due to their small size. A Figure with the number and percentage of investigations for all agencies can be found in Appendix C.

The researcher compared populations served by police departments with the percentage of IIO investigations. BC’s population at the 2021 census was 5,000,879 and 11 cities or towns had their own departments, leaving a remaining population of 3,663,978 to be primarily policed by the RCMP (Statistics

Canada, 2023). While this is not a precise comparison, it provides an indication of the alignment between populations served and incidents.

*Table 6: Police Agencies by Population Served and IIO Investigations*

Police Service	Population (2021 Census)	Number of IIO Investigations	% of IIO investigations	% of BC's Population
<b>RCMP</b>	3,663,978	633	65.7%	73%
<b>VPD</b>	662,248	192	19.9%	13.2%
<b>APD</b>	153,524	35	3.63%	3.0%
<b>Saanich PD</b>	117,753	9	.93%	2.3%
<b>Delta PD</b>	108,455	8	.83%	2.1%
<b>Vic PD</b>	91,867	40	4.1%	1.8%
<b>NWPD</b>	78,916	10	1.0%	1.5%
<b>West Vancouver PD</b>	44,122	6	.62%	.88%
<b>Port Moody PD</b>	33,535	5	.51%	.67%
<b>Oak Bay PD</b>	17,990	3	.31%	.35%
<b>Central Saanich PD</b>	17,385	5	.51%	.34%
<b>Nelson PD</b>	11,106	3	.31%	.22%

\*this chart excludes Transit Police, Special Provincial Constable and Stl'atl'imx Tribal Police Service

The RCMP makes up the vast majority of all IIO cases and comprises a disproportionate percentage of IIO's investigations into police-involved deaths, with 38.7% of IIO investigation into RCMP officers involving deaths. This stands in stark comparison to the VPD, which is the second most investigated agency by IIO, where deaths account for 11.45% of IIO investigations into the force. Police-involved deaths comprised 22.5% of IIO investigations into Vic PD, and 8.57% into Abbotsford PD. Many of the small police departments have too few IIO investigations for a reliable analysis, such as Stl'atl'imx Tribal Police's five investigations in the seven-year study period, two of which are for deaths or 40%. RCMP stands out as the only force that comprises over 1% of all IIO investigations that has a higher percentage of death investigations than the IIO average of 30%. Details on all police agencies subject to IIO investigation over the study period can be found in Appendix C.

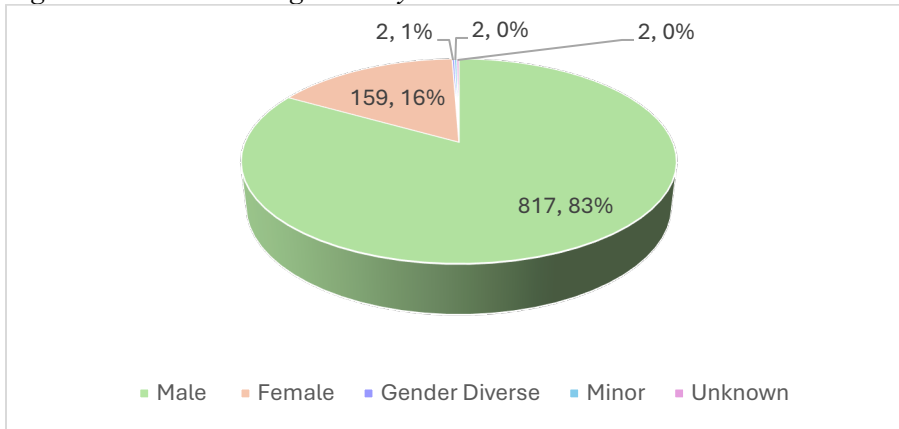
*Table 7: IIO Investigations by Agency and Type of Incident*

Agency	Total Number of IIO Investigations	Serious Harm Investigations	Death Investigations	Percentage of Investigations into Deaths
<b>RCMP</b>	633	388	245	<b>38.70%</b>
<b>VPD</b>	192	170	22	<b>11.45%</b>
<b>Vic PD</b>	40	31	9	<b>22.5%</b>
<b>Abbotsford PD</b>	35	32	3	<b>8.57%</b>

#### *Intersectional Considerations: Gender and Ethnicity*

Out of the 963 closed IIO investigations, there were 19 investigations with multiple APs, resulting in a total of 982 APs over the study period. Of the 982 APs, 817 were male (83.1%), 159 were female (16.1%), two were gender diverse (.2%), two were minors (.2%), and for two IIO declined to provide gender information (.2%), as shown in Figure 5, below. For the first layer of analysis of all IIO investigations, this section will explore the gender of the 982 APs by year, type of investigation, and ethnicity, and highlight variations both between gender categories and between years.

Figure 4: All IIO Investigations by AP Gender



The proportion of female to male APs varied throughout the study period but did become more consistent in the later years (see Figure 4b in Appendix C). Female APs made up from 0%-23.0% of IIO investigations in the study period, with the lowest proportion in 2015 (0%) and highest in 2016 (23.1%), while from 2017-2021, they made up 14.3-18.8% of investigations. While this study cannot draw conclusions about the role of gender in police-involved incidents of serious harm and death, this data highlights the predominance of incidents involving male APs as well as variation in AP gender over the study period and provides a basis for future research to build off.

Although the ratio of serious harm to death investigations is relatively consistent at 70% to 30%, there was immense variation in some years and within gender categories (see Figure 4c in Appendix C). Overall, the proportion of serious harm investigations with female APs varied from 33.3% in 2014 to 81.8% in 2018, with an average of 71.0%, which is extremely close to IIO's overall rate. For male APs, the variation in serious harm investigations was more consistent, shifting from a low of 60.0% in 2016 to high of 79.5% in 2014, with an average of 69.2%.

As IIO did not gather information on ethnicity prior to March 2020, the below chart only reflects data from March-December 2020 and all of 2021 – 382 investigations. There were several IIO cases in 2016 and 2019 where investigations were initiated post-2020, and therefore the ethnicity data is available, but these were excluded from this analysis due to the ad hoc nature of these limited cases and that they are not representative of the years in which they occurred. There were nine investigations with multiple APs, therefore there are more APs than total number of cases for this period, with racial data available for 391 APs in 382 cases.

As shown in Table 8, below, from March 2020 to December 2021, the largest category listed for ethnicity is unknown, followed by white and Indigenous. In these early years of IIO collection of race-based data, there appears to have been some inconsistency and overlap in terminology, with a mixture of more expansive terms, like Asian or white, and more specific terms, such as East, South and Southeast Asian as well as European and Eastern European.

Table 8: AP Ethnicity by Year

Ethnicity	2020 (March-Dec)	2021	Total (%)
<b>Unknown</b>	84	71	155 (39.6%)
<b>White</b>	64	77	141 (36.0%)
<b>Indigenous</b>	24	38	62 (15.8%)
<b>Asian</b>	7	4	11 (2.8%)
<b>East Asian</b>	0	4	4 (1.0%)
<b>South Asian</b>	0	4	4 (1.0%)
<b>Southeast Asian</b>	0	2	2 (.5%)
<b>Black</b>	0	3	3 (.7%)
<b>Latin, Central or South American</b>	2	1	3 (.7%)
<b>Latin Canadian</b>	0	2	2 (.5%)
<b>Middle Eastern</b>	0	1	1 (.2%)
<b>Eastern European</b>	0	1	1 (.2%)
<b>European</b>	1	1	2 (.5%)
<b>Total</b>	<b>182</b>	<b>209</b>	<b>391</b>

While the use of inconsistent and overlapping terms complicate this data, the researcher drew on 2021 data from Statistics Canada to compare the rate of IIO investigations with the ethnicity of BC’s population, where available. Although Indigenous people made up 5.9% of BC’s population in 2021 (Statistics Canada, 2022), they comprised 15.8% of all IIO investigations and are drastically over-represented. While 5.3% of all IIO investigations were for incidents involving Asian, East Asian, South Asian or Southeast Asian APs, these groups represented over 24% of BC’s population in 2021 – a drastic under-representation – with South Asians comprising 9.6%, Southeast Asian 1.5%, and East Asians 13.6% (Korean 1.5%, Japanese .9%, and Chinese 11.2%) according to Statistics Canada (2022). Statistics Canada also noted that 1.3% of BC’s population were identified as each Black and Latin American, which are higher than the .7% that each group makes up in IIO investigations during the study period. Although “white” is a nebulous term and not utilized by Statistics Canada, the 2021 census clarified that 34.4% of the population are visible minorities, indicating that approximately 65.6% of the population is not from a visible minority (Statistics Canada, 2022). In IIO’s data, 36.7% of APs were listed as white, Eastern European or European, highlighting the significant under-representation of white APs in IIO investigations.

While the variation between categories and terminology utilized by IIO and Statistics Canada prevent a precise comparison, available information indicates that there are stark differences between the representation of different ethnicities in the population and within IIO investigations, with APs of white and Asian ethnicity significantly under-represented, while Indigenous APs are drastically over-represented. Further research is urgently needed on the disproportionate harming and killing of Indigenous people in interactions with police, while research and IIO’s internal processes would also benefit from identification of the “unknowns” which made up the largest single category of AP ethnicity in IIO investigations.

Below, Table 9 highlights the importance of intersectional analysis, as significant differences become apparent when examining APs by ethnicity and gender. For the 74 female APs, Indigenous APs comprised 22.9% of IIO investigations, while white females accounted for 32.4% and unknown females 35.1%. For male APs, Indigenous APs comprise 14.2%, while white APs account for 36.8% and unknown for 40.6%. Although this data has significant limitations that inhibit reliable conclusions, there is one clear conclusion – the drastic over-representation of Indigenous people, especially Indigenous women, in IIO

investigations. While both gender diverse APs are included below, the incidents involving minor and unknown APs occurred prior to IIO’s collection of data on ethnicity.

While IIO’s data around ethnicity provides interesting insights, it is limited in its applicability due to numerous factors, including the high proportion of “unknown” and the erratic categorization, with ambiguous and overlapping terms, such as “white,” “European,” and “Eastern European”.

*Table 9: IIO Investigations by AP Ethnicity, Gender and Year*

Gender	Ethnicity	2020	2021	Total (%)
<b>Female</b>	Unknown	15	11	26 (35.1%)
	White	10	14	24 (32.4%)
	Indigenous	9	8	17 (22.9%)
	Asian	2	1	3 (4.0%)
	East Asian	0	1	1 (1.3%)
	Latin, Central or South American	1	0	1 (1.3%)
	Middle Eastern	0	1	1 (1.3%)
	South Asian	0	1	1 (1.3%)
	<b>Total</b>	<b>37</b>	<b>37</b>	<b>74</b>
<b>Male</b>	Unknown	69	59	128 (40.6%)
	White	54	62	116 (36.8%)
	Indigenous	15	30	45 (14.2%)
	Asian	5	3	8 (2.5%)
	East Asian	0	3	3 (.9%)
	Black	0	3	3 (.9%)
	Latin Canadian	0	2	2 (.6%)
	Latin, Central or South American	1	1	2 (.6%)
	South Asian	0	3	3 (.9%)
	Southeast Asian	0	2	2 (.6%)
	Eastern European	0	1	1 (.3%)
	European	1	1	2 (.6%)
	<b>Total</b>	<b>145</b>	<b>170</b>	<b>315</b>
	<b>Gender Diverse</b>	Unknown	0	1
White		0	1	1
<b>Total</b>		<b>0</b>	<b>2</b>	<b>2</b>
<b>Final Total</b>		<b>182</b>	<b>209</b>	<b>391</b>

To deepen the intersectional analysis, the investigations with AP ethnicity data available were re-analyzed for incident type. Between March 2020-December 2021, there were 391 APs, with 119 investigations categorized as deaths and 272 as serious harm, resulting in an average of 30.4% of all IIO investigations where APs died. This is an almost identical incident type to the total of all IIO investigations over the study period and provides a precise comparison point for March 2020 to December 2021.

AP ethnicity was re-examined by incident type, with the rate of death to serious harm in largest AP categories of unknown and white were almost identical to the overall average, while Indigenous people had a slightly higher percentage, with 32.2% of investigations with Indigenous APs for deaths or 1.8% higher than for all APs with ethnicity information available. For the less frequently utilized ethnicity categories, such as East Asian, there was a large degree of variation, ranging from 0-50%, but this is not unexpected given the small sample size in these groups. The full details of this analysis are available in

Appendix C.

Finally, AP ethnicity was examined by gender and incident type, as shown below in Table 10, below. For female APs, the rate of deaths to serious harm was 21.6%, with the unknown female APs over-represented in death investigations at 26.9%, while white female APs were slightly below the average at 20.8%. Indigenous female APs were under-represented with deaths comprising 11.7% of investigations as compared to the average of 21.6% for all female APs. For all male APs with ethnicity data available, deaths comprised 32.6% of IIO investigations. While the rates for unknown (31.2%) and white (32.7%) male APs were close to the average, Indigenous men were over-represented, with deaths comprising 37.5% of investigations. East Asian males were also over-represented, with 40% of investigations into deaths, but given the extremely small sample size (5), caution should be exercised in interpretation of this data, as well as the other groups, such as Eastern European males with miniscule sample sizes.

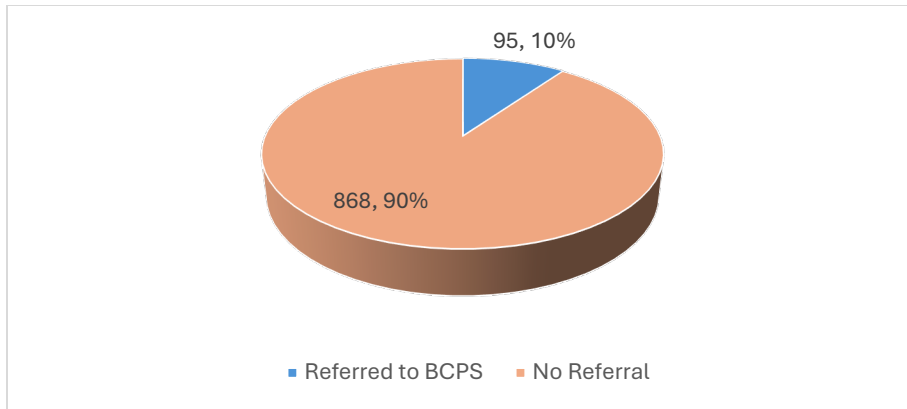
*Table 10: IIO Investigations by Incident Type, AP Ethnicity and AP Gender*

Gender	Ethnicity	Death	Serious Harm	Total (% death)
<b>Female</b>	Unknown	7	19	26 (26.9%)
	White	5	19	24 (20.8%)
	Indigenous	2	15	17 (11.7%)
	Asian	1	2	3 (33.3%)
	East Asian	0	1	1 (0)
	Latin, Central or South American	0	1	1 (0%)
	Middle Eastern	0	1	1 (0%)
	South Asian	1	0	1 (0%)
	<b>Total</b>	<b>16</b>	<b>58</b>	<b>74 (21.6%)</b>
<b>Male</b>	Unknown	40	88	128 (31.2%)
	White	38	78	116 (32.7%)
	Indigenous	18	27	45 (37.5%)
	Asian	2	6	8 (25%)
	East Asian	2	3	3 (40%)
	Black	1	2	3 (33.3%)
	Latin Canadian	0	2	2 (0%)
	Latin, Central or South American	0	2	2 (0%)
	South Asian	1	2	3 (33.3%)
	Southeast Asian	0	2	2 (0%)
	Eastern European	1	0	1 (100%)
	European	1	1	2 (50%)
	<b>Total</b>	<b>103</b>	<b>212</b>	<b>315 (32.6%)</b>
	<b>Gender Diverse</b>	Unknown	0	1
White		0	1	1
<b>Total</b>		<b>0</b>	<b>2</b>	<b>2</b>
<b>Grand Total</b>		<b>119</b>	<b>272</b>	<b>391 (30.4%)</b>

*Closure of IIO Investigations*

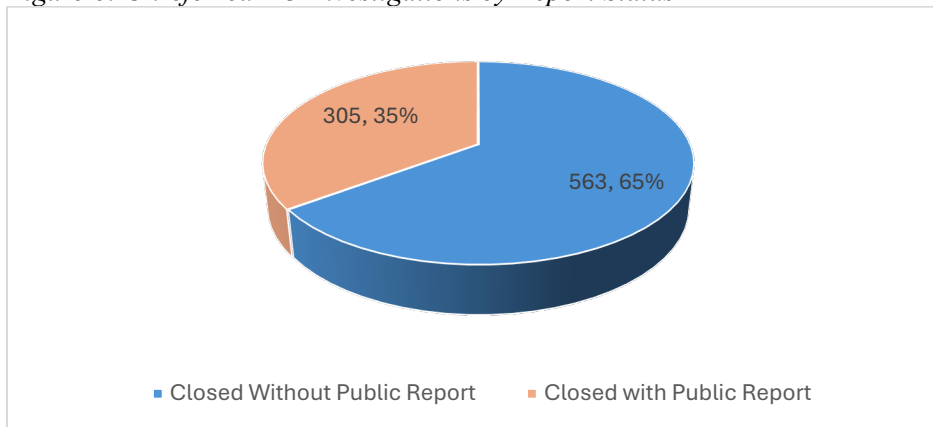
Finally, the researcher explored how IIO investigations were closed. As shown below in Figure 5, of the 963 IIO investigations, 868 (90.13%) were closed without referral to Crown Counsel.

*Figure 5: IIO Investigations by Referral Status*



Of the 868 not referred to BCPS, 64.86% (563) were closed without a public report, while 35.13% (305) were closed with a public report.

Figure 6: Unreferred IIO Investigations by Report Status



As shown below in Table 11, the way IIO closes investigations shifted through the study period. At the start of the study period, IIO published public reports for most investigations where it did not refer charges, with a significant shift occurring in 2017 when IIO began to close the majority of cases without a public report. This raises questions about the declining availability of information in recent years on IIO’s closed investigations where no charges are referred and the ability for those concerned about police actions to understand the rationale for not pursuing charges.

Table 11: IIO Investigations by Outcome and Year

Outcome	2014	2015	2016	2017	2018	2019	2020	2021	Total
<b>Closed – without public report</b>	1	2	8	80	65	120	154	133	<b>563</b>
<b>Closed – with public report</b>	25	15	20	26	40	68	56	55	<b>305</b>
<b>Total</b>	<b>26</b>	<b>17</b>	<b>28</b>	<b>106</b>	<b>105</b>	<b>188</b>	<b>210</b>	<b>183</b>	<b>868</b>

### Conclusion

The data on all IIO investigations provided a wealth of information on the inner workings of the oversight system, but there were also limitations, as some of the data were not available, such as AP age, or not feasible to appropriately analyze within this thesis. In the earlier years of the study period, the key dates for each investigation were not consistently available and an additional data request would be needed to evaluate the turn around time for all IIO investigations in the study period. While the location for all incidents is available, this requires a deeper level of analysis than this thesis can provide to consider the

implications by municipality and region. Instead, this thesis focused on police agency. Finally, beyond the incident type of death or serious harm, IIO investigations were not classified in a standardized way in publicly available information or in the provided data. This is an area for future research and may require working with IIO to understand their classifications, such as use of force and driving-related offences, to precisely analyze the types of investigations IIO completes.

#### 4.2.2 Unpacking the Data: All Cases Referred to Crown Counsel

Following the broad analysis of all IIO investigations, the research focuses on cases referred to Crown Counsel. When the BCPS does not press charges, a “clear statement” is released which provides in-depth information about the case. At this level of analysis, qualitative information begins to be collected to create a more detailed understanding possible of the cases that IIO deemed eligible for charge consideration.

Of the 963 IIO investigations, 95 or 9.86% were referred to Crown Counsel (RTCC) during the study period, but, as shown in Table 12 below, there was immense variation in the percentage of IIO investigations that resulted in referrals to Crown Counsel each year of the study period, ranging from a low of 2.59% in 2019 to a high of 50% in 2014. While IIO averaged a referral rate of nearly 10% during the entire study period, a more granular look reveals a much lower rate since the referral standard changed in 2017. The IIO referral rate from 2017-2021 was 5.34% or 45 referrals out of 842 investigations.

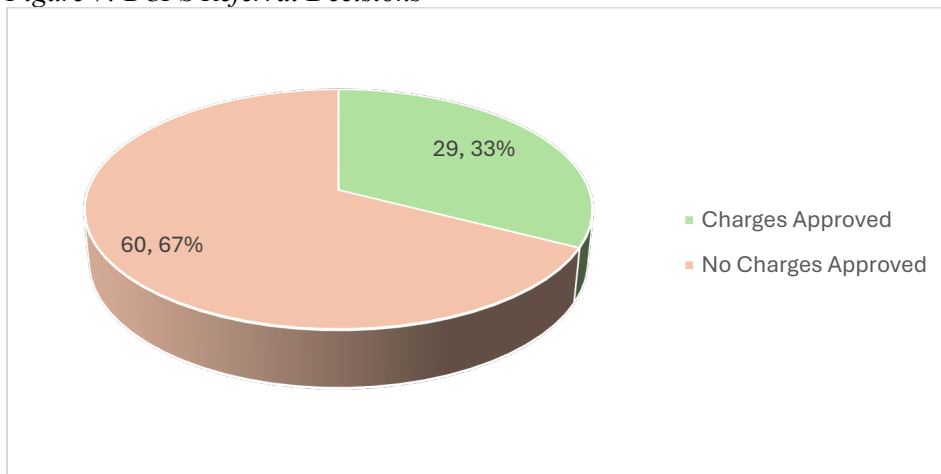
Table 12: IIO Investigations and Referrals by Year

	2014	2015	2016	2017	2018	2019	2020	2021	Total
<b>All IIO Investigations</b>	52	32	37	110	114	193	223	202	<b>963</b>
<b>IIO Referrals</b>	26	15	9	4	9	5	13	14	<b>95</b>
<b>Percentage RTCC</b>	50%	46.8%	24.3%	3.6%	7.89%	2.59%	5.82%	6.93%	<b>9.86%</b>

Of the 95 investigations referred to Crown Counsel during the study period, Crown Counsel declined to lay charges in 60 or 63.1%, and 29 or 30.52% resulted in charges being laid, with 6 outstanding cases (6.3%) still awaiting determination by Crown Counsel.

Of the 89 investigations with BCPS charge decision, charges were not approved in 60 or 67.4% of referrals and charges were approved in 29 or 32.5%, as shown in Figure 7, below.

Figure 7: BCPS Referral Decisions



In Table 13, below, the 89 cases where Crown Council has decided whether to lay charges are analyzed, excluding the six cases that are awaiting decision. This analysis highlights the immense variability on the approval rate for IIO referrals, ranging from a low of 7.69% in 2014 to a high of 88.8% in 2018, with an average of 32.58% for the entire study period. Since the charge referral standard changed in 2017, the outcome of IIO referrals to Crown Council should be examined since the new standard. The overall charge approval rate since the referral standard change in 2017 has resulted in a higher number of charges laid by Crown Council at 19 or 48.7% of the cases. Interestingly, although the charge referral standard was changed in 2017 and there appeared to be an immediate, responsive uptick in approvals, with both 2017 and 2018 seeing the highest rates for the study period, the rate quickly declined, and Crown Council approval did not exceed 1/3 of referred cases for the remainder of the study period. This raises questions about the overall, long-term success of the referral standard change, as approvals were higher in 2016 – pre-dating the referral standard change – than 2019-2021.

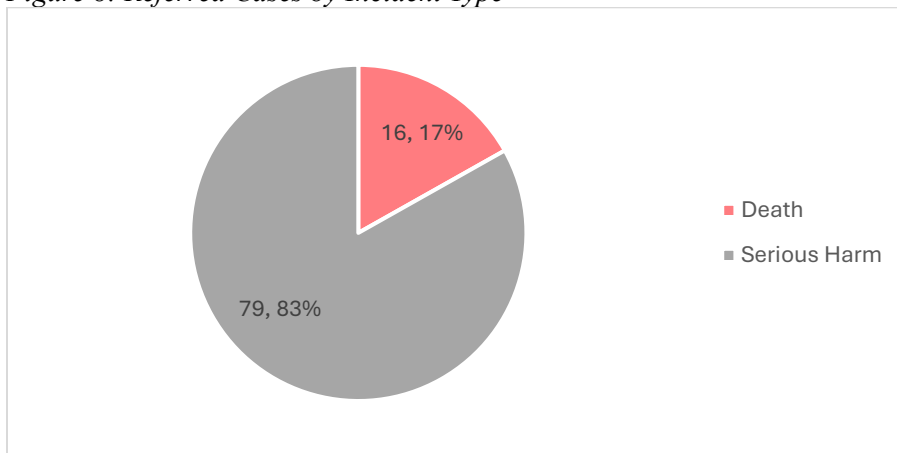
*Table 13: Crown Council Decisions by Year*

Referral Status	2014	2015	2016	2017	2018	2019	2020	2021	Total (%)
<b>Charges Approved</b>	2	3	5	3	8	1	4	3	<b>29 (32.58%)</b>
<b>No Charges Approved</b>	24	12	4	1	1	3	9	6	<b>60 (67.41%)</b>
<b>Total (% Approved)</b>	26 (7.69%)	15 (20%)	9 (55%)	4 (75%)	9 (88.8%)	4 (25%)	13 (30.7%)	9 (33.3%)	<b>89</b>

*Incident Type in Referred Cases*

The research set out to examine the types of incidents referred to Crown Council. As shown in Figure 8 below, of the 95 referred investigations, 79 or 83.1% were incidents of serious harm and 16 or 16.8% were deaths. This varies significantly from all IIO investigations in the study period, as 293 (30.4%) of the 963 investigations were for deaths, while 69.5% (670) were for incidents of serious harm.

*Figure 8: Referred Cases by Incident Type*



While the breakdown of total cases is important, a year-by-year analysis is necessary to better understand the data. As shown in Figure 9 and Table 14 below, the percentage of referrals to BCPS for investigations into deaths ranged widely during the study period from a low of 0% in 2018 to a high of 33% in 2015. Overall, the later years of the study period had lower rates of referrals for deaths than the earlier years. As the charge referral standard changed in 2017, it is important to examine these years separately as well.

From the charge referral change to the end of the study period, 2017-2021, 45 investigations were referred to Crown Counsel and 5 or 11.11% were for deaths.

Figure 9: IIO Referrals by Incident Type and Year

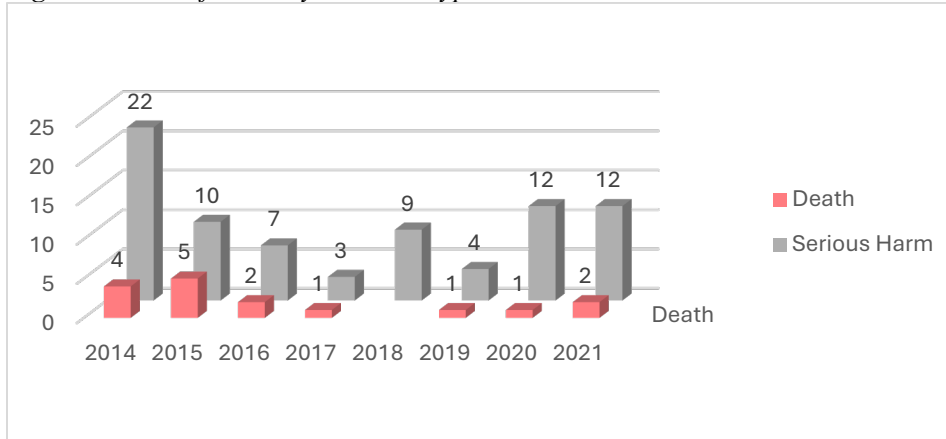


Table 14: IIO Referrals by Incident Type and Year

Incident Type	2014	2015	2016	2017	2018	2019	2020	2021	Total
<b>Death</b>	4	5	2	1	0	1	1	2	<b>16</b>
<b>Serious Harm</b>	22	10	7	3	9	4	12	12	<b>79</b>
<b>Total (% of death)</b>	<b>26 (18%)</b>	<b>15 (33%)</b>	<b>9 (22%)</b>	<b>4 (25%)</b>	<b>9 (0%)</b>	<b>5 (20%)</b>	<b>13 (7%)</b>	<b>14 (14%)</b>	<b>95 (15%)</b>

Table 15, below, examines the outcome of referrals by status, year and incident type, with deaths comprising 13.79% of approved charges and 16.66% of cases with no charges approved. The Table highlights the low number of referrals for deaths moving through the system, with no approved charges for AP deaths occurring since 2017. Of referrals where BCPS' charge assessment is pending, deaths make up one-third of the cases, including one referral for a death related incident in 2019. Overall, 25 of 75 referrals for incidents of serious harm resulted in approved charges (33.3%), while four of 14 referrals for deaths resulted in approved charges (28.57%).

Table 15: Outcome of Referrals by Year and Type of Incident

Status of Referral	Type of Incident	2014	2015	2016	2017	2018	2019	2020	2021	Total
<b>Charge Assessment Pending</b>	Death	0	0	0	0	0	1	0	1	<b>2</b>
	Serious Harm	0	0	0	0	0	0	0	4	<b>4</b>
<b>Charges Approved</b>	Death	0	3	0	1	0	0	0	0	<b>4</b>
	Serious Harm	2	0	5	2	8	1	4	3	<b>25</b>
<b>No Charges Approved</b>	Death	4	2	2	0	0	0	1	1	<b>10</b>
	Serious Harm	20	10	2	1	1	3	8	5	<b>50</b>
<b>Total</b>		<b>26</b>	<b>15</b>	<b>9</b>	<b>4</b>	<b>9</b>	<b>5</b>	<b>13</b>	<b>14</b>	<b>95</b>

### *Agencies and SOs Referred for Charges*

The quantitative analysis also set out to understand the frequency of investigation of different policing agencies and referral by IIO. The examination of referrals to Crown Counsel by agency reveals some consistency with all IIO investigations, with the RCMP continuing to make up 65% of the totals, while VPD's share slightly increased from 19.9% of all IIO investigations and 23.1% of IIO referrals. Abbotsford and Victoria represent the most significant variation, with Abbotsford making up 3.6% of all IIO investigations, but 6.3% of all IIO referrals in the study period, while Victoria comprised 4.1% of investigations, but only 1% of referrals. Delta PD, New West PD, Port Moody PD and the Transit Police also each comprised 1% (1) of IIO's referrals. While the variations for Victoria and Abbotsford are notable, the overall low number of cases both investigated and referred warrant caution at reaching conclusions about the significance of these variations.

As shown below in Table 16, a year-by-year analysis of referrals by agencies show immense variation, with the RCMP's percentage of yearly referrals ranging from 93% in 2015 to 44% in 2018, and 2014 being the only year that the RCMP did not comprise over half of all IIO referrals. The analysis for all agencies is available in Appendix C.

*Table 16: IIO Referrals by Agency and Year*

Agency	2014	2015	2016	2017	2018	2019	2020	2021	Total
<b>RCMP (% of total)</b>	17 (65%)	14 (93%)	6 (66%)	3 (75%)	4 (44%)	3 (60%)	7 (53%)	8 (57%)	<b>62</b>
<b>Vancouver PD</b>	7	1	2	1	5	2	2	2	<b>22</b>
<b>Abbotsford PD</b>	2	0	0	0	0	0	3	1	<b>6</b>
<b>Victoria PD</b>	0	0	0	0	0	0	0	1	<b>1</b>

Similarly, it is crucial to examine for any variation in the types of incidents different agencies are involved in. Table 17 examines the breakdown of referrals by agency and type of incident to determine the percentage of referrals for APs deaths, which is then contrasted with the percentage of deaths that comprise the agency's IIO investigations. While 30% of IIO investigations in the study period were for deaths, 38.7% of investigations into the RCMP were for deaths, but only 19.3% of RCMP referrals to the BCPS. The smaller agencies also display variation between the percentage of IIO investigations and referrals, but due to the small number of cases and referrals, the significance of these variations is unknown.

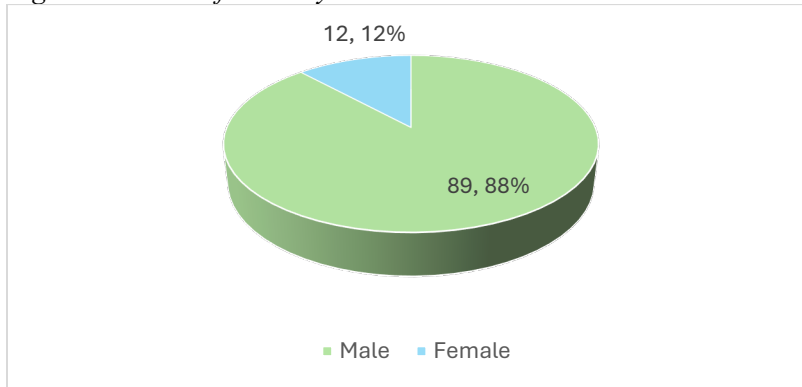
*Table 17: IIO Referrals by Agency and Type of Incident*

Agency	Total Number of IIO Referrals	Serious Harm	Death	Percentage of Referrals for Deaths	Percentage of Investigations into Deaths
<b>RCMP</b>	<b>62</b>	50	12	<b>19.3%</b>	<b>38.70%</b>
<b>VPD</b>	<b>22</b>	20	2	<b>9.0%</b>	<b>11.45%</b>
<b>Abbotsford PD</b>	<b>6</b>	5	1	<b>16.6%</b>	<b>8.57%</b>
<b>Victoria PD</b>	<b>1</b>	0	1	<b>100%</b>	<b>22.5%</b>
<b>New West PD</b>	<b>1</b>	1	0	<b>0%</b>	<b>10%</b>
<b>Transit Police</b>	<b>1</b>	1	0	<b>0%</b>	<b>37.5%</b>
<b>Delta PD</b>	<b>1</b>	1	0	<b>0%</b>	<b>37.5%</b>
<b>Port Moody PD</b>	<b>1</b>	1	0	<b>0%</b>	<b>0%</b>
<b>Total</b>	<b>95</b>	<b>80</b>	<b>15</b>		

### *Intersectional Considerations: Gender and Race in IIO Referrals*

Another element of analysis is the gender of APs. Of the 95 IIO referrals, there were 6 investigations with multiple APs, for a total of 101 APs – 89 Male (88.1%) and 12 Female (11.8%), as shown in Figure 10, below. This is a slight change from all IIO investigations, where female APs comprised 16% of investigations and male APs 83%. From all IIO investigations, referrals to Crown Counsel were not made for the gender diverse APs (2), minor APs (2), or APs without gender information available (2).

Figure 10: IIO Referrals by Gender



Delving deeper into the data on sex, the research explored sex and types of incidents. For female APs, 2 or 16.6% of referrals were for deaths, while 83.3% or 12 were for incidents of serious harm. For male APs, 74 or 83.1% were for serious harm, while 16.8% or 15 referrals were for deaths. Please see Appendix C for detailed tables on referrals by gender and year, and by gender and type of incident.

Of the 95 referred investigations, 23 occurred after demographic information on ethnicity was collected, and one of these investigations involved two APs, resulting in 24 APs with racial demographic information available. As shown in Figure 11, below, out of the 24 referrals, 8 or 33.3% were Indigenous APs, while 45.8% were white APs, 4.1% (1) was Black, 8.3% (2) were unknown, and 8.3% (2) were listed as Asian or South Asian. Interestingly, although “unknown” was the largest proportion of IIO investigations where racial identify was provided (39.6%), there were only two APs (8.3%) listed as Unknown for IIO referrals. In IIO investigations, Indigenous APs accounted for 15.8% of cases, while for referrals to BCPS it jumps to 33.3%. Throughout the police oversight system, Indigenous peoples are over-represented, but this raises questions about their further over-representation among the most egregious and/or overt cases of police violence and wrongdoing in which charges are referred. While white APs comprised 36.8% of IIO investigations with racial data available, they made up 45.8% of referrals to Crown Counsel.

Figure 11: IIO Referrals by AP Ethnicity (March 2020-December 2021)

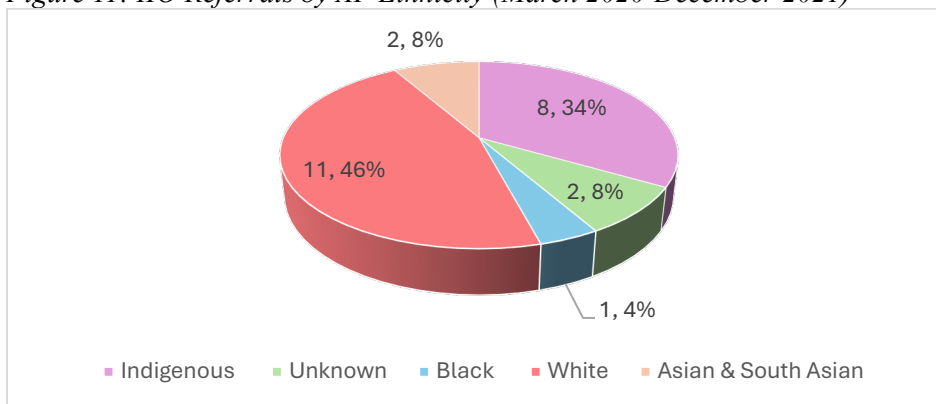


Table 18, below, details the gender and ethnicity of these 24 APs, with two female and 22 male APs.

*Table 18: IIO Referrals by Ethnicity, Gender and Year*

Gender	Ethnicity	2020 (Mar-Dec)	2021	Total
<b>Female</b>	<b>Asian</b>	1	0	<b>1</b>
	<b>Indigenous</b>	0	1	<b>1</b>
<b>Male</b>	<b>Black</b>	0	1	<b>1</b>
	<b>Indigenous</b>	2	5	<b>7</b>
	<b>South Asian</b>	0	1	<b>1</b>
	<b>Unknown</b>	2	0	<b>2</b>
	<b>White</b>	4	7	<b>11</b>
<b>Total</b>		<b>9</b>	<b>15</b>	<b>24</b>

These key variables, including type of incident and ethnicity of the AP, were re-examined based on the outcome of the referral in the below figures to better understand the context of these outcomes. Table 19, below and 19a in Appendix C, delves further into the ethnicity of APs in referred investigations. Of the 8 Indigenous APs, charges were approved in 2 cases – both for incidents of serious harm– while BCPS charge assessment is pending in 2 additional cases, and charges were not approved for 4 (50%) of these APs. For the 11 white APs, all investigations were for incidents of serious harm, and charges were approved in 3 cases (27%), the charge assessment is pending in 3 cases (27%), and charges were not laid in 5 (45%) cases. While the data on the ethnicity of APs in referred investigations is important, it is limited by the brief period where this data is available and the quarter of cases awaiting BCPS decision.

*Table 19: IIO Referrals by Ethnicity, Incident Type and Outcome*

Ethnicity	Type of Incident	Outcome	Total
<b>Asian</b>	Serious Harm	Charges Approved	<b>1</b>
<b>South Asian</b>	Serious Harm	No Charges Approved	<b>1</b>
<b>Black</b>	Serious Harm	No Charges Approved	<b>1</b>
<b>Indigenous</b>	Death	No Charges Approved	<b>2</b>
		Charge Assessment Pending	<b>1</b>
	Serious Harm	Charge Assessment Pending	<b>1</b>
		Charges Approved	<b>2</b>
<b>Unknown</b>	Serious Harm	No Charges Approved	<b>2</b>
		Charge Assessment Pending	<b>3</b>
<b>White</b>	Serious Harm	Charges Approved	<b>3</b>
		No Charges Approved	<b>5</b>
			<b>24</b>
<b>Total</b>			<b>24</b>

#### *Classifying Referred Cases*

In addition to the types of incidents of death and serious harm, the researcher created additional classifications to better analyze the types of incidents that move through the police oversight system. These categories are simplifications to highlight the core concerns of the investigation and referred charge(s). In many cases, two or more categories must be used to represent the incident, when multiple issues were at play – for example, with someone shot by police after a high-speed chase where the SO allegedly drove in a manner that violated the *MVA* or *Criminal Code* driving offences. By theming cases for the alleged or considered offences, a clearer picture of the types of incidents crystallizes.

The classifications are:

- Death – includes manslaughter, attempted murder and murder charges
- Firearm – encompasses all charges related to improper use of a firearm, including discharge a firearm with intent, careless use of a firearm, reckless discharge of a firearm, etc.
- Use of Force – encapsulates all assault-related charges and unlawfully causing bodily harm
- Negligence – includes all charges for criminal negligence, failing to provide the necessities of life and impeding an attempt to save a life
- Obstruction – includes only obstruction of justice charges
- Driving – this classification includes all driving related offences, and can be further subdivided into: a) Driving (CC) – for criminal code dangerous driving offences, such as dangerous driving causing bodily harm b) Driving (MVA) – all *Motor Vehicle Act* infractions, including driving without due care and attention, exceeding the posted speed limit, etc.

Incidents are classified based on the most severe categories considered. For example, if charges of manslaughter, assault with a weapon and driving without due care and attention were considered, the incident would be classified as “Death, Use of Force & Driving (MVA)” and would be counted among death-related charges, rather than being included in all three categories. Of the 95 referred investigations, the BCPS charge assessment is pending in six, 29 were charged, and 60 had no charges approved. To theme these 95 investigations, the researcher read through all available statements from IIO and BCPS. The information available on the incident for referred investigations comes from one of three places: 1) BCPS’ clear statement when no charges are approved 2) BCPS’ announcement of the charges laid 3) IIO’s media release for charge assessments that are pending.

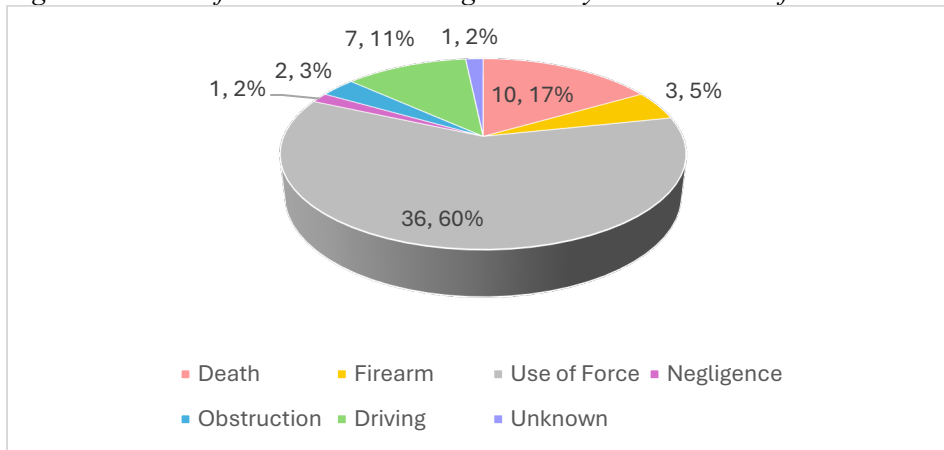
When BCPS does not approve charges, the clear statement outlines “charges considered,” which will be used as the basis for analysis for these incidents. In the first two years of the study period (2014-2015), BCPS did not include a specific “charges considered” section in clear statements and, in some cases, did not explicitly state what charges were considered. In these cases, the classifications must be established through the information included in the report, such as discussion on the relevant laws and circumstances of the incident as well as BCPS’ analysis and conclusion. While BCPS does not always clearly state what offences may have been committed, the reports typically discuss the relevant laws, legal defences, and details of the incident that clarifies potential classifications, including statements such as “allegations of excessive force,” and references to “use of force.” For three referred investigations (2016-048, 2019-197 and 2021-295), BCPS declined to release clear statements. For the 2019 incident, IIO’s media release about the referral includes reference to “an officer may have committed offences in relation to the officer’s use of force during the arrest,” therefore it was classified as a use of force incident, while neither IIO or BCPS released statements indicating the details of the incident for the 2016 incident and, therefore it is listed as unknown. For the 2021 incident, IIO’s release refers to “an offence in relation to the operation of their police vehicle,” but does not clarify if it was a potential MVA or CC violation, so it will therefore be coded as Driving.

For incidents where BCPS laid charges, the classification is drawn from the charges laid. While this likely results in the exclusion of some considered charges, it ensures precision and eliminates any risk of misinterpretation. For the six investigations pending BCPS assessment, the classification is drawn from IIO’s media release about referring for potential charges. While these are not as precise, they typically include language that indicates the types of charges considered. For example, in 2021-087, the release states that “reasonable grounds exist to believe that one officer may have committed an offence in relation to their driving and the use of a police service dog,” indicating that both driving and use of force related offences may have occurred, as assault charges were common for alleged misuse of a PSD throughout the study period. For these six investigations, more serious offences may have been considered, but better to under rather than over-estimate the severity of charges.

This creates a level of non-comparability between cases where charges are and are not laid, as when charges are laid, information is not available on the charges considered or details of the incident, which provide context for the analysis. Therefore, the three sets of cases that have been classified will have their data shared separately and together to ensure that differences are apparent.

As shown in Figure 12 below, the largest category of referrals from IIO where no charges were approved were for Use of Force, composing 39 or 41% of all referred investigations, while driving related offences made up the second largest percentage at 30 or 31.5%. Incidents where charges related to death were considered made up 16.6%, while Firearm related charges comprised 5% and Negligence, Obstruction and Unknown each made up 1.6%.

Figure 12: IIO Referrals with No Charges Laid by Incident Classification



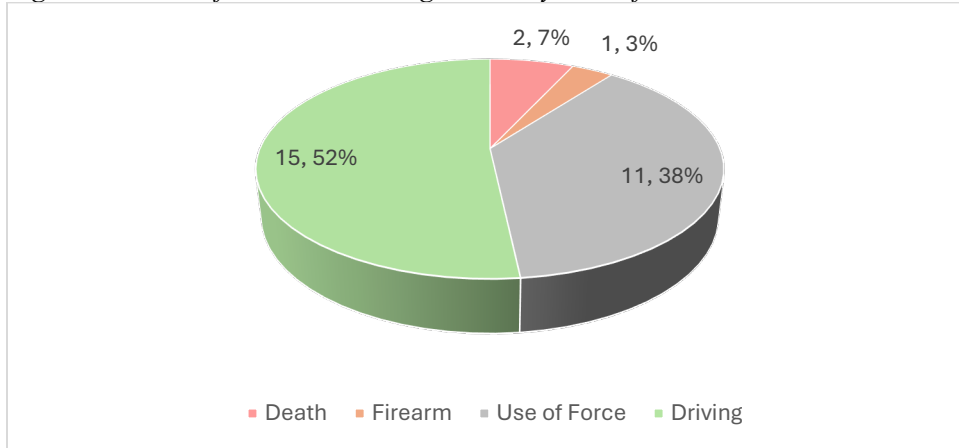
Below, in Table 20, the considered charges are shown in detail, highlighting the multiple potential offences in most referred cases.

Table 20: IIO Referrals with No Charges Laid (60) by Classification and Categories

Classification (count, percentage)	Categories	Total
<b>Death (10, 16.6%)</b>	Death & Negligence	1
	Death & Use of Force	2
	Death, Firearm & Use of Force	6
	Death, Firearm, Use of Force, Negligence & Driving (CC)	1
<b>Firearm (3, 5%)</b>	Firearm & Use of Force	2
	Firearm, Use of Force & Negligence	1
<b>Use of Force (36, 60%)</b>	Use of Force	31
	Use of Force & Driving (CC)	2
	Use of Force & Negligence	1
	Use of Force, Driving (CC) & (MVA)	1
	Use of Force, Negligence, Obstruction & Driving (CC)	1
<b>Negligence (1, 1.6%)</b>		1
<b>Obstruction (2, 3.3%)</b>	Obstruction	1
	Obstruction & Driving (CC)	1
<b>Driving (7, 11.6%)</b>	Driving	1
	Driving (MVA)	5
	Driving (CC) & (MVA)	1
<b>Unknown (1, 1.6%)</b>		1
<b>Total</b>		<b>60</b>

In the second category, where charges were laid, driving offences made up the largest proportion at 51.7%, as shown in Figure 13, below, while use of force related charges comprised 37.9%, death 6.8% and firearm 3.4%.

Figure 13: IIO Referrals with Charges Laid by Classification



Below, in Table 21, the charges laid are shown in detail by classification and category. These are shown by case, not charged officer, with some encompassing multiple officers and numerous charges, such as 2017-083, in which two officers were charged with manslaughter and three with obstruction of justice.

Table 21: IIO Referrals with Charges Laid (29) by Classification and Categories

Classification (total, percentage)	Categories	Total
<b>Death (2, 6.8%)</b>	Death & Obstruction	1
	Death, Firearm & Negligence	1
<b>Firearm (1, 3.4%)</b>	Firearm & Use of Force	1
<b>Use of Force (11, 37.9%)</b>	Use of Force	9
	Use of Force & Obstruction	1
	Use of Force, Negligence & Driving (CC)	1
<b>Driving (15, 51.7%)</b>	Driving (CC)	5
	Driving (MVA)	10
<b>Total</b>		<b>29</b>

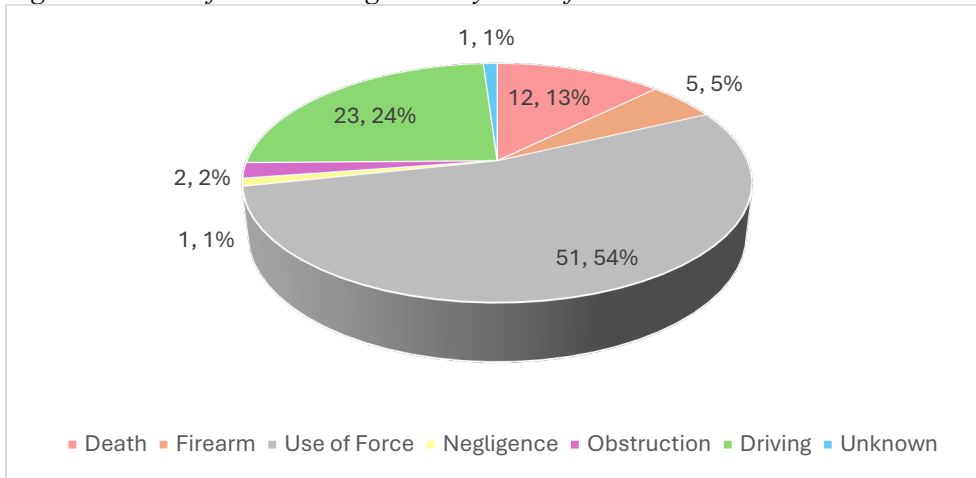
For the six investigations with assessments pending, four or 66.6% are for consideration of use of force related charges, with one each (16.6%) are for firearm and driving related charges, as shown in Table 22, below.

Table 22: IIO Referrals with Assessment Pending (6) by Classification and Categories

Classification (total, percentage)	Category	Total
<b>Firearm (1, 16.6%)</b>		1
<b>Use of Force (4, 66.6%)</b>	Use of Force	3
	Use of Force & Driving	1
<b>Driving (1, 16.6%)</b>		1
<b>Total</b>		<b>6</b>

Below, all investigations 95 referred to BCPS are explored by classification, in Figure 14.

Figure 14: All Referred Investigations by Classification



Below, in Table 23, all investigations referred to BCPS are shown in detail by classification and categories.

Table 23: All Referred Investigations (95) by Classification and Categories

Classification (total, percentage)	Categories	Total
<b>Death</b> (12, 12.6%)	Death & Negligence	1
	Death & Use of Force	2
	Death, Firearm & Use of Force	6
	Death, Firearm, Use of Force, Negligence & Driving (CC)	1
	Death & Obstruction	1
	Death, Firearm and Negligence	1
<b>Firearm</b> (5, 5.2%)	Firearm & Use of Force	3
	Firearm, Use of Force & Negligence	1
	Firearm	1
<b>Use of Force</b> (51, 53.6%)	Use of Force	43
	Use of Force & Driving (CC)	2
	Use of Force & Negligence	1
	Use of Force, Driving (CC) & (MVA)	1
	Use of Force, Negligence, Obstruction & Driving (CC)	1
	Use of Force & Obstruction	1
	Use of Force, Negligence & Driving (CC)	1
	Use of Force & Driving	1
<b>Negligence</b> (1, 1.0%)		1
<b>Obstruction</b> (2, 2.1%)	Obstruction	1
	Obstruction & Driving (CC)	1
<b>Driving</b> (23, 24.2%)	Driving	2
	Driving (MVA)	15
	Driving (CC) & (MVA)	1
	Driving (CC)	5
<b>Unknown</b> (1, 1.0%)		1
<b>Total</b>		<b>95</b>

Finally, Table 24, below compares the classifications between referrals where no charges were laid, charges were laid, and the assessment is still pending. Interestingly, this comparison reveals that while the classifications in referrals with assessments pending and no charges laid are similar, the classifications in cases where charges were laid is drastically different, with driving charges skyrocketing and charges relating to deaths and use of force plummeting.

*Table 24: Referred Investigations by Classification and Status*

Classification	No Charges Laid	Charges Laid	Charge Assessment Pending
<b>Death</b>	10 (16.6%)	2 (6.8%)	0
<b>Firearm</b>	3 (5%)	1 (3.4%)	1 (16.6%)
<b>Use of Force</b>	36 (60%)	11 (37.9%)	4 (66.6%)
<b>Negligence</b>	1 (1.6%)	0	0
<b>Obstruction</b>	2 (3.3%)	0	0
<b>Driving</b>	7 (11.6%)	15 (51.7%)	1 (16.6%)
<b>Unknown</b>	1 (1.6%)	0	0
<b>Total</b>	60	29	6

The research also set out to examine the timeframe of investigations, but although this information is readily available online for incidents occurring after 2017, it is only erratically available for earlier investigations. An additional data request to IIO will be necessary to address this data gap, but to provide some insight on the timeframe that it takes for cases to move through the police oversight system, the 45 cases referred to BCPS for charges between January 2017 and December 2021 were analyzed. All dates are taken from the media statements by the responsible agency, IIO’s announcement of referral and BCPS announcement of charge decision, to ensure consistency. To note, for one investigation, 2017-083, IIO filed the initial report to Crown Counsel in July 2019, but subsequently opened new lines of inquiry and submitted an updated referral in May 2020. For this investigation, the later and final date is used for IIO’s referral.

Cases were examined to identify the average time from incident to referral, from referral to BCPS decision, and from incident to BCPS decision. While the researcher hoped to analyze these cases to their potential completion with a court verdict, several cases remain before the courts and six cases in this period are still awaiting BCPS decision, which risks misinterpretation as the outstanding cases are the ones that take the longest and therefore cannot simply be excluded.

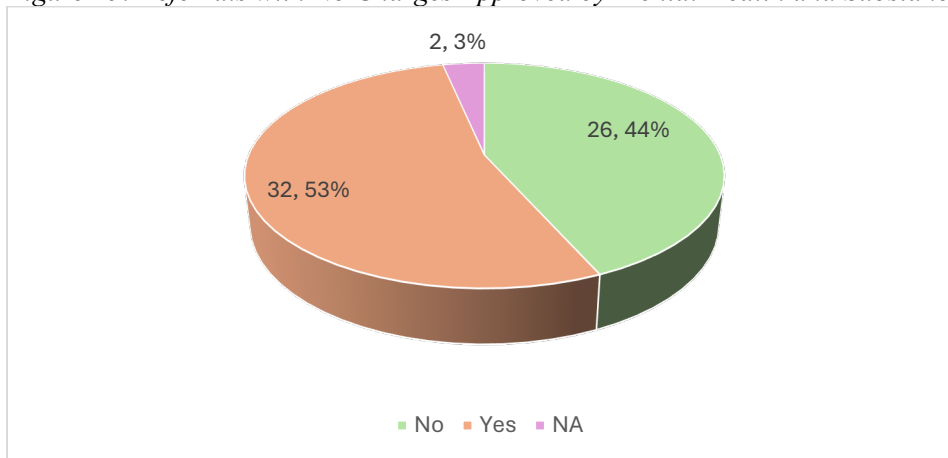
As shown below, in Table 25, it took an average of 2 years and four months or 854 days for cases to progress from the incident to BCPS decision on laying of charges. For the 17 cases with court outcomes, it was an average of three years and two months or 1157 days from the incident to the verdict. Although only a small number were for incidents of death, these cases were examined separately and took a significantly longer time during each phase of the oversight system. As of October 2024, one case where the AP died (2019-201) continues to await BCPS decision, over 4 years and 11 months since the incident, with the family and community of the deceased AP still awaiting BCPS’ answer on whether the SO(s) will be charged. It is important to note that these are averages and, as was noted above, the majority of cases where charges were approved were for driving-related offences, which may have less complexity and/or require less time for investigation due to the availability of evidence, such as dashcam footage, and potentially less severe charges and punishments.

Table 25: Average Time for Cases in the Oversight System

	Incident to Referral (45)	Referral to BCPS Decision (39)	Incident to BCPS Decision (39)	Incident to Court Outcome (17)
<b>Number of Days (Years and Months)</b>	467.73 (1 year and three months)	431.25 (1 year and two months)	854.69 (Two years and four months)	1157.94 (Three years and two months)
<b>Average # of Days for Incidents of Death</b>	836.8 (2 years and three months)	573.33 (1 year 6 months)	1440.33 (3 years 11 months)	NA

Finally, when reviewing the clear statements for referrals where charges were not laid, the researcher documented references to the mental health and/or substance use of the AP, such as wellness checks, drinking and driving and intoxication. Of the 60 cases where no charges were laid, clear statements were not provided for two, but in 32 the mental health and/or substance use of the AP was discussed, as shown below in Figure 15. While caution must be exercised in drawing any conclusions from this, as referrals with no charges approved do not provide a representative sample and not all details about incidents and APs are included in clear statements, it does indicate the prevalence of mental health and substance use in police-involved deaths and serious harm.

Figure 15: Referrals with No Charges Approved by Mental Health and Substance Use



#### 4.2.3 Unpacking the Data: Charges Laid

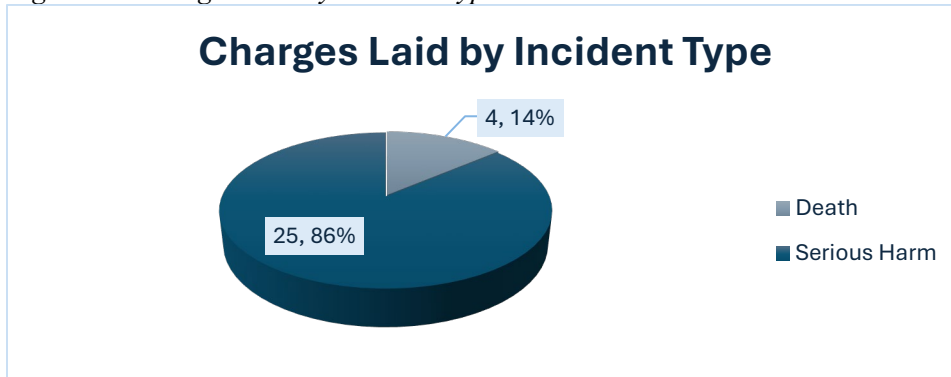
After exploring all investigations referred to Crown Counsel, the research focused in on all cases where the BCPS approved charges, examining the cases where charges are approved and the types of charges laid. In total, there are 29 cases where BCPS approved charges and six investigations pending BCPS decision. This analysis will primarily explore the 29 cases with approved charges. At times, the analysis will be completed for each charged SO, which is higher than the number of cases where charges were laid. In three cases, multiple SOs were charged, with three SOs charged for both IIO investigations 2016-051 and 2017-051, as well as five SOs charged for 2017-083, resulting in a total of 37 charged SOs. For clarity, descriptions and figures will be labelled as by Approved Charges or Charges Laid (29), by Court Outcomes (27), by Charged SOs (37), or by SOs with Court Outcomes (35).

#### Incident Type

As shown in Figure 16, below, of the 29 cases with charges laid, 14% (4) were for deaths, while the remaining 86% (25) were for incidents of serious harm. This ratio of death to serious harm continues the

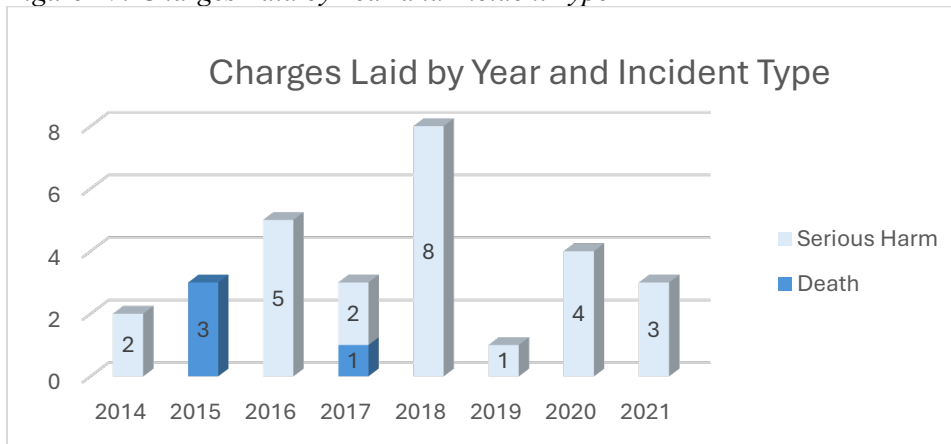
trend observed in all referred charges, where deaths comprise 15.7%, and is less than half of the rate of all IIO investigations where deaths comprise 30%.

Figure 16: Charges Laid by Incident Type



When the type of incident is examined on a year-by-year basis, the data, as shown in Figure 17 below, reveals that no charges were laid in the study period for deaths since 2017, and only in 2015 and 2017 were any SOs charged for incidents where the AP died.

Figure 17: Charges Laid by Year and Incident Type



For the charges, SOs rather than cases were examined, as those with multiple SOs involved different charges for each officer, and the two cases before the courts were included, as the charge data available, for a total of 37 SOs charged. As this data considers each SO, some have multiple charges. The charges are organized using the same classifications as in Chapter 4.2.2, which include Death, Firearm, Use of Force, Negligence, Obstruction and Driving.

As shown below in Table 26, when SOs are grouped by classification, patterns begin to emerge. 15 or 40.5% of SOs received driving related charges only, with driving without due care and attention, a *Motor Vehicle Act* violation, as the most common (8). Likewise, 15 or 40.5% of SOs were charged for use of force, with assault causing bodily harm (6) as the most frequent. Only one SO was charged with firearm related offences, while three were charged for death-related offences. The examination of SOs by charge highlight the range of charges laid by BCPS and provides a key comparison point for the considered charges analysed in Chapter 4.2.2 as well as the convictions that will be explored in Chapter 4.2.4.

Table 26: Charged SOs by Charge(s) Laid

Category (total, %)	Charge(s)	Total
<b>Death (3, 8.1%)</b>	Manslaughter	2
	Manslaughter and Criminal Negligence Causing Death	1
<b>Firearm (1, 2.7%)</b>	Discharging a firearm with intent, aggravated assault and careless use of a firearm	1
<b>Use of Force (15, 40.5%)</b>	Assault	5
	Assault causing bodily harm	6
	Aggravated assault and assault with a weapon	1
	Assault with a weapon and assault causing bodily harm	1
	Assault, assault with a weapon and obstruction of justice	1
	Assault with a weapon, assault causing bodily harm, criminal negligence causing bodily harm, and dangerous driving causing bodily harm	1
<b>Obstruction (3, 8.1%)</b>	Obstruction of Justice	3
<b>Driving (15, 40.5%)</b>	Driving without due care and attention (MVA)	8
	Dangerous driving causing bodily harm (CC)	5
	Driving without reasonable consideration (MVA)	1
	Failure to use due care to avoid pedestrian (MVA)	1
<b>Total</b>		<b>37</b>

Given the large proportion of driving-related charges, which was an unexpected result of this research, closer analysis is warranted. Examination of 15 SOs charged with for driving-related offences showed that over half were charged with driving without due care and attention (53%), while a third (33.3%) were charged with dangerous driving causing bodily harm and 6.66% (1) each were charged with driving without reasonable consideration and failure to use due care to avoid a pedestrian (see Appendix C for visual).

#### *Classifying Incidents*

As discussed in Chapter 4.2.2, there are limits on the comparability of classifications within referred cases, due to the variation in information available for cases where charges were laid and charge information is available, no charges were laid and a clear statement outlining considered charges is available, and the BCPS decision is pending with only the IIO statement upon referral available. These limitations are exacerbated when contrasting charges laid by SO with all referred cases by potential charges and future research is needed to improve the comparability, but cautious consideration still allows for insight into the oversight system and the cases that proceed through the different layers. As shown in Table 27, below, the proportion of death, firearm, use of force and negligence related charges declined, while driving and obstruction related charges increased. Obstruction charges related to five officers charged in one case (2017-083), two for manslaughter and three with obstruction of justice, while in two other cases, where it was the only considered charge, resulted in no charges being laid.

*Table 27: All Referred Cases by Potential Charges and Charges Laid by SO*

Classification	All Referred Cases by Potential Charges	Charges Laid by SO
<b>Death</b>	12 (12.6%)	3 (8.1%)
<b>Firearm</b>	5 (5.2%)	1 (2.7%)
<b>Use of Force</b>	51 (53.6%)	15 (40.5%)
<b>Negligence</b>	1 (1.0%)	0 (0%)
<b>Obstruction</b>	2 (2.1%)	3 (8.1%)
<b>Driving</b>	23 (24.2%)	15 (40.5%)
<b>Unknown</b>	1 (1.0%)	0 (0%)
<b>Total</b>	95	37

As shown below in Table 28, the later years of study period have a low number of approved charges, but there are 6 outstanding BCPS decisions, one of which is for 2019 while the other five are for incidents in 2021. 2019 stands out as having lowest number of charge approvals thus far in the study period, with one SO charged for an incident that year, followed by 2014 when two SOs were charged.

*Table 28: Charged SOs by Year and Charge*

Classification	Charge(s)	Years in Which Charges were Laid	Total
<b>Manslaughter (3)</b>	Manslaughter	2017 (2)	<b>2</b>
	Manslaughter and Criminal Negligence Causing Death	2015 (1)	<b>1</b>
<b>Firearm and Assault (1)</b>	Discharging a firearm with intent, aggravated assault and careless use of a firearm (1)	2020 (1)	<b>1</b>
<b>Use of Force (15)</b>	Assault	2014 (1), 2015 (1), 2016 (2), 2019 (1)	<b>5</b>
	Assault causing bodily harm	2014 (1), 2016 (2), 2017 (1), 2018 (1), 2020 (1)	<b>6</b>
	Aggravated assault and assault with a weapon	2015 (1)	<b>1</b>
	Assault with a weapon and assault causing bodily harm	2020 (1)	<b>1</b>
	Assault with a weapon, assault causing bodily harm, criminal negligence causing bodily harm, and dangerous driving causing bodily harm	2020 (1)	<b>1</b>
	Assault, Assault with a weapon and obstruction of justice	2016 (1)	<b>1</b>
<b>Obstruction (3)</b>	Obstruction of Justice	2017 (3)	<b>3</b>
<b>Driving (15)</b>	Driving without due care and attention	2015 (1), 2016 (1), 2017 (1), 2018 (3), 2021 (2)	<b>8</b>
	Dangerous driving causing bodily harm	2016 (1), 2018 (2), 2020 (1)	<b>4</b>
	Dangerous driving	2018 (1)	<b>1</b>
	Driving without reasonable consideration	2018 (1)	<b>1</b>
	Failure to use due care to avoid pedestrian	2016 (1)	<b>1</b>
<b>Total</b>			<b>37</b>

#### *Police Agencies and SOs*

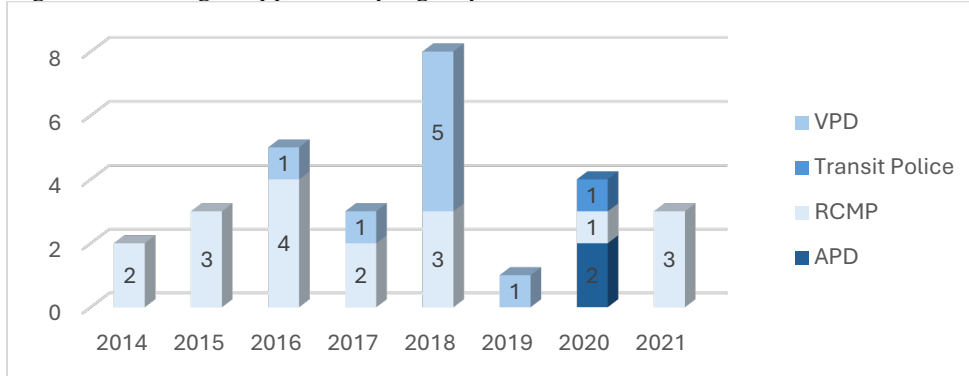
To most accurately examine the data by agency, the researcher analyzed the data on a case basis, rather than by SO, as the few cases with more than one SO could distort a data set of this size. As shown in Figure 18 below, of the 29 cases with approved charges, the RCMP accounted for 62.0% (18) and VPD for 27.5% (8), while APD made up 6.8% (2) and the Transit Police 3.4% (1). Aside from the Transit Police, none of the smaller departments – Saanich, Delta, Victoria, New West, West Vancouver, Central Saanich, Oak Bay, Nelson, Stl’atl’imx Tribal Police, and Port Moody – are represented in charges laid. Aside from Victoria, which accounted for 4.1% of all IIO investigations, these other departments accounted for 1% or less of all IIO investigations.

Although the size of the data set decreased dramatically from all IIO investigations (963) and referred charges (95) to charges laid (29), the proportion of cases involving the RCMP remains relatively consistent, from 65.7% of all investigations and 65.2% of all referrals to 62% of all charges. VPD’s share of the cases that proceed through the oversight system increased at each stage from 19.9% of all IIO

investigations, 23.1% of the referrals and 27.5% of charges laid. For APD, it represented 3.6% of all investigations and 6.3% of charges referred, rising to 6.8% of charges laid.

When the charges laid are examined by force and year, the data reveals that the RCMP were the only agency with approved charges in 2014, 2015 and 2021, although there are still four cases awaiting BCPS decision on charges for 2021, which may result in charges against officers from other agencies. The approved charges for incidents involving APD both occurred in 2020, while the eight cases with approved charges against VPD were spread over the middle four years of the study period.

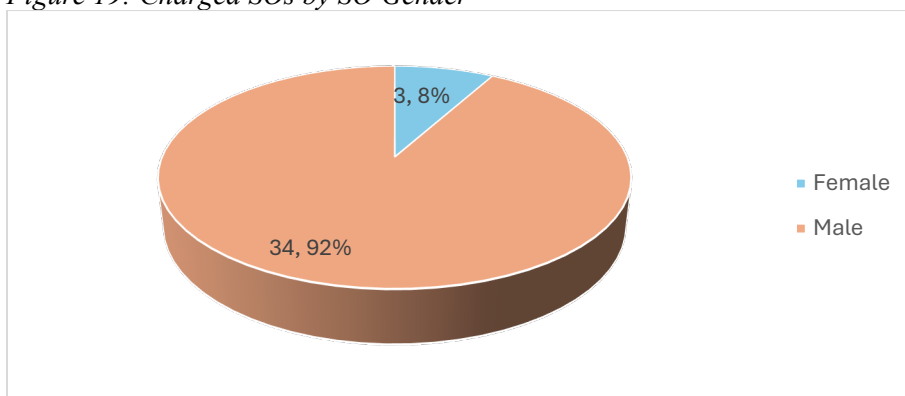
Figure 18: Charges Approved by Agency and Year



When the 29 cases were examined by force and type of incident, the RCMP accounted for all four cases where the APs died, while the three other departments represented only were charged for incidents of serious harm. Given that the RCMP comprised a larger share of IIO investigations and referrals for deaths, with 38.7% of IIO investigations into the RCMP for death-related incidents, while 30% of all IIO investigations were for deaths, this is a noteworthy observation.

As the names and pronouns of SOs are announced when charges are laid and in subsequent media coverage, gender information is available for SOs at this stage of analysis. Of the 37 charged SOs, three were female, while 92% were male.

Figure 19: Charged SOs by SO Gender

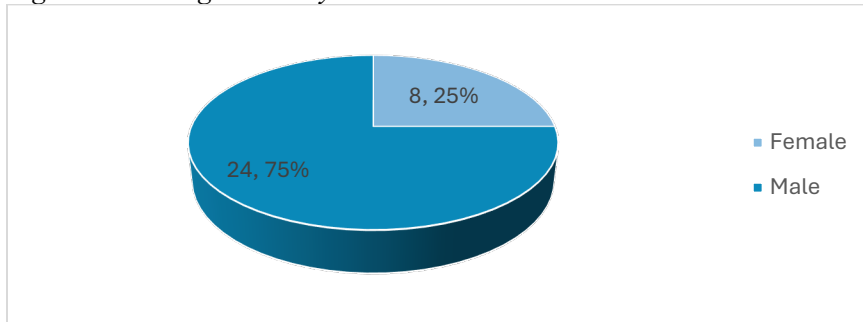


#### Intersectional Considerations: Gender and Ethnicity

Of the 29 cases where charges were laid, there were three cases with multiple APs, for a total of 32 APs. As shown below in Figure 20, 8 or 25% of APs were female, which is higher than the 16.19% of female APs in all IIO investigations and 11.8% of referred cases with female APs.

When AP gender for charges laid was examined by year, there was variation, but not unexpectedly so with a small data set. In 2014, 2015, 2017 and 2019, there were no female APs for charges laid, and there was a high of four female APs in 2018. When charges laid were analyzed by gender and type of incident, all female APs were for incidents of serious harm, while the four charges laid for AP deaths were all males.

Figure 20: Charges Laid by AP Gender



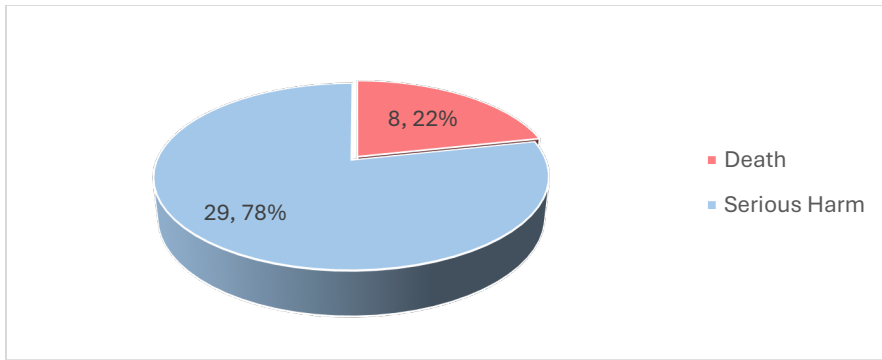
As data on ethnicity was only available for March 2020-December 2021 in the study period, there were only six of the 29 cases where charges were laid that had this demographic information available. Of these 6 cases, three (50%) were white, two (33.3%) were Indigenous and one was Asian (16.6%). For Indigenous APs, the variation previously observed was consistent, with Indigenous APs comprising 15.8% of all IIO investigations and 33.3% of both all referred cases, and all charges laid. For white people, the percentage increases through the oversight system, from 36.0% of all IIO investigations, 45.8% of referred charges to 50% of charges laid. Similarly, there are only six cases where data is available on whether or not the SO provided evidence in cases where charges were laid. Of these 6 cases, the SO provided evidence in one or 16.6%.

#### 4.2.4 Unpacking the Data: Court Outcomes

After exploring all charges laid by the BCPS, the research focused in on all cases with court verdicts, examining the types of charges, the outcomes of court cases, and the sentences for findings of guilt. This analysis will primarily explore the 29 cases with approved charges, focusing on the 27 cases with court outcomes where appropriate. At times, the analysis will be completed for each charged SO, which is higher than the number of cases where charges were laid, to better understand the charges, verdicts and sentences meted out through the police oversight system. In three cases, multiple SOs were charged, with three SOs charged for both IIO investigations 2016-051 and 2017-051, as well as five SOs charged for 2017-083, resulting in a total of 37 SOs. For clarity, descriptions and figures will be labelled as by Approved Charges or Charges Laid (29), by Court Outcomes (27), by Charged SOs (37) or SOs with Court Outcomes (35).

Of the 29 cases where charges were laid, four or 14% were for deaths, while 26 or 86% were for incidents of serious harm. As shown in Figure 21, below, of all 37 SOs charged, 29 or 78% were for incidents of serious harm, while 8 or 22% were for deaths. Please note that as IIO investigations, referrals and charges laid were examined by case, not charged SO, this percentage is not comparable with the figures discussed in Chapter 4.2.1, 4.2.2 and 4.2.3. This figure is by charged SOs, with multiple officers charged in several cases involving deaths and the rate by charges laid above should be used for comparison between stages.

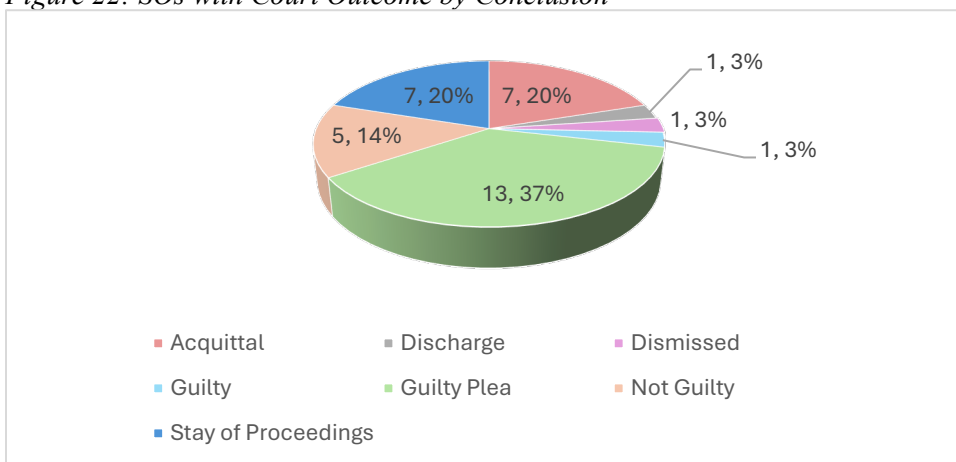
Figure 21: Charged SOs by Incident Type



There are 27 cases where the courts have reached a decision on the charges laid and two cases ongoing before the courts. Of the 27 tried cases, a guilty plea was entered in 13 or 48.1% of the cases, while the SOs were acquitted or found not guilty in 29.6% (8) of cases, charges were stayed in 7.4% (2) and dismissed and discharged each in 3.7% (1). There were two cases with multiple SOs with different findings.

When the status of court cases is explored by SO instead of by cases, there is a noticeable shift in the data. As shown below in Figure 22, of the 35 court outcomes for SOs, guilty pleas were entered in 37.1% (13), while SOs were acquitted or found not guilty in 34.2% (12), proceedings were stayed in 20% (7), a case was dismissed in 2.8% (1) and an SO was discharged in 2.8% (1), and the SO was found guilty in 2.8% (1) case. Although two cases remain before the courts and BCPS decisions are outstanding on six cases, only one SO has been found guilty thus far during the entire study period.

Figure 22: SOs with Court Outcome by Conclusion



When the outcomes for approved charges are examined on a yearly basis, there is noticeable variation throughout the study period in multiple areas. Over the study period, concluded cases range from a low of 1 in 2019 to a high of 8 in 2018, and a yearly average of 3.62 cases with approved charges per year for the study period, including the two cases before the courts. Interestingly, five of the 13 cases where a guilty plea was entered occurred in 2018, while two years had zero guilty pleas and two years had one. Although guilty pleas were entered for five cases in 2018, the referral standard change does not seem to have had a significant impact on case outcomes through the study period and 2018 is an outlier year to those preceding and following the charge standard change. See Appendix C for full table.

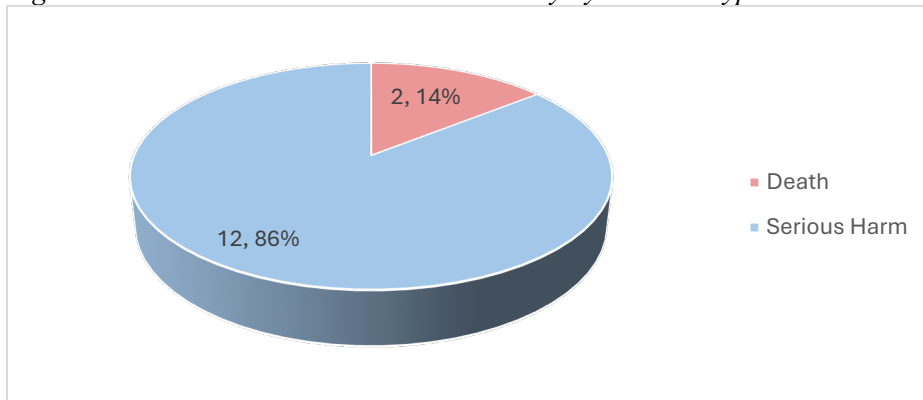
When the outcomes are examined on a yearly basis by charged SOs, the number of guilty pleas does not change, but acquittals increase by two, stay of proceedings increases by five and not guilty increases by two, while one SO was found guilty, as shown in Table 29, below.

Table 29: Charged SOs by Court Outcome and Year

Status	Outcome	2014	2015	2016	2017	2018	2019	2020	2021	Total
<b>Before the Courts</b>		0	0	0	0	0	0	1	1	<b>2</b>
<b>Court Outcomes</b>	Acquittal	0	0	1	4	1	0	1	0	<b>7</b>
	Discharge	0	0	1	0	0	0	0	0	<b>1</b>
	Dismissed	0	0	0	0	1	0	0	0	<b>1</b>
	Guilty	0	0	0	1	0	0	0	0	<b>1</b>
	Guilty Plea	2	1	2	0	5	0	1	2	<b>13</b>
	Not Guilty	0	1	1	1	1	1	0	0	<b>5</b>
	Stay of Proceedings	0	1	2	3	0	0	1	0	<b>7</b>
<b>Total</b>		<b>2</b>	<b>3</b>	<b>7</b>	<b>9</b>	<b>8</b>	<b>1</b>	<b>4</b>	<b>3</b>	<b>37</b>

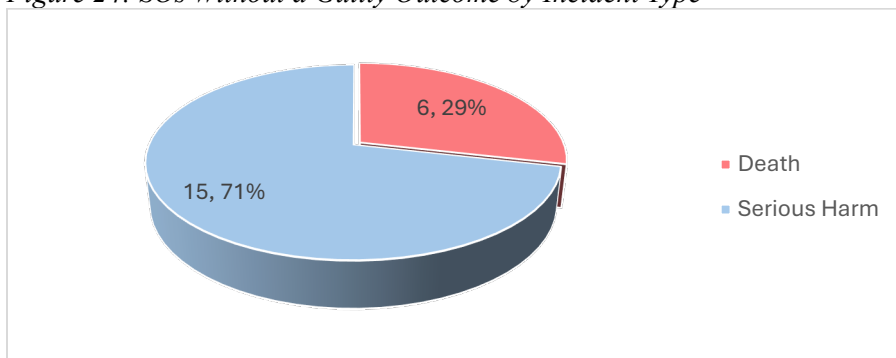
As shown in Figure 23, below, for all SOs that pled or were found guilty (14), 86% were for incidents of serious harm, highlighting that a significantly lower percentage of SOs are found or pled guilty for incidents resulting in deaths than are charged for deaths (22%).

Figure 23: SOs that Pled or Were Found Guilty by Incident Type



For all SOs without a guilty outcome, including dismissals, acquittals and SOs found not guilty, 29% were for deaths while 71% were for incidents of serious harm, as shown below in Figure 24. As with comparisons of incident type by case, where the cases regarding incidents of death comprised 30% of IIO investigations, but 16.8% of IIO referrals and 14% of cases with charges laid, the examination of incident type by SOs also exposes the decreasing likelihood of cases involving death of proceeding through the police oversight system.

Figure 24: SOs Without a Guilty Outcome by Incident Type

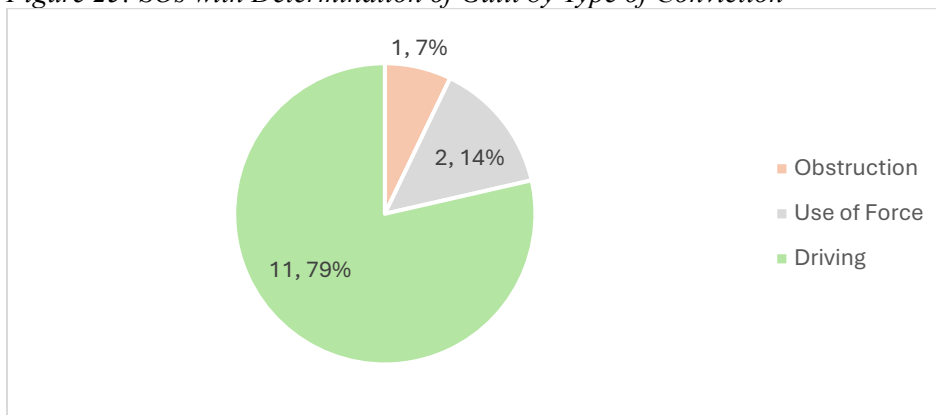


Of these 37 SOs charged, two cases remain before the courts and are therefore excluded from analysis of court outcomes and will instead be explored separately. Figure 25, below, explores the 14 SOs that were

found or pled guilty by the incident category, highlighting a significant shift in driving offences, which – between MVA and criminal code violations - comprised 40% of all charges laid, but 78.5% of all findings of guilt. Simultaneously, use of force related charges, which comprised 40% of all SOs charged, drastically declines to two SOs or 14% of all findings of guilt.

It is important to note that the two findings of guilt for use of force violations are for incidents occurring in 2014, with one SO pleading guilty to assault and the other to assault causing bodily harm. No other charges for use of force violations in the study period have resulted in a finding of guilt since 2014, although the two cases that remain before the courts are for use of force and firearm charges for incidents in 2020 and 2021. Obstruction of justice, which comprised 8% of charged SOs, remained relatively consistent at 7% of findings of guilt. The three death related charges, which comprised 8% of charged SOs, and one SO with firearm related charges (3%), resulted in no findings of guilt.

Figure 25: SOs with Determination of Guilt by Type of Conviction



As shown in Figure 26 below, of all SOs that were not found or did not plead guilty (21), the majority (57%) were for use of force related charges (12), with assault causing bodily harm as the most common charge. Three or 14.2% were for death-related charges, while 9.5% or two had been charged with obstruction. Finally, of the 19% or 4 charged with driving offences, 9% were for criminal code charges and 10% for MVA violations. This exploration highlights how driving related charges, especially under the MVA, appear to be the most likely to proceed through the multiple layers of oversight system, while use of force related incidents are less likely to move forward.

Figure 26: Charged SOs Without a Guilty Outcome by Classification

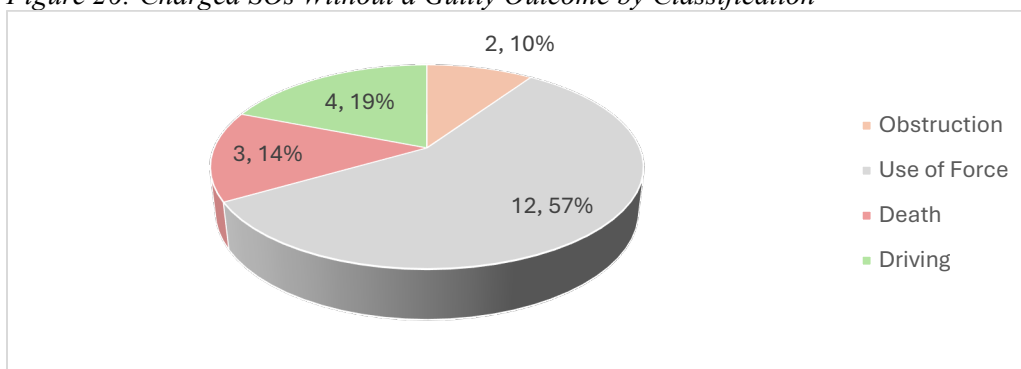


Table 30, below, takes a closer look at SOs that were found or pled guilty through the study period, focusing on the timelines of the oversight process. There was a wide range in the total time it took for these cases to weave their way through the oversight system, ranging from 12 to 84 months, with an average of 27.85 months from the incident to conviction. Interestingly, the two cases involving AP deaths, 2017-083 and 2015-128, included the longest time (84 months) and the second shortest period of 16

months. The case that took the longest to pass through the system was the only case where the SO was found guilty rather than pleading guilty, and the only finding of guilt for a non-driving related charge since 2014.

*Table 30: Path through the Oversight System from Incident to Court Outcomes for Findings of Guilt*

Case Number	Incident Date	Charge	IIO Referral Date	Charge Date	Court Outcome Date	Total Time
2022-093	August 2021	driving without due care and attention	July 2022	August 2022	August 2023	24 months
2021-157	July 2021	driving without due care and attention	December 2021	June 2022	March 2023	20 months
2020-302	Nov 2020	dangerous driving causing bodily harm	Sept 2021	May 2022	November 2023	36 months
2019-078	May 2018	dangerous driving causing bodily harm	May 2019	May 2019	Dec 2020	31 months
2018-112	September 2018	driving without due care and attention	April 2019	Sept 2019	July 2020	22 months
2018-087	July 2018	driving without due care and attention	April 2019	July 2019	June 2020	23 months
2018-039	March 2018	driving without due care and attention	Nov 2018	March 2019	Feb 2020	23 months
2018-004	Jan 2018	dangerous driving causing bodily harm	Nov 2018	Jan 2019	Dec 2019	23 months
2017-083	July 2017	obstruction of Justice	July 2019 & May 2020	Feb 2023	July 2024	84 months
2016-153	Aug 2016	driving without due care and attention	June 2017	Aug 2017	Oct 2018	26 months
2016-055	March 2016	driving without due care and attention	Unknown	March 2017	March 2018	24 months
2015-128	Sept 2015	driving without due care and attention	August 2016	September 2016	January 2017	16 months
2014-176	Oct 2014	Assault	Sept 2015	Feb 2016	Dec 2016	26 months
2014-107	June 2014	Assault causing bodily harm	Unknown	Feb 2015	June 2015	12 months

Over the study period, 14 SOs were found or pled guilty to charges, but as shown below in Figure 27, no SO was sentenced to any form of incarceration, although one sentence is outstanding for obstruction of justice regarding an incident in 2017. Over the full study period, the most common sentence was a fine, comprising 11 of the 14 sentences (79%) meted out by the courts and all sentences since 2015, pending the sentence for a case regarding an incident in 2017.

*Figure 27: Sentences of Convicted SOs, 2014-2021*

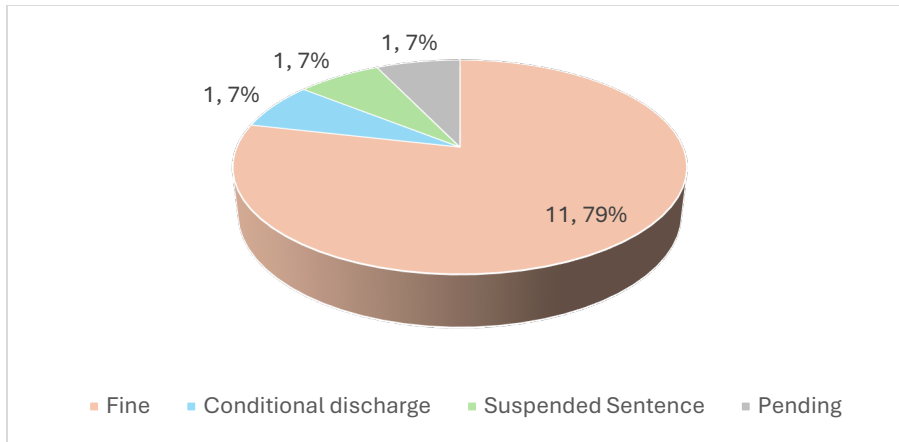


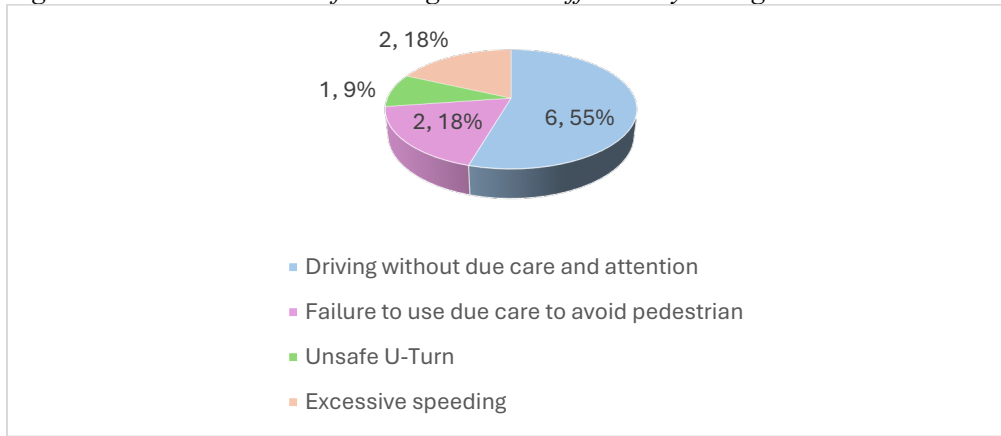
Table 31, below, outlines key information about all guilty verdicts and pleas over the study period, including the incident year, original charge, charge pled or found guilty, and sentence. As discussed, only one SO was found guilty, while the 13 others pled guilty. Where the charge is pled down, an orange box is shown (42.8%) in the plea/finding column, while for green boxes the plea or finding matches the original charge (57.1%), revealing a high rate of plea deals.

*Table 31: Guilty Pleas and Findings by Year, Charge, Plea and Sentence*

Incident Year	Original Charge	Guilty Plea or Finding	Sentence
2014	Assault Causing Bodily Harm	Pled guilty to Assault Causing Bodily Harm	Conditional discharge, one year probation
	Assault	Pled guilty to Assault	12 months suspended probation order, \$200 victim surcharge and 100 hours of community service
2015	Driving without due care and attention	Pled guilty to driving without due care and attention	\$1,500 fine and \$225 victim surcharge
2016	Failure to use due care to avoid pedestrian	Pled guilty to failure to use due care to avoid pedestrian	\$500 fine and \$75 victim surcharge
	Driving without due care and attention	Pled guilty to unsafe U-Turn	\$750 fine and \$121 Victim surcharge
2017	Obstruction of Justice	Guilty of Obstruction of Justice	Pending
2018	Dangerous Driving Causing Bodily Harm	Pled guilty to driving without due care and attention	\$1,500 fine, \$225 victim surcharge, and 12 months driving probation
	Driving without due care and attention	Pled guilty to driving without due care and attention	\$750 fine and victim surcharge of \$113
	Driving without due care and attention	Pled guilty to driving without due care and attention	fine of \$500 and victim surcharge of \$75
	Driving without due care and attention	Pled guilty to driving without due care and attention	fine of \$800 and victim surcharge of \$120
	Dangerous driving causing bodily harm	Pled guilty to driving without due care and attention	fine of \$2000, victim surcharge of \$300, six month driving prohibition
2020	Dangerous driving causing bodily harm	Pled guilty to excessive speeding relative to conditions	\$2000 fine and \$300 victim surcharge
2021	Driving without due care and attention	Pled guilty to failing to use due care to avoid pedestrian	\$1,200 fine and \$180 victim surcharge
	Driving without due care and attention	Pled guilty to excessive speed relative to conditions	\$500 fine and \$75 victim surcharge

Figure 28, below, examines the 11 SOs convicted of driving-related offences by the charge they were sentenced for, with driving without due care and attention comprising 55%.

Figure 28: SOs Convicted of Driving-Related Offences by Charge Sentenced



#### 4.2.5 Exploring the Convicted: SOs Found Guilty by the Police Oversight System, 2014-2021

An unexpected result of this research is the massive proportion of guilty pleas or findings over the eight-year study period for *Motor Vehicle Act* incidents, addressing charges that do not carry significant sentences and often result in fines. Of the 14 convicted SOs, eight were charged with *MVA* violations and three with dangerous driving under the *Criminal Code*, but – due to pleading down – all 11 of these SOs were convicted for *MVA* offences. While there was a degree of media attention for all these cases, it was limited in several of them, with some cases only having coverage of the charge laid, but no media articles on the verdict. The significance of a fine for speeding or “unsafe U-turn” for news media is low, as speeding or other *MVA* infractions do not draw a high level of public attention or controversy. The analysis of convicted SOs was limited by the unexpected lack of media coverage, including six cases with little to no media coverage of the court proceedings or verdict available online. Despite the unexpected prevalence of *MVA* convictions, the media scan for these cases still unearthed details that provide more insight into the oversight system.

There were notable patterns among the 14 convicted SOs. Six of the 14 SOs (42.8%) were charged under the *Criminal Code*, with criminal offences that carry the imprisonment as an eligible punishment, regardless of whether they are tried as an indictable offence or summary conviction, as shown in Figure 32, below.

Table 32: Criminal Code Offenses and Punishments

Criminal Code Offence	Punishment
<b>Assault (1)</b>	As an indictable offence, up to five years imprisonment, or as a summary conviction up to a fine of \$5000 and/or six months imprisonment
<b>Assault causing bodily harm (1)</b>	As an indictable offence, up to 10 years imprisonment, or as a summary conviction, up to 18 months imprisonment
<b>Obstruction of justice (1)</b>	As an indictable offence, up to 10 years imprisonment, or as a summary conviction, up to two years less a day imprisonment
<b>Dangerous driving causing bodily harm (3)</b>	For a first offence, as an indictable offence, a maximum imprisonment of 14 years and a minimum \$1000 fine, or as a summary conviction, a maximum of two years less a day imprisonment and/or a \$5000 fine

All three SOs charged with dangerous driving pled down to a *MVA* violation – two to driving without due care and attention, and one to excessive speeding relative to conditions, both of which fall under careless driving in Section 144 of the *MVA*. Under Section 144(2) of the *MVA*, section 4 of the *Offence Act* applies to careless driving, meaning that it carries a maximum fine of \$5000 and/or imprisonment up to six months (1996). Although careless driving and selected other *MVA* convictions for which no SOs were charged can be punished with imprisonment, most violations under the *MVA* are punishable by fines and demerit points (BC, 2024a; ICBC, 2023). In total, the 11 SOs (78.5%) convicted of *MVA* violations were all sentenced to fines and none sentenced to incarceration. This section will now explore the circumstances of each conviction individually to gain a better understanding of the proceedings and considerations that underlaid the convictions and sentences meted out by the police oversight system.

In case 2022-093, Constable Jay Barban of the RCMP was on-duty, driving an unmarked police vehicle in August 2021 when he rear-ended the AP in Prince George, causing “extensive and long-lasting injuries” (Nielson, 2023). IIO’s investigation was not launched until eight months after incident when they were contacted by the AP, as the extent of her injuries were not immediately apparent (IIO, 2022c). IIO referred the investigation to BCPS for consideration of charges in July 2022 and, one month later, Barban was charged with driving without due care and attention (BCPS, 2022c, p. 1). During the proceedings, “Barban was described as a valued and highly-qualified member of the North District detachment,” and expressed remorse for the incident, but for the AP, who still was unable to walk or work due to her injuries, “the outcome held no solace” (Nielson, 2023). Nearly a year after being charged, in August 2022, Barban pled guilty to excessive speed relative to conditions and the court sentenced him to pay a \$500 fine and \$75 victim surcharge (BCPS, 2023c). Barban also received three demerit points and a negative citation on his RCMP performance record (Nielson, 2023).

In case 2021-157, Corporal Steven Vandelft of the RCMP hit and seriously injured a pedestrian in Langley with an unmarked police car in June 2021 (IIO, 2021c). Six months later, IIO sent the case to BCPS for consideration of charges, and, in June 2022, he was charged with driving without due care and attention (IIO, 2021d; BCPS, 2022d). In March 2023, Vandelft pled guilty to failing to use due care to avoid a pedestrian and was sentenced by the court to pay a \$1,200 fine and \$180 victim surcharge (BCPS, 2023a). It is unclear from BCPS and IIO statements whether Vandelft was on- or off-duty when the incident occurred and although media requested this information from BCPS, it was not provided (Claxton, 2022). Several media outlets covered the laying of charges, but no media articles on the conclusion of the case were found.

In case 2020-302, Constable Randeep Randhawa of the Transit Police was on-duty, driving an unmarked police vehicle in Surrey when he collided with another vehicle in November 2020 (IIO, 2021d). The case was referred to BCPS in September 2021 and the charge of dangerous driving causing bodily harm, a *Criminal Code* offence that carries potential incarceration of up to 14 years as punishment, was laid in May 2022 (IIO, 2021b; BCPS 2022e; 1985, s. 320.2). Although the officer was charged under the *Criminal Code*, he pled guilty to excessive speeding relative to conditions under the *MVA* in November 2023 and was sentenced by the court to pay a \$2000 fine and \$300 victim surcharge (ICBC, 2023; BCPS, 2023e). Although there were numerous articles on the charges being laid, no articles on the outcome were found during the media scan.

In case 2019-078, Constable Luke Bokenfohr of the VPD hit a cyclist in May 2018 with a police vehicle while on-duty in Vancouver, causing serious harm (IIO, 2019d). A year later, in May 2019, IIO referred the case to the BCPS, which laid the charge of dangerous driving causing bodily harm within weeks (IIO, 2019d; BCPS, 2019c). The AP had pressed the crosswalk signal and when the light turned red, she proceeded across the intersection (Labbe, 2021). She had crossed three lanes when “Bokenfohr flashed his vehicle’s emergency lights and immediately accelerated into the intersection, knocking her off her bicycle” (Labbe, 2021). The AP submitted a victim impact statement, outlining the physical, mental and

financial scars and how “this offence has impacted every single part of my life” (Labbe, 2021). Although Bokenfohr record showed 14 previous driving infractions since 1998, with one still before the court during this case, the judge reduced his driving prohibition from the Crown’s recommended year to six months, given that he had expressed remorse and claimed to not see the AP, as well as the mitigating factors of the internal disciplinary proceedings the SO would face through the OPCC (Labbe, 2021). Bokenfohr pled guilty to driving without due care and attention and was sentenced to a \$2000 fine, \$300 victim surcharge and six-month driving prohibition (BCPS, 2020f).

In case 2018-112, Constable John Pankratz of the VPD hit and seriously injured a cyclist he was pursuing in Vancouver with an unmarked police car while on-duty in September 2018 (IIO, 2019e). The IIO referred the case to the BCPS in April 2019 and he was charged in September 2019 with driving without due care and attention (BCPS, 2020g). In July 2020, Pankratz pled guilty to the charge and was sentenced to pay an \$800 fine and \$120 victim surcharge (BCPS, 2020g). Although several media outlets covered the laying of charges, reiterating the content of BCPS and IIO statements and providing no insights into the circumstances of the pursuit or accident, no media articles on the conclusion of the case were identified during the scan.

In case 2018-087, Special Constable Michael Mazziotti of the VPD hit and seriously harmed a cyclist with a police vehicle while on-duty in Vancouver in July 2018 (IIO, 2019f). The IIO referred the case to the BCPS in April 2019 and, in July 2019, he was charged with driving without due care and attention (BCPS, 2020h). In June 2020, Mazziotti pled guilty to the charge and was sentenced to pay a \$500 fine and \$75 victim surcharge (BCPS, 2020h). In case 2018-039, Constable Yannick Leblanc of the RCMP hit and seriously injured a pedestrian while on-duty with a police vehicle in Chilliwack in March 2018 (IIO, 2018a). The AP, an elderly woman, was crossing the road when she was struck by Leblanc (Henderson, 2019). In November 2018, the case was referred to the BCPS, which charged Leblanc with driving without due care and attention in March 2019 (BCPS, 2020i). Leblanc pled guilty and was sentenced to pay a \$750 fine and \$113 victim surcharge (BCPS, 2020i). Although there were several articles on the charges being laid against Mazziotti and Leblanc, no articles on the outcomes were found during the media scan.

In case 2018-004, Constable Andrew Peters of the VPD hit and seriously harmed a pedestrian while on-duty with an unmarked police vehicle in Vancouver in January 2018 (IIO, 2018b). In November 2018, IIO referred the case to BCPS for consideration of charges and, in January 2019, Peters was charged with dangerous driving causing bodily harm (BCPS, 2019d). In December 2019, Peters pled guilty to driving without due care and attention and was sentenced to a \$1500 fine, \$225 victim surcharge and 12 month driving prohibition (BCPS, 2019d). There were numerous media articles covering the case, including the outcome, but little information was available in these articles, which primarily reiterated BCPS and IIO statements. The VPD did comment to media at the time, stating that he remains in active duty but in a role that does not require him to drive (Crawford, 2019). Although there was limited information available about Peters’ actions in this case, the media scan revealed that Peters shot and killed a man in mental health crisis, Tony Du, in 2014 (PIVOT, 2018). In the 2014 shooting, IIO referred the case (2014-208) to BCPS for consideration of charges, but they declined to lay charges against Peters (BCPS, 2017c). The incident, in which Du was fatally shot within 30 seconds of police arriving on the scene, was subject to a Coroner’s inquiry, which ruled his death a homicide, and a civil lawsuit against the city of Vancouver by Du’s family (Coroner’s Service, 2018; Fraser, 2016).

Case 2017-083 is regarding the death of Dale Culver and subsequent finding that Constable Arther Dalman of the RCMP was guilty of obstruction of justice. As this case is discussed in detail in Chapter 4.3, the details will not be reiterated here. According the RCMP, Dalman remains operational in his role (Hosgood, 2024c).

In case 2016-153, Constable Megan Valenta of the RCMP hit and seriously injured two people on a motorcycle with a police vehicle while on-duty near Vernon in August 2016 (BCPS, 2018b). The IIO referred charges to the BCPS in June 2017 and, in August 2017, the BCPS approved the charge of driving without due care and attention (BCPS, 2018b). In October 2018, Valenta pled guilty to an “unsafe U-turn” and was sentenced to a \$750 fine and \$121 victim surcharge (BCPS, 2018b). Although the crash had “life-changing consequences” for the APs, with one breaking his collar bone and being diagnosed with PTSD, while the other suffered permanent scarring from her injuries and was unable to work, the judge praised Valenta when he handed down her sentence, noting that she had been dealing with a speeding driver and had taken additional driving courses since the collision (Mturcato, 2018).

In case 2016-055, Sergeant Yun Fen Christopher Lee of the RCMP was off duty when he hit and seriously harmed a pedestrian in Coquitlam in March 2016 (BCPS, 2018c). The date of IIO’s referral is not available, but in March 2017, Lee was charged with driving without due care and attention (BCPS, 2017d) and, in March 2018, he pled guilty and was sentenced to a \$500 fine and \$75 victim surcharge (BCPS, 2018c). One newspaper article on the laying of charges was identified during the media scan, but it did not contain new information, and no media articles were found regarding the outcome of the case.

In case 2015-128, Constable Ace Stewart of the RCMP was driving his truck and off-duty when he struck and killed a five-year old pedestrian in Penticton in September 2015 (IIO, 2016a). The child’s family was crossing the road at an intersection when he was killed and IIO referred the case to BCPS for consideration of charges in August 2016 (IIO, 2016a). The next month, Stewart was charged with driving without due care and attention and pled guilty in January 2017, when he was sentenced to a \$1500 fine and \$225 victim surcharge – the Crown did not push for imprisonment, although the sentence is eligible for up to six months (BCPS, 2017e). With a senior RCMP officer and child victim, the case received substantial media coverage. The court heard from Stewart’s psychologist who stated that he is “a kind, conscientious police officer who has been irrevocably changed” (Boyd, 2017). Although Stewart’s legal counsel claimed that “everyone in this case is a victim” (Boyd, 2017), the court noted that Stewart’s truck was lifted with an aftermarket kit and had oversized wheels and tires, which increased the blind spot beside and in front of the vehicle by 62% (Boyd, 2017). Due to the modifications, Stewart did not have a clear view of the family and their dog at the intersection, and he only became aware that he had hit the child when bystanders yelled at him – the child died of blunt force head trauma (Boyd, 2017).

According to Stewart’s lawyer, “the case clearly says, we are not sentencing you for causing death, we are sentencing you for your momentary inadvertence” (Mangione, 2017). The Crown Counsel echoed this sentiment, stating “this is not the very worst driving, the very worst set of facts – notwithstanding these are the most tragic of consequences” (Fries, 2017). According to the website, Killer Cops Canada, which monitors incidents of police-involved deaths across the country, Stewart had an extensive record of speeding offences and although Crown Counsel did argue that he had an obligation to drive more carefully given the known consequences of his truck’s modifications, these factors did not appear to be considered in sentencing (2017). The judge concluded that although Stewart was to blame, it was the result of a “momentary lapse in attention” and left the decision regarding a driving prohibition to the Superintendent of Motor Vehicles (Fries, 2017).

In case 2014-176, Constable Bruce Lofroth was investigated by IIO after a bystander shared video of a violent arrest of an Indigenous teenager with local media, punching the teen in the head while he lay on the sidewalk in handcuffs (Trumpener & Baker, 2016). The incident occurred in October 2014 and, in September 2015, IIO referred the case to BCPS for consideration of charges (IIO, 2015a). In February 2016, the BCPS charged Lofroth with assault (BCPS, 2016c). The case received substantial media attention, partially because thirteen years earlier, in 2001, Lofroth was convicted of assaulting an Indigenous man in a jail cell (Trumpener & Baker, 2016). Lofroth’s defence at the time had emphasized that he was under emotional stress due to the death of a family member, and he was granted a conditional

discharge, with the judge informing him that he “expected this would never happen again” (Trumpener & Baker, 2016). During his second court appearance for assaulting an Indigenous person, Lofroth’s lawyer argued that the two assaults were unrelated, and, as he had already been disciplined by the RCMP for excessive force, called for a second conditional discharge, stating that “his career will not recover from this” (Trumpener & Baker, 2016). In both cases, the court was informed of the circumstances leading up to Lofroth’s assault of two Indigenous people, with the youth had resisting arrest and punching him, while the Indigenous man in 2001 had spat and kicked at him from behind cell doors (Trumpener & Baker, 2016). After pleading guilty, Lofroth was sentenced to 12 months suspended sentence probation order, a \$200 victim surcharge and 100 hours of community service (Trumpener, 2016).

In incident 2014-107, Constable Tim Bedard punched an inmate in the face eight times, after he refused to remove his clothing and tried to punch Bedard in June 2014 (Ruminski, 2015). The BCPS charged Bedard with assault causing bodily harm in February 2015 (BCPS, 2015d). In court, the judge noted that Bedard was “very remorseful, and the incident was completely out of character judging by the 20 letters of reference in Bedard’s file” (Ruminski, 2015). Like Lofroth, Bedard’s mental health was a consideration before the courts, as he had been seeing a psychologist since the incident and been diagnosed with Post Traumatic Stress Disorder, and he was also the subject of an internal investigation (Ruminski, 2015; Yu, 2015). Although the charge carried a possible jail term, the Crown called for a suspended sentence, while Bedard’s lawyer requested a conditional discharge, which the judge granted (Eckford, 2015; Ruminski, 2015). The conditional discharge and 50 hours of community service sentence results in no criminal record, if Bedard met the conditions (Yu, 2015).

#### ***4.2.6 A Closer Look at the Two Cases Before the Courts***

The two cases currently before the courts are for incidents of serious harm with use of force, firearm, negligence and driving related charges against Constable Madeline Hjelden (IIO# 2020-110) and Constable Keven Biagioni (IIO #2021-012) for incidents in 2020 and 2021. Hjelden’s case is expected to conclude in late 2024, with a court decision in early 2025, while Biagioni was scheduled to continue into 2025. Although these cases were not concluded in time to be included in the analysis, over the study period, no SO has been found guilty for firearms related offences and the only use of force related convictions occurred in 2014, making these high profile and significant cases for the police oversight system. Due to their significance, this section will briefly overview the details of these two cases.

According to the IIO, in May 2020, RCMP officers, including Hjelden, responded to a call in Williams Lake regarding an intoxicated, emotionally distressed man allegedly driving a motorcycle (IIO, 2021a). After locating the individual, he continued to drive away and police pursued, with an “interaction” occurring between a police vehicle and the motorcycle (IIO, 2021a). When IIO referred the case to BCPS for consideration of charges in April 2021, the statement only referenced potential offences in relation to the use of a police vehicle (IIO, 2021a). Over two years later, in July 2023, BCPS announced Constable Madeline Hjelden was charged by the BCPS with assault causing bodily harm, assault with a weapon, criminal negligence causing bodily harm and dangerous driving causing bodily harm (BCPS, 2023f). Although there is a wealth of media articles on the charges laid, they all reiterate content from BCPS and IIO, with no new information available about the AP or incident.

In January 2021, RCMP responded to a domestic incident in Chilliwack and, when they located the man who had departed in a vehicle, an “interaction occurred which resulted in shots being fired by police” (IIO, 2022d). The IIO referred the case to BCPS a year and a half later, in June 2022, stating that “one officer may have committed offences in relation to the use of a firearm” (IIO, 2022d). Months later, in November 2022, the BCPS announced that Constable Keven Biagioni had been charged with discharging a firearm with intent, aggravated assault and careless use of a firearm (BCPS, 2022f). Unlike Hjelden, numerous articles about Biagioni are available in news media, largely due to outcry from APs in another, misconduct incident and a civil lawsuit filed by the AP in this case. The civil lawsuit filed by AP against

Biagioni, the Minister of Public Safety and Solicitor General of BC, and the Attorney General of Canada, alleges that Biagioni shot him without warning while he was standing still with his hands in the air in “a state of acute mental health distress” and that, although police claim he was wielding a weapon, it was a metal meat skewer, not a weapon (Steaey, 2024). Biagioni contests these allegations, claiming that the AP was confrontational, aggressive and warned (Steaey, 2024). In February 2022, while Biagioni’s IIO investigation for serious harm was ongoing, he was promoted to Corporal, and although he had been on paid leave, he was put back on active duty (Steaey, 2024). When CTV News reached out to the RCMP about officer remaining in active duty while facing criminal charges, the RCMP responded stating that “to penalize members prior to a thorough and proper investigation being completed is contrary to the rule of law in Canada” (Steaey, 2024).

Additionally, in 2024, a couple, Brienne Giasson and Joshua Serniak, came forward to media, sharing the details of an incident with Biagioni in 2022, which resulted in him being disciplined by the RCMP. In this alleged road rage incident, the couple claims that Biagioni did not move out of the MacDonald’s drive-thru after receiving his order, blocking them in (Alexander & Steaey, 2024). After they honked at him, he began behaving in aggressive and erratic ways, and as the couple drove away, he pursued them, and rear ended them multiple times. (Alexander & Steaey, 2024). He then allegedly tried to convince the couple not to notify ICBC; they described him as inebriated and provided video footage of him in this state to CTV News (Alexander & Steaey, 2024; Steaey, 2024). The couple submitted a complaint to CRCC and were informed that no referral for charges would be sent to Crown Counsel, despite being told by the responding officer at the crash that “the driver had failed a breathalyzer” (Alexander & Steaey, 2023). Giasson shared that the incident “shattered her trust in the local police force” and stated, “how can he hold up the law when he’s breaking it himself” (Steaey, 2024). The Professional Responsibility Unit (CRCC) notified Giasson that Biagioni was disciplined for contraventions of the RCMP Code of Conduct, but refused to share details, including on the disciplinary measures, with her due to privacy (Steaey, 2024).

On November 26, 2024, the BCPS announced that the charges against Biagioni had been stayed (BCPS, 2024e). While this recent decision could not be integrated into this thesis’ quantitative analysis of the police oversight system, the BCPS’ statement was reviewed and analyzed. BCPS states the charges were stayed due to evidence from the preliminary inquiry and the opinion of a use of force expert, which caused the Crown to “re-evaluate whether there was a substantial likelihood of conviction” (BCPS, 2024e, p. 1). The referenced evidence is that one of the WOs, Sergeant Ristau, was closer to the AP than had been initially apparent, as the WOs’ original statements provided ranges, placing him between 10-40 feet away, and therefore not at imminent risk (pp. 2, 6-7). During the preliminary inquiry eight WOs stated that they feared for their own safety or that of their colleagues and assessed the risk at the highest level and the majority estimated the distance between the AP and Ristau was 10-15 feet, although Ristau stated it was 10-20 feet (pp. 8-9). The use of force expert concluded that Biagioni’s actions were reasonable, necessary and proportionate with the AP’s behaviour and level of risk (pp. 10-11).

#### ***4.2.7 Conclusion: Looking Back on the Full Study Period***

The researcher set out to examine investigations into incidents of serious harm or death and the questions guiding this analysis delved into the various stages of the oversight system, seeking to determine the frequency and circumstances in which investigations moved forward from investigation and referral to charge and conviction. Chapter 4.2 explored the oversight system and shed light on its outcomes, providing key takeaways about cases that proceeded through the system during the study period.

First, although only 14 cases resulted in convictions for SOs, incidents involving female APs appeared to be somewhat more likely to proceed through the oversight system. Of all IIO investigations, female APs comprised 16.19% and, although their proportion of referrals declined to 11.8%, they were the APs in 25% of cases with charges laid and made up 5 of 15 or 33.3% of the APs in cases where SOs were

convicted (incident 2016-153 had two APs, a male and female, resulting in a total of 15 APs in the 14 cases where SOs were convicted).

Second, although IIO's data collection around ethnicity was limited, with information only available from March 2020 to December 2021, utilized inconsistent and overlapping terms, such as European and white, and was complicated by the massive proportion of APs with "unknown" ethnicity, some patterns seemed to be evident. While Indigenous APs comprised 15.8% of all IIO investigations, they made up one-third of both referred cases and cases with charges laid. Only three cases with convicted SOs have racial demographic data available, but there was one (33.3%) Indigenous AP. Contrastingly, white APs made up 36% of IIO investigations, 45.8% of referred charges and 50% of cases where charges were laid. Of the cases with convicted SOs and AP racial information available, there was one white AP (33.3%). Although "unknown" was the largest proportion of IIO investigations where racial identify was provided (39.6%), there were only two APs (8.3%) listed as unknown for IIO referrals. While the proportion of both Indigenous and white APs increased from investigations to charges laid, a degree of increase was expected due to the massive decrease in APs listed as unknown. Although the percentage of white APs increased by 14% from investigations to charges laid, the percentage of Indigenous APs more than doubled. From this analysis, it appears that throughout the police oversight system, Indigenous peoples are over-represented, but they are increasingly over-represented as the system proceeds.

Third, incidents where APs died were less likely to proceed through the oversight system than incidents where APs were seriously injured. Although deaths made up 30.4% of all IIO investigations, they comprised 16.8% of cases referrals to BCPS and 14% of both charges laid and convicted SOs. Of the two cases with convictions for incidents where APs died, the two SOs were convicted of driving without due care and attention and obstruction of justice, and there were no convictions relating to causing death, such as manslaughter. This indicates that, at least during the study period, there were the immense barriers facing those who seek justice for the death of their loved ones.

Fourth, although there were issues with the comparability within referred charges, with different levels of information available in cases where charges were approved, no charges were approved and the assessment is pending, as well as between referred charges and convictions, it was abundantly obvious that driving-related charges were most likely to proceed through the oversight system during the study period. Despite the issues with compatibility, use of force related concerns were cited in the majority of IIO referrals and made up 40% of charged SOs, but only 2 of 14 (14.2%) convictions and both for incidents that occurred in 2014. Comparatively, while driving-related referrals were common, with driving violations as the primary concern in 24% of IIO referrals, they jumped to 51.7% of charges laid and 78.5% of all convictions over the study period.

### ***Chapter 4.3: Case Studies on the Deaths of Myles Gray, Jared Lowndes and Dale Culver***

The following three case studies were chosen for several reasons. First, while 30% of IIO investigations were for deaths, the quantitative research identified that the proportion of cases for deaths become progressively smaller throughout the oversight system and that the only officers that were found guilty of crimes related to the death of an AP during the study period were for a *Motor Vehicle Act* violation, resulting in a fine, and for obstruction of justice, with the sentence still pending. Second, these cases were selected for the wealth of information available. Each of these incidents receive intense media scrutiny and were the subject of actions and activism, such as protests, awareness raising campaigns, petitions, etc. The preponderance of available information allows for a depth of analysis that is not possible with many of the incidents investigated by the police oversight system, where the AP names are often unavailable and few to no media articles exist. Third, these three deaths were highly controversial with many advocating that each incident had a strong basis to charge to charge the SOs, as well as a potential for findings of guilt in high stakes charges, such as manslaughter. As shown in section 4.2, few high-stakes, death-related charges proceed through the oversight system, making it especially pertinent to understand why and when cases are abandoned by the system.

Overall, these three case studies provide a lens to better understand why the most egregious cases, where APs are violently killed and police action spark outrage, have not resulted in findings of guilt or, in two of the case studies, even charges. These cases highlight different elements of the police oversight system, with different charge standards but no charges laid for the deaths of Myles Gray and Jared Lowndes, while in Dale Culver's case, a variety of outcomes occurred for the five charged officers. These case studies shed light on the barriers faced in prosecuting police in highly complex, high stakes cases and shine a light on the points where the cases are frequently ejected from the oversight system.

#### ***4.3.1 Myles Gray***

On August 13, 2015, Myles Gray died in a backyard in Burnaby, BC with 9 VPD officers present. The incident began when Myles, who was making a delivery for his florist business, confronted a person for watering their lawn during a drought, against water restrictions, and sprayed them with their hose (Lindsay, 2022). A witness called 911, describing Myles as "agitated and disturbed" (BCPS, 2020a, p. 2). The first officer to arrive stated that Myles was initially cooperative and coherent but became agitated after she mentioned the incident (BCPS, 2020a, p. 6). Myles entered a backyard and, after two additional VPD officers arrived, the three SOs followed him there and attempted to arrest him (p. 2). Four other officers joined in the next few minutes, but the BCPS clear statement does not detail what occurred in the ten minutes from when the first three SOs entered the backyard to Myles' being unconscious, restrained and severely injured, only providing glimpses into the events that day (pp. 2, 6-7).

The IIO investigation into Myles' death (2015-116) dragged on from August 2015 until January 2019, when charges were referred to the BCPS. The process was delayed by several factors, with IIO making a public appeal for witnesses in August 2016 and, in October 2017, filing a petition with the BC Supreme Court to compel a VPD officer to "cooperate fully with the investigation by attending for interview as directed" (IIO, 2017a). In January 2019, IIO referred the case to Crown Counsel for consideration of charges for multiple officers. In their media release, IIO addressed the delay, stating that "the length of this investigation relates to a number of aspects, including a difference of opinion with a witness officer regarding the extent of their duty to cooperate under the Police Act in the context of a second interview. The subsequent court application was withdrawn after it was resolved between the parties. Also, to obtain further information regarding the cause of death, additional forensic pathology resources were sought and provided by the Coroner's Office in 2018 in order to ensure a comprehensive investigation" (IIO, Jan 16, 2019, 2015-116).

In December 2020, over five years after his death, the BCPS announced that no charges were approved

against the VPD officers and released a clear statement, which noted that “the only witnesses to the physical altercation and restraint of Mr. Gray by the police were the attending members of the VPD” (BCPS, 2020a, p.1). This “physical altercation” left Myles with “bruising to the body and extremities, bruising and lacerations to his face, an orbital bone fracture, nose fracture, possible partial dislocated jaw, a minor brain bleed, throat cartilage fracture, rib fracture, and bilateral testicular hemorrhage” (p. 2). In the clear statement, the BCPS noted that although the default charge standard is “a substantial likelihood of conviction,” the lower standard of “reasonable prospect of conviction” was applied in Myles’ case due to public interest factors, but still no charges were laid (BCPS, 2020a, pp. 3-4). The charges considered by the BCPS included manslaughter, aggravated assault and assault causing bodily harm (p. 4).

The post-mortem did not identify a clear cause of death, noting that none of the injuries in isolation would be fatal, and toxicology concluded that Myles had Mitragynine, commonly known as Kratom, in his system (BCPS, 2020a, pp. 2, 9). According to the BCPS, the forensic pathologist and other experts “could not exclude the possibility that Mr. Gray’s death was caused solely by factors unrelated to the use of force by police, specifically by the ingestion of Mitragynine or by the condition known as ‘excited delirium’ (p.2).” The forensic pathologist concluded that it “appeared probable that Mr. Gray’s death was multifactorial,” with ten possible contributory factors outlined, including the effects of Mitragynine, a pre-existing heart condition, “asphyxia and/or compromised cardiorespiratory function due to forcible restraint and/or the position of the deceased's body, possibly involving the compression of the chest and/or abdomen,” “external pressure on the neck structures as evidenced by the soft tissue hemorrhage and the fractured laryngeal skeleton,” other sustained injuries, “agitation, in keeping with instances of excited delirium,” physical exertion, anxiety, possibly pain, and the effects of pepper spray on respiratory function (p. 8). Other experts likewise did not exclude excited delirium or substance use as potential causes of death, with a panel of expert pathologists concluding the lack of reliable information on the altercation from the officers present complicated establishing a conclusive cause of death (pp. 8-9).

The issues with both witness and subject officers complicated the investigation and was discussed in the BCPS’ Clear Statement.

The eyewitness accounts of the seven VPD officers present prior to 15:28, provide incomplete and, in several respects, inconsistent accounts of the detail and sequence of events in this critical ten minutes. While all officers describe Mr. Gray as resisting and offering a threat to the officers present, accounts of what he and the officers actually did at each stage of the encounter vary considerably. With limited exceptions, the officers present have spoken only to their own use of force, without describing the actions of others. In many respects, the contradictions between officers’ accounts in key areas are incapable of resolution such that it is difficult to determine a coherent narrative of events between 15:18 and 15:28 with any reasonable degree of confidence (p 7).

Despite inconsistent, conflicting and incomplete narratives from the officers, the BCPS revealed that during a ten-minute period, Myles was pepper sprayed, put in a neck and head restraint, repeatedly struck with batons to the legs and lower body, and struck with closed fists, feet and knees in the back and upper body, and struck closed fist to his head and face (p. 8). BCPS noted that “officers’ accounts as to the degree of resistance and threat Mr. Gray offered in this period are inconsistent, although all say that he was resisting and was not compliant with handcuffing” (p. 8). The Use of Force Expert retained by IIO concluded that, overall, “all such uses of force could be consistent with police training and standards, where justified by a sufficient degree of threat and resistance from an individual” (p. 9). Without non-police witnesses or consistency among police narratives, and with an unclear cause of death, BCPS stated that they were “not able to prove, beyond a reasonable doubt, that the officers committed any offence in relation to the incident” (p. 1). Although no SOs were charged for Myles’ death, the investigation shed light aspects of the police oversight system, including the management of public opinion, narrative differences, the impact of substance use and mental and alternative measures for justice.

Beyond the actions of IIO and BCPS, Myles' death highlights the role of narratives and managing public opinion in the aftermath of violent incidents, providing insight into how police departments can navigate high-profile, controversial incidents. The day of Myles' death, VPD released a statement, entitled "One Man Dead and Six Officers Sent to Hospital," which detailed that six officers were taken to the hospital, two with significant and four with minor injuries (VPD, 2015). Despite VPD's assertions, five years later, the BCPS' Clear Statement clarified that mild injuries were sustained by SOs, including that "officer had been punched in the left side of his face and had a small cut under his chin. Another officer was noted to have a 5 cm laceration to his forehead, apparently caused by a low hanging tree branch" (2020a). Eight years after Myles' death and following the results of the coroner's inquest, Chief Palmer of VPD offered condolences to Myles' family in a public statement, saying that his death "had a profound and lasting impact on everyone involved" (Carey, 2023).

While BCPS noted that the narratives from WOs and SOs were conflicting and vague, there also was striking similarities in their description of Myles during the coroner's inquest, with three officers describing his as "animalistic," while two remarked on his "superhuman strength" and one stated that "his muscles had muscles" (St. Denis, 2023). Nine of the ten officers involved in the arrest shared either their belief that he was experiencing or description of the symptoms of excited delirium (St. Denis, 2023). During the inquest in 2023, five officers stated that "their union told them not to take notes after the incident, in contravention of Vancouver Police Department police," and while four claimed not to remember who gave them the instructions, one officer named Tom Stamatakis, who is now the head of the Canadian Police Association, as the individual (St. Denis, 2023). VPD's ability to frame Myles' as a violent, dangerous offender who caused mayhem and injured many officers – both in the department's statement and through SO and WO testimony – raises questions about how public funds, are utilized to manage media narratives and malign those allegedly harmed by police.

In 2023, the verdict of a Coroner's inquest into Myles' death was released. The forensic pathologist from the original autopsy, Dr. Orde, significantly changed his evaluation of the cause of death after hearing the testimony of police and paramedics, and due to medical studies on excited delirium (St. Denis, 2023). At the inquiry, Dr. Orde concluded that Myles died from "cardio pulmonary arrest complicating law enforcement subdual and restraint (involving the application of OC spray, multiple blunt force injuries, neck compression, dorsal handcuffing and forcible prone positioning); in an individual exhibiting features of acute behavioural disturbance" (Coroner, 2023, p.1). Dr. Orde's evaluation also evolved in that he ruled out two factors – Myles' enlarged heart and Mitragynine – as potential contributors to Myles' death, as his heart was unlikely to have caused his death and the Mitragynine was a false positive (St. Denis, 2023). The Dr. Orde also stated that Myles' steroid use was not a likely contributor to his death (St. Denis, 2023). The jury for the inquest ruled Myles' death a homicide, recognizing that the death was caused due to inflicted injuries, but not assigning fault or blame (St. Denis, 2023). Following the ruling, in May 2023, media asked BCPS and IIO about the possibility of reconsidering charges, with BCPS stating that IIO would need to resubmit the file to Crown Counsel, and IIO stating that it was assessing the evidence from the inquest (Miljure, 2023), but over a year and a half later, the file has not be re-referred and no public statements have been made by either agency.

The inquiry also highlighted the role of mental health and substance use in Myles' death and the police oversight system. Myles lived with bipolar disorder, which had been managed for several years through medication, but he had stopped taking his medication in the months prior to his death, with no known adverse effects (Coroner, 2023, p. 2). Myles' sister, Melissa, believed that based on his behaviour the day he died, he may have been having a manic episode, but told media that as a psychiatric nurse, she "can't understand how the incident escalated to the point where Myles had been beaten and pepper sprayed by police" (St Denis & Bennett, 2023). Although mitragynine was indicated in the original toxicology report, a review by an additional toxicologist concluded that the level did not meet the existing standard and that

“it could not be determined if mitragynine was present in Gray’s blood and that if present, it would not have been at a toxic level” (p. 8). The police response that day left Myles beaten beyond recognition, with a paramedic sharing with the inquest that “he arrived at the scene and saw bruising so severe, he initially thought Gray was not a white man” (St. Denis, 2023). At the Coroner’s inquest, SOs also testified about the impact on their mental health and wellbeing. Constable Folkestad shared that his first impression of Myles’ was that he was experiencing ‘excited delirium,’ which he believed could result in “superhuman strength” (Schmunk, 2023). He continued that he repeatedly punched Myles in the face as hard as he could and that after the incident, he was diagnosed with post traumatic stress disorder (Schmunk, 2023). The inquest also heard about the lack of mental health training for many of the involved VPD officers, including Folkestad (Schmunk, 2023), although one of the SOs had begun working on VPD’s Car 87, which is tasked with responding to calls for people in mental health crises, since Myles’ death (Miljure, 2023).

The search for justice for Myles Gray brought public attention to the simultaneous processes at play in incidents of police violence and exposed some alleged repeat offenders who took part in the “arrest” that day. Under the authority of the OPCC, the RCMP investigated the incident and found that some complaints were unsubstantiated, but when their investigation was reviewed by an external authority, former Police Chief David Jones, he found that these claims were substantiated (Hyslop, 2023). In early 2023, the investigative report by Jones for OPCC found that “seven of the nine officers who were present may have committed abuse of authority by using excessive force, and six of them may have committed dereliction of duty for failing to complete required notes and reports in the matter” (MacDonald & Little, 2023). The seven named officers were Constables Beau Spencer, Hardeep Sahota, Josh Wong, Kory Folkestad, Nick Thompson, Derek Cain and Eric Birzneck, and a media article shared that the SOs could face a range of discipline, including dismissal, in the upcoming disciplinary hearings (MacDonald & Little, 2023). The report concluded that Sahota, who was the first SO on the scene, may have used unnecessary force, abused her authority and neglected her duties by failing to take notes at the scene and waiting five months to submit them (Hyslop, 2023). Sahota claimed that she waited to write her notes until after a debrief meeting and to submit them for five months on the advice of a VPD Union representative, Ralph Kaisers, who has since been elected as president of the union (Hyslop, 2023). While VPD did not have an explicit timeline for submitting statements, the report cited a ruling by the Supreme Court of Canada in *Wood v. Schaeffer* regarding police officers’ duty to provide notes as soon as practical (Hyslop, 2023). With no criminal charges, trial or judgements against any of the officers, the OPCC’s investigation offered an alternative option to seek justice.

As the media honed in on the oversight system’s response to Myles’ death, information began to surface about the involvement of several of the SOs in other alleged violence and criminal conduct. In IIO investigation 2017-051, Constable Beau Spencer was acquitted on assault charges for an incident occurring in May 2017 (IIO, 2024a). Spencer, along with Constables Wong and Cain was involved in the fatal shooting of Peter Rintoul in 2016 (IIO investigation 2016-224) (Lindsay, 2022b; MacDonald & Little, 2023). At the time of Myles’ death, Spencer and three other SOs were also under active investigation for an incident six weeks earlier where an AP suffered a broken jaw (Lindsay, 2022a). Constable Cain was also named in a civil suit over the death of Constable Nicole Chan, who committed suicide in 2019, which alleges that he was sexually inappropriate and exploiting his position of power over her (MacDonald & Little, 2023). In 2024, Wong was charged with assault for another incident that occurred in December 2023, with the case currently ongoing (Brockman, 2024). While the names of SOs are typically not available in cases where no charges are laid, the release of these VPD officers’ names during the OPCC processes allowed for a rare glimpse into the multiple allegations many of them had faced.

When Myles’ mother, Margie Gray, learned of the officers’ histories of violence during the inquest, she expressed outrage, stating “they know the common denominators are out there, these violence-prone

police, and yet they do nothing. If these cops [had been] dealt with properly at the time, my son may well be alive” (Lindsay, 2022). The mother of another AP, Carol DeBoer, reached out to Margie Gray about the violence her son faced at the hands of VPD (IIO 2015-091); when they compared the lists of involved officers, four names were on both lists (Lindsay, 2022). While the OPCC proceedings were ongoing, with all seven SOs potentially facing discipline and dismissal, they remained in active duty with VPD (Owen, 2023). In June 2024, a media outlet shared that Constable Hardeep Sahota, one of the involved officers, now works as a school liaison officer in a Vancouver high school, but according to a VPD media relations officer, she is a “highly respected police officer,” and has the departments “full and unwavering support” (Hyslop, 2024). According to PIVOT Legal Society, Sahota refused to comply with the IIO investigation, which IIO had noted delayed the investigation (2023). Margie Gray shared her view on the oversight system, stating that “there’s just no end to this bureaucratic paper shuffling, you know, there’s just no end to it. And even 7, 8 years later, there’s zero consequences. It just gets shuffled up to the next level, and nothing ever happens” (Carey, 2023).

Over a year later, Margie Gray’s words continued to resonate. In October 2024, over 9 years after Myles death, the OPCC’s investigation, which was carried out by Delta Police Chief Neil Dubord, cleared all VPD officers of misconduct, concluding that none of the seven officers abused their authority or neglected their duties (Baker, 2024). The investigation took 19 months, the hearings were not open to the public and the final, 85-page report is not public (Urquhart, 2024a). In the report, Dubord noted the limitations of the investigation, including that evidence and arguments are untested and may be incomplete (Baker, 2024). He continued:

the evidence is almost totally a written record, and there is no cross-examination. While the respondent officers may challenge findings... the converse is not true: there is nobody to challenge the officers’ evidence or submissions. It is a strangely lopsided process (Urquhart, 2024a).

The OPCC stated that it is reviewing the report and could make recommendations, and it may have the case reviewed by a retired judge, which could involve a public hearing (Urquhart, 2024a). Although the OPCC may take further steps and a civil case against VPD is still possible, for the Gray family, there is little hope left (Baker, 2024). Myles’ sister, Melissa Gray, stated the report “doesn’t make sense... there’s been so much pain and agony and anguish and just nothing” (Urquhart, 2024b). She continued “How far are we going to push this? I just don’t know if it’s even worth it. My parents are a shell of who they used to be” (Baker, 2024).

#### **4.3.2 Dale Culver: “I can’t breathe”**

On July 18, 2017, Dale Culver, a Wet’suwet’en and Gitxsan man, died after his arrest by the Prince George RCMP (St. Denis & Hosgood, 2024). The incident began when police were called about a Caucasian man on foot looking in cars who may have a partner on a bicycle (BCPS, 2024b, p. 5). The responding officer saw Dale, “a visibly Indigenous man, riding a BMX bike without a helmet,” and asked him to stop (p. 6). Instead, Dale cycled away, and the officer decided he was “now arrestable, either for not stopping for police or because he was not wearing a helmet” (pp. 5-6). The incident rapidly escalated, with the officer chasing Dale, pulling him off his bike, fighting with him, calling for backup and pepper spraying him (BCPS, 2024b, p. 2).

Other officers arrived on the scene to find Dale lying on his stomach with the arresting officer and a civilian holding him down (p. 6). Constable Ste-Marie arrived first and punched Dale in the back of the head at least once, while Constable Monette – the second backup to arrive – kicked or kned him in the head or upper body as well (p. 6). Up to twelve officers arrived and with seven of them surrounding Dale, he was restrained with multiple pairs of handcuffs (pp. 2, 6). According to the BCPS, Dale was moving through much of the arrest, but “it is unclear if this was because he was resisting or being beaten is hard to say,” and at some point during the arrest, Dale told the officers “I can’t breathe” (p. 6). After being handcuffed, Dale was taken to a police vehicle where he again stated that he was not able to breath – 29

minutes after his arrest, he collapsed and died (pp. 2, 7).

The IIO investigated Dale's death (2017-083) for two years before referring the incident to Crown Counsel for consideration of charges "in relation to issues surrounding the use of force during the struggle with the male and in relation to the allegations of obstruction of justice in relation to the deletion of video from a civilian phone" (IIO, 2019c) in July 2019. Nearly a year later, in May 2020, IIO released another statement outlining that they had updated the report to Crown Counsel, after "additional lines of inquiry were identified and followed," and clarified that reasonable grounds for use of force offences existed for two officers, while three may have committed obstruction of justice offences (IIO, 2020b). In 2022, the BCPS assigned Dale's case to a private practice lawyer, as the ad hoc Crown Counsel, due to BCPS' lack of resources, an option under Policy ADH 1 of the Crown Counsel Policy Manual for circumstances when no employee is available, there is an actual, perceived or potential conflict of interest or to bring a particular expertise, skill or knowledge (Hosgood, 2024; BCPS, 2023d, p. 1). Unexpectedly, IIO released another statement in February 2023, responding to concerns about the delayed process being unacceptable and unfair, with CCD MacDonald stating that "to be blunt – I agree. The time it has taken to lay charges in this very serious matter is unacceptable" (IIO, 2023b).

In February 2023, the BCPS announced that manslaughter charges were approved against Constable Paul Ste-Marie and Constable Jean Francois Monette, and obstruction of justice charges were laid against Constable Arther Dalman, Constable Clarence Alexander MacDonald, and Sergeant Bayani Eusebio Cruz (BCPS, 2023b). As in Myles' case, the BCPS "resorted" to the lower charge assessment standard of "reasonable prospect of conviction" for Dale's death, which is lower than the default standard of substantial likelihood of conviction, due to public interest factors (BCPS, 2024b, p. 4). The National Police Federation released a statement in response to the charges, stating that their thoughts were with Dale's family and friends, "as well as our Members and their families in face of the charges laid today" (2023). The statement expressed concern about the delays in the oversight system in this case, with the charge approval occurring nearly six years after Dale's death, stating that "this delay is simply unacceptable and unfair" (NPF, 2023). In April 2024, after preparing for the preliminary inquiry, the BCPS announced that, at their request, charges were stayed against Constables Ste-Marie and Monette for manslaughter and Crown Counsel would not be charging them with any lesser offences (BCPS, 2024b). In May 2024, BCPS stayed the charges against Constable MacDonald, but declined to provide a rationale until after the trial against Cruz and Dalman concluded (Skrypnek, 2024).

The clear statement outlines BCPS' rationale for staying the manslaughter charges, focusing on the evaluation of the pathologists. The original pathologist who performed the autopsy concluded that there were six factors contributing to Dale's death – methamphetamine toxicity, synthetic opioid use, pepper spray exposure, reactive airway disease/asthma, blunt force head trauma and that "the possibility of excited delirium cannot be excluded (p. 7)" – and that the cause of death was blood clots in his lungs (BCPS, 2024b, pp. 2, 7). The IIO had the cause of death reviewed by a panel of pathologists, including the original pathologist and two others, who prepared a report that supported the conclusion that blunt head force trauma contributed to Dale's death and that a key factor in his death was respiratory compromise from the combined effects of asthma, pepper spray, Dale's supine position and the synthetic opioid (BCPS, 2024b, pp. 2, 8; St. Denis & Hosgood, 2024). BCPS states that Crown Counsel had questions for the original pathologist, with a key concern centering on the connection between the blunt force head trauma and the blood clots in his lungs that caused his death, and they agreed to complete three telephone interviews, but "communication between *ad hoc* Crown and the pathologist immediately broke down" (BCPS, 2024b, p. 8).

The ad hoc Crown Counsel, in consultation with senior counsel, decided to consult a fourth pathologist from Ontario, Dr. Michael Pollanen, who did not perform an autopsy and did not confirm the findings, instead concluding that Dale's cause of death was "acute and chronic adverse effects of methamphetamine

following a struggle. The mechanism of death was sudden cardiac (arrhythmic) death” (p.3). The fourth pathologist disagreed with the original pathologist in several areas and concluded that while the “strenuous physical exertion while struggling with police likely exacerbated the effects of methamphetamine use,” “he was vulnerable to sudden cardiac death at any moment” (BCPS, 2024b, p. 10). According to the BCPS, Dr. Pollanen was selected “based on his extensive experience as the chief forensic pathologist for Ontario” (BCPS, 2024b, p. 3), but his reliability for this critical role has been questioned. According to reporting by *The Tyee*, a BC news publication, Pollanen had been criticized by a judge in 2017 for his “confirmation bias” and, in 2019, been the subject of two complaints to the Death Investigation Oversight Council in Ontario due to his alleged bias and abuses of power (Hosgood, 2024a). Based on the evaluation of the fourth pathologist, BCPS “concluded that there is no longer a reasonable prospect of conviction” (BCPS, 2024b, p. 3) and stayed the charges.

Three days after the charges were stayed, Constable Ste-Marie pleaded guilty to assault for an incident in August 2022 that was not investigated by IIO, and, at the request of the Crown and defence, received an absolute discharge, which carries no sentence or criminal record (Hosgood, 2024b). Ste-Marie had remained on active duty with the RCMP after Dale’s death but was moved to administrative duties after being charged with assault in August 2023 (Hosgood, 2024b). At the sentencing for the unrelated assault, Ste-Marie’s lawyer stated Ste-Marie suffers from post-traumatic stress disorder (Hosgood, 2024b), called the assault an “isolated incident” and argued that “the seven years he spent facing the manslaughter charge following Culver’s death should be taken into account by the court while considering the Crown and defence’s joint submission for a discharge” (Hosgood, 2024). After both cases were settled, Ste-Marie returned to active duty (Hosgood, 2024b).

The trial of Constable Dalman and Sergeant Cruz for obstruction of justice took place in summer 2024 and hinged on the allegation that they had threatened a bystander who had filmed the incident on his phone after Dale had been subdued, demanding to see his footage, threatening him with arrest for obstruction of justice and telling him that he needed to delete the video or his phone would be taken (Proctor, 2024a). Dalman and Cruz both pled not guilty and disputed the allegation that they had told the bystander to delete the footage, with their defence claiming that the bystander did not like police due to criminal convictions over a decade ago (Proctor, 2024a). The presiding judge, Brooks, found the bystander to be a credible witness, but noted that although he had serious concerns with the testimony of Cruz, a RCMP officer with 22 years experience, he “unable to reject his evidence” and “had to enter an acquittal” (Proctor, 2024a), but that Cruz “avoided committing to answers that should not have been so difficult” (Hosgood, 2024c). Dalman, who had been with the RCMP less than six months at the time of Dale’s death, was found guilty of obstruction of justice, with judge Brooks concluding he deliberately lied under oath and rejecting his evidence, as “not worthy of any belief” (Hosgood, 2024c). Brooks took issue with Dalman’s narrative, identifying several “illogical missteps” and pointed out that his RCMP database entry about the incident, which was submitted a week after Dale’s death, was identical to Cruz’s, even including the same spelling errors, despite Dalman claiming he had not reviewed Cruz’s submission before writing his own (Hosgood, 2024c). According to the RCMP, Dalman remains “operational,” but that this status is subject to review (Hosgood, 2024c). Sentencing was expected in fall 2024, but in August 2024, Dalman’s lawyer applied for a stay of proceedings on the basis that Dalman’s Charter rights were breached and that the trial did not occur within a reasonable time (Romer, 2024). According to the BCPS, this application will delay the sentencing hearing (Romer, 2024).

The oversight system’s response to Dale’s death provoked indignation and outrage on many fronts. Dale’s family expressed their outrage with the drawn-out process, with Dale’s daughter, Lily Speed-Namox, stating “to call our system a justice system is not true” (Hosgood, 2024b). Dale’s Cousin, Debbie Pierre pressed that allegations of police brutality against Indigenous people need to be heard in court and that the circumstances of Dale’s death would not be brought into the open with the charges against Monette and Ste-Marie stayed (Proctor, 2024a). Regarding Dalman’s efforts to have his conviction stayed, Debbie

stated “he must not escape justice on a technicality” (Romer, 2024). Hereditary Chief Na’moks of the Wet’suwet’en Nation stated, “how could we call this country a free and just country when a man goes down riding his bike in the dark in this city and ends up dead” (Osborne, 2024). The former head of the IIO, MacDonald, echoed concerns, outlining to media how the IIO based the charge report on the professional opinions of three pathologists (St. Denis & Follette Hosgood, 2024). A director with the NPF, Chris Voller, disagreed, stating “this exoneration comes too late. And the court of public opinion is relentless. It’s treated them as if they were guilty. And today, there were over 100 individuals protesting the charges being stayed, even in the face of now clear medical evidence that they were not responsible for Mr. Culver’s death” (Osborne, 2024).

Although the NPF believed that the fourth pathologist’s conclusion exonerated Monette and Ste-Marie, a collective of First Nations and justice organizations, alongside members of Dale’s family, vehemently disagreed and submitted an open letter to the Deputy Attorney General, Barbara Carmichael,<sup>1</sup> in May 2024, calling for them to reconsider criminal proceedings for manslaughter against the SOs. The letter discussed how Dale’s fear of and fleeing from the police was a reasonable response in the context of historic and contemporary police violence against Indigenous people (BCCLA, 2024, p. 2). It continued “the fact that a benign infraction like riding a bike without a helmet can be the pretext to a death sentence for an Indigenous person is demonstrative of the deeply rooted colonial oppression inflicting harm on Indigenous peoples since contact” (p. 2). The organizations questioned why “the fourth pathologist’s conclusion outweighed the opinion of the other three pathologists who agreed that blunt force head trauma was a contributing cause of Dale’s death” (p. 2) and stated that the evidence and credibility of the experts should be evaluated in court, not decided by BCPS behind closed doors (p. 2). They asserted that “Crown Counsel’s actions and conclusions are indicative of a disturbing trend that BCPS is unwilling to prosecute police officers who kill Indigenous people” (p. 2). The BCPS has until April 2025 to resume charges against Ste-Marie and Monette, but there has been no indication that this option is being seriously considered.

#### ***4.3.3 Jared Lowndes: “the RCMP is going to kill me”***

On July 8, 2021, Jared Lowndes was fatally shot by the RCMP in Campbell River BC (BCPS, 2024d, p. 1). The incident began with an SO noting a “suspicious vehicle” and running the license plate to find that Jared had an arrest warrant for alleged breaches of a conditional sentence order (p. 2). When the SO approached, Jared sped off, hitting the police vehicle in the process, and a search was initiated, eventually locating Jared at a drive-thru in Campbell River (p. 2). After a brief vehicle pursuit through the parking lot, Jared was blocked in by police vehicles, and several SOs approached his vehicle with their guns drawn (p.2). Jared deployed bear spray, causing them to retreat, and continued to try to free his vehicle (p. 6). An SO then lifted a police service dog (PSD), Gator, into Jared’s vehicle through the open driver’s window, and Jared stabbed the PSD with a knife as well as the arm of an SO when they reached back into the vehicle (p. 2). Although it is not acknowledged in the clear statement, according to his family, Jared’s own young dog, a puppy, was also in the car and they believed that he may have been trying to protect it from the PSD (Klukas, 2021; St. Denis 2024).

Officers were yelling commands at Jared, including to come out of the vehicle, show his hands and drop the knife, and deployed a taser twice with no effect (pp. 2, 6). Jared responded that “I’m not coming out, just fucking kill me” (p. 6). Moments later, Jared opened the vehicle door and pushed the PSD out of the vehicle, then began to step out, with the knife still in his hand (pp. 3, 7). With one foot on the ground, Jared was shot in the back and then was “likely” run over (pp. 3, 7). Twelve hours after his death, Jared’s body remained on the ground at the drive-thru, uncovered, and witnessed by his friends and family, with a friend, Heckett, sharing with the media that “his face wasn’t recognizable, the cops had shot him in the face,” and that he sees this image every time he closes his eyes (Auger, 2021). While Jared’s body still

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<sup>1</sup> Barbara Carmichael is the Deputy Attorney General, but is referred to as the Assistant Deputy Attorney General in the letter.

laid on the ground, the RCMP, ambulances, fire trucks and locals paraded in honor of the killed PSD, but Jared's mother, Holland, stated "we know their grief and outrage over a dead dog is actually a thinly veiled celebration that an Indigenous man was shot in the head and face and killed" (Auger, 2021).

The IIO's investigated Jared's death (2017-179) and, in December 2022, released a statement that the case would be sent to BCPS for consideration of charges, stating that "reasonable grounds exist to believe that three officers may have committed offences in relation to various uses of force" (IIO, 2022b). This foretelling that charges had not yet, but would be referred was uncharacteristic for IIO, as these decisions are typically only announced when the report is submitted to BCPS. Nearly a year later and 27 months after Jared's death, in October 2023, IIO submitted the case to BCPS for consideration of charges (BCPS, 2023c). In April 2024, two years and nine months after Jared's death, the BCPS announced that no charges would be laid and released a clear statement (BCPS, 2024d). Unlike Dale and Myles' deaths, the BCPS did not utilize the lower charge assessment policy due to public interest factors and instead based their evaluation of charges on determination of substantial likelihood of conviction; no rationale for this decision was provided (BCPS, 2023c, p. 3). The charges considered by BCPS against three SOs were manslaughter, discharge of a firearm with intent, assault with a weapon and aggravated assault.

The clear statement provides insight into BCPS' evaluation of police actions and insists that it was "clear the SOs had reasonable grounds to perceive that Mr. Lowndes posed a risk to themselves or others," as he had tried to evade arrest and hit a police vehicle, driven dangerously and used bear spray against the officers (BCPS, 2024d, p. 8). The BCPS questioned whether closing in on him was unreasonable, "as opposed to formulating a tactical plan involving maintaining a perimeter and attempting to have Mr. Lowndes comply with directions to surrender," but as Jared had continued to try to flee, they concluded that "it was not unreasonable to proceed with some urgency to remove him from the vehicle and effect the arrest" (p. 9). The reasonableness of lifting PSD, Gator, into Jared's vehicle was a key consideration within the clear statement, which acknowledges that although there are "exceptionally few scenarios in which it would be an appropriate and proportionate response to deploy a police dog into a vehicle (p. 9)," they could not prove it was unreasonable given the "unique threat matrix faced by the officers during this arrest" (p. 9). Although Jared was shot immediately upon stepping a foot out of his vehicle, the BCPS concluded that "jurisprudence does not require a risk to materialize before the officer acts... the Crown would be unable to prove the decision to use lethal force was made before there was an objectively reasonable risk" (p. 10).

Despite BCPS' conclusion, the intentional lifting of a PSD into a stationary car during the incident raised concerns and consternation. A criminal defence lawyer, Sarah Runyon, involved in several cases where PSDs were deployed stated about the case that "we need to re-evaluate our willingness to accept that a dog can be deployed not simply to trace but to apprehend and confine, when common sense and experience dictates that the likely result is serious bodily harm" (Dickson, 2021). A lawyer for Jared's family, Neil Chantler, raised concerns about how the PSD's use was not in alignment with training (St. Denis, 2024). In 2015, BC had introduced new guidelines for PSD, which state that they should no longer be deployed against those suspected of minor crimes (Dickson, 2021). This change followed a report which noted that PSD are "the leading cause of injury by police forces across British Columbia" (Dickson, 2021).

Unacknowledged in the clear statement was Jared's own foretelling, months prior, about his upcoming death at the hands of police. In January 2021, six months before he was fatally shot by the RCMP, Jared provided a letter to his lawyer for "the Supreme Court, Print Media and Social Media," which outlines the brutality and violence he had experienced at the hands of police and the betrayals and injustices that had marked his experiences before the courts (Justice for Jared, 2021). The letter opens with the statement "my name is Jared Lowndes, I'm First Nations and the RCMP is going to kill me" (Justice for Jared, 2021). In the letter, Jared asserts that he had been falsely charged and had been assaulted, threatened and

had his rights denied by law enforcement, including access to legal counsel and food, and details the abuse and harassment he faced during his time in custody (Justice For Jared, 2021). Jared states that he would die for what he believes in, he will not appear before court until the officers that committed crimes against him are charged and will respond with deadly force if arrest is attempted before then (Justice for Jared, 2021). He states “I am not hiding, I am not running... So kill me if you must, like you have so many of my relatives and people before me, it won’t change the fact there needs to be serious reform of the criminal justice system. How can anyone uphold the law without being held to a higher standard of law?” (Justice for Jared, 2021).

Jared also documented his family history, from 1904 to 2021. The history speaks of the displacement of his ancestors by the RCMP and colonial courts as they sought to clear their land for mining. For decades, his family experienced the devastation of the child apprehensions, which Jared referred to as being hunted by the RCMP and Indian Agents (Justice for Jared, 2021). As a young child, Jared’s mother moved with him to Vancouver where social workers and VPD decided “for me, on the spot that it would be in my best interest if they could get me to a white family to be ‘raised’ properly” (Justice for Jared, 2021). So began Jared’s journey within foster care, group homes “and even worse” (Justice for Jared, 2021). In government “care”, he experienced physical, mental and sexual abuse and, in one group home, he “defended himself from abuse and was charged with assault (Justice for Jared, 2021).” This was not the only time that Jared would be charged with assault as a minor for defending himself from abuse. At 13, after being released from custody, “the ministry tells me they can no longer ‘help’ me” (Justice For Jared, 2021). Jared wrote of his inability to trust after decades of violation and betrayal by those who should have kept him safe, and his journey to sobriety in the last eight years of his life (Justice for Jared, 2021). Jared finishes his family’s history, stating “my daughter, dog and I are now broke, and homeless, left to wander until our car breaks down” (Justice for Jared, 2021).

The day of Jared’s death, the RCMP made a public statement honoring the death of PSD Gator, and the following days and weeks, along with the National Police Federation, held a procession, set up memorials and posted on social media, drawing extensive media attention (Klukas, 2021; Feagan, 2021; Gibson, 2021). Four days after his death, the National Police Federation’s president, Brian Sauv , made a public statement directed at Jared’s family entitled “Campbell River RCMP Response Protected Residents, Community and Officers,” in which he offered the family condolences, but emphasizing that “if Mr. Lowndes had not, however, evaded police, stabbed PSD Gator and injured an RCMP officer, and instead turned himself to the Courts to comply with a Warrant for weapons offences, he could be alive today” (National Police Federation, 2021). The details of Jared’s warrant were not public knowledge at that point, due to the ongoing investigation (Klukas, 2021). A close friend of Jared, Fay Blaney, told media that the NPF “had no business prematurely stating a verdict of the situation when the IIO is still investigating... They’re trying to control the narrative” (Baker, 2021). Homalco Nation’s Chief Darren Blaney told the media “I think an arrest warrant shouldn’t be a death sentence,” and that he was distressed by the negativity towards Jared on social meeting in the aftermath of the shooting (Baker, 2021).

Nearly two weeks after Jared’s death, a group of mourners, including his family marched with his ashes through Campbell River, stopping at the RCMP detachment where a memorial to PSD Gator stood (Klukas, 2021). Jared’s mother confronted several RCMP officers, stating “you were created to control and kill Indians and you have not stopped” (Baker, 2021), while his family shared that the RCMP and media focus on the loss of Gator’s life, rather than Jared’s, had made them a target for racist comments (Klukas, 2021). When the mourners’ procession moved on to the Tim Hortons where Jared was killed, they found that part of his memorial had been ripped and defaced, including his daughter’s goodbye notes; this had happened multiple times, including days earlier when it had been dismantled and replaced by a memorial for the PSD (Klukas, 2021; Auger, 2021). As the gathering closed, the mourners were harassed by a woman in a car yelling at them about how Gator’s life was more valuable than that of a “violent criminal” (Auger, 2021). Grand Chief Stewart Phillip, the President of the Union of BC Indian

Chiefs (UBCIC), stated “Jared Lowndes endured unchecked racism, violence, sexual and physical abuse, and mistreatment from the foster and criminal justice systems throughout his life. He deserves to have his name spoken out loud and his life remembered – that a dog would receive more news coverage and be prioritized over his life is unspeakable and unconscionable” (UBCIC, 2021). The UBCIC also pointed out that “the dehumanizing treatment of Jared by the police and media is profoundly disturbing and indicative of deeply entrenched racism and discrimination,” in which Jared’s humanity, including “his fatherhood and involvement with his Indigenous community” has been “excised from the narrative,” while the PSD received a publicly funded memorial parade (UBCIC, 2021).

Jared’s death provoked widespread outrage and calls for justice from his family, First Nations, advocacy organizations and individuals, escalating after BCPS declined to lay charges. The joint letter by First Nations and justice organizations, as well as the families of Jared and Dale, referenced above, called out BCPS’ decision to not use the lower charge standard, stating that it should “always apply in police-involved deaths, and it is in the public interest to do so” (BCCLA, 2024). The letter accused Crown Counsel substituting “their own subjective view of the ultimate weight or credibility of evidence, usurping the role of judge or jury” (BCCLA, 2024). The First Nations Leadership Council, composed of three high-profile First Nations political organization in BC, released several statements, with calls for justice and accountability shortly after Jared’s death, and outrage at BCPS’ decision to not prosecute (BC Assembly of First Nations [BCAFN], 2024a; BCAFN, 2024b, UBCIC, 2021). After being informed that no charges would be laid and being offered victim support services by BCPS, Jared’s mother, Laura Holland, shared her indignation with the media, stating “Do I look like a victim? Can victim support workers give me access to the same money and lawyers that the police have? No... it has been 1,020 days that I have waited to hear what proposed charges might be — and there are none” (St. Denis, 2024). Her lawyer, Neil Chantler, also expressed shock, stating “this was a case that we all thought clearly met that standard from the outside and should have gone to a trial — this is one of those cases where we would have liked to see justice be done in the open” (St. Denis, 2024).

The movement created a website “Justice for Jared” that provides allies with information and tools in a “digital bentwood box (Justice for Jared, 2021b)” to support the search for justice and details numerous past actions, including ceremonies, protests, banner drops and art (Justice for Jared, 2021c). The group has six core demands for reform, including disarming the police, always on body cameras, ending the use and abuse of police dogs and the transformation of IIO to include Indigenous oversight and remove former police from the oversight system (Justice for Jared, 2021d). PIVOT Legal Society also hosts a letter that allies can send to the BC political leaders to call for a public inquiry into the disproportionate killings of Indigenous people and the creation of a Canada-wide tracking system of police-involved deaths and serious injuries (PIVOT, 2024). In July 2023, Jared’s family filed a civil lawsuit against the Ministry of Public Safety and four RCMP officers seeking damages, which his mother calls “a message for the RCMP – you cannot keep killing us” (PIVOT, 2023).

After BCPS’ announcement that no charges would be laid, the former CCD of the IIO, MacDonald, spoke to media about the case and publicly pled for the government to review BCPS’ decisions in the cases referred by IIO. MacDonald assessed Jared’s case as meeting the standard for a charge report based on the totality of police actions, referencing the need for de-escalation, the deployment of the PSD into his car and the fatal gunshots as Jared exited his vehicle with a knife as key factors (St. Denis & Follett Hosgood, 2024). MacDonald identified that the system is weighted in police’s favor, including that the BCPS requires the IIO to utilize use of force experts in these cases, who are all current or former police officers (St. Denis & Follett Hosgood, 2024). Regional Chief Terry Teegee of the BC Assembly of First Nations stated “we are here yet again at the helm of closed-door investigations that uphold instead of dismantle the colonial and racist institution of the RCMP. We cannot accept these decisions as the status quo, and we demand immediate answers for Jared’s family” (BCAFN, 2024a). Jared’s mother thinks of her son’s final moments, stating “imagine, after being rammed by several vehicles and an attack dog jumping

through the window to maul your own puppy, with no way out of smashed-in doors, and being yelled at by police, who have been created to control and kill Indians. In this mass chaos, what would anyone be expected to do? Stop and think?" (Auger, 2021).

#### **4.3.4 Conclusion**

By examining the deaths of Myles Gray, Dale Culver and Jared Lowndes, this research takes a deeper look inside the police oversight system, exposing barriers faced in the search for justice. In many ways, these cases highlight the commonality of police being called to support people struggling with their mental health or substance use, but instead delivering escalation, violence and even death. Myles, Dale and Jared each lived complex lives, with Jared experiencing violence at the hands of police and Canadian state, Myles living with bipolar disorder, and Dale dying with methamphetamine in his system. As discussed in the literature review, police are often the only option available when concerns arise about the safety of someone in a mental health crisis or under the influence substances. Yet, throughout the study period, these calls for help often ended with IIO investigations into serious harm or deaths, with over half of BCPS clear statements where charges were not laid referring to the mental health or substance use of the AP. In Myles and Dale's cases, excited delirium was relied on as a potential cause of death, despite the evidence, widely available in 2020 and 2024 when BCPS made their determinations, about its problematic and unevidenced basis. Furthermore, the manslaughter charges were stayed against SOs Ste-Marie and Monnette for Dale's death when one out of four pathologists ruled methamphetamine toxicity to be the cause of death.

Each case also exposes the management of narratives by police leaders and organizations, with VPD's statement the day of Myles' death making inaccurate claims about injuries to SOs, the RCMP and National Police Federation focusing on the death of a dog over Jared and the NPF airing details of Jared's arrest warrant while an investigation was underway. The investigation into Myles' death also highlighted the role of police unions, with two union representatives telling SOs to breach policy and not submit their notes; both former representatives are now in leadership positions, one as the head of the local union and the other as the president of a national policing organization. In Myles and Dale's cases, SOs and WOs testimony raised questions for the obvious inconsistencies, with BCPS noting the inconsistencies in narratives of WOs involved in Myles' death, and SO Dalman called out by a judge for copying another SOs statement and lying under oath, while SO Cruz's testimony raised suspicions for the judge during the trial for obstruction of justice around Dale's death.

The "resistance" of Myles, Dale and Jared also seems to be perceived from a particular lens, with even the BCPS noting about Dale's movements while being arrested that "it is unclear if this was because he was resisting or being beaten is hard to say" (BCPS, 2024b, p. 6). Yet, the benefit of the doubt is given to the officers, with "use of force experts" seeming to rationalize any level of violence and harm, as long as there was enough resistance and perception of risk by the SOs (BCPS, 2020a, p. 9; BCPS, 2024b, p. 12). The multitude of concerns about BCPS' potential biases and flawed evaluation of Dale and Jared's cases led the collective of First Nations and justice organizations, alongside their families, to call for the appointment of an Indigenous Special Prosecutor or an Indigenous lawyer to serve as second chair to a Special Prosecutor, as is necessary for public interest, the administration of justice and reconciliation (BCCLA, 2024, p. 5). In response to the deaths of Jared and Dale, First Nations leadership and justice organizations have also launched a petition and call for a national and provincial inquiry into police-involved killings of Indigenous people and a nationwide tracking system for police-related incidents of serious harm and death (PIVOT, 2024).

These three cases also highlight the frequency of over-lapping oversight processes and multiple cases against SOs. In Myles' case, at least four SOs had previously been involved in alleged violence and criminal conduct (Lindsay, 2022a), while SO Ste-Marie was found guilty of assault in another case days after his charges for Dale's death were stayed (Hosgood, 2024). In Jared's case, the names of the SOs

remain unknown, preventing this analysis. As the proceedings of the OPCC and CRCC occur behind closed doors, it is only when this information is provided to media, often by the families of APs, that we are able to glimpse inside these hidden processes. These cases also highlight the disproportionate harm faced by Indigenous people at the hands of law enforcement, as both Jared and Dale were First Nations men. The incident that sparked Dale's death was not wearing a bicycle helmet and not wanting to speak to police – two choices that are frequently made by members of the public without deadly consequences. Jared's case also exposed the horrifying racism that families and communities of those harmed by police can be faced with, both in their search for justice, but also in simply honoring their deceased relative.

In each of these cases, the families and communities of the deceased sought justice through a multitude of avenues, but consistently express frustration and a sense of betrayal with the bureaucratic, inflexible, slow-moving police oversight system. Although these layers of the oversight system, including the OPCC and CRCC, should provide additional scrutiny and accountability, they are cloaked in secrecy, with the outcome of OPCC hearings into Myles' death not publicly available, and no information publicly available about CRCC processes in Dale and Jared's deaths. The families and communities of Myles, Dale and Jared waited years in hopes of justice, but all expressed disappointment and betrayal with the processes, decisions and outcomes of the police oversight system. Through the three cases, there was a clear theme of widespread public outrage and calls for accountability and justice. All three cases were egregious, but the families, communities and general public still there were no trials for causing these deaths, with only SOs Dalman and Cruz facing the courts for obstructing justice.

#### ***Chapter 4.4: Interview with Ronald MacDonald, former Chief Civilian Director of the IIO***

In October 2024, the researcher and MacDonald met virtually to discuss the police oversight system. MacDonald was selected as the sole interviewee for this research given his unique and expansive perspective as the head of IIO from 2017 to 2024, spanning the majority of the study period. In addition to his role as the Chief Civilian Director (CCD) of IIO, MacDonald previously worked as a defense lawyer in a law firm for six years, a senior Crown Counsel for Nova Scotia's Public Prosecution Service for 17 years, a Council Member and President of the Federation of Law Societies of Canada for nearly nine years, and as the Director of Nova Scotia's Serious Incident Response Team for nearly seven years. While future research could benefit from the insights of Crown Counsel, there was and is not a consistent individual accountable for BCPS decisions when IIO refers charges, while MacDonald was responsible for all IIO investigations and referrals from 2017 to 2024. The interview with MacDonald focused on several key areas, including IIO investigations, the dynamics between IIO and BCPS, considerations for prosecuting police and the future of oversight. This chapter will summarize MacDonald's insights as well as providing direct quotes.

##### ***4.4.1 IIO Investigations: Outcomes and Barriers***

The interview began by discussing the outcomes of IIO investigations, with questions about the predominance of charges and convictions under the *Motor Vehicle Act* and the infrequency of use of force related charges and convictions. MacDonald confirmed that the only two convictions for use of force (assault) were for incidents that occurred a decade ago, and that,

There has never been a conviction in a contested case of use of force ever in the history of the IIO. In fact, there was never a conviction in a contested case of any sort in the history of the IIO until earlier this past summer when there was the conviction for obstruction of justice in the matter involving the death of Dale Culver. So, those are very stark statistics.<sup>2</sup>

These statements about IIO extend beyond the timeframe of this research but confirm that the patterns of guilty pleas instead of trials and an absence of convictions for use of force related charges, as observed in Chapter 4.2, were not unique to or a feature of the study period, but indicative of IIO's outcomes – or lack thereof – since its inception. In this context, SOs are convicted when they pled guilty, but the system has not shown itself to be effective in prosecuting cases through trials – an essential component of fulfilling the goals of increasing transparency and public trust in policing and oversight.

When asked why IIO's processes have primarily resulted in convictions related to contraventions of the *MVA*, MacDonald shared a variety of factors that contribute to these outcomes. In *MVA* cases, there does not need to be a criminal act and there frequently is not one, which is true of cases against police as well as other individuals. These cases often hinge on a mistake made by an officer, rather than an intentional crime. Additionally, *MVA* cases are quasi-criminal, with a more limited defence, and are strict liability offences, which means that the offence can be committed without intention to commit it. For these reasons, "a conviction under the *Motor Vehicle Act* does not carry same type of stigma as does one under the *Criminal Code*." Many of these cases result in guilty pleas, including those where the SO was charged with dangerous driving under the *Criminal Code*, but pled down to *MVA*. Ultimately, these cases can be "easier to get convictions in."

MacDonald discussed the much lower rate of charge approval by BCPS of investigations referred by IIO, especially for incidents of use of force, than the charge approval rate for cases referred by the police, calling these "concerning statistics." He stated, "I think the real issue here is that the cases of serious harm

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<sup>2</sup> The referenced conviction for obstruction of justice was against Constable Dalman in July 2024 in the case of Dale Culver's death, but, as discussed in Chapter 4.3, the defence is seeking to stay the conviction due to the long delays in the prosecution of this case. If this conviction is overturned, the police oversight system's pattern of not convicting any SOs in contested cases will continue.

and death aren't being approved enough for charges," and that none of them, where the approved charges were contested, have ever resulted in a conviction. MacDonald shared his definition of effective oversight in this context, stating "oversight works when it: a) it publicly and transparently clears an officer so the public can understand why the officer was not charged" and b) when officers who ought to be held accountable, are held accountable. MacDonald clarified that although "that is the minority of cases, but nevertheless there are those types of cases, it's [accountability] not happening enough in this country... It needs to happen more often." Although IIO was intended to fulfill both goals, MacDonald shared that "in general, I don't think there are as many police being held accountable for excessive use of force cases in British Columbia as was expected would happen."

When interviewer asked MacDonald about barriers faced by IIO, he identified the restriction on hiring current and former police as investigators, as applicants are required to not have worked in policing for at least five years. He clarified that while there are benefits to having investigators who do not have policing backgrounds, he believes IIO can benefit from hiring former police with years of experience in investigating violent crimes and dealing with difficult witnesses. MacDonald stated, "there simply is not that level of experience at the IIO and that slows things down and leads to, in my view, a situation where the investigations take longer and may not be as challenging to the individual officers who are giving evidence or witness officers as they might be if the IIO had more experience." Although not all former police are suitable for roles in oversight, some bring a level of expertise that can be utilized and shared with other investigators to strengthen their ability to question, where appropriate, the actions of police. In MacDonald's opinion, the lack of this police-specific experience within IIO results in longer investigations, causing IIO to lose out on potential benefits to its overall effectiveness. Overall, MacDonald's concerns about the outcomes of the oversight system and the lack of public trials for excessive use of force echo those of the families and communities of APs, as discussed in Chapter 4.3, while his concerns about restrictions on hiring former or current police are markedly different and align more closely with law enforcement stakeholders, as discussed in Chapter 2 (Background).

#### **4.4.2 Dynamic with BCPS**

Given the low charge approval rate and indicators of tension between the two organizations, as discussed in Chapters 2, 4.2 and 4.3, MacDonald was asked about his perspective on the dynamic and the working relationship between the BCPS and IIO. MacDonald shared that during his time at IIO, there was a working relationship between the two organizations, but "did I think that BC Prosecution Service listened to the opinions we offered them often enough about cases? No." MacDonald was asked about his perspective on why IIO's recommendations often do not result in charges being laid, such as different standards, assessments or approaches between the two organizations. MacDonald clarified that technically the two organizations follow different assessment standards, with IIO requiring reasonable grounds to believe an offence was committed, while BCPS requires the higher standard of substantial likelihood of conviction, but that, given his extensive experience in prosecution and oversight, he was always confident when he referred a case that it could meet the BCPS standard.

MacDonald raised that although BCPS has the highest charge assessment standard in the country, which one would expect to weed out cases that are unlikely to result in a conviction, BC has the lowest rate of conviction compared to the other provinces – Quebec and New Brunswick – that follow the same process of requiring Crown approval before laying charges. The researcher followed up on this assertion and found, as shown in Table 33 below, that of *Criminal Code* prosecutions, BC had the lowest rate of findings of guilt in court between 2016 and 2023 of the three jurisdictions, although data from Quebec is not available for the most recent two years (Statistics Canada, 2024).

*Table 33: Conviction Rates by Year in BC, Quebec and New Brunswick*

Conviction Rates by Year	BC	Quebec	New Brunswick
2016/2017	70.55%	73.15%	79.01%
2017/2018	71.11%	71.35%	77.75%
2018/2019	69.67%	73.09%	77.65%
2019/2020	68.41%	77.01%	75.97%
2020/2021	61.52%	71.19%	72.53%
2021/2022	66.54%	NA	71.98%
2022/2023	66.20%	NA	71.46%

Despite BC having a higher standard for charging than IIO has for referrals and the highest charge assessment standard in the country, MacDonald pointed out that the lower standard of reasonable prospect of conviction that is used across most Canadian jurisdictions is available to BCPS but is generally not applied. He continued that this a tool at BCPS’ disposal to bring more cases before the courts to test them in a public forum. In his view, almost all use of force cases that result in serious harm or death have significant public interest, but BCPS routinely does not apply the lower, public interest standard and “therefore is routinely saying that these cases do not meet the test of significant public interest.” He concluded “this is yet another example of where BC Prosecution Service and I don’t agree.” Even with the standard of a substantial likelihood of conviction, he stated that “they [BCPS] apply the test in a different way than I would in their shoes” and insisted that part of this stems from his wealth of experience with police over his years as a defense lawyer and Crown prosecutor and within the police oversight system in Nova Scotia.

Returning to the working relationship between the two organizations, McDonald stated that,

For whatever reason, it was rare for us to be asked by the Prosecution Service for our views on, for example, witness officer evidence, if it was evidence that could be effectively challenged in court and, if so, how. Even though we had all that experience, it was rare for us to be asked how to bring forward a challenge to that evidence if necessary. The approach taken by the Prosecution Service in BC, in my view, could have been much more collaborative than it was. While we were always entitled to make our representations, it didn’t seem to be a two-way street.

When questioned further about the divergence in perspectives, MacDonald stated that,

In cases where charges were not approved by the Crown and I felt that it was a decision that I didn’t agree with, and there were many of those, but I didn’t speak of them publicly at the time, it generally came down to what views I or we at the IIO had on the evidence as opposed to the view taken by the Prosecution Service.

He continued,

The key is that if we’re going to make change, if we agree as a system, and we do, that the accountability of police needs to be improved in this country, then we need to start taking an approach that more carefully examines police evidence and then all of the evidence and utilizes that evidence to a full extent in an effort to ensure accountability is applied in the right cases.

He clarified,

I’m not saying that every case should be taken to court, but when the line is crossed, it should go to court. That’s what the police, for the most part, want too, and I believe, in this country, we are not successful in Canada in doing that, in having the right amount of accountability, when appropriate.

Overall, MacDonald painted a picture of a working relationship that functions on paper but is not collaborative or effectively coordinated to leverage expertise and move forward cases.

#### **4.4.3 Prosecutions of Police**

A core area of discussion with MacDonald was the prosecutions of police, including current barriers or issues with the system and opportunities for improvement. MacDonald called for measures to address the “inertia in the justice system” that he believes is in favour of police. This inertia is not a conscious issue, but “typically we know that state institutions resist challenge just because of the fact that they are the authoritative body.” This is especially pertinent with police, who benefit from this inertia in prosecutions and deference to those in authority. In the context of oversight, MacDonald stated that this situation calls for careful, thoughtful planning for prosecution and new approaches taken, as well as prosecutors who are prepared to take on difficult cases and “consult carefully with those in oversight to understand fully what happens when police are asked to give testimony.” According to MacDonald, unfortunately “that is just not happening in Canada enough.”

Another core issue that must be addressed is the under-resourcing of prosecutions of police. While there are examples of effective, well-resourced prosecutions, there are,

Too many examples where the resources that prosecution services are applying to our cases are insufficient... a use of force case, even if its just an assault case, can sometimes take a significant amount of resourcing from a Crown office and I believe that the failure to make those resources available is impacting the decisions that are being made because often cases that are approved by oversight bodies for charge or forwarded for charge are not being carried forward by the Crown.

They are not even being taken to court.

The need for new approaches and sufficient resourcing were not the only issues MacDonald identified in the current approach to prosecuting police.

MacDonald called for examination of the type of prosecutor used for these cases and suggested that “the persons who are taking on these cases must be the most experienced prosecutors you have; they must be those who have demonstrated ability to use all the resources at their disposal to appropriately prosecute a case.” MacDonald clarified that he is not suggesting that cases be prosecuted where there is not a reasonable prospect of conviction, but that he has seen

Far, far, far too many decisions made by prosecution services across this country that say there is no reasonable prospect of conviction, where I and others who are as experienced as me and who are experienced prosecutors are saying that decision simply is not reasonable. There are far, far too many of those cases for me to accept that we have the right people prosecuting these cases.

We need persons who are the most experienced, who have a track record of being able to take on difficult cases and push them forward appropriately. And that is not happening.

MacDonald identified this as the core reason why more cases do not go before the courts. In this way, MacDonald’s calls for change align with the calls of many individuals, families, communities and advocacy organizations – for trials of officers accused of misuse of force to occur in the public view, with the evidence heard and challenged before the courts, rather than defaulting to cautious approaches and plea deals made behind closed doors.

MacDonald continued that,

The BC Prosecution Service works daily with police, and they are their witnesses in almost all their cases, and that creates an appearance of conflict. I know that that appearance of conflict is real in the minds of many of the families I have spoken to in cases where the matters have not gone forward for charge. It is a real and significant issue.

McDonald shared that he has read decisions from the BCPS where he believes that their daily dealings with police and lack of experience challenging police, as is done at IIO and by independent prosecutors, inhibited their ability to properly assess cases for charge. He referenced cases where BCPS determinations to not prosecute relied heavily on reports from the SOs. He continued “I would suggest that while obviously you should read potential accused’s statements and determine what role that plays,

its very common in criminal justice system that you look at a statement from a potential accused with grains of salt,” but that instead the BCPS often gives a significant weight to SO statements. He recommended that in each case, independent prosecutors should be hired who are very experienced criminal lawyers that understand how to push a case forward and how to challenge police, where appropriate, and meet the goal of the IIO to bring forward, where appropriate, cases of excessive use of force to the courts. Referencing his significant experience in prosecution, MacDonald insisted that when he referred to BCPS, it was for cases that, in his opinion and that of his two legal counsels, could be prosecuted, and that “while I did not expect that every single time there would be agreement one with my opinion... one would have expected it to be agreed with more often than it was.”

While Crown decisions are and are intended to be an exercise in discretion, it is “incredibly important to ensure that any appearance of bias is eliminated” and, in cases involving allegations of police criminal conduct, it ought to be exercised by the most highly trained and experienced prosecutors. MacDonald’s recommendation for independent prosecutors stems from the Braidwood Commission into the death of Robert Dziekanski, which called for the creation of a province-wide, fully civilian body to investigate police-related incidents of death, serious harm and contraventions of the Criminal Code and served as the impetus for the creation of IIO. As MacDonald clarified, although Justice Braidwood’s core recommendation for the creation of IIO was carried out, his recommendation for these cases to be assigned to a special prosecutor rather than the BCPS due to the potential for real or perceived conflict of interest remains unfulfilled (2010, pp. 26, 421-422). Braidwood stated that,

It would in my view be inappropriate for lawyers within that branch [Criminal Justice Branch] to make charge assessment decisions in police-related incidents. In such sensitive matters, it only takes a perception of conflict of interest to undermine public confidence. I am also uncomfortable with the director of the independent investigative body making charge assessment decisions. British Columbia has a long and respected tradition of keeping the police investigatory and the quasi-judicial charge assessment roles separate. It would in my view be a regrettable blurring of those roles for the director of the independent investigative body to make charge assessment decisions. For these reasons, I have concluded that in every police-related incident that is assigned to the proposed independent investigative body, a special prosecutor should be appointed... and should, if charges are approved, assume conduct of the prosecution (2010, pp. 421-422).

This approach could also address MacDonald’s concerns about the level of experience of many Crown decision-makers in these cases, who he insists must be the most experienced front-line prosecutors with demonstrated ability to deal with difficult cases, as it is “incredibly important for the appearance of objectivity.” He concluded, “the key is, is the BCPS the right agency to be prosecuting these cases? I suggest that Justice Braidwood has already answered that question and that is that there ought to be independent prosecutors appointed in each case.”

When queried on how the BC could utilize independent prosecutors effectively, MacDonald recommended the creation of “a stable of independent prosecutors who are carefully vetted and have demonstrated experience and abilities.” While a specialized unit within BCPS could also be useful, it requires the right people to be assigned to it. Currently, BCPS has a specific unit that handles these cases regarding police, but MacDonald clarified that,

I don’t believe that the unit has the type of experience I’m talking about. The right experience and attitude and abilities to carry out all these challenges, in addition, be prepared to work with IIO to understand and learn about investigations of police and how those go, trends those bodies see in ways officers come forward and give evidence.

He further clarified that it comes down to the level of experience, not the individuals, and that maintaining regular contact and close working relationships are essential to understand the context and

trends in oversight, broadly and for specific cases. He continued that there is precedent for this, with specialized units responsible for cases such as sexual assaults, domestic violence, murders and gangs in BC, and “nobody bats an eye at ensuring that those teams are highly trained, that they have great deal of education and training from the police who can explain to them the type of situations that they’ll end up prosecuting.” He continued, “that’s fully appropriate. The same has to apply to holding police accountable where necessary and yet it doesn’t.” Ultimately, MacDonald proposed increased resourcing, new approaches to prosecution and a vetted stable of independent prosecutors as the best path forward due to the complexities and challenges of prosecuting police. He concluded, “there is still a lot of change that is necessary in Canada with respect to the oversight of police. While the move towards civilian oversight now in every province is a very good thing, it is still not where it needs to be.”

#### ***4.4.4 The Future of Oversight***

When asked about his thoughts for the future of oversight and opportunities for improvements, MacDonald made three system-level recommendations as well as one recommendation for police training and one regarding IIO’s mandate. First, funding is a persistent issue that must be addressed and “governments do not resource oversight of police sufficiently.” While there was a “bump” in IIO funding during his tenure, MacDonald noted the discrepancy between ever growing budgets for police services and insufficient resources for police oversight. He emphasized that the tangible result of this lack of resourcing is delays in IIO investigations. To fulfill its role effectively, IIO must recruit and retain highly skilled individuals to work as investigators as well as have the capacity to move forward this highly administratively complex work. MacDonald concluded that this is not merely a BC problem, as across Canada oversight bodies are under-resourced.

Second, MacDonald reiterated his calls for new approaches to the prosecution of police to challenge the inertia that plagues the justice system, especially in cases of alleged police criminal conduct. As stated above; to achieve this, prosecutions of police must be better resourced and careful consideration must be given to who is prosecuting police and exercising the discretionary power of the Crown in these cases. MacDonald recommended that these cases to be moved forward by the most experienced prosecutors with a demonstrated ability to use all resources at their disposal and a history of challenging police and tackling complex cases with difficult witnesses. These prosecutors must also be willing and able to work closely with IIO and oversight bodies to leverage their expertise and evidence for a coordinated, effective approach. MacDonald’s recommendation echoes the call of Justice Braidwood in 2010 for the use of independent prosecutors to reduce any perceived or real bias. With the creation of a stable of vetted, highly skilled prosecutors with extensive experience in complex case and challenging police, rather than working with them, MacDonald suggested that the oversight system would see more charges laid and more assertive prosecutions.

Third, MacDonald identified that there are “challenges to the law that need to be taken.” He referred to areas where the status quo should be challenged, especially the use of police-based use of force opinions, which are relied on heavily by some courts and some Crown offices. He continued,

Typically, use of force experts that testify in court in Canada are either current or former police, which certainly raises questions about their objectivity. More importantly, I believe in most of those cases, the evidence is not necessary because it goes to issue of reasonableness and that’s the court’s job, and the court can figure that out.

He contrasted prosecutions of police for use of force with alleged assaults that occur in other contexts, such a bar fight, where the courts do not call an expert to weigh in on the force used by one person against another. For use of force by police, “the law says very clearly that the test is that it must be reasonable, necessary and proportionate.” In these cases, the courts must evaluate if the level of force used was necessary to accomplish the SOs goal, such as arrest or obtaining compliance, and the force must also be proportionate to the risk that is being faced. MacDonald provided an example of a case where two officers

were holding down a small-framed AP, who slapped one of the SOs during her arrest. The SO responded with a full force, closed fist blow to the AP's face. In this example, a use of force expert called by the Crown stated that, as the slap constituted a form of assaultive force, the blow was consistent with use of force training. But, in MacDonald's view, while a response was needed, the closed fist blow to the AP's face was not a reasonable or proportionate, or necessary to obtain compliance, as one of the SOs could simply have held down her arm. In this case, the SO was acquitted, which MacDonald believes was largely due to the use of force expert's opinion. MacDonald stated the role of use of force experts need to be challenged by the Crown and new precedents must be set to clarify the specific circumstances where these experts contribute to the trials in relevant ways, such as explaining technicalities or scientific factors, but not to explain reasonableness.

MacDonald was also asked about the high prevalence of IIO investigations involving APs in mental health crises and/or under the influence of substance, and any suggestions to improve outcomes. He stated that this is a complex area but suggested that police use of force training is a crucial factor. He explained that "I believe in Canada we need to do a much better job training police to use critical thinking in their approach to each and every interaction they have with the public." He continued that people naturally reach conclusions quickly, especially in circumstances that may be dangerous and are quickly evolving, and "may automatically jump to one that offers you the greatest amount of protection, which is a forceful response, but I believe we need to do a better job through real life simulation training." He suggested that this could reduce both injuries of police and of the public by police. He continued that this also involves ensuring that "the culture of police is one that ensures that persons are always dealt with respect and from a point of view of how can we bring about this situation in as peaceful manner and as safe a manner as possible for everyone concerned." He concluded, "the culture of police plays a large role in that and there are different cultures in different agencies even within BC. And I've seen the difference it makes on the ground." In this area, MacDonald suggestions share similarities with calls of SCORPA for education and training to shift police culture and improve services for individuals in crisis (BC Legislative Assembly, 2022, pp. 10-11).

Finally, MacDonald shared his thoughts around IIO's mandate, stating that the "IIO should be responsible for domestic violence and sexual assault cases. I said that since my first day there." This links to his first recommendation, as it will require significant resourcing to expand IIO's capacity with specialized, highly trained investigators to take on these complex cases, including those with police-training. In closing, MacDonald was asked about IIO's effectiveness in achieving its goals of increasing public confidence, accountability and transparency in policing in BC. MacDonald stated that:

I thought we did quite a good job in those cases where police didn't commit offences. I think we were as transparent as we could be. We were proactive and open with media and certainly had no problem meeting with families, affected persons and communities. We did our best. Could have done better? Always, but I think the attitude of IIO while I was there that we were always willing to listen and try to do better. I think on the side of clearing police officers we did a pretty good job. That doesn't mean that everybody always agrees with us, but I think that helped with confidence in the police. But on the accountability side, no. A good job did not happen.

He reiterated earlier points about the need for better resources and faster investigations, stating that, Any issue that's ever been identified with IIO's ability to do its work has always been acknowledged. When I was there, we always said, yes, we need to do better there, but we tried. Sometimes it takes some time and sometimes it needs more money, but we tried. However, then there's the Prosecution Service side of that. So, I think right now, in BC, certainly the accountability of police in the area of use of force is failing. Since 2013 there's never been a conviction for use of force, at all. That's 11 years and police aren't perfect.<sup>3</sup> I'm talking about IIO

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<sup>3</sup> The referenced cases were for incidents occurring in 2014, not 2013, and it has been 10 years, not 11, since they occurred.

cases, there has been a case or two that involved assaults that didn't result in serious harm or deaths that we didn't deal with. So, clearly the system is not working.

MacDonald shared that, prior to leaving the IIO, he submitted a report to the Minister of Public Safety and Attorney General outlining his concerns regarding “how the Crown office handled IIO cases” and requesting steps be taken to remedy the situation. He concluded “right now, oversight in this country isn't working the way it should, for the reasons I've mentioned. And I'm not sure if governments care enough about it or not. We'll have to wait and see.”

#### ***4.4.5 Conclusion***

The interview with Ronald MacDonald serves as a final layer to this research, building upon the literature review, jurisdictional scan, quantitative analysis, and case studies. While the feedback of MacDonald was unique in many ways, it also echoed themes and statements evident throughout the earlier layers of this research. MacDonald raised concerns about the much lower rate of charge approval by BCPS of investigations referred by IIO, especially for incidents of use of force, than the charge approval rate for cases referred by the police, and shared how his extensive experience in prosecutions and oversight led him to believe that many of these cases were eligible for prosecution. As shown in Chapter 4.2, the BCPS approved IIO referrals for charges in 32.58% of incidents occurring between 2014 and 2021. He called for public trials in contested cases against police, especially for allegations around use of force and death, as essential to upholding transparency and public confidence in the oversight system. He also recommended the use of independent prosecutors with the highest level of experience and skill to take on these complex, high-pressure cases and reduce the perception of bias. His perspective in these areas aligns with the calls made by many individuals, families, communities and advocacy organizations, as evidenced in the Case Studies in Chapter 4.3.

MacDonald also highlighted the need to have better resourcing, both for individual prosecutions, as well as IIO, to ensure that cases are investigated and prosecuted in a timely manner. As shown in Chapter 4.2 and 4.3, this is essential not only for the closure and wellbeing of APs and their communities as well as SOs, as these long, drawn-out processes can cause further harm to individuals wellbeing, but the lack of sufficient funding also creates a risk that delayed processes will result in cases being stayed due to alleged violations of SOs' rights to a trial within a reasonable timeframe. As discussed in the Case Studies, in summer 2024 Constable Dalman was convicted of obstruction of justice seven years after Dale's death but quickly applied for the conviction to be stayed in fall 2024 (Romer, 2024). The hearing for this application is not scheduled to be heard until April 2025, further extending the legal proceedings (Petersen, 2024). Finally, MacDonald echoed the longstanding calls, as discussed in the literature review, for IIO's mandate to include sexual assault as is the norm in oversight bodies across Canada (see Chapter 4.1).

## **Chapter 5: Analysis and Discussion**

### ***5.1.1 Defining the Goals of Police Oversight: A Foundation for Evaluation***

To critically evaluate the police oversight system, the results of this research and outcomes of this system must be measured up to the purposes and goals for which it was created. As discussed in the literature review and interview with former Chief Civilian Director (CCD) MacDonald, the role of the police oversight system is to determine if, and bring accountability when, a Subject Officer (SO) commits a crime. Foundational to successfully completing this role is the system's ability to weed out "bad apples," deter similar behaviour from other officers, and punish law breaking (*Criminal Code*, 1985, s. 718; Roach, 2022, p. 64; Sewell & Williams, 2021, pp. 40-42). While the roles of the system are highly individualistic, reflecting its western colonial context, and do not encompass systemic considerations or remedies, theoretically, the achievement of this role would promote policing that aligns with the rule of law and democratic model of policing (Puddister, 2023; Pino & Wiatrowski, 2006; Smith, 2013).

Like most independent oversight bodies in Canada, the impetus for IIO's creation was high profile, controversial deaths linked to police actions and/or inactions, centering on the deaths of and subsequent public inquiries regarding Robert Dziekanski and Frank Paul (IIO, 2019a). Although the police oversight system is not composed of one organization and therefore does not have explicitly articulated goals, the goals of this system were identified by examining the creation and mandate of IIO, discussions on the future of oversight by SCORPA and the goals of the criminal justice system and other police oversight bodies. The goals of the police oversight system are more expansive than its purpose and reflect the context and intentions that led to its creation. The system's goals are demonstrating police accountability to consistent standards, increasing the transparency of police oversight, and boosting public confidence and trust in both policing and oversight (IIO, 2019a; BC Legislative Assembly, 2022, p. 84). The goals of the police oversight system are intrinsically interlinked, as public confidence and trust hinge on transparent displays of police accountability. In this way, the oversight system is responsible for demonstrating that police are equal before the law and that the system can effectively and efficiently weed out "bad apples," mete out punishments and prevent repeated, unjustifiable harms and deaths at the hands of police. This display is intended to assure the public that they can expect fair, law-abiding police, and accountability when police deviate from these standards. While the statement of Lord Hewart, a Lord Chief Justice of England, that "justice must not only be done, but must manifestly and undoubtably be seen to be done" (*R. v. Sussex Justices, Ex parte McCarthy*, 1924) is regularly reiterated in Canadian courts, it holds special weight in the context of police oversight, where the foundational goals of the oversight system require transparent, public demonstrations of accountability.

In order to analyze the effectiveness of the police oversight system in achieving its goals, the goals themselves must be clearly defined as well as indicators of successfully achieving them. The Merriam-Webster's dictionary defines accountability as "an obligation or willingness to accept responsibility or account for one's actions" (2024). In this context, IIO and BCPS demonstrate the need (or lack thereof) for accountability, while the courts enforce the obligation to accept responsibility and determine what punishments are necessary to account for the harm done. The crucial indicator of this system's effective delivery of accountability are its outcomes, as they demonstrate that police are being held to account by being punished and "weeded out" when their actions are unjustifiable. Also relevant are institutional factors, which uphold or constrain accountability, like mandates and sufficient resources, which are required for the system to function effectively. The goal of accountability is premised on the assumption that police officers do, at times, break the law and commit crimes, which, as outlined in the literature review, is grounded in evidence and widely acknowledged by the political, law enforcement and other stakeholders that supported the creation of this system and participate in efforts to strengthen it.

In the context of police oversight, transparency is rooted in clear, timely information-sharing that invites

the public behind the curtain to witness and judge for themselves the processes and decisions of this system. The police oversight system cannot meet its goals if justice is not seen to be done, and the indicators of this include not only the accessibility of information, but also public perceptions of the transparency of this system, which can be undermined when the system does not appear to function in a cohesive, clear and coordinated manner that upholds a high standard of accountability. Finally, in the context of police oversight, the researcher defines public trust and confidence as the public's belief that police are held to account when they commit crimes and that the oversight system is an effective and transparent vehicle to secure this accountability. Indicators of public trust include polls and statistics on the public perceptions and are reflected in public discourse, including in the media, government statements and actions, and the views of leaders and stakeholders within this space. But unlike accountability and transparency, public trust and confidence cannot be achieved in isolation; it requires the visible fulfilment of the first two goals. If the system demonstrates transparently that it is ineffective in delivering accountability, public trust is undermined. Likewise, if the system delivers accountability, but refuses to publicly demonstrate it and instead conceals processes and decisions from public view, it feeds suspicion and skepticism, destabilizing public trust and confidence.

By defining the intended outcomes of the police oversight system – accountability, transparency, and public trust and confidence – an evaluative framework, against which to measure the results of this research, takes shape. Due to the interconnected and inter-dependent nature of the police oversight system's goals, many indicators within this framework bolster or undermine multiple goals and have institutional and systemic implications, which will be explored with an intersectional lens throughout the discussion. For example, if referral and charge standards are not utilized in a clear and consistent manner and there is frequent confusion around these decisions, transparency, the perception of accountability and public trust may all be undermined. Likewise, the system must not only be impartial but publicly demonstrate its impartiality and that investigations and prosecutions are moved forward with the same force of the law against police as those who do not work in law enforcement. If not, the public perception of this system's commitment to the rule of law may be undermined, along with perceptions of transparency, accountability and trustworthiness. This discussion will serve as the basis for the recommendations in Chapter 6 and will note the link between its analysis and the relevant recommendation in brackets.

### ***5.1.2 Demonstrating Accountability? The Police Oversight System's Outcomes, 2014-2021***

The system's struggle to demonstrate accountability was evident throughout Chapter 4.2, which delved into the outcomes of the police oversight system, quantitatively analyzing the data from each decision-making stage: IIO referrals, BCPS charge decisions and court verdicts. Between January 1, 2014, and December 31, 2021, the oversight system carried out 963 investigations and 95 cases were referred to BCPS, which resulted in charges for 29 cases against 37 SOs, and finally 14 SOs convicted by the courts. While the research was not equipped to determine whether a conviction rate of 1.45% from IIO's investigations indicates accountability, it was the types of cases that did and did not, result in convictions that raised serious concerns about the system's ability to hold police to account. The outcomes of the system over the study period exposed a chasm between the system's purpose and results. This gap not only impacts public confidence but also underscores the complexity of prosecuting police-involved incidents, which, in BC, remain largely confined to charges that are easier to convict and with a lower impact on public confidence, rather than high-profile, trust-shattering allegations of brutality and other serious crimes.

A core finding of this research was that driving-related offences were increasingly likely to proceed through this system, while incidents related to use of force violations or death, such as assault and manslaughter, rarely moved forward. Although there were limitations on the comparability in classifying the incidents investigated, referred, charged and convicted, the analysis in Chapter 4.2 exposed how driving-related offences ballooned in significance at each stage in the oversight process, making up 24.2% of

referred investigations, but 51.7% of charges laid and 78.5% of all convictions. Of the 60 cases where BCPS declined to lay charges, only 11.6% were for driving-related offences, again highlighting how driving offences were pursued at a much higher rate than other criminal allegations.

Contrastingly, use of force related charges made up over half of IIO referrals (53.6%) and comprised 40.5% of all SOs charged but drastically declined to two or 14.28% of all outcomes of guilt. Although there were gaps in the comparability of information, as mentioned above, the research indicated that use of force related charges made up the majority of referrals for cases where no charges were laid (60%), indicating that the system abandoned these cases at a much higher rate. The two convictions for use of force violations during the study period – assault and assault causing bodily harm – were for incidents in 2014, and the SOs punishments were a conditional discharge with one year of probation, and 12 months suspended sentence probation order plus community service. Absolute or conditional discharges, which do not register the conviction, are the least severe criminal sentence available, while suspended sentences and probation follows as one of the least severe penalties available, although the offender will have a criminal record (Canada, 2024b). Of the 11 convictions for driving-related offences during the study period, all were punished by fines, again highlighting the chasm between the intentions of this system to address the most serious incidents of police law-breaking and the reality of driving fines.

Death-causing offences, such as manslaughter, were also less likely to proceed with the complexity of and barriers to prosecution of SOs for deaths evident throughout the literature review, case studies and interview. 12.6% of IIO referrals were for death-causing offences, but these made up only 8.1% of charges, with three SOs charged with manslaughter, and 0% of convictions. Similarly, although 5.2% (5) of IIO referrals were for firearms related offences and 1 SO (2.7%) was charged with firearm offences, there were no convictions. Throughout the data, it was evident that incidents of serious harm were more likely to move forward than deaths. Cases where APs died comprised 30% of all IIO investigations, but 17% of referred cases and 14% of charges laid. While the 14 convictions include two cases where the AP died, the charges against SOs in these incidents were not for causing these deaths, but obstruction of justice and driving without due care and attention.

This research set out to better understand a system that raises polarized opinions—it is working well, or it is failing to deliver justice—and situated itself in the post-2020 context in which the public increasingly believes that police do, at times, unjustifiably harm and kill people. Given the full weight of evidence examined in this research, the outcomes of this system can also be interpreted in, at least, two ways: 1) no police officer in BC unjustifiably took a life between 2014 and 2021 and none unjustifiably caused *Police Act* defined serious harm between 2015 and 2021, or 2) the system created to deliver accountability in incidents of serious harm and death is failing to do so. A holistic and intersectional response to the outcomes uncovered here is not to simply press for more charges and convictions, but rather to initiate immediate and long-term measures to understand why the system is largely failing to secure the convictions for serious offences and begin to address these gaps. A first step for BC is to heed the call of the former CCD MacDonald and mandate an independent review of BCPS charge approvals (Recommendation 5). The ballooning of driving-related offences and drastic decline of all other serious allegations as the system progresses indicates dire issues at the decision-making stages of this system that must be thoroughly understood. To ensure that this gap in knowledge does not re-emerge in the coming years and decades, BC should require and fund regular (e.g. every five years) external evaluations of the outcomes of the police oversight system, examining the types of incidents that are and are not moving through the system as well as racial and other key demographics factors (Recommendation 7).

### ***5.1.3 IIO's Mandate and the Fragmentation of Police Oversight: Where do the Serious Offences Go?***

Organizational mandates not only outline what an agency does, but also what is outside of its scope, operating as its boundaries. But does IIO's areas of oversight match with its intended purpose of addressing the most egregious incidents of police violence that risk undermining public trust? IIO's

mandate for incidents causing serious harm is defined by s.76(1) of the *Police Act*, which states that these are injuries that may result in death, cause serious disfigurement or cause substantial loss or impairment of mobility of the body or the function of any limb or organ (1996). These appear to be envisioned as the most serious allegations of police wrongdoing – those that kill or cause substantial harm to people – and the system was likewise created to be the most transparent and independent of police oversight processes, providing the only civilian-led oversight in BC. But BC stands alone as the only jurisdiction in Canada with no mandate for sexual assault allegations against police and is one of three jurisdictions that does not have a mandate to investigate allegations of domestic or intimate partner violence by police: both troubling omissions in 2025. Many Canadian jurisdictions also provide their oversight bodies with a flexible mandate to assume jurisdiction of incidents that implicate public trust or contravene any federal or provincial laws, ensuring that these bodies are empowered to step in when needed. Despite the *Police Act* already containing a provision for the provincial government to expand IIO’s mandate to encompass any contravention of the *Criminal Code* or other laws at any time (1996 RSBC, s. 38.09(1)(b); Personal Communications, October 24, 2024), BC has resisted all calls to expand IIO’s mandate for sexual assault, domestic violence and other trust-shattering criminal allegations.

Calls to include sexual assault in IIO’s mandate date back to its origins and, in 2015, the Legislative Assembly’s Special Committee to Review the Independent Investigations Office pointed to the slow progress in civilianization of IIO as a reason not to expand IIO’s mandate to sexual assault, “since this would require additional expertise and resources” (British Columbia, 2015, p. 6). In 2020, David Eby, current Premier and Attorney General at the time, stated that adding sexual assault and domestic violence to the IIO’s mandate was a possibility after surviving its “rocky start” (Brend, 2020). Yet, in 2025, sexual assault continues to be excluded from BC’s definition of serious harm and there is no indication of a provincial change of heart or that work is underway to build the expertise and resources necessary for independent oversight of these crimes. This exclusion of sexual assault from IIO’s mandate conveys to the public and all sexual abuse survivors that BC does not consider sexual assault a form of serious harm and refuses to provide survivors of these heinous crimes with the most rigorous oversight available.

Research from Ontario shows that sexual assault is a common allegation against police and that many cases have compelling evidence of wrongdoing, with sexual assault comprising 26% of all charges laid against police by the civilian-led SIU between 2005 and 2020 (Puddister and McNabb, 2021, p. 390). Despite 51 SOs being charged in Ontario over a fifteen-year period, a quick media scan highlights the infrequency of sexual assault charges against BC officers, with media stories on only a handful of cases, despite the high degree of public attention these allegations bring. Allegations of sexual assault and domestic violence by police are highly sensitive and high-profile, but these cases are offloaded by BC into a less independent system where police investigate police. While the OPCC oversees investigations and the CRCC may review retroactively, the survivor of alleged sexual assault or domestic violence by police have their claim investigated by police, possibly from the same department as their alleged abuser. It is difficult to comprehend or begin to evaluate the chilling effect that this approach to oversight may have on survivors’ reporting of sexual assault and domestic violence and BC-specific research is urgently needed to examine the OPCC and CRCC’s handling of sexual assault allegations against police.

With IIO restrained by the rigid definition of serious harm in the *Police Act*, the research uncovered that the other police oversight systems – the CRCC and OPCC – appear to be frequently investigating allegations of serious criminal conduct by police that may not meet the *Police Act*’s definition of serious harm but have dire implications for public trust and confidence. In the process of the research, cases came to light that did not involve IIO and resulted in charges by the Crown Counsel, including charges for assault, assault with a weapon, assault causing bodily harm, criminal harassment, breach of trust and forcible entry (see BCPS 2021b-d, 2020b-d, 2020k). The researcher reached out to IIO for clarification and Media Liaison Whalen confirmed that “it would be reasonable to infer that the injuries sustained by the affected person did not rise to the level of serious harm given that we did not investigate” (Personal

Communications, September 9, 2024). This fragmentation of police oversight, where allegations of misconduct, policy violations and improper attitude are clumped together with serious criminal offences that do not cause “serious harm” and shunted into the CRCC or the OPCC (Canada, 2024), which have lower transparency, civilian-involvement and independence, raises questions about the ability of this system to hold police to account and whether this disjointed approach supports the oversight system’s achievement of its goals.

Shunting cases where police actions put the public at serious risk and are criminal in nature, but do not result in death or *Police Act* defined serious harm, into the system responsible for misconduct where police investigate police also raises concerns about the ability of police to avoid criminal consequences for criminal behaviour. For example, in 2020, RCMP constable Blaise Picketts drove his marked, police vehicle drunk, with a police service dog, gun and ammunition inside, and crashed it on the Lions Gate Bridge in Vancouver before continuing and passing out in the vehicle at the drive-thru of a fast-food restaurant where workers tried to rouse him for twenty minutes before calling police (Staacy, 2022). When police arrived, he refused to take a breathalyzer and resisted arrest to the degree that backup was required and two officers sustained minor injuries (Staacy, 2022). Picketts was charged and pled guilty to resisting arrest, an offence that can be punished with up to two years imprisonment (*Criminal Code*, s. 129), but was sentenced to a \$1,000 fine and three months probation. Picketts was not charged with drunk driving, assaulting police officers or other crimes related to careless storage of his firearm and ammunition and negligence or reckless endangerment of the public, and the RCMP’s internal misconduct process found that his actions were not dismissal worthy (Staacy, 2022). Instead, he was fined, forfeited some vacation days, transferred units, made ineligible for promotions for three years and required to seek treatment for alcohol use. Public interest was cited in the RCMP’s decision as an important consideration, as they did not want to “deprive the public of members who may safely return to make meaningful contributions to the RCMP and the communities it serves” (Staacy, 2022).

It is unclear from publicly available information if the CRCC reviewed the investigation and oversight provided by the RCMP for this incident, especially as no member of the public was harmed in the process. Regardless, incidents like this, which are witnessed by the public and receive media attention, indicate a lower standard of accountability for police than the public, undermining the public’s trust in police and oversight. It is important to note that while experts and those involved in these systems may recognize that this case was not in IIO’s jurisdiction, to the public, this is an example of police oversight appearing to fail at accountability and transparency, with no public explanation for why drunk driving and other criminal conduct went unpunished. As long as the CRCC and OPCC remain responsible for allegations of serious criminal conduct, public trust and confidence in policing and oversight cannot be maintained by IIO in isolation and requires all systems responsible for serious criminal allegations and public law breaking by police to deliver accountability in a transparent manner.

BC’s ongoing decision to not expand IIO’s mandate to include sexual assault, domestic violence and other allegations that undermine public trust, but do not rise to the level of serious harm defined in the *Police Act*, weakens IIO’s ability to meet its goals of increasing public confidence by transparently delivering accountability. The IIO was created to investigate and prosecute allegations of serious, criminal offences that damage public trust with the highest-level independence of any oversight body in BC. To meet this goal, IIO must, at a minimum, be mandated to investigate sexual assault. In 2025, how can the public trust a system that does not treat sexual assault as a form of serious harm? While this research has uncovered serious concerns about the ability of this police oversight system to deliver accountability, the systems accountable for “lesser” concerns are addressing criminal matters in a way that does not appear to meet the public’s calls for transparent, independent, and accountable oversight. Further research is needed to examine the outcomes of the OPCC and CRCC systems and evaluate whether segregating different offences within different agencies is an effective, coordinated method to ensure accountability for police criminal wrongdoing.

Addressing the fragmentation of the police oversight system will not be an easy task, but there are several immediate and longer-term measures that the province should undertake. First, the BC government should utilize the flexibility in section 38.09(1)(b) of the *Police Act* (1996) to immediately expand IIO's mandate to encompass sexual assault and domestic violence, in alignment with other jurisdictions, as called for since IIO's creation and as required to ensure accountability and bolster public confidence. Consideration should also be given to whether IIO is the appropriate body to investigate all criminal matters, fully separating the systems responsible for misconduct and criminal allegations or, if not, what provisions of the *Criminal Code* and/or other provincial or federal enactments should be included within IIO's mandate (Recommendation #1). The CRCC and OPCC do not have the level of independence and civilian involvement necessary to bolster public confidence, while the blending of smaller matters, like policy breaches, with criminal behaviour stokes concerns that police are able to dodge accountability, away from the public view, for trust-violating, criminal acts. While the CRCC and OPCC are separate systems, public trust and confidence in policing and oversight cannot be achieved by IIO in isolation; a holistic and integrated approach is required.

BC's longer-term work to improve police oversight should not be limited to IIO, but include measures to expand civilian involvement and leadership, independence and transparency in all oversight systems responsible for policing in BC. Given the substantial nature of these proposed changes, the full implementation of SCORPA's recommendation to form a single, independent, civilian-led oversight body with the capacity, resources, and expertise to investigate all allegations against police may provide an effective path forward (Recommendation 9). This agency would be responsible for all disciplinary, conduct and criminal complaints and allegations against police and public safety personnel (BC Legislative Assembly, 2022, pp. 11-12). To be effective and meaningfully address the institutional and systemic issues at play, the new oversight body must be sufficiently and sustainably funded, be grounded in stand-alone legislation, and have a broad mandate that includes authority to investigate and make binding recommendations regarding systemic issues, policy and trainings, as well as misconduct and criminal allegations. While this option is promising, caution should be exercised to ensure that overall independence is bolstered, not diminished through this process and close attention should be given to the organization culture, staffing, leadership, and authorities of this body. In the interim, BC should increase the independence of the police oversight system by ensuring that all components are civilian led, especially those dealing with criminal allegations, and all investigative bodies and teams have civilian members and other external parties and experts, as needed (Recommendation 9a). In 2024, the police should not be leading investigations of police allegations of serious criminal conduct and the search for justice for those criminally harmed by police actions should not be gatekept by the police.

#### ***5.1.4 Comparison with Ontario's Special Investigation Unit: How Do the Outcomes of BC's Police Oversight System Measure Up?***

This thesis was inspired by the peer-reviewed work of Puddister and McNabb in Ontario (2021, 2022), which examined the outcomes of the SIU and offers a comparison point for this research. Although any evaluation of Ontario's police oversight system's fulfilment of its purpose and goals is beyond the scope of this research, the comparison offers insights that may support reforms in BC's context. In their study of all completed SIU investigations between January 1, 2005, and May 31, 2020, Puddister and McNabb found that of charges laid against 143 officers, 34.5% were for assault and 26.3% were for sexual assault, while driving-related offences comprised 11.2% (2021, p. 390). Of the 37 SOs charged by BCPS during the study period, both assault and driving related charges each accounted for over 40%. While this is not a direct or perfect comparison, in part due to differences in study period and inclusion of sexual assault in SIU's mandate, it highlights that SOs in BC are charged with driving-offences at a drastically higher frequency than in Ontario.

In BC, the rate of guilty pleas or findings were slightly higher at 40% of charged SOs, than in Ontario, where 33% of charges resulted in a guilty finding or plea, although Ontario secured guilty convictions rather than guilty pleas at a much higher rate of 13% compared with BC's 3% (Puddister & McNabb, 2021, p. 394). Of these guilty findings, driving-related charges made up 17.6% in Ontario (p. 391), while they comprised a shocking 78.5% in BC. Puddister and McNabb noted that most driving-related charges resulted in a guilty plea or finding, potentially because the evidence may be easier to obtain (2021, pp. 393, 395). The dominance of driving charges in BC may contribute to the higher rate of guilty pleas or findings, with all BC SOs convicted of driving-related charges pleading guilty, while 6 of the 11 pled down from the original charge to a lesser offence. Puddister and McNabb also identified that in 90% of driving-related convictions, Ontario SOs received a non-custodial sanction, with fines being the most common at 67%, although some SOs were sentenced to a conditional or absolute discharge (22%) and one SO was sentenced to incarceration of over 2 years for their driving-related conviction (2021, p. 396). In BC, all 11 SOs convicted of driving-related offences were sentenced to fines and several also received a driving prohibition. Table 34, below, provides a comparison of the outcomes of court cases in police oversight systems in Ontario and BC, with guilty verdicts over four times as common in Ontario.

*Table 34: Comparison of Court Verdicts in Cases Investigated by BC's IIO and Ontario's SIU*

<b>Outcome/Finding</b>	<b>Ontario (Puddister &amp; McNabb, 2021, p. 394)</b>	<b>BC</b>
<b>Not Guilty</b>	30% *acquittal and not guilty are grouped	14%
<b>Acquittal</b>		20%
<b>Guilty Plea</b>	20%	37%
<b>Guilty Verdict</b>	13%	3%
<b>Charges Stayed</b>	27% (withdrawn by Crown)	20%
<b>Dismissed</b>	3% (by judge)	3%
<b>Discharged</b>	0%	3%
<b>Pending</b>	8%	0%

Over the study period, no BC SOs were sentenced to any form of incarceration, although one sentence for obstruction of justice is pending, while one SO received a conditional discharge, and another a 12-month suspended probation – all others received fines. This contrasts significantly with Ontario, where absolute or conditional discharges were the most common sentence between 2005 and 2020 (31%), followed by incarceration of less than two years (18%), while fines and incarceration of over two years each make up 16% of all sentences (Puddister & McNabb, 2021, p. 396). The remainder of the convictions in Ontario were split at 4% each for conditional sentence orders, suspended sentences, probation, intermittent incarceration and sentence pending (p. 396). With all forms of incarceration comprising 38% of sentences in Ontario and 0% in BC, the comparison raises questions about BC's effectiveness in prosecuting and delivering accountability for the most egregious acts of police abuse of power and brutality.

Puddister and McNabb also observed a low rate of charges for incidents that resulted in deaths in Ontario, with only eight officers in their study period prosecuted for death-related charges, such as attempted murder and criminal negligence causing death, and several were convicted (2021, pp. 391-392, 396). In BC, from January 2014 to December 2021, only three of the 37 SOs were charged with manslaughter or criminal negligence causing death, and none of these cases resulted in convictions. Additionally, in both jurisdictions, the vast majority of charged SOs were male, comprising 97% in Ontario and 92% in BC (Puddister & McNabb, 2021, p. 389). This stands in contrast to the overall percentage of female officers in policing, with a 2020 analysis finding that approximately 22.5% of RCMP officers and 26% of VPD officers were female (Culbert, 2020), highlighting the role of gender not only among APs but also SOs. Further research is needed to examine the outcomes of these systems and explore why they may diverge

in these key areas, while analysis of police oversight systems in other Canadian jurisdictions would also be a benefit.

Given the dearth of peer-reviewed analysis into the police oversight system in Canada, Puddister and McNabb's work offers a powerful, if not perfect, comparison point in Ontario. Their work shows that, despite its ongoing struggles to meet the demands of this complex work, the SIU prosecutes and convicts SOs on a wider range of charges (2021, 2022). In this way, the outcomes of Ontario's system more closely reflect the goals for which it was created, investigating and prosecuting serious, public trust damaging crimes. Furthermore, SIU's mandate encompasses sexual assault and Ontario's delivers charges and convictions for sexual crimes by police, publicly displaying that, at least in some cases, police will be held to account if they commit these heinous crimes. In BC, verdicts of guilt are often the result of SOs pleading guilty and 0% are incarcerated, while in Ontario, they are more commonly subject to a trial and are far more likely to receive incarceration as a sentence (38%). Together, these factors suggest that BC's system is not as effective in prosecuting serious offences, relies heavily on SO admissions of guilt and metes out slaps on the hand, not sentences that could claim to deter and punish criminal behaviour. Despite its imperfections, which are beyond the scope of this research, Ontario system offers insights that could be applied to support BC's police oversight system in achieving its foundational goals.

#### ***5.1.6 Who Really Needs Oversight Anyway? Intersectional Implications***

Throughout the research, the interplay between intersectional considerations was on full display, not only around ethnicity and gender, but also substance use and mental health. Although IIO's data collection around ethnicity was limited, with information only available from March 2020 to December 2021, utilized inconsistent and overlapping terms, such as European and white, and was complicated by the massive proportion of APs with "unknown" ethnicity, patterns emerged. While Indigenous APs comprised 15.8% of all IIO investigations, they made up one-third of both referred cases and cases with charges laid. Contrastingly, white APs made up 36% of IIO investigations, 45.8% of referred charges and 50% of cases where charges were laid. The "unknowns" made up the largest proportion of IIO investigations (39.6%), but there were only two referrals for "unknown" APs (8.3%) and BCPS declined to lay charges in both cases. Although the proportion of both Indigenous and white APs increased from investigations to charges laid, a degree of increase was expected due to the massive decrease in APs listed as unknown, but the percentage of white APs increased by 14% from investigations to charges laid, while the percentage of Indigenous APs increased drastically, more than doubling.

When the ethnicity of APs was compared with the ethnicity of BC's population, notable differences emerged. Indigenous people were drastically over-represented in IIO investigations and increasingly so in later stages of the system (33%), as they made up 5.9% of BC's population in 2021. At the same time, Asian people appeared to be under-represented, comprising only 5.3% of IIO investigations but approximately 24% of BC's population. Although "white" is a nebulous term and not utilized by Statistics Canada, APs who were not of a visible minority appear to be significantly under-represented. From the start of the police oversight system, Indigenous peoples are over-represented, but their increasing over-representation as the system progresses raises questions about if Indigenous people are disproportionately experiencing the most egregious and/or overt cases of police violence and wrongdoing in which charges are referred and laid, and/or what other factors are contributing to this over-representation.

The outcomes of the police oversight system highlighted the importance of intersectional analysis. Although deaths make up 30% of all IIO investigations, Indigenous female APs had lower rates of death investigations, comprising 11.7% of investigations as compared to the average of 21.6% for all female APs, while Indigenous men were over-represented with deaths comprising 37.5% of investigations as compared to the average of 32.6% for all male APs. Future research would benefit from a longer time horizon than one year and eight months of data and a complete data set, with no APs listed as "unknown," to better understand the interplay between gender and ethnicity in incidents of serious harm and death.

The quantitative analysis also revealed that the RCMP, as expected, comprises the majority of IIO investigations (65.7%) as well as referrals. But IIO's investigations into the RCMP are disproportionately for incidents where the AP died, with deaths comprising 30% of all IIO investigations, but 38.7% of investigations into RCMP incidents. The quantitative analysis also showed that incidents where APs died were less likely to proceed through the oversight system, and, out of the 29 cases where BCPS laid charges, the four (13.7%) incidents where the AP died all involved the RCMP. It is important to note that in BC, the RCMP is the default police service for First Nations communities, although some Nations, like Musqueam, have agreements with municipal police agencies to provide policing services. For many of the over 200 First Nations in BC that are located far from the eleven municipal police agencies operating in the province, the RCMP is the only and required option. Further research in this area is necessary to better understand the reasons for and possible links between the over-representation of Indigenous men in police-involved deaths, the over-representation of the RCMP in incidents where APs died, and the declining representation of deaths throughout the police oversight system.

Currently, the IIO continues to list a massive proportion of APs as "unknown," as evident in its 2023/2024 and 2022/2023 Annual Reports (IIO, 2022g & 2023c). While the research did not probe the reasons behind IIO's incomplete ethnicity data, BC's OPCC is able to provide this data, with no complainants' ethnicity listed as "unknown" in its annual reports since 2019/2020 (OPCC, 2020, 2022a & 2023). The police oversight system is the last stop for the individuals and the families of those seriously harmed or killed by police, but these gaps in IIO's data uphold the system's ability to claim ignorance and disregard the concerns of Indigenous and other marginalized groups. Despite the improvements to IIO's data collection in 2020, the failure of police oversight bodies to collect data on ethnicity until recent years and IIO's ongoing incomplete data collection bolsters deniability about the role of race in oversight and incidents of serious harm and death at the hands of police, complicating any attempts to hold the police or the oversight system accountable for problems that are not clearly documented, despite evidence of abundant "isolated incidents".

Beyond the quantitative outcomes, the research also exposed the intersectional nature of the brutal treatment experience by some APs and the traumatizing reality of oversight processes for their families and communities in the case studies. After being shot and killed by the RCMP, Jared's body was left on the ground for 12 hours, visible to his family and bystanders. While the deceased PSD was celebrated by the RCMP and NPF with a parade, multiple memorials and social media and media content, Jared's memorial was vandalized multiple times. Jared was a member of the Wet'suwet'en First Nation and had experienced a lifetime of violence and racism at the hands of the state; his death and the subsequent oversight processes exposed his family and community to further harm by colonial systems. Although Jared and Dale were both First Nations men, the potential role of racism in their deaths, from the view of publicly available information, seems unacknowledged and unconsidered by the oversight system. Available evidence clearly shows that Indigenous people are over-represented in arrests, discretionary interactions, and deaths at the hands of police and all elements of criminal justice system (Maynard, 2017; Sewell & Williams, 2021; Wortley, 2006). With the quantitative outcomes also clearly establishing the over-representation of Indigenous people in incidents of serious harm and deaths, the system's exclusion of systemic factors is unacceptable and not aligned with provincial commitments to reconciliation. Harold Johnson aptly stated, "race is so fundamental to our existence that the refusal of the justice system to consider it means that the system has closed its mind to our reality" (2019, p. 87).

Research has established that people living with mental illness or substance use have higher and increasing rates of police contacts, are disproportionately Indigenous and Black, and are more likely to die in their interactions with police (Schulenberg, 2016, p. 459; Wortley, 2021, p. 245; RCMP, 2021b; Vaughan, Zabkiewicz & Verdun-Jones, 2017, p. 1; Marcoux & Nicholson, n.d.). The quantitative analysis briefly considered the prevalence of mental health and substance in incidents of serious harm and deaths. Although there were limitations on this analysis and the research was not equipped to evaluate the impact

of these factors on the incidents, a review of the 58 clear statements where charges were referred but not laid highlighted the commonality of mental health and substance use in these incidents, with over half of the statements referencing details such as wellness checks, drinking and driving and intoxication. Although this is unsurprising as, given the lack of support for other services, police are the default front-line response, it highlights the need for further intersectional research of the role of mental health and substance use in incidents of and prosecutions for serious harm and death. This is the opportune moment for intersectional research in this area, as SCORPA recommended the creation of a continuum of response for these needs and the implementation of standards, policies, and expectations for responses to them.

The case studies also highlighted the role of substance use and mental health in incidents of serious harm and deaths. Myles lived with bipolar disorder and his cause of death was, in part, wrongly attributed to substance use (BCPS, 2020a, pp. 2, 9; Coroner, 2023, p.1), while Dale died with methamphetamine in his system and, after one out of four pathologists attributed his death to his substance use, the BCPS stayed manslaughter charges against constables Ste-Marie and Monette (BCPS, 2024b, pp. 2, 7-8). Their deaths highlight the very real risk and realities of police being called to support and intervene with people struggling with their mental health or under the influence of substances, but instead delivering escalation, violence, and death. Jared, Myles, and Dale all experienced extreme violence at the hands of police before they died. The disturbing circumstances around both their deaths and the subsequent oversight processes were witnessed by their families and communities, as well as the public through extensive and ongoing media coverage, undermining trust and confidence. Given the motivating factors behind the creation of civilian-led, independent oversight bodies, which include improving police-minority relations and responding to high-profile brutality against marginalized individuals, the system must open its eyes to racism and hold the police to a higher standard in their interactions with people in mental health crises or states of intoxication.

This discussion and many others in this chapter highlight the hardships faced by APs and their families as they navigate the daunting and maze-like system of colonial oversight that refuses to acknowledge the systemic factors that contributed to the harm they experienced. In 2021, the Human Rights Commissioner (OHRC) noted that many community organizations serving marginalized groups are being asked to support their clients in making complaints against police, but they are unable to meet these complex needs. The OHRC recommended that BC fund legal advocacy programs for APs and complainants (OHRC, pp. 10, 64). The lack of support for APs and their families reduces the pushback the oversight system faces when it reinforces existing power structures and systemic biases. While the province and the oversight system may not welcome more rigorous and better resourced advocacy for APs and their families, this could provide an opportunity to amplify the pressure on this colonial system to change.

The commitment to reconciliation, which BC embedded into law with the passing of the *Declaration on the Rights of Indigenous Peoples Act* in 2019, demands immediate and longer-term responses from BC as well as the IIO and BCPS to reduce harms and eradicate the colonial roots of this system. The IIO should immediately seek to increase the safety of Indigenous APs by applying the authority of the *Police Act* (s. 38.08) for IIO's CCD to appoint a civilian monitor for investigations for all police incidents where an Indigenous person was seriously harmed or killed, with the monitor holding a position of respect and trust within the community of the AP (Recommendation 12a). Furthermore, the IIO should utilize funding from the province to embed supports and services for Indigenous people within the police oversight system, as developed in consultation with First Nations (Recommendation 12b). As a longer-term measure, the IIO should improve its ethnicity data, clearly documenting the ethnicity of all APs and using distinctions-based terminology and options of First Nations, Inuit and Metis, rather than homogenizing all Indigenous Peoples under one label (Recommendation 11). Many recommendations for the BCPS will be discussed later in this chapter in sections focused on that component of the police oversight system, but, in general, BCPS should take up calls made by Indigenous people and communities harmed by this system, such as the call for the appointment of an Indigenous Special Prosecutor or an Indigenous lawyer

to serve as second chair to a Special Prosecutor in the cases of Dale Culver and Jared Lowndes deaths (BCCLA, 2024, p. 5) (Recommendation 17).

As IIO and BCPS are creations of the province, BC bears the brunt of responsibility for addressing the over-representation of Indigenous people within the police oversight system. The BC government should immediately take up the call made by First Nations leadership and justice organizations and initiate and fund a public inquiry into police-involved deaths of Indigenous people in BC (Recommendation 5). To chart a clear path forward that will meaningfully address the concerns of the public, BC must cease to close its mind to the experiences of marginalized people and communities and end the dark space of allegations and unknowing about the current realities oversight and policing in BC. As further urgent measures, BC should fund embedded supports and services for APs, especially Indigenous people, within the police oversight system (Recommendation 4). The specialized supports for Indigenous APs, their families and impacted community members should be funded by government and delivered by Indigenous service providers to meaningfully increase safety (Recommendation 8b). BC should also require there to be specialized team(s) responsible for cases involving Indigenous APs that have high levels of cultural competency, prioritize the hiring of Indigenous staff, and commit to building trust-based relationships with First Nations and Indigenous organizations around the province (Recommendation 8b).

There are also longer-term measures, foundational to which are the full implementation of the *Declaration Act*. In realizing recommendation nine of the SCORPA, BC should work in partnership with title and rights holders, deeply involving them in the co-development of a new oversight body and implementing their recommendations to forge a decolonial path for oversight in BC (Recommendation 8). Additionally, BC must work with title and rights holder to embed First Nations oversight as a measure to expose and address systemic, ingrained racism and bias. This may include the creation of a stand-alone Indigenous civilian oversight body, as called for by the First Nations Leadership Council and the Human Rights Commissioner (Recommendation 8a), but these solutions must be shaped by First Nations. Intention is not enough; BC should sustainably fund all measures to improve the safety of Indigenous people in this system and realize the full implications of the *Declaration Act*. The province should use its authority and treasury to not only make the changes to legislation, but to compel the transformation of the entire system.

### ***5.1.7 Resourcing: Structural Undermining of Accountability***

Sufficient resourcing is a foundational factor for any system to operate effectively and achieve its goals; the police oversight system is no different. Yet, the insufficient resourcing, both of IIO by the BC government and of individual prosecutions by the BCPS, was repeatedly raised as a hindrance to oversight by MacDonald in the interview. In both contexts, under-resourcing leads to delays, which undermines accountability and public trust by creating a system that is not able to meet carry out its role in a timely and *Charter* compliant manner. Delays also undermine trust and confidence as the public witnesses the stage after stage of oversight that appear to go no where and the drawn-out suffering of APs and their families and communities through this process.

Police have certain advantages in the criminal justice system, including insider knowledge, the perception of their trustworthiness and reliability, the role of use of force experts and ‘police logic,’ and legal expertise at their disposal through police unions (Sewell & Williams, 2021; Puddister & McNabb, 2021; Roach, 2022; Nave, Meehan & Dennis, 2024; Moran, 2018; Moran, 2023; Levine, 2016), and, to hold police accountable, oversight bodies must have the resources to assertively investigate and prosecute these cases in a timely manner. The IIO requires highly skilled investigators as well as the administrative and technical support systems to move forward this highly complex work, but resourcing continues to be a barrier and BC’s central excuse to not include sexual assault within the mandate of this police oversight system. Although MacDonald was able to secure more funding during his tenure as CCD, the police oversight system should not have to seek out “bumps” in funding to continue its work but be sustainably

funded. This system was created to tackle trust-shattering, criminal allegations against police, but without sufficient funding, there is a risk of resourcing shaping high-stakes decisions.

During the interview, MacDonald expounded on the resource-intensity of moving forward prosecutions of police and his belief that “that the failure to make those resources available is impacting the decisions that are being made because often cases that are approved by oversight bodies for charge or forwarded for charge are not being carried forward by the Crown. They are not even being taken to court” (Personal Communications, October 10, 2024). This underfunding connects to and may be an exacerbating factor in the lacking and non-assertive prosecutions of SOs that is examined later in this chapter. Inadequate resources limit the system’s operational capacity and appear to be a factor in extensive delays, which harm both SOs and APs, as well as their families and communities, that are caught in drawn out processes that may retraumatize and, at times, violate the rights of SOs to timely trials.

The quantitative analysis set out to understand the timeframes of investigations but was only able to evaluate this data for referred cases occurring from 2017-2021. The analysis showed that IIO’s investigations that resulted in a referral took an average of a year and three months, but two years and three months for incidents where the AP died. The BCPS then took an additional year and two months to announce whether charges would be laid, which increased to a year and six months in cases where the AP died. The predominance of *MVA* related charges complicated the evaluation of the average time from incident to court verdict, as these cases are “easier” and are more often resolved with a guilty plea. Despite this context of *MVA* focused prosecutions, the average time it took for the 17 court outcomes between 2017 and 2021 was three years and two months from incident to conclusion. For the 14 guilty findings over the entire study period, a massive variation was observed, ranging from 12 to 86 months. In general, the shortest timelines were for cases earlier in the study period and the longest was for the obstruction of justice conviction stemming from the death of Dale Culver. It is important to note that while IIO is the dedicated investigative body and provides a package to BCPS with the evidence and reasoning that underlies its referrals, the BCPS takes almost the same amount of time to determine whether to lay charges. This research highlighted the apparent duplication of IIO’s work by BCPS in some cases, raising questions about whether the current structure of the police oversight system impedes the timely resolution of processes.

These delays cannot be sluffed off as an inconvenience; the APs, families, communities, and SOs’ lives are kept in turmoil and uncertainty as they await these life-altering decisions. Delays also demonstrate to the public that if they or their loved ones are the victim of serious harm or death at the hands of police, they will be sucked into a drawn-out process that rarely yields convictions for serious offences. This was driven home in December 2024 when the OPCC announced a public hearing into the death of Myles Gray, nine and a half years after his death (Ghania, 2024). This follows IIO’s three-and-a-half-year investigation that culminated in the referral for charges and another two-year evaluation before BCPS declined to lay charges in 2020. The outcome-less processes continued, with a Coroner’s Inquest in 2023, which ruled his death a homicide but did not assign blame, and an OPCC investigation in 2024, which cleared all officers of misconduct. Myles’ violent and brutal death has been the focus of media and advocacy for nearly a decade, and while this newest stage of oversight may offer another glimmer of hope, this public hearing cannot recommend criminal charges (Ghania, 2024). In this and other cases, the public has witnessed incidents being shuffled from one process to another, with gruesome and gut-wrenching details of the violent incidents as well as the ongoing suffering of APs, and their families and communities during the oversight processes. While the other processes are carried out more rapidly, IIO and BCPS processes drag on for years, with decisions about referring and charging that may boost hopes of accountability before obliterating it.

Even when an SO is convicted of a significant criminal offence, delays can result in the decision being overturned, which leads to the public witnessing an officer found guilty but not held accountable because

of the system's inability to work in a timely fashion, as required by section 11(b) of the *Charter*. This is currently underway with the fall 2024 application to overturn Constable Dalman's conviction for obstruction of justice in the death of Dale Culver. This conviction was the only contested case during the study period, with Dalman convicted seven years after Dale's death. Whether successful or not, Dalman's application raises concerns that work to bolster the independence and assertiveness of prosecutions could be to no avail if rulings are overturned due to the slow pace of oversight.

These resourcing issues for IIO and BCPS undermine accountability, as they constrain efforts to investigate and prosecute police. The system is caught in a cycle of delays, which can have devastating consequences, as cases are not moved forward, and rulings risk being overturned, further destabilizing public trust and confidence in oversight. Unlike many of the complex issues faced by the oversight system, resourcing is much more straightforward to address. This system was created to tackle trust-shattering, criminal allegations against police, and it requires sufficient and stable resourcing for both investigations and prosecutions to ensure long-term sustainability. While BC is responsible for resourcing IIO, the BCPS must ensure that individual cases are sufficiently resourced to prosecute cases against police in an assertive manner (Recommendations 2 & 18).

#### ***5.1.8 Behind the Curtain: Information-Sharing for Transparency and Accessibility***

Although the police oversight system provides some transparent and accessible information, including the provision of clear statements by BCPS when charges are not laid, it became apparent through the research that there are several weak points in information-sharing that undermine the system's transparency, which may have a negative impact on public trust and confidence. A key area that appears to lack transparency is the potential information gap between IIO's recommendations for a case and the charges laid or clear statement shared by BCPS. Although IIO statements upon referral of charges often refer to the number of officers that may have committed offences, when BCPS lays charges, the statement only addresses the officers charged, and no clear statement is provided on why the other officers implicated during IIO's investigation were not charged. Furthermore, there is a lack of clarity between the potential charges referred by IIO and the charges laid by BCPS.

Investigation 2018-148 highlights both concerns, with IIO's statement upon referral of charges outlining that charges should be considered against three officers for *Criminal Code* and *MVA* driving offences as well as, for one SO, assault (IIO, 2019g). Seven months later, the BCPS announced dangerous driving charges against one officer, with the statement making no mention of the other officers or potential assault charge (BCPS, 2020e). As cases where charges are laid do not typically have clear statements and one officer was charged in 2018-148, BCPS did not release a clear statement addressing why the other officers were not charged and why the use of force that IIO evaluated to be an assault did not result in a charge. These rare glimpses behind the curtain raise questions about the frequency at which IIO recommends that multiple officers be charged or that officers be charged with more serious crimes, while BCPS' statement only addresses the officer(s) and charge(s) that they decided to lay. This is especially pertinent given the domination of driving-related charges, which raises concerns that this might not be a rare occurrence. This gap in information-sharing undermines the transparency of the police oversight system, while also hinting at possible reforms that could increase public trust in this system.

Another gap in information-sharing came to light during the quantitative analysis, which found that IIO decreased the frequency of public reports for cases where charges are not referred. Early in the study period, the vast majority of unrefereed investigations were closed with a public report, including 96% of closed cases in 2014, 88% in 2015 and 71% in 2016. A drastic change then occurred and for incidents in 2017, IIO provided public reports for less than 25% of closed, unrefereed incidents. This trend continued through the remainder of the study period, with IIO closing the majority of cases without a public report. While this change may have been rationalized as a means to reduce backlogs and increase the efficiency of oversight, especially as the overall case load of IIO was rapidly rising in this period, it raises questions

about the impacts of the declining availability of public information on the perceived transparency of this system and its ability to uphold public trust. As noted by the Honourable Justice Michael Tulloch in a review of Ontario's independent police oversight, public reports are a key factor in justice being seen to be done and allow the public to examine decisions to ensure that investigations were impartial and effective (2017, p. 10). While delays, which were discussed above, undermine the system's ability to achieve its goals, caution must be exercised in cutting time-consuming measures, like public reports, that are also critical to the system's goals. In this area, IIO should apply the learnings of Ontario and SIU's 35 years of operations, where the requirement for public reports was embedded in legislation in 2019, and return to a higher standard of transparency by releasing public reports for all investigations where charges are not laid.

Additionally, the jurisdiction scan noted that there is significant variation in the accessibility and level of publicly available information on the websites of oversight bodies across Canada. While the IIO provides substantial information and has a more modernized, accessible website than some organizations, there is room for improvements and to learn from other jurisdictions. For example, while the IIO provides general inquiry and witness-specific contact numbers, there is no unique access point for Affected Persons, as is the case with Ontario's SIU. Similarly, the information SIU provides to the public stood out as more streamlined and easily searchable and comparable (SUI 2024e, f, g & h), than IIO, which allows members of the public and researchers to more easily access information.

Increasing the transparency of the police oversight system will require action by the IIO, BCPS and the BC government. At the provincial level, BC should embed in legislation the requirement for IIO to release public reports for all unreferred closed cases and provide the necessary funding to support this work (Recommendation 6). Likewise, the IIO should release public reports for all closed investigations where charges are not recommended and, for investigations that are referred, IIO should explicitly state the number of SOs and the charges recommended to the BCPS in its media statements. Further, the IIO should consider updating its website to increase accessibility and information-sharing, which could be supported by a thorough review of other Canadian oversight bodies' websites to gather best practices (Recommendation 10). Finally, BCPS should provide clear statements for all SOs not charged despite having charges recommended by IIO and for all recommended charges that were not laid (Recommendation 14a). Together, these actions would serve to strengthen the police oversight system's communications with the public, bolstering trust and confidence by allowing the public to examine decisions for themselves.

### ***5.1.9 Tense and Uncoordinated: The Working Relationship Between IIO and BCPS***

Unlike many Canadian jurisdictions where the oversight body lays charges, as shown in the jurisdictional scan, the BCPS decides whether to lay charges based on IIO's investigation. BC's system requires a degree of coordination between the IIO and BCPS as inter-dependent components of the police oversight system, but the pervasive tension and lack of coordination between these two bodies was on full display throughout the research. This disconnect between the IIO and BCPS undermines the functioning of the system, impeding its ability to deliver accountability, and feeds public confusion and distrust.

In Chapter 4.4, MacDonald raised how BCPS did not utilize the specialized expertise and knowledge of IIO about prosecuting police, both in general and for specific cases. While the dynamic functioned, MacDonald was clear that he did not think that BCPS listened to the opinions IIO offered them about cases often enough and that it was rare for IIO to be asked by BCPS for their input in key elements, such as how to effectively challenge SO or WO evidence in court (Personal Communications, October 10, 2024). This disconnect and lack of collaboration between the two organizations was also evident in the Chapter 4.3, when BCPS brought in a fourth pathologist to re-assess Dale Culver's cause of death rather than relying on the three pathologists' evaluations secured by the IIO and provoking public ire from MacDonald (St. Denis & Follett Hosgood, 2024). Although IIO is the designated investigative body, when

BCPS determines that further information is needed, it does not appear to work closely with IIO to avoid duplication and ensure consistency. As discussed above, the system is bogged down with delays and BCPS replication of investigative work may be a contributing factor to the extended periods it takes to make charge decisions.

The IIO has publicly made statements that were critical of BCPS decisions on multiple occasions about incidents that occurred during the study period, raising questions about the depths of the concerns and tension behind closed doors. For example, in November 2022, former CCD MacDonald issued a media release to respond to BCPS' decision to not lay charges regarding IIO's investigation 2018-056, stating that the clear statement did not "transparently outline for the public important evidence the IIO presented on these issues" (IIO, 2022f). The release details expert analyzed video evidence that was not discussed in BCPS' clear statement, continuing that "although the IIO acknowledges the position of the BCPS that the video is not clear enough to support a prosecution, their clear statement does not refer to the nature of this video evidence, which challenges other evidence received about the SO's location, and whether SO had objective grounds to fear for his life and safety or took advantage of a reasonable alternate means of escape" (IIO, 2022f). This statement not only highlights the tension between IIO and BCPS but calls into question the BCPS evaluation of evidence, concerns that will be explored in detail later in this chapter.

The results of this research raise questions about the effectiveness of and lack of coordination and collaboration within BC's current, two-layer approach to police oversight. To function effectively, the oversight system requires alignment and cooperation between these organizations, but, while BCPS and IIO are linked together as two inter-dependent pieces of the police oversight system, they do not appear to be collaborative, which appears to undermine the transparency and accountability of the system as well as public trust in oversight. Addressing this fraught relationship will not be easy. The province should consider a range of options to either promote and assess the collaboration between the IIO and BCPS or restructure the system either by providing IIO with the authority to lay charges or shifting IIO referrals to independent prosecutors rather than the BCPS (Recommendation 3). As long as BCPS continues to hold these critical roles of charge approvals and prosecutions, it should strive to build an effective, collaborative working relationship with the IIO and promote increased integration and understanding between the two organizations to better leverage the unique expertise of all parties (Recommendation 16). Likewise, the IIO should continue to offer its expertise and utilize the shift to a new CCD in 2024 as an opportunity to rekindle the relationship. In the long run, a close and collaborative working relationship should reduce the burden on BCPS, as IIO can complete all investigative components of this work and provide the precise information the Crown requires for its determinations. Effective collaboration will not only bolster the transparency and accountability of this system, but also public trust and confidence.

#### ***5.1.10 IIO's Referral Standard: Mind-Reading Required?***

The IIO and BCPS are interconnected, inter-dependent bodies within the police oversight system, tasked with investigating and prosecuting police, but they appear to lack of a shared understanding of the evidence necessary for cases to move forward within the system. The lack of coordination within the system, with the majority of IIO's referrals not resulting in charges, feeds confusion as to why IIO would evaluate cases as charge-worthy, but BCPS so frequently disagrees. This uncertainty undermines the system's ability to achieve its goals, as the public is not provided with sufficient information to understand the conflicting decisions of IIO and BCPS.

During the quantitative research, the impact of IIO's referral standard was evident in the data. The IIO referral standard changed during the study period, as in the early years the IIO was required to refer all investigations where they found that an offence may have been committed, regardless of the likelihood of charge approval. The changed referral standard gave IIO the discretion to determine which cases to refer, with the *Police Act* amended so that the CCD "may refer" (s. 38.11), and the significance of the change from "must" to "may" was immediately apparent in the data. The percentage of investigations referred to

BCPS plunged from an average of 40.36% in 2014-2016 to 3.6% in 2017, and has not exceeded the single digits since, averaging 5.34% between 2017-2021. On the one hand, the referral standard change appears to be a rational decision to prevent cases where there is no probability of conviction from clogging up the system, but it requires IIO to evaluate the likelihood of charges being approved by the BCPS, a process that requires some inference of the evidence BCPS expects in order to lay charges.

Of the 89 referred charges with decisions during the study period, BCPS' approval rate was 32.58%, but there was massive variation between years. At the start of the study period, the approval rate was dismal, with charges laid in 7.69% of referred cases in 2014 and 20% in 2015. Although IIO began to move towards a new referral standard with the arrival of MacDonald in 2017, which was codified in 2019, the approval rate only exceeded 50% for casing occurring in 2016-2018, peaking at a high of 88.8% in 2018. In 2019, BCPS approval of charges for cases referred by IIO dropped dramatically to 25% and did not exceed a third of referred cases for the remainder of the study period. As evidenced by the oscillating approval rate throughout the study period, the IIO has not consistently been able to evaluate BCPS' appetite to lay charges. Although the two years with the lowest rates are 2014 and 2015, 2019 to 2021 also saw low approvals, which raises questions about the effectiveness of the referral standard change and updates to IIO's internal evaluation process, and why these two organizations do not have even a shared understanding of the evidence necessary to lay charges. During the interview, the former head of the IIO, MacDonald, shared that, based on his extensive experience as a defense lawyer, Crown prosecutor, and head of oversight bodies in two Canadian jurisdictions as well as the input of his two legal counsels, he was always confident that the cases he referred could meet the BCPS standard for laying charges. Although he did not expect BCPS to always agree with his evaluations, "one would have expected it to be agreed with more often than it was" (Personal Communications, October 10, 2024).

The chasm between referred and laid charges has not gone unnoticed. In the joint letter regarding the deaths of Dale Culver and Jared Lowndes, the families and organizations noted the former CCD's public statements regarding BCPS decisions and stated that "the BCPS's refusal to prosecute police officers based on the IIO's investigations has undermined the IIO's legitimacy and the public's faith in the IIO's ability to hold police accountable" (BCCLA, 2024). For the APs and their families and communities, this lack of shared understanding and coordination can have devastating impacts, as they wait – often years – for IIO's decision that the evidence is charge-worthy, raising their hopes that justice will be done, only to be dashed when BCPS declines to lay the charges, often after additional years of waiting.

For the public, this is a confusing and unclear aspect of the oversight system, with no coherent explanation available for why these two bodies are so uncoordinated and have such variant standards for evidence. Why is the IIO, a thirteen-year-old organization specially formed to investigate police and that has the flexibility to only refer cases grounded in strong evidence, only "accurate" in 1/3 of referrals? What are the evidence requirements of BCPS and IIO, and why are they unaligned? Does the low approval rate stem from within IIO, with evidence poorly evaluated, or are the BCPS' charge approval standards unclear or inconsistently applied? As long as BCPS continues to decline to lay charges in the majority of IIO referrals, this will continue to be a problem spot in the oversight system where transparency is low, and concerns are rampant, undermining public trust in the system's ability to deliver accountability. Addressing this issue will require a variety of measures, but most importantly IIO and BCPS getting on the same page about the evidence required for charging and prosecuting police. The following sections deepen the discussion on charge approvals and prosecutions, with additional measures that may also serve to address this gap discussed.

### ***5.1.11 BCPS' Charge Assessment Standards and the Role of Public Interest***

The BCPS' charge assessment standards play a crucial role in the outcomes of the police oversight system and transparency around charge decisions are essential to upholding public trust. As shown in the jurisdictional scan, BC stands alone with the highest standard utilized across Canada. The charge standard

has been the focus of multiple inquiries and reviews, both in its application to the public and specific to the police oversight system. The conclusions and recommendations of these reviews and inquiries have varied, with some calling for reforms to align with other jurisdictions, while others questioned if switching from “substantial” to “reasonable” would have any impact (McCuaig, 2012, p. 14). As stated by Q.C. Fitch during the Davies Commission Inquiry into the death of Frank Paul, BC “took into account the reputational damage that can be caused to people, especially in high-profile cases, when charges cannot be substantiated at trial,” when establishing the standard (Davies, 2011, p. 42.). During the interview, MacDonald noted that BC high charge assessment standard is intended to weed out cases that are unlikely to result in a conviction, but BC has a lower rate of convictions than comparable provinces with lower standards, raising questions about the impact of this standard.

Furthermore, as pointed out by MacDonald, the approval rates for charges against police are substantially lower than for charges against the public in cases referred by police, which he referred to as “concerning statistics” (Personal Communications, October 10, 2024). The BCPS’ annual report for 2019/2020 shared that of the 63,141 accused referred to Crown Counsel, charges were approved in 84% of the cases, while charges were not approved in 14% and alternative measures were utilized in 2% (BCPS, 2020j, pp. 12-13). This rate is not an outlier and high approval rates, consistently over 75%, are typical for cases referred to the BCPS by police (BC, 2012; BCPS, 2024a). The IIO is the designated body tasked with investigating allegations of police causing serious harm or death, but there is a glaring gap between BCPS’ decisions on cases investigated and referred by police and IIO, raising questions about the effectiveness of this arrangement.

In determining whether to lay charges, the BCPS applies foreshadowing to evaluate the probability of conviction in their two-part test, which requires “whether there is a substantial likelihood of conviction; and, if so, whether the public interest requires a prosecution” (BCPS, 2021a, p. 2). The guidelines also outline a lower evidentiary test – reasonable prospect of conviction – to be used in exceptional circumstances where “public interest factors weigh so heavily in favour of prosecution that it is necessary to resort to a lower criminal standard in order to maintain public confidence in the administration of justice” (p. 6). Despite this lower standard being applied to all cases by Canada, Ontario and Quebec and more closely aligned to the standards of Saskatchewan, Alberta, Manitoba, Nova Scotia and Newfoundland and Labrador than BC’s default standard (see Chapter 4.1), the BCPS guidelines urge caution as “resorting to a lower charge assessment standard could materially increase the risk of miscarriage of justice” (BCPS, 2021a, p. 6).

BCPS’ charge assessment standard applies to all criminal cases in the jurisdiction, not only those against police, but there are unique considerations to the prosecution of SOs. As discussed in the literature review and demonstrated in the case studies, police have unique advantages in criminal prosecutions, including their insider knowledge, high-quality legal support through police unions and high trust in their credibility. Further, police hold a position of immense power in society, which provides them with both access to and authority over people in vulnerable circumstances. The BCPS charge assessment guidelines detail public interest factors that weigh in favour of prosecution, including “the alleged offender’s position of authority or trust” (2021, p. 3), and if the offence “affects the integrity, safety or security of the justice system or its participants” (2021, p. 4). It is difficult to fathom how allegations of excessive use of force or abuse of authority by police do not meet these factors. There is a need for future research on the impact of BC’s charge assessment standard, but, even more importantly, clarity and transparency on the role of public interest in charge assessments, especially in cases against police, in order for the system to support increased public confidence in policing and oversight. As stated by MacDonald, when BCPS routinely does not apply the lower, public interest standard they are “saying that these cases do not meet the test of significant public interest.”

As explored in the case studies, there appears to be a lack of transparency in BCPS' decision around which charge assessment standard to utilize and the role of public interest, raising concerns from families and communities caught up in the oversight system. The BCPS applied the lower charge standard of a reasonable prospect of conviction in Dale and Myles' cases, while in Jared's death the default standard of substantial likelihood of conviction was applied (BCPS, 2020a, p. 4; BCPS, 2024a, p. 4; BCPS, 2024b, p. 3). The BCPS' guidelines speak to the special consideration necessary in situations with Indigenous peoples, outlining the history and ongoing impacts of colonialism and stating that if the accused or victim is Indigenous, the Crown should determine "whether public interest considerations specific to Indigenous persons apply" (BCPS, 2021a, p. 6). Jared was a First Nations man who had repeatedly shared his belief that he would be murdered by police, raising question about why the standard of reasonable prospect of conviction was not applied in his case, but was in Myles and Dale's.

Media articles are rife with concerns and anger raised by the families and communities of Dale and Jared, as in many other cases of police-involved deaths and violence. The lawyer for Jared's family, Neil Chantler, stated, "if it is not this case, it's hard to imagine a case meeting the charge approval standard" (St. Denis, 2024). Additionally, the joint letter to the Deputy Attorney General Carmichael from a collective of organizations and the families of Jared and Dale pointed out the inconsistency and lack of clarity on BCPS' decision in these case, stating that "considering the role of police officers to maintain peace and public order, their duty to protect the public, and their access to deadly weapons and lethal tactics, the lower charge assessment standard should always apply to police-involved deaths, and it is in the public interest to do so" (BCCLA, 2024, p. 3). This call was echoed by MacDonald when he suggested that almost all cases of excessive use of force, in his view, meet the test of significant public interest.

The lack of clarity around BCPS' assessments of charges against police, with charges laid in less than a third of IIO referred cases, undermines the transparency of the oversight system and feeds fears that BCPS is not holding police to consistent standards of accountability. Measures within BCPS' purview could help ease these concerns and bolster public trust in the oversight system by transparently clarifying the processes around assessing charges against police. BCPS should implement a policy or other mechanism that clearly outlines and standardizes the application of the public interest in charge decisions against police when the allegations could implicate trust in the justice system and links to their position of authority and public trust. BCPS should also consider whether all or some allegations of police criminal conduct, such as misuse of force, should by default trigger the standard of reasonable prospect of conviction due to the implications for public interest and confidence in the justice system. Finally, BCPS should transparently and publicly articulate the role of public interest in all charge decisions regarding allegations against police for the public's awareness (Recommendation 13).

#### ***5.1.12 Is This the Best You Can Do? BCPS' Advancement of Cases Against Police***

Over the course of the research, BCPS' evaluation of evidence in cases against police appeared at times to be inconsistent and lacking in rigor, with several reoccurring issues which seem to favor police and work against their own cases. While the oversight system's over-reliance on evidence from police for trials against police and apparent skepticism of evidence that bolsters their own cases is not the focus of widespread media attention, it is quickly evident to those that peer behind the curtain of oversight. These factors have the potential to significantly impact the accountability meted out by the police oversight system and undermine the appearance of impartiality, feeding the perception that cases against police are not being assertively moved forward, with damning repercussions for public confidence.

A reoccurring concern that arose during the research was the reliance of use of force reports, as the BCPS requires IIO to provide these reports for investigations that pertain to allegations of misuses of force to evaluate whether the SO's actions were consistent with training (St. Denis & Hosgood, 2024). As raised by MacDonald, use of force experts in Canada are current or former police, which "certainly raises

questions about their objectivity” (Personal Communications, October 10, 2024). He also questioned the necessity of these reports as they go to the “issue of reasonableness and that’s the court’s job” (Personal Communications, October 10, 2024). The law is clear that use of force must be reasonable, necessary, and proportionate, and it is the responsibility of the courts to evaluate if the level of force used met these criteria. While these reports may be relevant in some cases to clarify technical or scientific considerations about force, MacDonald noted that these reports are often used to support acquittals. The unchallenged use of these reports appears to uphold the status quo and further embed police perceptions of reasonable behaviour within the decision-making processes of the oversight system, which feeds the perception that the system cannot be trusted to deliver accountability.

The limitations of these use of force reports were evident in reviews of BCPS clear statements, with no use of force reports that challenged the SOs evidence or testimony identified. For example, for incident 2015-102, the BCPS clear statement outlines that the use of force expert “assumed that the arrest of the suspect was lawful and that the suspect resisted attempts to conduct an arrest,” basing his evaluation of the appropriateness, proportionality, reasonableness and legality of the “control tactics” upon these assumptions (BCPS, 2017f, p. 9). Similarly, after reviewing the evidence around Myles Gray’s brutally violent death (2015-116), the use of force expert retained by IIO concluded that, overall, “all such uses of force could be consistent with police training and standards, where justified by a sufficient degree of threat and resistance from an individual” (BCPS, 2020a, p. 9). The BCPS’ own clear statement called out the inconsistency, incompleteness, and contradictory testimonies of the WOs and SOs, raising questions about how the “sufficient degree” of threat and resistance to justify a deadly beating was conclusively identified. Although the value and intention behind the requirement for use of force reports demands further investigation that is beyond the scope of this research, the reliance of use of force reports feeds a perception that police can use any level of force they can retroactively rationalize and justify, and the system will not challenge their assertions.

In some clear statements that BCPS appeared to take an uncritical view of statements made by Subject and Witness Officers, often seeming to treat these statements as reliable rather than evidence to be evaluated and questioned. For example, in 2020-164, Constable Courtoreille was charged with assault causing bodily harm for an incident involving a PSD in July 2020, but the proceedings were stayed due to new information provided by WOs after Courtoreille had been charged (BCPS, 2024c, p. 2). Although BCPS laid charges after originally concluded that “there is no evidence that any officer asked Cst. Courtoreille to deploy the dog, and no evidence that Cst. Courtoreille gave any warning before setting the dog on AP” (BCPS, 2024c, p. 2), two WOs later provided additional information that they “considered using different types of force when they were unable to physically restrain the AP” (p. 3). In retrospect, three of the four WOs “said that they had lost control of the fight with the AP, and that the use of force by deploying the dog was appropriate in ending AP’s active resistance and concluding the incident” (BCPS, 2024c, p. 3). After Courtoreille was charged, the WOs “were of the view that AP was sufficiently warned of the presence and potential use of the dog because of the dog’s barking” (p. 3). The clear statement does not address any potential concerns with WOs providing new, exculpatory testimony after charges had been laid, or question why this information was not provided during the original interviews. Instead, the new testimonies appear, to an outsider view, to be seized upon as a rationale to stay the charges.

This concern about BCPS’ approach to SO and WO statements was also raised by MacDonald as he shared that there have been cases where, in his opinion, BCPS’ lack of experience challenging police and daily work alongside of them inhibited their ability to properly assess cases for charge. He pointed out that in the criminal justice system, the statements of alleged offenders are looked at with “grains of salt,” but that instead the BCPS often gives a significant weight to SO and WO statements (Personal Communications, October 10, 2024). While these concerns are not the subject of widespread and in-depth media attention, media articles do frequently raise case-specific concerns about the prosecution of police, as was evident throughout the case studies. Ultimately, the high value BCPS seems to place on use of

force reports and seeming hesitation to challenge the evidence of SOs and WOs, feeds perceptions that cases against police are not being assertively moved forward. If this is the case, then accountability is undermined, but regardless, this perception undermines the public's trust in this system.

The researcher also noted that in at least three cases, 2015-107, 2015-116 (Myles Gray) and 2017-083 (Dale Culver), excited delirium was attributed as a cause of death; an assertion that appeared to be unquestioned by BCPS. Excited delirium is a highly controversial term that has been used to rationalize police use of force and dangerous restraint and lacks scientific or medical basis (Rimmer, 2021, p. 1; McGuinness & Lipsedge, 2022, pp. 1601-1606). In these cases, BCPS decisions to stay charges or not lay charges cited excited delirium as a reason to not move the cases forward. In Myles' case, the BCPS declined to lay charges as the pathologist and other experts could not exclude the possibility that his death was caused by the ingestion of Mitragynine or by excited delirium (BCPS, 2020a, p. 2). In 2023, eight years after Myles' death, the coroner's inquest found that the Mitragynine was a false positive (St. Denis, 2023), with excited delirium playing a pivotal and still unchallenged role in the decision to not charge any officers. In 2015-107, BCPS' clear statement reads that that "the expert conceded that Mr. Brooks was likely suffering from "excited delirium" and that this had significant implications for the use of force options that were available to Cst. Cucheran" (BCPS, 2019e, p. 8). It continues that "all experts agree that individuals experiencing excited delirium are likely to be unaffected by interventions that rely on pain to effect compliance" (BCPS, 2019e, p. 2). In this case, concerns about evolving testimony and use of force reports were also on display when the charges of aggravated assault and assault with a weapon against Cucheran were dropped after the preliminary inquiry, as witness testimony "now provided significant context and objective support for a conclusion that Mr. Brooks posed an imminent risk of grievous bodily harm or death" and the Crown's use of force expert's cross examination significantly undermined the case (BCPS, 2019e, p. 8). The BCPS' decisions for these cases occurred in 2019, 2020 and 2024, at a time when the concerns about the attribution of police-involved deaths to excited delirium were well known and widely available (BCPS, 2019e; BCPS, 2020a). This is yet another area where BCPS appears to lack a critical approach to evaluating, questioning, and challenging evidence.

The case studies highlighted further contrasts in its evaluation of evidence and that, despite BCPS' seemingly high confidence in police evidence, WOs and SOs do, at least in some cases, resist oversight, provide suspect and unreliable testimony and violate the policies that are intended to guide their conduct. In the investigation of Myles' death, one of the WOs resisted their duty to cooperate under the *Police Act*, refusing a second interview and requiring IIO to submit a court application before they complied (IIO, 2017a). BCPS' own clear statement called out the suspect testimony of the seven VPD officers (BCPS, 2020a, p. 7) and, during the coroner's inquest, five of the officers revealed that their union had told them not to take notes, a clear violation of VPD policy (St. Denis, 2023). In determining Dale's cause of death, although the fourth pathologist sought out by BCPS, Dr. Pollanen, had strong qualifications at the surface level, a basic web search calls into question his reliability and history of bias (Hosgood, 2024a). Again, there appears to be a contrast between BCPS' doubt about the determination of the first three pathologists, who concluded that the SOs contributed to Dale's death, and its confidence in the fourth pathologist's conclusion that methamphetamine was the true killer, despite his suspect reputation and that he did not perform an autopsy. In the court case for Dale's killing, three officers were charged with obstruction of justice, as bystanders were threatened to delete their cellphone videos, and the judge aired serious concerns with the testimony of one SO and the blatant lying of another (Proctor, 2024a; Hosgood, 2024c). The judge also noted that two SOs appeared to copy their notes in the RCMP database, against policy, again, appearing to resist potential oversight (Hosgood, 2024c). In Jared's death, police policy was once again breached, as the RCMP officers pushed a PSD through his car window (BCPS, 2023c, p. 9). In the joint letter to Deputy Attorney General Carmichael, the decisions in Dale and Jared's cases were criticized as BCPS substituting "their own subjective view of the ultimate weight or credibility of evidence, usurping the role of judge or jury" (BCCLA, 2024).

Finally, there was a note-worthy change in the language BCPS used to describe APs over the study period that impacts the framing of incidents of serious harm and death. While IIO utilized the terminology of AP throughout the entire study period, BCPS' clear statements often referred to the AP as a "suspect." In 2020, this began to shift, with some clear statements, such as 2020-068, 2020-045 and 2020-183, referring to suspects, while other reports, such as 2020-067 and 2020-046, spoke of APs. In 2021, BCPS appeared to more consistently utilize terminology of AP, but there continued to be exceptions, including 2021-169. Intentional or not, this dichotomy of officers and suspects supports a framing of incidents as "the good guys versus the bad guys" and police defending themselves against "suspects," bolstering the perceived justifiability of police actions and inactions.

While this study was not equipped to conclusively evaluate the BCPS' approaches to and evaluation of evidence in cases against police, many stark contrasts surfaced in the research. These concerns around impartiality are raised not only by those who advocate for APs but also from a former leader within this system and are brought into public view in the media. The contrast between BCPS' approach to evidence that undermines and bolsters their own cases against police feeds the appearance of inconsistency and potential bias that are devastating to the system's claims of delivering accountability in a transparent manner and ultimate goal of shoring up public trust and confidence. As called for by MacDonald, there is a need for BCPS to challenge these status quo approaches and transform the ways in which it evaluates evidence in prosecutions against police. These concerns must be urgently addressed, and this research calls on BCPS to critically evaluate evidence, testimony and expert opinions, where appropriate, including challenging the reliance on use of force reports, SO and WO testimony, and the use of excited delirium as a cause of death (Recommendation 14c). Furthermore, BCPS should avoid avoiding terminology and framing that may be interpreted as connotating guilt, not only for SOs, but also for APs, including ending the use of terms like "suspects" in BCPS reports (Recommendation 14b). Finally, at the provincial level, the police's duty to comply with oversight investigations could be strengthened through the development of stand-alone legislation that affirms the independence of oversight and outlines punishment for non-compliance by police, learning from the 2019 legislative reform in Ontario (Recommendation 9).

### ***5.1.13 Contest to Win? BCPS' Struggle to Secure Guilty Verdicts***

For the police oversight system to demonstrate that it is delivering accountability, securing guilty verdicts through public trials is essential. Public trials are also crucial for transparency, as they allow the public to witness for themselves the evaluation of the evidence that underpins the judgment. But, of the 14 convictions secured by the police oversight system during the study period, 13 were the result of plea deals, with only 1 case having a full trial. In the case studies and during the interview, perspectives emerged that the system is not dedicated to moving forward cases to public trials and applying the same force of the law to police, who are supposed to uphold and enforce it, as to civilians. The frustration with the lack of public trials was shared by the families of Jared and Dale as well as First Nations and justice organizations, which stated in their 2024 letter to the Deputy Attorney General that "the public is still waiting for police accountability to play out in the courtroom. How long must the public continue to wait?" (BCCLA, 2024, pp. 4-5). The letter also calls for "these proceedings to take place transparently in the light of a courtroom and not behind closed doors in the minds of prosecutors" (pp. 5-6). In spring 2024, MacDonald also expressed frustration to the media about the lack of trials, noting that prosecutions are of a significant public interest (St. Denis & Hosgood, 2024). Plea deals made behind closed doors do not provide the same demonstration of accountability that this system was created to achieve. For oversight to function as intended and achieve its goals, it cannot almost exclusively convict SOs who plead guilty.

While guilty pleas are common in cases against civilians as well as police, the context and implications for the perception of transparency and accountability, are very different for police-involved incidents. Outside of the police oversight system, finding or plea of guilt made up 63-72% of court cases with a

decision for individuals tried for offences in BC, with the entire study range staying in the 70-72% range, except for 2020/2021 (63%), which occurred during the height of the COVID-19 pandemic restrictions (Statistics Canada, 2024b). Furthermore, for all individuals prosecuted in BC, charges were stayed in 26-35% of cases and acquitted in under 1.5% (Statistics Canada, 2024b). This stands in stark contrast with outcomes for verdicts against police in the oversight system. Acquittals for police are drastically higher than the public, at 20% versus under 1.5%, while finding of guilt are substantially lower, at 40% versus approximately 71%, although charges are stayed at a more similar rate of 20% versus 26-35% (Statistics Canada, 2024b). While there are unique challenges to prosecuting police, the drastic contrast between outcomes for police and non-police prosecuted by BCPS stoke concerns that cases against police are not being moved forward as assertively as those against members of the public.

Of the 35 SOs with court outcomes during the study period, 21 were not convicted and their charges stand in contrast to convictions secured by this system. Only four of 21 SOs (19%) were charged with driving-related offences, while 12 (57%) were charged with use of force violations, such as assault, three (14%) were charged with manslaughter and two (9%) were charged with obstruction. These SOs overwhelmingly had high-profile charges that stem from and trigger deep concerns of police brutality and abuse of power and starkly contrast with the cases that do result in a guilty finding, which are predominately *MVA* violations. This raises a foundational question, why is this system not securing convictions for the cases it was created to address? Although detailed information on when the 21 cases that did not result in convictions were abandoned was not readily available, BCPS appears to have initiated the halting of many of these trials of contested cases by calling for stays of proceedings and acquittals. The BCPS does not justify its decisions to the public, but its decisions are under public scrutiny. After the trial and acquittal of an APD officer for assault with a weapon and assault causing bodily harm (#2020-042), the APD made a statement to media, clarifying that “it is important for the public to know this acquittal was presented by the Crown and accepted by the court” (Ruttle, 2024).

Throughout the study period, the police oversight system only secured a conviction in one case where the SO contested their charge, raising concerns about this system’s ability to deliver accountability. These concerns are devastating for the system’s ability to achieve its goals, as it cannot claim to achieve accountability and alignment with the rule of law if police are only convicted when they agree with the charge. While the vast majority of the system’s convictions are secured through plea deals, transparency is also undermined, as the public is not able to witness the examination of evidence and accountability is taken behind closed doors. Ultimately, the BCPS’ struggle to secure convictions through public trials is a detriment to public trust and confidence in oversight.

#### ***5.1.14 Prosecutorial Independence: Is BCPS the Right Fit?***

This research uncovered a multitude of apparent issues in the prosecution of police that feed the perception that cases against police are not being appropriately prioritized or assertively advanced by the Crown and that status quo thinking and potential bias may be impacting prosecutorial decisions in favour of SOs. While this research was not equipped to conclusively evaluate whether this perception is accurate, it did uncover information that bolsters these concerns, and they are increasingly in the public view. Media articles are rife with concerns and anger raised by the families and communities of Dale and Jared, as in many other cases of police-involved deaths and violence. Donald Lowndes, Jared’s father, shared with the media that his family believes that BCPS is biased in favour of the RCMP and that prosecutors should not hold the same weight as a judge and jury in these decisions (Gangdev & Nassar, 2024). Likewise, MacDonald’s concerns about BCPS’ approach to cases against police were increasingly evident in the media, including numerous headlines in 2024. At the heart of these concerns is a question: is the BCPS is the appropriate body to make charge assessments and prosecute police? Ultimately, these concerns – whether accurate or not – undermine the ability of the system to achieve its goals and indicates the need for a structural shift in the approach to approving and prosecuting charges against police.

During the interview, MacDonald highlighted the close working relationship between BCPS and police, who are their witnesses in almost all cases, and the need for prosecutions of police to be carried out by the most experienced, highly skilled, independent prosecutors who are accustomed to challenging police and moving forward complex cases (Personal Communications, October 10, 2024). Although the IIO-equivalent in most Canadian jurisdictions can lay charges, calls for IIO to have this authority are not consistent or unanimous, especially given BC's long history of keeping investigative and charge assessment roles separate (Braidwood, 2010, p. 421). MacDonald reiterated the long-standing recommendation of Justice Braidwood for independent prosecutors to be appointed for all cases against police, as even the perception of conflict of interest undermines public trust. The call for a different approach to charging and prosecuting police was also raised by the individuals, families and organizations connected to Jared and Dale, with the Joint Letter to Deputy Attorney General Carmichael calling for the appointment of an Indigenous Special Prosecutor or an Indigenous lawyer to serve as second chair to a Special Prosecutor, which they assert is necessary "for public interest, the administration of justice and reconciliation" and "consistent with BCPS' recognition that Indigenous peoples continue to face discrimination in all matters of the criminal justice system" (BCCLA, 2024, p. 5).

While BCPS may have rock solid rationales for all internal decisions, the appearance of untransparent decisions and irregular or arbitrary application of standards and guidelines stoke fears or beliefs that the Crown's approach to the prosecution of police is not assertive or consistent, undermining public trust and confidence. The police oversight system was formed based on the recommendations of Justice Braidwood, but BC did not heed his call for independent prosecutors to advance cases. This recommendation continues to offer a potential path forward for BC to bolster the system's independence by shifting responsibility from BCPS to a vetted group of highly skilled, independent prosecutors, with extensive experience in prosecuting complex cases and challenging police (Recommendation 3). Caution must be exercised in this, and any, significant reforms and thoughtful attention must be given to the qualifications and vetting process for these prosecutors. Given the system's impact on Indigenous people and other marginalized groups, this may be an opportunity for the Crown to co-develop this process with title and rights holders, while leveraging the expertise of legal professionals experienced in this system. Alternatively, the province could shift charge approvals to IIO, as is the norm in many Canadian jurisdictions.

Although BC's role in reforming the structure of the oversight system cannot be overstated, as long as this work remains in the domain of the BCPS, it has a critical role in insulating prosecutorial independence and reducing the perception of bias in charge assessments and prosecutions against police. The BCPS should ensure that the Crown Counsel responsible for cases against police are the highest skilled individuals at BCPS disposal, with a proven track record of advancing complex cases (Recommendation 15a). The BCPS should also consider mechanisms to bolster clear lines of separation between those that advance cases brought forward by police and those against the police to avoid the impact and/or perception of bias, in recognition of the potential risks to the careers of Crown Counsel that work closely with police and rely on them as witnesses (Recommendation 15b). Ultimately, the police oversight system must be structured in a manner that reflects the context in which it operates, including the frequent resistance to oversight common in police culture, and not claim ignorance of the "thin blue line."

### ***5.1.15 Do You Trust Us Now? Answering the Research Questions***

This thesis set out to answer the questions: 1) what does a mixed methods examination of the police oversight system responsible for investigating incidents of serious harm and deaths reveal about the system's achievement of its foundational goals? 2) what opportunities exist for this system to more effectively realize these goals? This discussion has examined a myriad of factors that seem undermine the police oversight system's achievement of its goals of demonstrating accountability and increasing transparency and public trust and confidence in policing and oversight. As was discussed at the outset and highlighted through this discussion, the goals of the police oversight system are deeply interlinked and inter-dependent, and public trust and confidence hinges on the achievement of the first two goals.

Accountability without transparency does not bolster public confidence. Likewise, transparency without accountability will not boost public trust.

While the system operates with some transparency, gaps and problem spots where confusion abounds were apparent throughout the research, indicating the need for substantial reforms. For accountability, a much more dismal picture emerged and, throughout the research, the words of MacDonald rang true, “on the accountability side, no. A good job did not happen” (Personal Communications, 2024). IIO was opened in September 2012 and (as of February 2025) the quantitative analysis examined eight of its 12.5 years in operation. If the quantitative findings are an accurate portrayal of the police oversight system’s outcomes for incidents of serious harm and deaths over the study period, this indicates that either no police officers in BC unjustifiably took a life between 2014 and 2021 and none has unjustifiably caused *Police Act* defined serious harm since 2014, or the system designed to deliver accountability in cases of violent, criminal actions by police is failing to do so. This mismatch between the intentions for and realities of this system have not gone unnoticed. While this research cannot conclude that the police oversight system does not deliver accountability, especially as 14 convictions were secured, it exposed many areas where the system diverges from its intended purposes and numerous problem spots where observers may question the impartiality of this system and, in its current structure, its ability to hold police to account.

The outcomes of the police oversight system raise the question, is this system set up to succeed? This discussion has exposed institutional considerations that may be undermining the system’s ability to fulfill its goals, such as IIO’s constrained mandate and insufficient resourcing for both investigations and prosecutions. It has also grazed the surface of systemic considerations, highlighting the troubling over-representation of Indigenous people and the inconsistent application of standards and assessments that may exacerbate or leave room for bias or discrimination that perpetuate social inequalities and reinforce existing power structures. The discussion’s concerns around BCPS’ advancement of cases against police raise questions about the unique institutional and systemic constraints faced by this organization. It bears repeating that a significant limitation of this research is the lack of input from BCPS; there are likely numerous unconsidered contributing factors to BCPS’ decisions and outcomes. From the available information, BCPS faces institutional and systemic barriers, which may be externally or self imposed, including a lack of clarity in policy around the role of public trust and the “home court” advantages for police in a legal system that pits officers against APs, who are frequently not white and, at times, under the influence of substances and/or struggling with their mental health. While BCPS’ ability to deliver accountability appeared compromised in this discussion, prosecutors, regardless of their lofty intentions, cannot overcome all the institutional and systemic barriers engrained in Canadian society and legal system.

Public trust and confidence rest on the pillars of accountability and transparency. While polls indicate declining trust in policing and limited research from Ontario found skepticism in the ability of independent oversight to hold police to account (Kwon & Wortley, 2022, pp. 651-659; Schulenberg et. al, 2017, p. 779; Angus Reid, 2022, pp. 12-13; Statistics Canada, 2020; Boutilier, 2022), a critical component that emerged through this research is how frequently the public witnesses seeming issues in transparency and accountability, including through the news media. While communities marginalized by the state have long raised these issues and gone unheeded and police stakeholders continue their attempts to manage narratives, these issues are beginning to be more commonly identified by people in positions of power and exposed in public view. Although the majority of British Columbians may not closely follow media stories on the oversight system, this reality appears to be seeping into the collective consciousness more deeply in the post-2020 context, especially as the former head of the IIO has been ringing the alarm on this system in recent years. The question remains, is there political will in government to address these failures and bring about the systemic changes and transformational reforms needed to re-envision and foundationally restructure this system?

Five years since the widespread mainstreaming Black Lives Matter and Shut Down Canada movements, public awareness has of systemic injustice within policing and oversight has expanded. Although the over-representation of Indigenous people in the police oversight system may surprise few, the outcomes of this system undermine public trust and erode the “founding myths” of the rule of law and democratic model of policing that the oversight system upholds. While daunting, the myriad of concerns raised in this discussion must be urgently addressed for the police oversight system to begin to achieve its goals of delivering accountability and increasing transparency and public trust and confidence in policing and oversight.

### ***5.2 Revisiting Critical Intersectional Institutionalism***

This thesis demonstrates the value of merging critical and institutional theories into an intersectional framework for research into complex systems that are deeply rooted in colonialism and racism. While institutional and critical theories are often viewed as a world apart, this research highlighted their complementary natures, with institutional perspectives fitting within the systemic critical analysis. For example, while Meyer and Rowan note that institutionalized organizations may strive to protect their structures from technical evaluation (1977, p. 357), which points to the lack of research on the outcomes of the police oversight system, institutional theories offer only limited explanations for these behaviours, such as organizational self-preservation and drive to reduce uncertainty (pp. 349-358), and fail to examine the systemic bases for institutional arrangements, such as upholding existing power structures. Critical Intersectional Institutionalism (CII) demands the integration of both institutional and systemic perspectives.

By insisting on both, CII creates space nearly limitless room for expansion and increasingly nuanced understanding. This is both an opportunity and a challenge, as CII, like all forms of intersectional analysis, is always a partial approach; it “is never done, nor exhausted by its prior articulations or movements; it is always already an analysis-in-progress” (Carbado, Crenshaw, Mays & Tomlinson, 2013, p. 303). CII provides and demands the adaptability and expansiveness to follow the research, which proved essential in this thesis’ numerous unexpected findings and an organic layering of information. One example of this was the unexpected focus on BCPS, which arose spontaneously out of the research findings and required additional, responsive learning about topics like charge assessment standards and charge rates. At the same time, CII’s ever-expansive positioning presented challenges, including scope creep and a literature review that spans an unwieldy number of topics (and pages). This thesis did not expand scope to integrate perspectives from BCPS, although interviews with Crown Counsel would have undoubtedly added more nuance and depth to the understanding of the police oversight system and strengthened the recommendations. Given its perpetually partial nature, at some point, CII and all intersectional research must, even if only temporarily, stop and be defended.

While at times painstakingly slow with its cumbersome demands, CII is a natural fit with mixed methods, as it calls for consideration and integration of tangible, data-driven outcomes with contextual and qualitative exploration of the visceral realities of this system. CII also integrated two sets of goals; institutionalism orientates itself toward reforms and improved outcomes, while the systemic theories call for transformation and justice. Here also, this research is partial, as the recommendations primarily reflect institutional rather than transformational goals. More work is needed to re-envision a future state, beyond colonialism and the limits of western conceptions of justice, where criminal acts and racism are rapidly and systemically rooted out, and to develop tangible plans and policies to shift in this transformational direction.

This research also highlighted how intrinsically embedded intersectionality is within my approach and worldview. Intersectionality was ingrained in me not only through theory and academic learning during my undergraduate degree, but more profoundly and inextricably through lived experience. In this way, CII is not my creation; it is the articulation of the framework that underpins my worldview and approach to all

my work. CII and my thesis stand on the shoulders of giants, both of theory and activism, who shaped the way I view systems, problems and solutions. At a macro level, I do not claim CII to be a significance theoretical advancement, but within studies of the police oversight system in BC, intersectional analysis that integrates institutional and systemic considerations is rare. I hope that CII and my research contributes to a deeper understanding of this system and inspires others to also interweave systemic and institutional analysis in their examinations of police oversight.

## **Chapter 6: Recommendations & Conclusion**

### ***6.1 Strategic and Policy Implications***

In closing, this chapter proposes a wide range of recommendations, which center around the goals of police oversight and are intended to support the system in delivering accountability, bolstering transparency, and promoting public confidence and trust in oversight and policing. At the core of this is transparency. As well put by Puddister and McNabb, “the public cannot have trust in a process that suffers from a lack of transparency” (2021, p. 401). Likewise, this researcher proposes that the public cannot be confident in the alleged accountability that the system metes out without transparency. From this stance, the researcher proposes 18 recommendations.

The findings of this examination of the police oversight system highlight the interconnected nature of potential reforms to the police oversight system. The recommendations are divided into three categories based on the party responsible for their implementation, including six recommendations for the BC government, three for IIO and four for the BCPS. Please note that the fulfilment of some recommendations, such as the implementation of SCORPA’s ninth recommendation, may erase the need for others, but a comprehensive list is provided to both immediately address urgent gaps and holistically advance long-term reforms.

Overarching recommendations for the BC government regarding the police oversight system:

1. Immediately expand IIO’s mandate to encompass sexual assault and domestic violence, in alignment with other jurisdictions, as called for since IIO’s creation and as required to ensure accountability and bolster public confidence. Consideration should also be given to the inclusion other trust-shattering criminal allegations against police, with future research needed to determine which provisions of the *Criminal Code* and/or other provincial or federal enactments should be included within IIO’s mandate, or if all criminal allegations should be investigated through the civilian-led system.
2. Sufficiently and sustainably resource the oversight system, including both investigations into and prosecutions against police. Under-resourcing this system undermines its ability to achieve its goals and risks the overturning of guilty verdicts.
3. Bolster the independence of police prosecutions through implementing the recommendation of Justice Braidwood and former CCD MacDonald to create a stable of vetted, highly experienced independent prosecutors. BCPS’ close working relationship with the police, as well as the outcomes of this system thus far, have fed a perception of bias and police privilege, and reforms are needed to insulate prosecutors from public, police and career pressure and ensure that the most highly skilled experts are responsible for these challenge, complex and high-stakes cases.
  - a. As an alternative option and dependent on political will, BC could expand the authority of IIO to lay charges, in alignment with police oversight bodies in other jurisdictions, such as Ontario, Alberta, Nova Scotia and Newfoundland and Labrador.
4. Provide supports for APs through the implementation of the recommendations of the Human Rights Commissioner for the provision of funding by the Ministry of the Attorney General for legal advocacy programs, including legal aid, for individuals caught up in this system (OHRC, 2021, p. 10). This will not only offer support to APs navigating the complex and intimidating web of oversight and acknowledge the over-representation of marginalized people within this system but begin to level the playing field between APs and SOs, increasing pressure on the system to deliver accountability in a transparent manner and build public trust.
5. Heed the calls made by the former CCD of the IIO and by First Nations leadership and justice organizations by mandating an independent review of BCPS charge approvals and a public inquiry into police-involved deaths of Indigenous people in BC. To chart a clear path forward that will meaningfully address the concerns of the public, which are evidenced by the outcomes of the current system, BC must cease to close its mind to the realities of marginalized people and communities and

end the dark space of allegations and unknowing about the current realities oversight and policing in BC.

6. Require the release of public reports for all IIO closed cases where referrals are not made and clear statements for all SOs that BCPS does not charge, as well as all charges that are not laid, to increase the public transparency of referral and charge decisions.
7. Require and fund regular (e.g. five year) external evaluations on the outcomes of the police oversight system, examining the types of incidents that are and are not moving through the system, including intersectional analysis around race, gender, mental health and substance use.
8. Work with title and rights holders in BC to improve the safety of Indigenous people within the police oversight system and embed First Nations oversight as a measure to expose and address systemic, ingrained racism and bias, as required by the government's commitments to reconciliation and the full implementation of the *United Nations Declaration on the Rights of Indigenous Peoples*. This process and the goals of it must be shaped by First Nations, but may include:
  - a. The creation of an Indigenous civilian oversight body, as called for by the First Nations Leadership Council and the Human Rights Commissioner (2021, p. 10; OHRC, 2021, p. 11).
  - b. Funding for embedded supports and services for Indigenous people within the police oversight system, such as:
    - i. Specialized team(s) responsible for cases involving Indigenous APs that have high levels of cultural competency, prioritizes the hiring of Indigenous staff, and commits to building trust-based relationships with First Nations and Indigenous organizations around the province.
    - ii. Specialized supports for Indigenous APs, their families and impacted community members, which should be funded by government and delivered by Indigenous service providers.
9. Cautiously and in partnership with title and rights holders implement recommendation nine of the Special Committee on Reforming the Police Act by establishing a single, independent, civilian-led oversight agency responsible for all disciplinary, conduct and criminal complaints and allegations against police and public safety personnel (BC Legislative Assembly, 2022, pp. 11-12). To be effective and meaningfully address the individual and systemic issues at play, the new oversight body must be sufficiently and sustainably funded, be grounded in stand-alone legislation that affirms its independence as well as police duty to comply and punishments for noncompliance, and have a broad mandate that includes authority to investigate and make binding-recommendations regarding systemic issues, policy and trainings, as well as misconduct and criminal allegations. Victims of police violence and wrongdoing, as well as their families and communities, are currently caught up in a complex web of organizations with inconsistent approaches and are often bounced between these bodies, without access to justice.
  - a. In the interim, increase the independence of the police oversight system by ensuring that all components are civilian-led, and all investigative bodies and teams have civilian members and other external parties and experts, as needed. In 2024, the police should not be leading investigations of police and those harmed by police actions forced to rely on the police in their search for justice.

The researcher also proposes three recommendations for IIO:

10. Increase transparency by:
  - a. Explicitly stating the number of SOs and charges recommended to BCPS in media statements.
  - b. Releasing public reports for all closed investigations where charges are not recommended.
  - c. Providing a distinct access point (e.g. dedicated contact form) for members of the public who believe they have experienced harm that falls within IIO's mandate, despite the incident not being reported to IIO by the relevant police agency.

- d. Updating the IIO website to increase accessibility and information-sharing. This could be supported by a thorough review of other Canadian oversight bodies' websites to gather best practices to apply to the IIO.
11. Improve the collection of race-based data, including ensuring that this data is available for all APs and the demographic data differentiates between First Nations, Inuit and Metis people.
  12. Increase the safety of Indigenous APs by:
    - a. Applying the authority of the *Police Act* (s. 38.08) for IIO's CCD to appoint a civilian monitor for investigations for all police incidents where an Indigenous person was seriously harmed or killed, with the monitor holding a position of respect and trust within the community of the AP.
    - b. Utilizing funding from the province to embed supports and services for Indigenous people within the police oversight system, as developed in consultation with First Nations, such as the two examples provided in Recommendation 8b.

Finally, the researcher recommends that BCPS:

13. Update and clarify the processes around assessing charges against police to improve transparency, including:
  - a. Implementing a policy or other mechanism that clearly outlines and standardizes the application of the public interest in charge decisions against police when the allegations could implicate trust in the justice system and link to their role of authority.
    - i. Considering whether all or some allegations of police criminal conduct, such as misuse of force, should by default trigger the standard of reasonable prospect of conviction due to the implications for public interest and confidence in the justice system.
  - b. Transparently, clearly and publicly articulating the role of public interest in all charge decisions regarding allegations against police for the public's awareness.
14. Increase transparency and reduce the perception of bias by:
  - a. Strengthening communications with public, including providing clear statements for all SOs not charged when charges were recommended by IIO, and for all recommended charges that were not laid.
  - b. Avoiding terminology that may be interpreted as connotating guilt, not only for SOs, but also for APs, including ending the use of terms like "suspects" in BCPS reports.
  - c. Critically evaluating evidence, testimony and expert opinions, where appropriate, including challenging the reliance on use of force reports, SO and WO testimony, and the use of excited delirium as a cause of death.
15. Insulate prosecutorial independence and reduce the perception of bias for charge assessments and prosecutions against police. This may include:
  - a. Ensuring that the Crown Counsel responsible for cases against police are the highest skilled individuals at BCPS disposal, with a proven track record of advancing complex cases.
  - b. Considering mechanisms to bolster clear lines of separation between those that advance cases brought forward by police and those against the police to avoid the impact and/or perception of bias and in recognition of the potential risks faced by Crown Counsel that work closely with police and rely on them as witnesses, as well as prosecute SOs.
16. Build and maintain a coordinated, collaborative working relationship with IIO and promote increased integration and understanding between the two organizations to better leverage the unique expertise of all parties and more effectively move forward prosecutions of SOs.
17. Identify and implement measures to increase the safety of Indigenous people within the BCPS involved in police oversight cases. This may include:
  - a. The creation of Specialized team(s) responsible for cases involving Indigenous APs that have high levels of cultural competency, prioritizes the hiring of Indigenous staff, and commits to

- building trust-based relationships with First Nations and Indigenous organizations around the province.
- b. When requested in cases where the AP is an Indigenous person, BCPS should strive to provide an Indigenous lawyer as Special Prosecutor or Ad Hoc Counsel, or an Indigenous lawyer to serve as second chair for both charge assessment and prosecution.
18. Ensure that prosecutions against police are well-resourced, reflecting the immense complexity and resource-intensity of these types of cases.

## ***6.2 Areas for Future Research***

This thesis has sought to begin to address the glaring lack of literature on police oversight in BC and the complete absence of literature examining the outcomes for cases that IIO refers to Crown Counsel and proceed through the legal system. Working in this context, there are nearly countless opportunities for future research. This thesis, as explained in Chapter 1, was scoped to the components of the police oversight system responsible for serious harm and deaths—the IIO and BCPS—but research is also urgently needed to evaluate the effectiveness the CRCC and OPCC. As became clear in this research, these bodies are not just adjudicating misconduct, but are also responsible for serious criminal allegations, including sexual assault, and must be examined for a more holistic understanding of police oversight. Regarding sexual assault specifically, dedicated research is urgently needed, especially given the frequency of these allegations and convictions in Ontario. During the media scan, only a handful of charges against BC police officers were noted, despite making up over 26% of charges laid, with 51 SOs charged, by Ontario’s SIU. In the jurisdictional scan, the researcher also identified a need for future research into the flexible mandates in some jurisdictions as well as how public interest is understood and applied.

This research declined to make a recommendation around the civilianization of IIO, although this was a frequently raised issue in the myriad of reports regarding police oversight in BC. During the SCORPA engagements in 2021, many organizations reiterated long-standing calls for the full civilianization of IIO, including the Office of the Human Rights Commissioner and the First Nations Leadership Council (FNLC) (OHRC, 2021, p. 10; FNLC, 2021, p. 10). While these calls continue to be common from First Nations and justice related organizations, the former head of the IIO, MacDonald, opposed full civilianization and called for the removal of the five-year restriction on hiring current or former police as a mechanism to bolster the effectiveness of IIO. To make a meaningful recommendation, this topic requires not only research on the stances of stakeholders and title and rights holders, but the development of a feasible path forward to implement civilianization without undermining the investigative expertise of oversight agencies. Although this is out of scope of this project, future research is needed.

A core area for future research in the quantitative analysis is the classification of incidents, such as use of force, as IIO investigations are not publicly classified or defined in this manner, and this would provide invaluable insight to precisely analyze the types of investigations IIO completes and comparison of the oversight system’s response to different types of incidents. While this research provided some analysis of classifications, future exploration could improve comparability and offer more insight into this critical consideration. In the case studies and interview, it was evident that future research is also needed on the BCPS’ processes, charge assessment standards and working relationship with IIO, as well as options for alternatives to the current charge approval and prosecution structure.

While this thesis was grounded in intersectionality, it barely grazed the surface of ethnicity, with less than two years of data available, while other intersectional factors, such as class and socioeconomic status, and more in-depth analysis of mental health and substance use would help paint a clearer picture of the people, the families and communities caught up in this system. Likewise, although there is abundant evidence, as discussed in the literature review, of the over-representation of Black people in interactions with police, arrests, charges and incidents of police violence, only three APs of 391 IIO investigations with ethnicity data were Black. Future research is needed to analyze the factors that contribute to the

overrepresentation of Black people in incidents of police use of force, but under-representation in the oversight system and if there are additional barriers to accessibility that require unique solutions. Finally, this thesis did not delve into opportunities to decolonize the police oversight system and forms of justice and accountability to both better meet the needs of the Indigenous people who are drastically over-represented in this system and fulfill BC's commitment to the *United Nations Declaration on the Rights of Indigenous Peoples* by embedding First Nations leadership and oversight within this or other new system(s). Future research is urgently needed in this area.

### **6.3 Final Thoughts**

In Canada, the expectation of independent, civilian-led police oversight is relatively new, with the oldest civilian-led oversight agency responsible for incidents of serious harm and deaths formed in 1990, and organizations created in several provinces since 2020 (Saskatchewan, 2021; Roach, 2022, p. 63; SIRTNL, 2024a; New Brunswick, 2023). Although relatively novel, this expectation has been rapidly accepted as the new norm by the public (Smith, 2013, p. 92) and further cemented through increasing public awareness of injustice, inequality and racism in policing and the “justice” system in the post-2020 context (Canadian Museum for Human Rights, 2025; Environics Institute, 2021).

Despite this contextual awareness, the findings of this study were shocking in the degree of variance between the intended purpose and goals of the police oversight system and its dismal outcomes. The system's outcomes are not merely lacklustre; Ontario's similarly colonial system, despite facing frequent critiques and calls for reform, shines in comparison. Upon closer examination, a myriad of problem spots emerged that call into question the system's impartiality and, in its current structure, its ability to hold police to account. While the connection between these apparent problem spots and the outcomes cannot be definitively concluded, it is clear that the police oversight system in BC is facing a rising crisis of legitimacy as it fails to achieve its goals. While public awareness of these issues has increased in recent years, the full scale of the failures of this system have yet to be recognized in mainstream discussions, including by SCORPA. This gap between reality and perception is contributed to by the complete dearth of peer-reviewed literature on this system, especially evaluations of its outcomes, which creates a blind spot of deniability. In this dark space of unknowing, government, police stakeholders and the system itself are able to relegate the experiences of marginalized communities and those harmed by police to the realm of the anecdotal, unreliable, and – most importantly – ignorable.

But this is changing. This research takes a (small) step towards exposing the police oversight system. I hope it leaves readers with a more nuanced perspective of police oversight and motivation to share and act on what they have learned. While ignorance may be preferred by the current systems of power, the failures of the police oversight system present a threat to the rule of law, the foundations of the western legal system and the public's safety – from the police. BC would be wise to urgent action to address these failures; a drastic decline in public trust and confidence in policing and oversight, triggered by the apparent inability of the oversight system to transparently hold police to account, will have dire and rippling implications.

## Appendices

### *Appendix A: Sexual Violence*

The IIO does not investigate allegations of sexual assault by police. Despite calls dating the origins of IIO, including by Human Rights Watch in 2013, IIO's mandate is limited to investigating "incidents where serious harm or death has occurred (IIO, 2019a)." IIO looks to the decades old *Police Act* to define serious harm as an injury that may cause death, serious disfigurement or substantial loss or impairment of mobility of the body as a whole or of the function of any limb or organ (Police Act, 1996). While sexual violence by police is out of scope of IIO and therefore the research of this thesis, it is critical to acknowledge from the outset that this is a grave oversight and that this topic cannot be fully omitted from a thesis that explores police oversight in cases of death or serious harm, even if the responsible body excludes it. Research from Ontario shows that sexual assault is a common allegation against police and that many cases have strong evidence of wrongdoing, with sexual assault comprising 26% of all charges laid against police by SIU between 2005 and 2020 (Puddister and McNabb, 2021, p. 390).

In 2013, Human Rights Watch (HRW) released the report "Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada." The report recounted many allegations of sexual assault by police against Indigenous women and girls in BC and referred to the recently formed IIO's exclusion of sexual violence from its mandate as "an unacceptable discriminatory omission on the part of the provincial legislature. It sends a loud message that assaults on women are not important (p. 10)." The report recommended the expansion of IIO's mandate to include sexual assault and identified that provisions already exist in legislation to broaden the mandate, including when an officer "may have contravened a prescribed provision of the Criminal Code or a prescribed provision of another federal or provincial enactment (p. 43)." The Attorney General at the time of the HRW report stated that the government "will wait until the IIO has been in operation for a sufficient period of time to assess its workload and capacity before deciding whether to expand the IIO's mandate through regulations."

In 2022, McNabb and Puddister published an article on alleged sexual assault by police in Ontario, analyzing 689 cases of police-involved sexual assault between 2005 and 2020. This article outlines the immense challenges and barriers, including difficulties proving cases, re-traumatization by the justice system and commonality of disbelief by police, that those who experience sexual assault face in their search for justice, and how these are exacerbated when the perpetrator is a police officer (p. 2-4). McNabb and Puddister found that of the 689 cases, 40% were not fully investigated and charges were laid in 51 of the 689 cases. Of those 51 investigations, 20% were withdrawn by prosecution and 40% were acquitted, with 11 cases resulting in a conviction and sentence for a total rate of 1.59% of all sexual assault reports made to SIU between 2005-2020 (p. 15). The authors found that officers accused of sexual assault were male in all 689 cases, and on average held a rank of sergeant or higher (p. 15). The authors compared the Ontario criminal justice system's response to allegations of police and non-police sexual assault, finding allegations against police were categorized as "unfounded" in 40% of investigations, while the general population rate across Ontario is 10.5%, and only 7% of investigations into police resulted in charges, while 43% of cases involving civilians resulted in charges (p. 15).

This exclusion of sexual assault from IIO's mandate is especially egregious in light of the public confirmation of police assault, often of Indigenous women and girls, in BC. In February 2023, news media released articles on allegations that the RCMP did not investigate sexual violence against Indigenous girls in Prince George, despite video evidence and reports from various officers, including those with senior ranks, to the chain of command since 2006 (Mulgrew, 2023). The allegations have not yet been proven in court, but recently retired RCMP Commissioner Lucki took three years to sign off an investigation that found "a complete failure by all management personnel (Mulgrew, 2023)."

Sexual violence by police is not only targeted at the public. The “thin blue line” often fails to protect police from their fellow officers, instead shielding perpetrators and punishing victims. In 2020, the report “Broken Dreams, Broken Lives: The Devastating Effects of Sexual Harassment on Women in the RCMP” was provided to the RCMP Police Commissioner by an independent assessor to support the settlement of a class action lawsuit against the force. The report finds that “the culture of the RCMP is toxic and tolerates misogynistic and homophobic attitudes among its leaders and members... this report concludes that change cannot come from within the RCMP but must be initiated from external sources (Bastarche, 2020, p. I).” The assessor completed 644 interviews and assessed 3,086 claims, with over 130 claimants disclosing penetrative sexual assaults and threats of retaliation for those that complained of sexual harassment or assault (pp. II, 45-54).

Sexual violence against police by police is not limited to the RCMP. In British Columbia, in February 2023, news media covered the Coroner’s Inquest into death of Constable Chan by suicide in 2019, where officers testified about the harm and lack of action regarding her complaints of sexual assault and coercion by a supervisor (Mannoe, 2023). The experience of Constable Chan evidences the ongoing normalization of sexual violence within police departments, with VPD being the subject to multiple *Police Act* investigations and the OPCC providing recommendations regarding sexually inappropriate conduct of officers in four of the five recent annual reports, further emphasizing the vital importance of independent investigations into allegations of sexual assault of civilians by police (Mannoe, 2023).

In 2015, the Legislative Assembly’s Special Committee to Review the Independent Investigations Office pointed to the slow progress in civilianization of IIO as a reason not to expand IIO’s mandate, “since this would require additional expertise and resources, and could divert the IIO from its primary goal of ensuring effective investigations (British Columbia, 2015, p. 6).” In 2020, David Eby, current Premier and Attorney General at the time, stated that adding sexual assault and domestic violence to the IIO’s mandate was a possibility after surviving its “rocky start” (Brend, 2020). Yet, in 2023, sexual assault continues to be excluded from BC’s definition of serious harm.

The exclusion of sexual assault from IIO’s mandate ensures that those who experience sexual violence at the hands of police are forced into a less independent investigative process, with fewer recourses. There is no research to quantify the chilling effect this may have on reporting of sexual violence by police, but it must be repeated that, in 2023, BC does not consider sexual assault a crime that causes serious harm or deserves to be investigated with the most rigorous tools at its disposal. While this thesis analyzes serious harm and deaths at the hands of police, as defined by the *Police Act*, and, therefore, excludes sexual assault from its scope, this is a failure that empowers perpetrators and exposes survivors of sexual assault to more risk.

## *Appendix B: Data Set Clarifications*

While IIO cases are numbered sequentially (e.g., 2019-001, 2019-002, etc.), many investigation numbers were missing from the data received through the data request and on IIO's website. IIO clarified that these are advice files, which are incidents where the IIO is notified of an incident, which does not meet the threshold for an investigation. Over email, Whalen provided the following details,

This is often the case where the injury does not meet the threshold of serious harm or there is insufficient connection to any police actions or inactions. These notifications are categorized as 'advice files' given the agency is calling to receive advice and/or confirmation that an IIO investigation will not be undertaken. A file number is assigned for administrative purposes only, and very limited or no work is undertaken. Advice files are excluded from IIO statistics (Whalen. R, personal communication, September 15, 2023).

Additionally, sometimes there is a delay in IIO's investigation of an incident, often due to new information becoming available. For example, for 2020-198, the investigation was initiated in 2020, but the incident occurred in 2013. As this thesis' study period is January 1, 2014, to December 31, 2021, 2020-198 and other incidents occurring outside of the scope were excluded from the dataset.

There were several notable changes in IIO practices over the study period, which IIO's liaison also flagged over email exchanges. While the data shows that there were fewer investigations in 2014-2016 than in more recent years, the number of referrals to Crown Counsel for consideration of charges were higher in those years. The IIO clarified that this was the result of two changes. First, the definition of an investigation was updated, as previously only lengthy investigations were counted, but in 2017/2018, the definition was updated to include any incidents where investigative work is completed; advice files continued to be excluded.

Second, IIO's standard for referring cases to the BCPS changed, with the IIO stating that this was to align with other law enforcement agencies and oversight jurisdictions. The IIO elaborated that:

The *Police Act* previously stated that the CCD must refer a file to Crown if it is determined that an officer may have committed an offence under any enactment. The past interpretation of this referral standard by the IIO resulted in some cases being referred to Crown where there was no likelihood of charges being approved and resulted in significant delays and an increased workload for the IIO. Following consultation with Crown and other stakeholders and drawing on his extensive experience in the criminal justice system, the CCD implemented a practical interpretation of the referral standard which is consistent with the referral standard used by police. The goal is to refer those cases where the likelihood of charge approval is reasonable (Whalen. R, personal communication, September 15, 2023).

This change was codified in the *Police Act* in 2019 and resulted in a decrease in the number of cases being referred to Crown Counsel, as cases where IIO evaluated the likelihood of charge approval to be low are no longer referred.

While working with publicly available data on IIO's website, the researcher identified that some incidents listed in the dataset were not available online, including 2021-080, and reached out to IIO Media Liaison, Whalen. Whalen explained that there was a glitch with the website which caused most of the discrepancies, but incident 2021-080 was duplicated and had listed under two codes in error (2020-046 and 2021-080), which is why it was not available online. To maintain the integrity of the dataset, 2021-080 was deleted. Similarly, for one investigation, 2020-077, the CCD had determined that no information would be provided to the public (Whalen. R, personal communication, May 22, 2024) and the limited information available was not enough for analysis. Due to the CCD's determination, investigation 2021-077 was excluded from the dataset, as information was not available for analysis.

Finally, IIO clarified that information is not provided on open investigations. While there were minimal open investigations for the study period, there were several and some were finalized while the research was ongoing. The researcher maintained close communication with IIO's Media Liaison and added investigations to the dataset as they became available. As of August 1, 2024, there were four open cases for the study period, all for incidents occurring in 2020 and 2021. These cases – 2020-047, 2021-137, 2023-005 and 2023-045 – are excluded from this research. Additionally, there are six investigations that IIO referred to Crown Counsel but is awaiting decision on – 2019-201, 2021-097, 2021-100, 2021-171, 2021-256 and 2021-332. These investigations are noted as a separate category – Referral to Crown Counsel (RTCC) – in the analysis.

## Appendix C: Additional Figures and Charts

### 4.2.1 - Unpacking the Data: All IIO Investigations

Figure 5b: IIO Types of Investigations

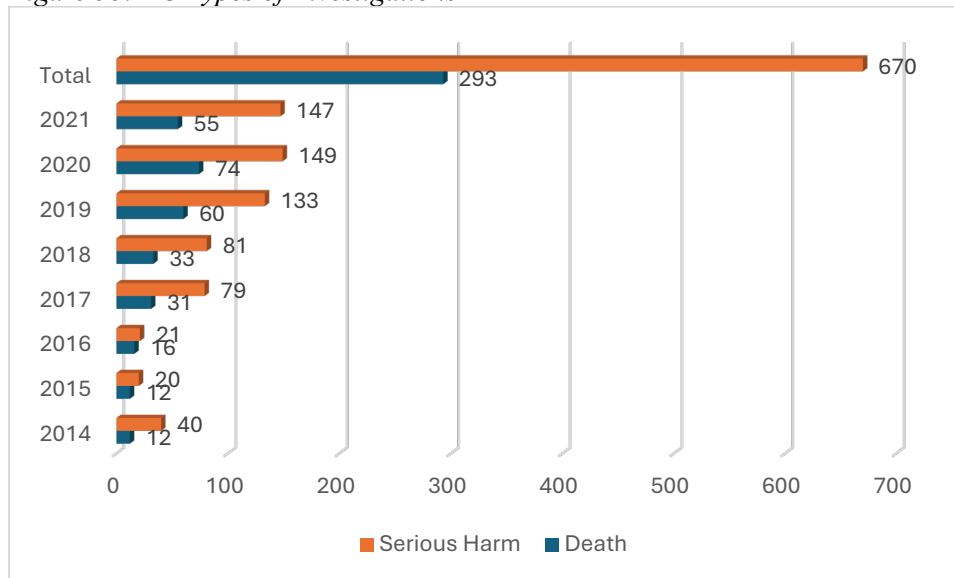


Table 6 (extended): IIO Investigations by Agency

Agency	Number of IIO Investigations	Percentage of IIO's Investigations
<b>RCMP</b>	633	65.73%
<b>Vancouver PD (VPD)</b>	192	19.99%
<b>Victoria (Vic) PD</b>	40	4.15%
<b>Abbotsford PD (APD)</b>	35	3.63%
<b>New West PD (NWPD)</b>	10	1.03%
<b>Saanich PD</b>	9	.93%
<b>Transit Police</b>	8	.83%
<b>Delta PD</b>	8	.83%
<b>West Vancouver PD</b>	6	.62%
<b>Stl'atl'imx Tribal Police Service</b>	5	.51%
<b>Port Moody PD (PMPD)</b>	5	.51%
<b>Central Saanich PD</b>	5	.51%
<b>Nelson PD</b>	3	.31%
<b>Oak Bay PD</b>	3	.31%
<b>Special Provincial Constable</b>	1	.10%
<b>Total</b>	<b>963</b>	<b>100%</b>

\*all percentages are to the nearest 2 decimal places and are not rounded

Table 7 (extended): IIO Investigations by Agency and Type of Incident

Agency	Total Number of IIO Investigations	Serious Harm Investigations	Death Investigations	Percentage of Investigations into Deaths
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<b>RCMP</b>	633	388	245	<b>38.70%</b>
<b>VPD</b>	192	170	22	<b>11.45%</b>
<b>Vic PD</b>	40	31	9	<b>22.5%</b>
<b>Abbotsford PD</b>	35	32	3	<b>8.57%</b>
<b>New West PD</b>	10	9	1	<b>10%</b>
<b>Transit Police</b>	8	5	3	<b>37.5%</b>
<b>Saanich PD</b>	9	7	2	<b>22.22%</b>
<b>Delta PD</b>	8	5	3	<b>37.5%</b>
<b>West Vancouver PD</b>	6	5	1	<b>16.66%</b>
<b>Stl'atl'imx Tribal Police Service</b>	5	3	2	<b>40%</b>
<b>Port Moody PD</b>	5	5	0	<b>0%</b>
<b>Central Saanich PD</b>	5	4	1	<b>20%</b>
<b>Nelson PD</b>	3	3	0	<b>0%</b>
<b>Oak Bay PD</b>	3	2	1	<b>33.33%</b>
<b>Special Provincial Constable</b>	1	1	0	<b>0%</b>
<b>Total</b>	<b>963</b>	<b>670</b>	<b>293</b>	<b>30.42%</b>

In the below Figure, a more granular look at investigations into agencies shows significant variations between years. For the RCMP, the proportion of IIO investigations into deaths ranges widely from 21.7% in 2014 to 51.7% in 2016, but with less variation later in the study period with 2017-2021 ranging from 36.9-41.7%. While the variation has reduced in recent years, the RCMP was only below the IIO average of 30% investigations into deaths in 2014, and since then has consistently exceeded the province-wide average.

*Table 7b: IIO Investigations by Agency, Year and Type of Incident*

Agency	Incident	2014	2015	2016	2017	2018	2019	2020	2021	Total
<b>RCMP</b>	Death	5	10	15	28	26	48	63	50	<b>245</b>
	Serious Harm	23	13	14	39	41	82	98	78	<b>388</b>
<b>Vancouver PD</b>	Death	3	2	1	0	2	6	4	4	<b>22</b>
	Serious Harm	12	6	6	23	25	32	22	44	<b>170</b>
<b>Victoria PD</b>	Death	1	0	0	1	1	2	3	1	<b>9</b>
	Serious Harm	0	1	0	6	4	8	7	5	<b>31</b>
<b>Abbotsford PD</b>	Death	1	0	0	0	1	1	0	0	<b>3</b>
	Serious Harm	2	0	0	4	4	5	11	6	<b>32</b>
<b>New West PD</b>	Death	0	0	0	0	0	1	0	0	<b>1</b>
	Serious Harm	1	0	1	1	0	1	1	4	<b>9</b>
<b>Saanich PD</b>	Death	0	0	0	0	0	1	1	0	<b>2</b>
	Serious Harm	0	0	0	0	3	1	1	2	<b>7</b>
<b>Delta PD</b>	Death	0	0	0	0	1	0	2	0	<b>3</b>
	Serious Harm	0	0	0	0	0	0	2	3	<b>5</b>
<b>Transit Police</b>	Death	2	0	0	1	0	0	0	0	<b>3</b>
	Serious Harm	0	0	0	2	0	0	1	2	<b>5</b>
<b>West Vancouver PD</b>	Death	0	0	0	0	1	0	1	0	<b>2</b>
	Serious Harm	0	0	0	1	1	0	3	0	<b>5</b>

<b>Central Saanich PD</b>	Death	0	0	0	0	0	1	0	0	<b>1</b>
	Serious Harm	1	0	0	0	0	1	1	1	<b>4</b>
<b>Port Moody PD</b>	Death	0	0	0	0	0	0	0	0	<b>0</b>
	Serious Harm	0	0	0	1	1	2	0	1	<b>5</b>
<b>Sl't'at'l'imx Tribal Police Service</b>	Death	0	0	0	0	1	0	1	0	<b>2</b>
	Serious Harm	0	0	0	1	2	0	0	0	<b>3</b>
<b>Oak Bay PD</b>	Death	0	0	0	1	0	0	0	0	<b>1</b>
	Serious Harm	0	0	0	0	0	0	2	0	<b>2</b>
<b>Nelson PD</b>	Death	0	0	0	0	0	0	0	0	<b>0</b>
	Serious Harm	1	0	0	1	0	1	0	0	<b>3</b>
<b>Special Provincial Constable</b>	Death	0	0	0	0	0	0	0	0	<b>0</b>
	Serious Harm	0	0	0	0	0	0	0	1	<b>1</b>
<b>Total</b>		<b>52</b>	<b>32</b>	<b>37</b>	<b>110</b>	<b>114</b>	<b>193</b>	<b>223</b>	<b>202</b>	<b>963</b>

Figure 4b: All IIO Investigations by AP Gender and Year

Year	Female	Male	Gender Diverse	Minor	Unavailable	Total	% of Male APs
2014	3	49	0	2	0	<b>54</b>	<b>90.7%</b>
2015	0	31	0	0	0	<b>31</b>	<b>100%</b>
2016	9	30	0	0	0	<b>39</b>	<b>76.9%</b>
2017	18	94	0	0	0	<b>112</b>	<b>83.9%</b>
2018	22	94	0	0	1	<b>117</b>	<b>80.3%</b>
2019	28	166	0	0	1	<b>195</b>	<b>85.1%</b>
2020	42	183	0	0	0	<b>225</b>	<b>81.3%</b>
2021	37	170	2	0	0	<b>209</b>	<b>81.3%</b>
<b>Total</b>	<b>159</b>	<b>817</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>982</b>	<b>83.1%</b>

Figure 4c: All IIO Investigations by AP Gender, Year and Incident Type

Gender	Incident	2014	2015	2016	2017	2018	2019	2020	2021	Total
<b>Female</b>	Death	2	0	5	7	4	9	11	8	<b>46</b>
	Serious Harm	1	0	4	11	18	19	31	29	<b>113</b>
<b>Serious Harm to Death %</b>		33.3%	NA	44.4%	61.1%	81.8%	67.8%	73.8%	78.3%	<b>71.0%</b>
<b>Male</b>	Death	10	12	12	24	29	52	63	49	<b>251</b>
	Serious Harm	39	19	18	70	65	114	120	121	<b>566</b>
<b>Serious Harm to Death %</b>		79.5%	61.2%	60.0%	74.4%	69.1%	68.6%	65.5%	71.1%	<b>69.2%</b>

\* For investigations with gender diverse, minor or gender-unavailable APs, the number of cases is too low to allow for proper analysis, with only 2 cases in each category through the total study period, and they are therefore excluded from the chart below. Both gender diverse APs were seriously harmed in incidents in 2021, while both incidents involving minors occurred in 2014, with one death and one serious harm, and both APs with gender information unavailable were seriously harmed, one in 2018 and one in 2019.

Table 16: IIO Referrals by Agency

Police Force	Total	Percentage of IIO's Referrals
<b>RCMP</b>	<b>62</b>	<b>65.2%</b>
<b>Vancouver PD</b>	<b>22</b>	<b>23.1%</b>
<b>Abbotsford PD</b>	<b>6</b>	<b>6.3%</b>
<b>Victoria PD</b>	<b>1</b>	<b>1.0%</b>
<b>Delta PD</b>	<b>1</b>	<b>1.0%</b>
<b>New West PD</b>	<b>1</b>	<b>1.0%</b>
<b>Port Moody PD</b>	<b>1</b>	<b>1.0%</b>
<b>Transit Police</b>	<b>1</b>	<b>1.0%</b>
<b>Total</b>	<b>95</b>	

As shown below in Table 16b, a year-by-year analysis of referrals by agencies show immense variation, with the RCMP's percentage of yearly referrals ranging from 93% in 2015 to 44% in 2018.

*Table 16b: IIO Referrals by Agency and Year*

Agency	2014	2015	2016	2017	2018	2019	2020	2021	Total
<b>RCMP</b>	17	14	6	3	4	3	7	8	<b>62</b>
<b>Vancouver PD</b>	7	1	2	1	5	2	2	2	<b>22</b>
<b>Abbotsford PD</b>	2	0	0	0	0	0	3	1	<b>6</b>
<b>Victoria PD</b>	0	0	0	0	0	0	0	1	<b>1</b>
<b>New West PD</b>	0	0	1	0	0	0	0	0	<b>1</b>
<b>Delta PD</b>	0	0	0	0	0	0	0	1	<b>1</b>
<b>Transit Police</b>	0	0	0	0	0	0	1	0	<b>1</b>
<b>Port Moody PD</b>	0	0	0	0	0	0	0	1	<b>1</b>
<b>Total (% RCMP)</b>	26 (65%)	15 (93%)	9 (66%)	4 (75%)	9 (44%)	5 (60%)	13 (53%)	14 (57%)	<b>95</b>

The table below examines the number of subject officers in referred investigations and is drawn from IIO's media release when charges are referred. While the exact number of SOs was not available for all investigations, as IIO's media releases at times refers to "multiple" officers rather than the exact number, these indicators give a sense of the frequency of multiple officers being involved in incidents deemed charge-worthy by IIO. Out of 95 referrals, the majority of 64 referrals or 67.3% were for one officer, while 31.5% of incidents involved more than one officer.

*IIO Referrals by Number of Subject Officers*

Number of SOs	Total
<b>One</b>	64
<b>Two</b>	13
<b>Three</b>	8
<b>Five</b>	1
<b>Multiple (number not specified but more than one)</b>	8
<b>Unknown (not indicated by IIO and no clear statement provided)</b>	1
<b>Total</b>	<b>95</b>

As shown below in Figure X, the percentage of male to female APs varied significantly through the study period, ranging from 60% in 2018 to 100% referrals in 2015 and 2019 for investigations with male APs referred to Crown Counsel, but the 2017 change in referral standard does not appear to have noticeably impacted this rate.

Figure 10a: Referrals by Gender and Year

Gender	2014	2015	2016	2017	2018	2019	2020	2021	Total
<b>Female</b>	2	0	3	1	4	0	1	1	12
<b>Male</b>	26	15	8	3	6	5	12	14	89
<b>Total</b>	28	15	11	4	10	5	13	15	101
<b>(% male)</b>	(92.8%)	(100%)	(72.7%)	(75%)	(60%)	(100%)	(92.3%)	(93.3%)	(88.1%)

Delving deeper into the data on sex, the research explored sex and types of incidents. For female APs, 2 or 16.6% of referrals were for deaths, while 83.3% or 10 were for incidents of serious harm. For male APs, 15 or 16.8% were for deaths, while 74 or 83.1% were for serious harm.

Figure 10b Referrals by Gender and Type of Incident

Gender	Type of Incident	Total
<b>Female</b>	Death	2
	Serious Harm	10
<b>Male</b>	Death	15
	Serious Harm	74
<b>Total</b>		101

Table 19a: Referrals by Ethnicity and Status

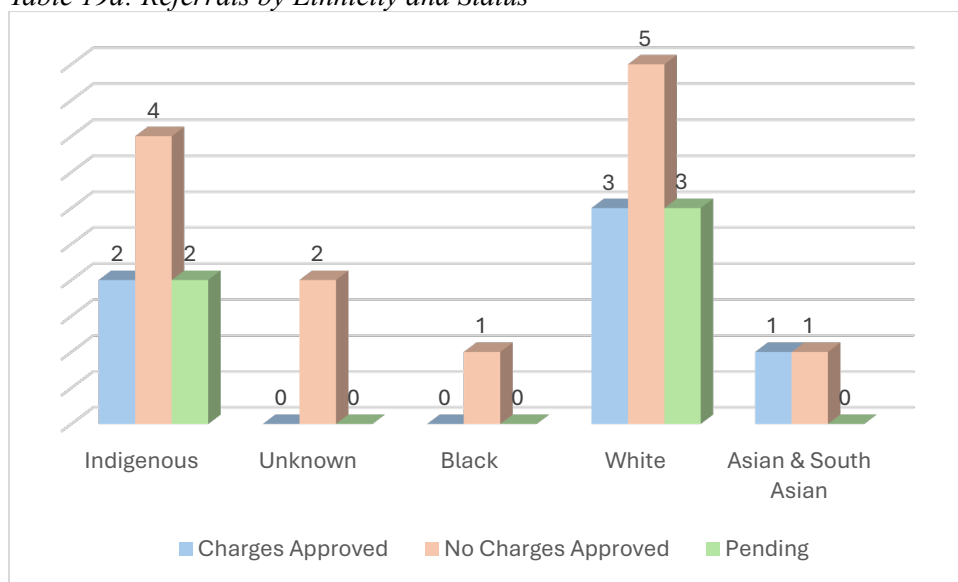


Table 29a: Approved Charges by Court Outcome and Year

Status	Outcome	2014	2015	2016	2017	2018	2019	2020	2021	Total
<b>Pending Court (Charges Approved)</b>		0	0	0	0	0	0	1	1	2
<b>Court Outcomes</b>	Acquittal	0	0	1	2	1	0	1	0	5
	Discharge	0	0	1	0	0	0	0	0	1
	Dismissed	0	0	0	0	1	0	0	0	1
	Guilty Plea	2	1	2	0	5	0	1	2	13
	Not Guilty	0	1	0	0	1	1	0	0	3

	Stay of Proceedings	0	1	0	0	0	0	1	0	2
	Multiple SOs/Decisions	0	0	1	1	0	0	0	0	2
<b>Total</b>		<b>2</b>	<b>3</b>	<b>5</b>	<b>3</b>	<b>8</b>	<b>1</b>	<b>4</b>	<b>3</b>	<b>29</b>

#### 4.2.5 Exploring the Convicted: SOs Found Guilty by the Police Oversight System, 2014-2021

There were notable patterns among the 14 convicted SOs. The vast majority, of 11 out of 14 or 78.5% were constables, as show the Figure below, which is the second lowest rank and the most common position within the RCMP (RCMP, 2021a).

##### Convicted SOs by Rank

Rank (from most to least seniority)	Number of Convicted SOs
<b>Sergeant</b>	1
<b>Corporal</b>	1
<b>Constable</b>	11
<b>Special Constable</b>	1

Among the 11 driving-related convictions, there were also notable patterns. Nearly half of the *MVA* convictions, at five of the 11 (45.4%), stem from incidents in which the SO hit a pedestrian with their vehicle (2021-157, 2018-039, 2018-004, 2016-055, 2015-128), while the SO hit a cyclist in three cases (2019-078, 2018-112, 2018-087), another vehicle in two cases (2022-093, 2020-302) and, in one incident, a motorcycle (2016-153). Additionally, the SO was driving an unmarked police vehicle in five of the 11 (45.4%) incidents. For 10 of the 11 *MVA* convictions, information was available on whether the SO was on- or off-duty, with eight of the 10 on-duty, two off-duty and one unknown. This section will now explore the circumstances of each conviction individually to gain a better understanding of the proceedings and considerations that underlaid the convictions and sentences meted out by the police oversight system.

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