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## **Setting the record straight on ASIRT naming policy**

Much has been said by many about ASIRT's decision not to name the deceased in two separate incidents that occurred in Calgary in the recent past and that are under investigation by ASIRT.

Some circumstances presented as fact by media and members of the Calgary Police Association have been inaccurate, which has left members of the public operating under a misapprehension about ASIRT process and what ASIRT may have done in the past.

These inaccuracies have been relied upon to underscore the suggestion that ASIRT has acted capriciously on the issue of the release of names. This has left ASIRT with no alternative but to both correct the inaccuracies and explain fairly the process and policies it acts upon.

ASIRT operates from a unique position within the criminal justice system. It is expected to be an independent body that objectively investigates incidents where police conduct may have caused serious injury or death to any person. That objectivity and independence is necessary in all cases to ensure procedural fairness and objectivity for both the subject officers and the affected person and their families. Procedural fairness also requires that ASIRT make principled decisions, including those regarding the release of information, based on guidelines that can be applied in all cases.

While some matters might appear straightforward, that is precisely why ASIRT must have consistent practices and policies that apply in all cases. To be independent and objective, ASIRT cannot make decisions based on appearances or strong opinions held by individuals or groups based on speculation and rumour, opinions which might favour either the subject officer or the affected person, before an investigation has been undertaken. We must make decisions based on evidence. ASIRT is confident that the majority of police officers in this province understand the importance of independent, objective investigations that lead to the gathering of evidence that supports the specific findings in all cases.

The timing of disclosure of information must also be considered. The argument always advanced is: "How will people know and understand what happened?" That is the purpose of an investigation. Do the involved officers, the family of the affected person and the public have a right to understand what happened? Absolutely. At the outset of an investigation, however, it is not known with any certainty what might have been relevant factors. A name generally tells you nothing about what happened. In the two most recent cases, there is no evidence that police knew the name of the person they were dealing with. Police conduct was not guided by knowledge of the identity of the men they encountered. It was responsive to circumstances they found themselves in.

ASIRT is mindful of the fact that considerably important personal information relating to the deceased may have played a critical role in incidents it investigates. In many cases closed over the last three years, physical and mental health issues have been critically relevant to how the officers and the individuals wound up in a confrontation. Similarly, information related to substance abuse, relationship issues, criminality and suicidal ideation can also culminate in a critical incident. The release of this information, much more relevant than a name, can often better explain what

happened. This information, however, can also relate to people who are very much alive and who also have a reasonable expectation of privacy.

If the name of the deceased has not been released, there is no risk in releasing the above information as it cannot connect to any one person and/or their family, friends, or significant others who may have had no involvement in the conduct that ultimately resulted in the death – people who may have done nothing wrong. Examples can be seen throughout ASIRT's news releases over the past four years. In many instances, important information could be released without fear of negatively impacting the privacy interests of those living *because* the name of the deceased had not been released. The public can understand what happened and the privacy interests of others are not unnecessarily impacted.

One does not need to know the name of injured officers to have compassion for their situation and how it has impacted not only them, but also their families and loved ones. The converse is also true: one does not have to know the name of the deceased person to have compassion for a family that has, regardless of the circumstances, suffered a loss. Leaving aside the issue of respecting any reasonable expectation of privacy of the affected person, there are mothers, fathers, siblings, spouses, children and other loved ones who have lost a loved one, regardless of the circumstances.

ASIRT considers the following factors in determining whether the name of a deceased person may be released. Whether and when an affected person's identity *might* be revealed will depend on the circumstances surrounding the incident and a number of factors, including:

- Investigative requirements or necessity.
- The position of the affected person or, if deceased, the family.
- The age of the affected person.
- Whether the identity is already in the public domain.
- Other personal information that might be disclosed relevant to the investigation that might impact the affected person or the deceased and/or the family.
- The stage of the investigation and investigative steps that have not yet been undertaken.
- Limitations imposed by law, including the *Freedom of Information and Protection of Privacy Act*, the *Youth Criminal Justice Act*, statutory and common law privileges, the law of defamation, and protection of third-party records and information.
- The joint statement from Canadian civilian oversight agencies on the release of names (2015). This policy position was arrived at only after significant discussion and careful consideration by the Canadian civilian oversight agencies, which are all part of the Canadian Association for the Civilian Oversight of Law Enforcement, and having had the benefit of a review conducted in Ontario, where names were previously released, that included submissions from stakeholders including mental health professionals. This review ultimately supported the position that names should not be released and Ontario changed its position.
- The AACP Homicide Naming Protocol – adopted by ASIRT to apply in homicides. In law, “homicide” is a neutral term. It applies where any person causes the death of a human being. Some homicides are crimes -- including murder, manslaughter and criminal negligence causing death. Others are justifiable and not a criminal offence, as when an officer is lawfully acting in the execution of his or her duties and must resort to lethal force, as authorized in the *Criminal Code*. The protocol is adapted for these purposes even though we do not use the term “victim.”

As ASIRT's investigations focus on incidents to determine whether it is a culpable or non-culpable homicide, we do not use the term “victim” as that presupposes that the officer's conduct was an offence, which can only be determined after a full and proper investigation that considers the lawful authorities that apply to police officers' use of force in the execution of their duties. As such, any suggestion that ASIRT has referred to anyone as a “victim” at the outset of an incident is incorrect.

It is only when it has been determined, through evidence, that the officer exceeded the statutory authority to use force that the conduct may constitute a crime.

These same principles apply to the release of the name of subject officers. It is only after an investigation has been completed and a determination made that there are reasonable grounds to believe that an offence has been committed, that a Crown opinion has been obtained that confirms that the evidence meets the standard of prosecution and an information sworn before the courts that a subject officer will be named as that officer's name is now in the public domain.

Now to clarify the facts:

- Members of the Calgary Police Association have repeatedly said that ASIRT released the name of the deceased in the incident that resulted in the death of Shawn Rehn, who shot and killed one RCMP member and injured an RCMP auxiliary member. ASIRT did not release the name of Shawn Rehn. The initial news release from Jan. 17, 2015 is on ASIRT's website, and no name is given. An internet search confirms that on Jan. 18, 2015, the RCMP released the name. At the conclusion of ASIRT's investigation, Rehn's name was referred to but it was, by that time, officially established in the public domain.
- ASIRT did not release the name of the injured officer in one of the most recent incidents. Regardless, one would assume that whoever released that information, which is personal information under the *Freedom of Information and Protection of Privacy Act*, would have been done so only with the consent of the member, particularly as it would have tied personal medical information to his name.
- ASIRT did not release the name of the deceased in a recent officer-involved shooting in Evansburg, AB. The Calgary Police Service released the name, with the knowledge and consent of ASIRT, as CPS had previously issued a public request for assistance in locating the man for whom a Canada-wide warrant had been issued for murder, along with a public safety statement that the man was believed to be dangerous and that he should not be approached if seen. There was a compelling public interest in advising the public that the man was no longer at large and no longer presented any potential public safety issues. Additionally, based on evidence obtained to date with respect to that matter, the release of the name did not impact the integrity of the ASIRT investigation.
- It has been suggested, particularly by the Calgary Police Association, that ASIRT has been less transparent than it has been in the past. An examination of ASIRT's website would demonstrate that for the first six years, in addition to media scrums, ASIRT released an average of approximately 7 or 8 written news releases a year. To be fair, in the early years, ASIRT was just starting and processes were being developed and there was little statutory guidance about what should or should not be released. As ASIRT developed, the need for more transparency became evident so between 2014 and 2017, again in addition to media scrums, ASIRT released an average of approximately 43 news releases a year. The information contained in those releases has also increased.

As can be seen by the above examples, ASIRT has not, in fact, been inconsistent in its application of the principles guiding these decisions. Further, transparency has, in fact, only increased over the last several years. In appropriate circumstances when the public interest significantly outweighs the risk to the integrity of the investigation and/or the protections of privacy as guaranteed, the name may be released. That having been said, ASIRT is a public body charged with the duty to carefully

apply the law and balance the public interest in knowing a name with the privacy rights of both the living and the dead. That balance is difficult. One does not automatically trump the other.

After a criminal investigation has been completed, there is still the fatality inquiry process. That is a court process, before a judge, and the name of a deceased will likely be released. To do so at this stage is much more appropriate as the criminal investigation and/or prosecution would have been concluded so there can be no risk to the integrity of the criminal justice process. Equally important, those whose privacy interests may be impacted by publishing names have an opportunity to make submissions to a judge on the release of certain information.

As the president of the Calgary Police Association has said, there is a public interest in a review of the circumstances surrounding incidents such as these to identify what, if anything, might be done to prevent similar incidents in the future. That is the express purpose of a fatality inquiry. If meaningful review is wanted, it should not be done with a piecemeal approach to evidence of potential bad character before the full circumstances surrounding the actual incident are established by evidence. That would be like trying to solve a problem with only a part of the equation.

There is no doubt that people want to know names -- indeed, they want to know everything. There is not, however, a mandatory requirement that the information be released, nor is there a mandatory requirement that this information be released at the outset of an investigation. The opposite is also true: There is no express and unlimited prohibition against naming. In those circumstances, ASIRT will continue to make decisions based on a principled examination of the factors noted above, the impact of the AACP Homicide Naming Protocol and the national position reached by Canadian oversight agencies.

ASIRT is charged with doing what is right and responsible, not what is popular or politically expedient. Ultimately, in each case, the decision will be the one that the executive director believes best represents a balancing of the relevant law, public interests, privacy interests and the risk to the integrity of the investigation.

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