

RCMP-GRC

Witness Protection Program Advisory Committee

Fifth Annual Report 2018-2020

Executive Summary

This is the fifth report of the Witness Protection Program Advisory Committee (WPAC) presented, per the terms of reference, to the Commissioner of the Royal Canadian Mounted Police (RCMP).

The RCMP created the WPAC in 2013 as a mechanism to provide independent, expert advice on the range of complex issues inherent in administering the Program. The Committee structures this advice around three main pillars: a focus on protectees, Program independence from investigations, and adhesion to program standards. Committee members are not privy to information that would reveal the identity or location of any protectees.

The Committee commends the RCMP's progress in implementing significant structural and operational changes. Most notably, updating the array of policies and procedures, engaging a fulltime researcher and developing a Research Strategy, undertaking analysis of data to support decision making, establishing an independent intelligence capability, delivering enhanced services to protectees, and hiring additional staff to ensure the necessary capacity to deliver on both expanded and specialized requirements.

The Committee recommends the Program continue to advance on the following:

- Designing Program decision-making around 'the protection continuum.'
- Collaborating with Public Safety Canada, provincial witness protection programs, and other key stakeholders in creating national witness protection standards.
- Supporting ongoing collaboration between the RCMP's and Public Safety's Legal Services in the drafting of regulations, specifically relating to the administration of witness protection disclosure materials and testimony.
- Exploring opportunities to sensitize Canadian Family Courts on the impact on protectees of processes and decisions, bearing in mind the best interests of children in the Program.
- Advancing the Research Strategy by leveraging external research where possible, including referrals from Committee members who have extensive networks in a range of disciplines.

Despite the inherent challenges of witness protection, the Committee praises the RCMP and the Program in implementing many improvements and in executing a world-class program. The Committee looks forward to continued engagement with the RCMP on key challenges.

Fifth Report to the Commissioner of the Royal Canadian Mounted Police from the Witness Protection Program Advisory Committee

This is the fifth report from the federal Witness Protection Program Advisory Committee (hereinafter referred to as “the Committee” or WPAC), presented, per its terms of reference, to the Commissioner of the Royal Canadian Mounted Police (RCMP).

A. Program Background

In complex cases, such as those relating to organized crime and terrorism, witness information and testimony is particularly crucial. For witnesses to come forward and assist investigative and prosecutorial authorities, they must be assured that they will receive support and protection from intimidation, reprisals, and harm.

Canada’s Witness Protection Program (hereinafter referred to as “the Program” or WPP) was established in 1996 with the introduction of the *Witness Protection Program Act* (1996) (WPPA), and its subsequent amendment in 2013 with the *Safer Witnesses Act*. This federal legislation gives the Commissioner of the RCMP the sole authority to administer the Program on behalf of the Government of Canada. The Program is responsible for providing protection to individuals who have assisted law enforcement agencies, including federal security, defence or safety organizations and who as a result are deemed to be at risk of harm. Protection is also provided to those who have a relationship with these individuals.

The WPP is available to law enforcement agencies, federal, security or safety organizations across Canada, including designated provincial programs¹, and internationally. There are also provisions within federal witness protection legislation to facilitate the protection of foreign witnesses when they can no longer be protected within their own country.²

The Program’s accountability mechanisms include a legislatively mandated public annual report to the Minister of Public Safety, which must be tabled in the House of Commons. Additionally, the Program is subject to Parliamentary reviews and inquiries and this Advisory Committee report.

B. The Committee’s Role

The RCMP created the Committee in 2013 to secure independent, neutral advice from subject matter experts. The Committee’s role, as per its foundational documents, is to advise the Commissioner (and by extension, the Program) on matters related to the effective and efficient administration of the Program by aiming to provide a balanced, external perspective on its

¹ Section 10 of the *WPPA* allows the Governor in Council to designate a provincial or municipal program.

² Section 14(2) of the *WPPA* allows the Minister of Public Safety to enter into a reciprocal arrangement with the government of a foreign jurisdiction in cooperation with the Minister of Citizenship and Immigration.

processes. This Committee enhances the accountability of a Program that is necessarily discreet, by acting as one of its external review mechanisms.

Of note, Committee members are not privy to any information that would reveal the identity or location of any protectees and are not involved in specific case decisions, such as individual admission or termination decisions.

The Committee's mandate is to provide strategic, informed advice to the Commissioner of the RCMP on a wide range of program-level issues, but not on specific operational decisions. Its observations and recommendations are made available to the public in order to ensure an added layer of accountability to Canadians. Per the terms of reference, the Committee advises the Commissioner on:

- The function, processes, and protocols of the federal Program relative to the prescribed legislation (the *Witness Protection Program Act* [1996] and the *Safer Witnesses Act* [2013]);
- Methods developed to assist protectees in adapting to the Program, including addressing health, psycho-social, and legal issues;
- Funding schemes to facilitate the provision of protection by ensuring adequate funding levels for the Program are maintained;
- Ensuring that Program standards are appropriate in order to facilitate the services required under the *WPPA*, as well as ensuring such standards are complied with; and,
- Any other witness protection issues that will contribute to enhancing the delivery of the Program.

The Committee may also play a role in communicating and educating external stakeholders on the roles and work performed by the Program, and in advocating on the Program's behalf. In addition to advising the Commissioner on potential improvements, the Committee also highlights Program achievements.

Committee meetings take place twice a year and are structured to encourage fulsome discussion and exchange of information, including leveraging the knowledge and experience of the various committee members from their areas of expertise.

The Committee is comprised of the following members:

- Dr. Julia Hughes, Lakehead University, Bora Laskin Faculty of Law (Chair)
- Dr. David Marsh, Northern Ontario School of Medicine (Vice-Chair)
- Professor Yvon Dandurand, University of the Fraser Valley, School of Criminology and Criminal Justice
- Senior Deputy Commissioner Fraser Macaulay, CSC (retired)

- Assistant Commissioner Michel Séguin, RCMP (retired)
- Professor Jo-Anne Wemmers, Université de Montréal, École de criminologie
- Assistant Commissioner Eric Slinn, RCMP Federal Policing Criminal Operations (*ex-officio* member)

It is with sadness that we note that our colleague, Dr. Stephen Wormith from the University of Saskatchewan passed away on March 28, 2019. Senior Deputy Commissioner Fraser Macaulay joined the Committee for the January 2020 meeting.

This is the Committee's fifth report to the Commissioner, covering the period of April 1, 2018 to March 31, 2020. Due to operational pressures within the RCMP, the meeting of September 2019 was cancelled and merged with the meeting held in January of 2020.

C. The Three Pillars

Pursuant to a review by the Standing Committee on Public Safety and National Security in 2008, the Program instituted three pillars, as follows:

1. Protectee-focus: ensuring the Program's service delivery places protectees at the forefront of decision-making by addressing protectee needs to ensure their security, safety, and re-establishment.
2. Program independence: ensuring the integrity of the WPP which requires the Program to be independent from investigative or prosecutorial interests.
3. Program standards: supporting consistent decision-making and professional, standardized service for all clients across all parts of the country.

D. Committee Findings and Observations

The Committee offers the following observations, structured around the three pillars. These form the basis of the recommendations provided at the end of the report.

Protectee Focus

Since 2013, the Program has undertaken considerable change to enable it to serve an increasing number of clients.

Entry into the Program is a major life decision, and protectees must feel that they will be cared for and continued to be cared for if they are to come forward as a witness and trust law enforcement, as this can put their own – or their families' – lives in danger. Protectees undergo significant changes when entering the Program, including a physical move and the severing of ties with friends, family, and other associates. Many protectees have substantial criminal histories and/or mental health issues, which require rehabilitation and/or treatment.

The Program created a dedicated unit to assess the psychosocial needs of protectees which includes plans for integration into their new environment and follow-ups throughout their time in the Program. The unit has evolved over the years by conducting research to support decision-making, undergoing specialized training, integrating psychosocial principles into operations, and engaging with external partners to improve its processes.

In response to an internal RCMP Review in late 2015, the Program established the Assessment and Case Planning Working Group (ACPU WG). This group consists of subject matter experts with specializations in areas such as victimology, psychology, corrections, and other related fields. Its mandate is to advise and support, consistent with best practices, the operation of the ACPU. Providing recommendations on program direction and overall policy, while the ACPU WG focuses solely on the unit responsible for risk and needs assessment. The difference between the ACPU WG and the Committee is clear: the Committee supplies guidance at a higher level, providing recommendations on program direction and overall policy, while the ACPU WG focuses solely on the unit responsible for risk and needs assessment.

The Committee supported the creation of the ACPU WG at its inception and continues to do so, highlighting it as a best practice. The Committee recognizes the considerable value that comes with the expertise provided by the WG, noting that it is an efficient way for the Program to obtain expert advice since it is unable to reach out to experts in the field the way other psychosocial groups can, due to security reasons.

During the January 2019 Committee meeting, the ACPU WG joined the Committee for a morning session to discuss how their mandates supplement one another and to deliberate how the “protectee focus” pillar manifests itself in the work of the two groups.

Both groups recognized that the definition of a protectee is not absolute, but rather an ever-evolving concept that requires an ongoing and responsive decision-making process based on dynamic and unique circumstances. It was discussed that there is a tension between the rights of the clients, and the need to protect the organization from liability – all within a legal framework as well as a moral framework resulting from the impact the Program has on protectees’ lives. As such, the ACPU WG and the Committee reiterated the requirement for independence from investigations in order to ensure a protectee focus.

The Committee highlighted the concerns of government and the public from many years ago about potential protectees getting false promises of awards and safety in exchange for providing information that could advance a crucial investigation. This means that the calculation of loss and gain for this potential witness would be skewed right from their first engagement with law enforcement, which inhibited them from making an informed decision about this life-changing event (i.e., entering the WPP).

In the *Witness Protection Program Act* the definition of a Protection Agreement is clear; what is not clearly defined is “alternate methods of protection.” When clients do not wish to be considered for full admission or when a client is not suitable as per Section 7 of the WPPA the Program will often offer alternate methods of protection. It was supported by the Committee that the Program continues to explore a tiered admissions approach for protectees and to look at the possibility of

including this in the Act. Overall, the Committee believes that the highly varied circumstances of each individual requiring protection lends itself to the concept of a “spectrum of protection”. Viewing the protectee focus pillar as a continuum, rather than as a dichotomous process (e.g. “in” or “out” of the Program), would contribute to addressing the needs of the wide array of cases that the Program encounters.

Program Standards

The WPP, as it exists today, is a result of many elements, including its statutory framework (the *WPPA*), recommendations conveyed through various mechanisms, precedents set in Court, and best practices obtained from external partners. Indeed, as the WPP expanded, all of these elements worked together to design a modern Program that reflects the full range of needs required to administer a WPP independent from investigations, yet remains focused on protectees, who undergo significant changes upon entering the Program. Given that the Program operates nationally, it is essential that the standards set out by the Program and any improvements made are consistent nation-wide. This ensures that any individual entering the Program within Canada who comes forward with valuable information on a serious crime can expect to receive the same level of service regardless of their police of jurisdiction.

The reality of witness protection in Canada is one that is conducted at many levels of government. In addition to the federal Program administered by the RCMP, there are multiple provincial and municipal programs in operation throughout the country. For example, section 48 and Schedule G of the *Police Act* in Quebec mandates that all Level 4 and 5 police forces within the province must operate a witness protection program; this includes the Sûreté du Québec, as well as the Service de Police de la Ville de Montréal. There can also be two witness protection programs in one province, at the same level, such as the program run by the Ontario Provincial Police, as well as the program run by the Ministry of the Attorney General of Ontario. British Columbia has also introduced their own Witness Support Unit. The Committee raised the concept that there is a federal program with federal standards, while at the same time, there are provincial programs with their own standards, and stressed the operational necessity to have national standards for witness protection.

With the amendments effected to the federal legislation in 2014, the *WPPA* recognized the presence of other programs within Canada and therefore introduced the “designation” process for these other programs. This new process allows the federal WPP to facilitate the change of identity for a protectee within a designated provincial or municipal program. So far, two provinces have chosen to designate, the Alberta Witness Security Program and the Saskatchewan Witness Protection Program.

As an added layer of complexity, the federal WPP covers both federal and provincial cases referred to them by its own RCMP units contracted to provide policing services to eight provinces, three territories, and 150 municipalities as part of its contract policing arrangements.³

³ <http://www.rcmp-grc.gc.ca/ccaps-spcca/contract-eng.htm>

The presence of overlapping jurisdictions, with their own Protection programs, has raised the need for deconfliction between programs in order to minimize the risk of placing associated witnesses in the same vicinity, which can lead to the inadvertent identification of a witness. This would place a witness at serious risk of physical harm and negates an individual's (and their family's) change of identity and relocation, causing them to have to start the emotional and expensive process all over again.

In addition to deconfliction, the Committee would like to see the RCMP work in collaboration with Public Safety Canada, Provincial Programs, and other relevant stakeholders in order to exchange best practices and ensure consistent standards across the country. The Committee recognized that the police jurisdiction within which an individual resides is simply a matter of chance, and that it would be concerning to find that the level of WPP service an individual or family may receive within Canada could differ by jurisdiction. Additionally, having many programs, each with its own standards and processes, makes for a complex framework of protection. This is challenging for anyone who is required to work with a witness protection program, including the Courts and investigators, which ultimately affects the outcome of major trials.

At the January 2020 meeting, an additional challenge was raised in regards to the interactions with family courts and provincial child services. There has been an increase in the number of issues related to child custody; the Program is managing this issue by actively ensuring there are no barriers to enter into the Program caused by custody arrangements. There must be a balance in the Program's protection of the children as well as ensuring the provincial authorities are able to carry out their duties. In collaboration with the Committee, it is recommended that the Program reach out to the National Judicial Institute with seminars to familiarize judicial organizations with the WPP. In reference to children, the Committee recommends that the decision making process should include regard to the best interest of the child principle in addition to or as part of protectee focus.

In January 2018, as part of its modernization the WPP established an Intelligence Analysis Unit. The purpose of this unit is to produce intelligence assessments that are unbiased and independent from the investigative process. This is accomplished by adhering to a sound methodological process that incorporates threat criteria grounded in qualitative and quantitative research methods that can be applied to all assessments. Producing assessments that are protectee focussed allows for intelligence-led decision making by senior management with regard to approving admissions or alternate methods of protection.

Legal Procedures and Challenges

The *WPPA* prohibits disclosure of WPP information for security and safety reasons, including the identities of WPP employees, service-providers, protectees, and the methods that the Program employs to protect individuals. To those unfamiliar with the *WPPA*, it is widely assumed that WPP information is part of an investigation, simply because the WPP resides within the RCMP, and therefore tends to be associated with the RCMP investigative team. However, the WPP is a

Government of Canada program, which is administered by the RCMP given the requirement for peace officers to provide protection services. Under the Program's Independence pillar, significant steps have been taken to further ensure separation between investigative components and the Program. The Committee commends the Program's efforts.

The WPP is a third party entity that provides protection services with the sole aim of ensuring the physical security and safety of those who come forward with information at great personal risk – regardless of the outcome in the judicial process. This principle is essential because witnesses have to trust that they will receive protection, as they are potentially putting themselves in danger simply by aiding the authorities in their investigations.

Nonetheless, one of the principles of the Canadian legal system is that an accused individual has the right to make full answer and defense, in line with the right to a fair trial.⁴ Therefore, despite being third party, the WPP is still required to submit redacted information to the Court in cases where a successful *O'Connor*⁵ application has been submitted by defense counsel. When this happens, WPP personnel are required to comply with Court requests while also adhering to its protection standards to maintain the security and safety of the witness; this can cause challenges as there is a requirement to provide information, but the Act outlines a counter-requirement to keep its employees, protectees, and others who assist in the administration of the Program secure and safe as well as its methods secure.

Often, disclosure applications typically come in once a trial has already begun, and judges may not be aware that WPP information is subject to disclosure prohibitions. This means that potentially thousands of documents may require vetting within weeks, and without a full legal team to do so. This has typically resulted in added pressures for WPP employees across the country to obtain and vet the documents, often within extremely short deadlines. This last-minute process is problematic for a number of reasons, including: inconsistent responses presented to the Court; an inadvertent disclosure of secure WPP information; or missing the deadline, which can lead to a stay of charges.

Following the Committee's previous recommendations to centralize various elements of the Program, the WPP has successfully created a centralized Disclosure Unit at National Headquarters. This Unit has improved how Program information is handled and released to the judiciary.

The Committee's previous report also noted that disclosure is a highly resource-intensive component of the Program's activities that takes away resources from the unit's overall mandate of providing protection. The previous report highlighted that the Program had experienced an increase in disclosure cases year over year, and this trend has continued. The Committee acknowledges the procedures that were established within this Disclosure Unit in order to comply

⁴ Section 7 and Section 11(d) of the *Charter of Rights and Freedoms*.

⁵ *R. v. O'Connor* [1995] 4 S.C.R. 411. If the defense wishes to seek disclosure of WPP material, they must apply for an *O'Connor* request, for which two requirements must be met: first, it must prove that the documents are likely to be relevant to the case; and second, the judge must review the documents and approve their disclosure based on the balance between the right to defense and the right to privacy. In this case, the onus shifts to the defense to prove the relevance of the material.

with Court requests and the unit's ability to efficiently work to obtain information from WP units across the country in a timely manner.

Additionally, as noted in the previous section of the report ("Program Standards"), the multilayered system of WPPs within Canada is becoming increasingly complex, involving multiple actors at various levels and different procedures or legislation. Unfortunately, the Canadian courts system is often unable to keep up with all of the complexities inherent in a federalized policing structure. The impact of this is that inconsistencies then develop between different provinces with regard to the process for disclosing WPP material. This variance directly affects the integrity of the Program.

The Committee has previously noted its concerns regarding the divergence present in disclosure as it relates to the WPP. Although the Program is unable to influence the case law or precedents set, it can employ tools at its disposal to encourage uniformity in the way it provides information to the Courts. In turn, this education and increased understanding by prosecutors, defense lawyers, and judges, can then manifest into a process by which the WPP is notified in a timely manner about its requirements.

The Committee was pleased to see the creation of the disclosure unit, and recognizes that adding more resources, is not always realistic given financial pressures. As a result, it has looked into ways to ease the burden on this unit and suggested that the WPP examine developing standard documents for Court, working between RCMP Legal Services and Public Safety Legal Services and Policy center to enact regulations that will provide direction to the courts on the handling of witness protection disclosure, and the testimony of witnesses. Additionally, a standardized court memo for the Department of Justice could be developed which informs the prosecutors and defense on the process for cases with a WPP component, including Section 11 prohibitions on disclosure, which are essential for the protection of both protectees and Program employees.

Program Data and Research

The importance of data and research in contributing to sound program decision-making has been emphasized throughout all of the Committee's reports. As such, the Committee continues to encourage the Program in executing its Research Strategy, and is pleased to see the substantial progress that has been made so far. This has allowed the Program to make fact-based decisions on how the Program is administered. It has also allowed the WPP to have the data it needs to back up its decision-making to Senior Management, the public, and Parliament.

In September 2018, the WPP presented its findings on the research project looking at the demographics of clients, which examined trends in the characteristics of individuals within the Program. Since this time, the Program has developed a Research Strategy that aligns with the forward planning of management. The Committee was pleased with the proposed research topics and their alignment with the three pillars.

At the January 2020 meeting, the Committee reviewed the Research Report on why clients were choosing not to participate in the Program at all, or who agreed to alternative methods of protection. Over the past 5 years, the primary reason why clients refused was that they were

unwilling to relocate. There were a few instances where the Program was not able to meet the clients' reasonable expectations, but at this point the WPP has made progress to addressing all of these situations, particularly demonstrating the benefits of the ACPU noted above.

The Program also presented at the January 2020 meeting its Research Strategy, which has been designed as an evergreen document that will be updated to reflect the ongoing needs of the WPP and management moving forward. The topics included in this plan for the next 2 years cover comparative analysis, threat actors, program standards, impact on children entering the Program, Program centralization, and Business Intelligence. This ambitious plan seeks to enhance evidence-based decision-making and to enrich the overall knowledge of WPP in continuing to implement best practices. The Committee was given an opportunity to review the Research Strategy and to provide input to assist in the implementation.

The Committee continues to be supportive of the steps the Program has taken to improve its business knowledge and encourages the further development of the Program's research capability including the proposed use of internal and external contacts to enhance overall capacity.

Technology and Tools

The rapid pace of technology has presented a challenge for the WPP, as indicated in previous reports. The Committee recognizes that the technology, expense, and complexity of the overall Program was not foreseen when the *WPPA* was developed and enacted. The witness protection field in Canada has changed dramatically since 1996. Some of the changes include the number of programs operating within Canada, the type of crime most often resulting in witnesses requiring protection, reasons for refusal by potential protectees, and much more. This has created significant obstacles as the Program works hard to modernize while operating within a restrained financial environment, as well as a complex – and highly sensitive – operating structure.

Various technologies pose issues to the Program in many different ways. In the previous report, the Committee raised the issue of the Program's modernization of tools in the protection of witnesses. Another considerable issue is the use of technologies by protectees. Individuals have an expectation to have access to social media and open internet. Given that this has become an integral aspect of society today, many protectees expect to be able to continue this while in the Program.

In addition, there is a massive cost to developing solutions to these challenges. The Committee discussed some of the emergent issues, such as facial recognition or the increasing pervasiveness of big data. They were also informed by the WPP that for some potential protectees, the inability to use social media or other internet-based applications that most Canadians wish to use as a reason for refusal. The Committee noted that solutions need to be developed to this as best as possible, as this could present issues in terms of adaptation; these technologies present a form of connectivity for individuals, and eliminating that can hinder the progress of certain individuals as they try to rehabilitate and/or re-establish themselves.

E. Recommendations

The Committee and the Assistant Commissioner charged with overseeing the Program have had productive exchanges. Although not all of it is included in this report, it has still substantively contributed to the advancement of the Program. As with previous years, the Committee would like to acknowledge the RCMP's receptiveness and willingness to accept its comments and move forward on the issues that were discussed.

The Committee uses this report to provide more formal advice, recommendations and support on what it sees as essential elements to continue the fruitful evolution of the Program. The Committee has also found it important to highlight areas in which the Program has made significant positive progress, especially within such a complex domain.

The Committee hopes that these recommendations are found to be useful and will be given consideration by the Commissioner. It should be noted that many of these recommendations will require years to fully implement, given their complexity and the time and resources required to implement them in full.

The recommendations are as follows:

1. Continue employing the concept of 'protection as a continuum' to enable consideration of unique circumstances against a variety of protection options/methods.
2. Continue to develop and enhance collaboration with Public Safety Canada, provincial programs and other key stakeholders in creating national witness protection standards which ensure the security, safety, and needs of protectees, regardless of the program they enter. Additionally this should help assist the Program in its pursuit to explore deconfliction strategies with other organizations.
3. Advance solutions to resolve disclosure challenges by developing standard documents for Court. The Committee encourages RCMP Legal Services and Public Safety Canada Legal Services to work in conjunction with the Department of Justice, Public Safety Canada, and the Program to enact regulations that will provide direction to the courts on handling disclosure, and the testimony in the context of witness protection.
4. In collaboration with the WPAC, continue to explore outreach opportunities with the National Judicial Institute, the Chief Justices of the Family Courts, and the Canadian Association of Provincial Court Judges to educate on the issues facing children and families in the protection process and to ensure the best interests of the child.
5. Build on the work undertaken to date and continue to advance the Research Strategy. Explore opportunities to secure external resources, such as leveraging Committee members research networks where opportunities arise. The Committee commends the Program on its progress in data analysis and increased evidence based decision-making.

F. Concluding Remarks

The Committee is encouraged by the Program's achievements and progress over the past number of years. Sustained progress is essential. The Committee believes it is important to recognize the significant effort made by the RCMP in ensuring the Program adheres to its three pillars, its legislative requirements, and its overall mandate. The complexities of this Program make progress challenging, and it is encouraging to see that Program employees and management acknowledge the recommendations put forth by the Committee. The Committee looks forward to continuing to work with the WPP in providing sound advice for the advancement of this Program.