



**National Security
and Intelligence
Review Agency**

**Office de surveillance des
activités en matière de sécurité
nationale et de renseignement**

Royal Canadian Mounted Police Human Source Handling Program

NSIRA // Review 21-20 TOP SECRET // CEO

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List of Acronyms

- CI** Confidential Informant
- FPNS** Federal Policing National Security
- HSP** Human Source Program
- NSIRA** National Security and Intelligence Review Agency
- RCMP** Royal Canadian Mounted Police
- SDU** Source Development Unit

Glossary of Terms

- Police Agents** An agent is a person directed by the police to collect evidence in the course of an investigation. An agent may be compelled to testify as a witness; identity is not protected by law.
- Canadian Fundamental Institutions** Canadian Fundamental Institutions include academia, politics, religion, the media, and trade unions.
- Confidential Informants** A Confidential Informant (CI) is a person who is promised confidentiality by the police in exchange for information that assists investigations. A confidential informant's identity is protected by the law of informer privilege.
- Handler** A police officer who is the primary contact for a CI or agent.

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Executive Summary

NSIRA's review of the Royal Canadian Mounted Police (RCMP)'s Human Source Program is the conclusion to a suite of reviews focused on Human Source Programs pertaining to Canada's national security. NSIRA has completed reviews of the human source programs of the Department of National Defence/Canadian Armed Forces, the Canadian Border Services Agency, and now the RCMP.

This review examined the legal and policy frameworks that govern the RCMP's human source handling activities. The review has three areas of focus: 1) the management and assessment of risk; 2) RCMP's fulfillment of its duty of care to its sources; and 3) the sufficiency of ministerial direction and accountability in relation to the program. Together, these areas support the RCMP's ability to conduct its source handling activities lawfully, ethically, and with appropriate accountability.

Human sources can be pivotal in changing the course of an investigation, often holding the key to information that would otherwise be difficult or impossible to obtain. Through proper handling, management and effective oversight, human sources can be used to advance investigations. The RCMP uses two categories of human sources: police agents and confidential informants.

Through the course of the review, NSIRA identified a number of areas of concern, specifically the recruitment and use of confidential informants. NSIRA found that:

- The general policies and procedures governing the recruitment and use of human sources, and the reporting requirements in national security matters, are in need of serious attention. An update to the RCMP's human source program is required to ensure that the proper oversight and accountability structures are in place; and,
- The risk assessment framework for confidential informants is inadequate. The current assessments of risk are not well documented and as such do not provide adequate or reliable information to decision makers. The RCMP over relies on the promise of confidentiality extended to sources to mitigate any risks. They are also primarily focused on operational security and risk to the investigation, as opposed to risk to the confidential informants.

Additionally, Ministerial Direction from 2003 requires the RCMP to demonstrate "special care" when conducting national security investigations into Canadian Fundamental Institutions. NSIRA found that:

- The RCMP has not demonstrated special care in its use of human sources in Canadian Fundamental Institutions; and,

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- The RCMP has an inadequate framework to ensure the appreciation of the cumulative impact of national security investigations in Canadian Fundamental Institutions.

NSIRA found that while there is a process in place for the approval of the use of human sources in Canadian Fundamental Institutions, it does not fully account for the impact human sources could have on an institution or the surrounding community.

1. Introduction

Authority

1. This review was conducted under the authority of paragraph 8(1)(b) of the *National Security and Intelligence Review Agency Act* (NSIRA Act).

Scope of the Review

2. This review is part of a series of reviews conducted by NSIRA on three departments' human source handling programs: the Department of National Defence/ Canadian Armed Forces (DND/CAF), the Canadian Border Services Agency (CBSA), and the Royal Canadian Mounted Police (RCMP).
3. Human source programs must be adapted to the circumstances and mandate of each organization, while respecting their legal obligations. NSIRA identified matters of significance to each organization within three common themes, 1) the management of risk, 2) the organizations' discharge of its duty of care with respect to human sources, and 3) the role of Ministerial Direction in the program. Together, these areas support the organizations' ability to conduct their source handling activities lawfully, ethically, and with appropriate accountability.
4. This review examined the Royal Canadian Mounted Police (RCMP)'s use of human sources in national security investigations. The review considered the RCMP's use of risk assessment models, the fulfillment of its duty of care and the RCMP's implementation of Ministerial Directives regarding Canadian Fundamental Institutions (Sensitive Sectors).
5. The review considered human source activities and policy frameworks. In particular, changes to the structures/policies and procedures for the recruitment of human sources in the national security context that took place before the review period are directly relevant to the evaluation of how the RCMP manages the risks associated with these types of sources.
6. The RCMP has a long tradition of handling human sources. The general policies and procedures governing the use of human sources in national security matters are the same as those for all human sources, with a few exceptions. National security investigations represent a small number of cases in comparison to all of the RCMP's investigative activities and bear specific characteristics. In particular, RCMP national security investigations are often complex, resource intensive and touch on Canadian Fundamental Institutions that require additional oversight. It follows that the use of human sources in national security investigations requires particular scrutiny.

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Methodology

7. NSIRA reviewed national security investigations involving human source handling activities that occurred between [REDACTED] and [REDACTED]. The information reviewed included policies, procedures, training documents, applicable ministerial directives, briefing materials, legal opinions and advice, and previous reviews of the program. NSIRA also examined the human source files associated with high priority national security investigations that were active during the period under review. NSIRA conducted interviews with Integrated National Security Enforcement Teams in [location] [REDACTED] and [location] [REDACTED] Divisions, Criminal Operations Officer [REDACTED] Division and National Headquarters' operational and policy personnel.
8. A total of [REDACTED] national security high priority (Tier 1 and Tier 2) investigations were identified as being active during the review period. Of these national security investigations, approximately 10 percent ([REDACTED] investigations) were identified as having a police agent (also referred to as "agent") or confidential informant (also referred to as "informants" or "CI") active within the review period. Within these [REDACTED] investigations, [REDACTED] human sources were identified by the RCMP as having been engaged. These [REDACTED] human sources constituted the sample for NSIRA's review.
9. From the sample of the [REDACTED] human sources, [REDACTED] were engaged directly as agents, [REDACTED] were in the process of being transitioned to agents (from CIs), and the remaining [REDACTED] were used as CIs. NSIRA reviewed these files to assess whether the RCMP, in the course of its activities, acted in compliance with the law, Ministerial Direction, internal directives, policies and procedures. NSIRA also considered the reasonableness and necessity of the RCMP's human source activities in national security investigations.

Review Statements

10. NSIRA found that the RCMP partially met its expectations for responsiveness during this review. The engagement of senior level executives was required to resolve concerns regarding the RCMP's pro-activeness and timeliness in providing material. Furthermore, the RCMP narrowly interpreted informational requests, resulting in delayed exploration of issues with a number of subsequent requests for information. Issues were resolved after several deadline extensions, late submissions, the triggering of an advisory letter, and an advisory letter warning notification.
11. NSIRA found that the RCMP partially met its expectations for verification of the requested information for this review. The RCMP did not provide direct access to systems or data such that the information could be directly and independently searched and verified. The RCMP provided controlled access to its Classified

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Environment, where NSIRA staff could view specific administrative and operational files and data sets that were pre-screened by the RCMP. NSIRA notes that the decentralized nature of the RCMP's information holdings and antiquated IT/IM infrastructure presented challenges to ensuring that all pertinent information was provided. NSIRA used cross-verification methods to verify completeness and accuracy of information provided. This included the interviewing of operational and headquarters staff; follow-up verification requests; as well as additional and confirmatory information requests.

2. Background

12. The RCMP has the primary law enforcement responsibility under section 6(1) of the *Security Offences Act* for investigating offences arising out of conduct constituting a threat to the security of Canada as defined in Section 2 of the *Canadian Security Intelligence Service Act* (i.e. espionage, foreign influenced activities, terrorism, and sedition). The RCMP, as a law enforcement body, also derives authority from the common law. The RCMP National Security Program retains primary responsibility in the investigation of national security offences. Most investigative steps in national security criminal investigations require reasonable suspicion or belief that a crime has or will occur. These investigations must also comply with three ministerial directions: one on responsibility and accountability; one on arrangements and cooperation; and one on investigations in sensitive sectors [Canadian Fundamental Institutions].
13. The policing context also required NSIRA to consider the principle of police independence, which is central to the rule of law and "is a fundamental and organizing principle of the Constitution."¹ Broadly, police independence insulates police investigations from political influence. However, police independence is not absolute. Rather, and especially in the context of national security investigations, accountability mechanisms are needed to ensure police activities are not shielded from the rule of law under the guise of police independence.
14. The concept of intelligence-led policing plays an important role in modern law enforcement strategy. It is premised on disruption and prevention methods, which rely on strategic management and accurate information from a variety of sources,

¹ Canada, Commission of Inquiry in the Actions of Canadian Officials in Relation to Maher Arar, *A New Review Mechanism for the RCMP's National Security Activities* (Ottawa: Public Safety Canada, 2006) at 459 [Arar Inquiry, Policy Report] citing *R v Campbell*, [1999] 1 SCR 565 at para 18.

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including human intelligence. This is significant because intelligence-led policing aims to emphasize the incorporation of risk assessments, as well as proactive and targeted approaches, rather than reacting to single events. It encourages police forces to be forward-looking in their usage of data analysis, criminal intelligence, and decision-making frameworks.

15. The RCMP uses human sources in order to investigate offences concerning national security. The value of human sources to the carrying out of police duties has been acknowledged by the courts. The use of human sources is a “recognized social benefit of having [community members] aid in enforcing the law ... and encourages others to do the same.”²
16. The RCMP uses two categories of human sources: police agents and CI, each of which has a distinct legal status. Police agents are directed by the police to covertly engage in scenarios and complete tasks which may include ingratiating themselves with suspects of an investigation, obtaining specific information, or introducing an undercover police officer. While an agent’s involvement in the investigation makes them a compellable witness, their identity is carefully protected. If charges are laid, disclosure to the accused will reveal their identity.
17. Conversely, CIs provide police with information under the promise of confidentiality. At trial, informer privilege prohibits the disclosure of their identity or information that may tend to identify them, with the exception of innocence at stake. CIs are not tasked by the police to seek out specific information, but are coached to make passive observations in respect of the investigation as they go about their normal lives. This is often referred to as the “eyes and ears only” method.

² *R v Leipert*, at paras 9-10, citing *Bisaillon v Keable*, [1983] 2 SCR 60 at 105. *R v Durham Regional Crime Stoppers*, 2017 SCC 45 at para 1.

3. Findings, Analysis, and Recommendations

Chapter I: Risk Management

Part 1: Policy Implementation

Finding 1. NSIRA found that the RCMP's dated human source policy does not provide a sufficient framework for the consistent application of the Source Development Unit methodology in the proactive recruitment of human sources.

18. The Human Source Program (HSP) is ostensibly designed to act as the policy centre for human source operations. As the policy centre it provides guidance on recruitment, training, support and direction to operational units in the management of human sources. It is also responsible for providing oversight and accountability. However, human source policy has remained substantively unchanged since 2011, and has had no significant updates despite several major reorganizations to the RCMP National Security Program at National Headquarters. In addition, the Human Source Program does not monitor or track compliance with policy. Rather, this is left to numerous divisional and federal stakeholders.
19. Moreover, national security investigations have reporting requirements to the Federal Policing National Security program. However, the management of human sources that provide input into these investigations resides with the Human Source Program. This bifurcation of responsibility has advantages, while introducing complexity in the reporting and approval process.
20. For context, the recruitment of a human source can be described as either reactive or proactive. In a reactive recruitment, an individual on their own initiative volunteers information to the police. In a proactive recruitment, the police will identify an individual who is believed to be able to provide information to fill an intelligence gap and seek their assistance. While any police officer has the legal authority to recruit a human source, RCMP human source policy requires that this activity should be limited to officers who have completed the appropriate training. However, the HSP cannot stop units from doing proactive recruitments, even if they do not possess the advanced training. The HSP can only provide recommendations for oversight of the techniques.

Source Development Unit Methodology

21. The human source policy sets out a subset of proactive recruitment that is more specialized and limits its use to those who possess the advanced qualification. This recruitment method is known as the Source Development Unit (SDU) methodology.

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It is [REDACTED] used in the recruitment of sources in respect of national security investigations.

22. Originally conceived in the aftermath of 9/11, the SDU program and methodology was established as the RCMP's response to enhance Canada's capacity to generate and collect intelligence, with a focus on national security. The use of the SDU methodology for national security is now left to the discretion of the division in which the investigation takes place. There is substantial variation in recruitment and how the source development function is currently operationalized.
23. National security investigations are conducted by a division's investigation team and falls under the purview of Federal Policing National Security program. When an information gap is identified, the investigation team may request the assistance of the SDU to recruit a human source. The separation of reporting authorities is considered a best practice as it has the potential benefit of incorporating objectivity into the assessment of prospective sources and assists with the protection [REDACTED] [REDACTED] of source identity. NSIRA observed the value of this practice where, in one particular investigation, the recruitment of a prospective source [REDACTED] [REDACTED] [REDACTED]
24. Once tasked, the SDU evaluates and identifies individuals believed capable of filling the intelligence gap; identifies potential human sources and, if there are multiple prospects, further examines the individuals within this pool. [REDACTED] [contextual information about assessment and recruitment process] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

Recommendation 1. NSIRA recommends that the RCMP update its human source policy to, at a minimum, include:

- a centralized framework that requires the Human Source Program policy centre to establish:
 - clear thresholds and guidance on the appropriate criteria for the use of proactive recruitment methods in national security investigations;
 - strong oversight and accountability by monitoring and tracking policy compliance; and
 - entrenched methodology principles, including for the conduct of a standardized approach to the assessment of risk to human sources in all national security investigations.
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Part 2: Policy Governance – Risk Assessment

Agents

Finding 2. NSIRA found that the risk assessment for agents is adequate because it is comprehensive and details the management of risk as a shared responsibility involving multiple independent stakeholders.

25. Using an agent involves substantial risk, both to the human source and to law enforcement. Given the anticipated involvement of the courts, prospective agents are heavily scrutinized to ensure that they will be effective witnesses and that their involvement in the investigation does not bring the administration of justice into disrepute. Agent tasks can include direct involvement with serious or violent criminality. To mitigate the risks, agents [redacted] able to take and follow direction.
26. For the RCMP, the process of recruiting an agent is complex. Multiple independent units and responsibility centres are involved throughout the process and contribute their expertise at different decision points. This includes the Witness Protection Program and the Public Prosecution Service of Canada. Prospective agents also have the opportunity to retain independent legal counsel.
27. The agent recruitment process begins with the investigators and the potential handlers conducting a preliminary assessment of an agent's [additional details on assessment] [redacted] This is presented to the division's Human Source Unit, which administers human source activity at the divisional level. The unit then conducts [redacted] on the prospective agent across a range of factors, [redacted] [redacted] The prospective agent is also subject to [additional details on assessment] [redacted]
28. This risk assessment aims to identify all individuals who may be impacted by the operation, [redacted] [details on intended result] [redacted] At a minimum, risk assessments include [additional details on assessment] [redacted] [redacted] [redacted] [redacted] The formal risk assessment for agents is segmented into the following risk categories: [redacted]
29. Before involving an agent in an operation, the terms and conditions of the engagement are documented in a Letter of Acknowledgement, which is a mechanism used to address the RCMP's duty of care obligations. The Letter of

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Acknowledgement is negotiated by a human source negotiator, the agent, and the agent's counsel (if engaged).

30. The RCMP will pay the legal fees of independent legal counsel to advise the prospective agent during the assessment process. [redacted]
[redacted]
[redacted]
31. The involvement of the Witness Protection Program provides another form of independent oversight of the engagement of risk. The legal basis and parameters for the Witness Protection Program are laid out in the *Witness Protection Program Act*.
32. The Witness Protection Program's assessment of an individual's suitability for program admission is independent from investigators and investigations. There are multiple criteria for entering the program, including the likelihood of the individual's ability to adjust, the individual's maturity, judgement, and personal characteristics.
[redacted] [additional details on process]
[redacted]
[redacted] The individual's familial and personal relationships also bear on the decision to admit an individual as an agent.
33. The Witness Protection Program will not share with the Human Source Program or the investigators any information from its assessment in order to maintain independence from the investigations and ensure compliance with protection of information provisions pursuant to Section 11 of the *Witness Protection Program Act* and RCMP policy. [redacted] [additional details on process]
[redacted]
[redacted]
34. An agent may be introduced at various stages of an investigation for a broad range of reasons. [redacted] [details on roles]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]

Confidential Informants

Finding 3. The risk assessment framework for confidential informants is inadequate.

The current assessments of risk:

- are not well documented and as such do not provide adequate or reliable information to decision makers; and
- are primarily focused on operational security and risk to the investigation, as opposed to risk to the confidential informants.

35. Consideration of risk for CIs begins the moment a recruitment is contemplated and focuses primarily on the risks to the investigation. The risk is managed by [REDACTED]

[REDACTED]

[REDACTED] As noted above, a CI's identity is protected and cannot be revealed in court. The overriding question in the recruitment process is whether the potential CI [REDACTED]

[REDACTED]

36. The CI Assessment initiates the coding process of a CI, and includes baseline information about the source and a preliminary assessment of risk. In many cases this is the only documented assessment in the CI's file. This stage is where investigators determine [REDACTED]

[REDACTED] This evaluation addresses the consideration of the promise of confidentiality, and not directly the risk to the CI. The promise of confidentiality is [REDACTED]

[REDACTED]

37. Proactive recruitments are identified based on [REDACTED]

[REDACTED] The RCMP has advised that those who were not proactively recruited have often come forward to provide a tip based on an observed concern. Individuals become CIs because they wish to provide information to police without becoming a witness or having their identity revealed.

38. The RCMP considers that risks to CIs are substantially mitigated through the protection of the source's identity. The RCMP protects the source's identity through [REDACTED]

[REDACTED] Internally, the RCMP maintains control over the identities of its sources. The individuals who know the identities of the CIs are few and are recorded.

39. Throughout the investigation, there is constant attention to the challenges of using information from a CI. Actionable information may be underutilized due to the risk of revealing a confidential source. Despite best efforts, it remains a possibility that the identity of a source could be compromised.

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40. Information gathered from a CI is recorded in the handler's notebook and is maintained separately from the investigation. The information is then disseminated in CI debriefing reports where the information is written in such a way as to obscure the identities of the CIs. Information may be used in a warrant application. If so, it is carefully vetted to protect the identity of the source. Before information from a CI is used or disseminated, handlers are consulted to determine the risk of attribution.
41. The RCMP acknowledged that it may be obligated to intervene to protect the safety of a CI. Measures taken by the RCMP to protect the identities of CIs do mitigate the risk of retribution. However, protecting the confidentiality of the source does not mitigate the full range of potential risks to those acting as CIs.
42. The RCMP considers that risk to CIs are negated as their conduct and environment is presumed to remain unchanged. Most of the risk assessments reviewed by NSIRA focus primarily on operational security and risk to the investigation. Other risks to CIs are not the primary focus. The RCMP's position is that mitigating risk to the investigation serves to mitigate *any* risk to the CI.
43. This approach is concerning when considering that sources are often in situations with demands and stresses that may not be fully appreciated or anticipated by the CI. The source handler, by virtue of their training and experience, has a clearer understanding of risks, but this is not always shared with the CI. Moreover, the CI relationship can prolong an individual's exposure to the risk environment. All of this makes the individual more susceptible to risk by virtue of their recruitment as a CI.
44. The sample of CIs were overwhelmingly documented by the RCMP as being motivated by [redacted] [details on profiles of CIs] [redacted] [redacted] Sources also bring [redacted] [redacted] access. [redacted] individuals should not be expected to fully understand the risks involved in investigations of national security offences.
45. Focusing solely on confidentiality for CIs ignores a complete accounting of risks incurred by CIs. The review sample has provided examples where risk assessments, when completed, revealed significant concerns in the utilization of these individuals. Arguably, these assessments should be conducted in the initial engagement phase for all potential CIs regardless of SDU involvement.
46. The SDU model of risk assessments considers broader categories of risk. These assessments are based on the observable risk across a group of classes. During these assessments the possibility of ongoing risks to the human source are more formally considered, despite the already present danger. However, there are still

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limitations with the SDU risk assessments in their current iteration. While SDU risk assessments are initiated early in the investigation, and these assessments are made more broadly, they remain cursory and not an in-depth accounting of risk to the individual.

Recommendation 2. NSIRA recommends that the RCMP revise its risk assessment framework for confidential informants to require officers to consider all applicable risks to the confidential informant, and to aggregate and document those risks, thereby providing for a full accounting.

Chapter II: Duty of Care

47. The engagement of a human source brings with it several legal obligations, namely the responsibility to take reasonable care in the treatment of human sources. A duty of care is owed to a human source when the RCMP's actions create reasonably foreseeable risks for individuals where there is a close and direct relationship.
48. In the context of handling of human sources, the adequate discharge of the duty of care by the RCMP incorporates a wide range of responsibilities. This includes the protection of the individual's identity, risk management, maintenance of operational security, and informed consent.
49. In this context, informed consent is such that human sources understand the nature of their relationship with the RCMP and are adequately apprised of their role, limits and risks associated with their participation. For informed consent to be meaningful, individuals must be informed in advance of those limits and risks in an accessible manner and in such a way that they have the capacity to understand the true extent of their participation. For the purpose of this review, NSIRA focused on the measures the RCMP has established to address and maintain informed consent.

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Part 1: Agents - Duty of Care and Informed Consent

Finding 4. RCMP's discharge of its duty of care towards agents is satisfactory because the current process:

- considers a wide range of risks;
 - ensures that obligations for informed consent are met;
 - accounts for risk mitigation measures;
 - provides for administrative interviews; and
 - includes independent third party assessments.
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50. While the term "informed consent" is not explicitly used by the RCMP, there is policy, guidance and training on when and how to ensure understanding throughout the recruitment process. The RCMP has comprehensive measures in place to ensure that its obligations in relation to agents and informed consent are discharged appropriately.
51. Before involving an agent in an operation, the terms and conditions of the engagement must be documented in a Letter of Acknowledgement. The letter governs the relationship between the agent and the police and is a binding agreement between the RCMP and the agent. It sets out the specific terms, roles and responsibilities, performance objectives and expectations, as well as how much the agent will be compensated.
52. The RCMP designates an officer with specialized training to manage and finalize the terms of the letter. The officer's role is to meet and evaluate potential agents, explain the risks and associated process, and negotiate terms that will satisfy both parties. Letters of Acknowledgement include a declaration that the agent understands their right to consult, retain and instruct independent legal counsel. The agent must sign a Letter of Acknowledgement before they can be assigned or tasked in any investigation.
53. Where the RCMP determine that a CI may be better suited to take on an active role in the investigation, they may attempt to recruit them as an agent. If the individual is open to this change in roles, the RCMP officer designated to negotiate the terms of the letter must verify that the individual consents to their identity being disclosed to the accused if police lay charges in the investigation.
54. NSIRA has reviewed the Letters of Acknowledgment in the agent files. Attestations signed by agents were comprehensive and demonstrate that agents understood their role and the requirement to provide testimony in court.
55. Once the agent is in place, there are several roles independent from the investigation team with specific responsibilities to ensure the effective running of an

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agent. These are the agent handlers, agent cover, and the independent agent monitor. Handlers are the primary point of contact with agents throughout an investigation. Handlers are responsible for the agent [REDACTED]
[REDACTED]

56. "Agent cover" [officers] oversee the undercover operation and provide all operational direction to the agent. [details of role] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
57. The Independent Agent Monitor ensures oversight of the agent-handler relationship and compliance with policy. [details of role] [REDACTED]
[REDACTED]
[REDACTED]
58. "Annual interviews" with human sources are another measure to ensure that the human source-handler relationship remains stable. These administrative interviews give the human source an opportunity to discuss any concerns or problems they may have, and confirm that all documented payments have been received. Interviews are scheduled when the following thresholds have been passed: [REDACTED] months have elapsed and information has been provided [REDACTED] times or an amount of [REDACTED] (or more) has been paid.
59. RCMP policy dictates that interviewers are to be experienced human source handlers. They are not the human source's handler (other than in exceptional circumstances and with approval from the criminal operations officer) and are from separate units. Interviewers must also interview the handler and the co-handlers if there are any inconsistencies during the human source's interview.
60. NSIRA reviewed the interview notes in the agent files. In the documents provided (as part of the review sample of [REDACTED] human sources) only one interview was filed. It would appear that agents, in some cases, did not meet the threshold to trigger an interview. Details of the interview are a sparse accounting by the interviewer of the agent's experience. With responses limited to: "No issues or concerns raised..., All monies accounted for..., and Stated that he/she wished the process to make it to Police Agent was faster." The sample shows that the detail in the record keeping is scant, with implications for the RCMP's ability to fully monitor agent welfare.

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61. There are examples where the Divisional Human Source Unit is tracking the interview requirements. NSIRA considers compliance and the tracking of interviews to be a best practice.
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Recommendation 3. NSIRA recommends that the RCMP adjust the parameters for the conduct of agent interviews so that agent feedback is more descriptive concerning their experience; and documented with greater frequency.

Part 2: Confidential Informants - Duty of Care and Informed Consent

Finding 5. NSIRA found that the RCMP over relies on the promise of confidentiality and does not adequately consider risk to confidential informants.

62. As a matter of process, the RCMP seeks to obtain informed consent from prospective CIs at the moment when RCMP extends the promise of confidentiality to them. The decision to extend the promise of confidentiality requires agreement between investigators, the Divisional Human Source Unit, and/or SDU and comes only when the risks are weighed against the potential benefit. In advance of this decision, and in order to avoid implicit promises of confidentiality, officers are trained to make explicit that the individual does not enjoy any measure of confidence in their identity nor in the information they provide to police at this stage.
63. There is insufficient documentation on when the promise of confidentiality is to be extended. To the extent that it is documented, handler notebooks provide insight as to under what circumstances a promise of confidentiality is offered. RCMP training defines and explains when it is appropriate to extend confidentiality to a person. The training also states the CIs should be ██████████ to make an informed decision.
64. This means that “ground rules” of acting as a CI should be well explained, and at a minimum the CI must understand that the RCMP will not intercede if the CI commits an offence. Training also dictates that there should be a discussion of the limits of what a CI can do to collect information. CIs are advised to collect information based on what they see and hear.
65. RCMP officers are trained to emphasize that CIs are equally responsible for maintaining the confidentiality of the relationship and are advised of operational security protocols. The training materials provided apply a standardized approach to obtaining informed consent to becoming a CI. The scenario-based training includes guidance on how to deal with various circumstances related to the individual CI, which may include a personalized approach. Despite this, the training

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does not contain sufficient guidance on when the specific circumstances of the individual involved might require a bespoke approach to obtaining informed consent.

66. Informed consent is an ongoing requirement. RCMP policy requires that the risks and limitations of acting as a CI should be reinforced at multiple points in the relationship. Handlers are prompted to communicate information to CIs on a regular basis. [REDACTED]
[REDACTED]
[REDACTED]
67. The process of assessing risks posed to CIs, in its current iteration, focuses almost exclusively on maintaining confidentiality. The CI assessment and accompanying cover memo is a foundational document used to evaluate and approve the use of CIs. The CI assessment is, therefore, a pivotal document in assessing whether the information provided would warrant the extension of a promise of confidentiality.
68. The CI assessment captures [REDACTED]
[REDACTED] In addition to these elements, the assessment also includes [REDACTED]
[REDACTED]
69. In the review sample provided, individuals who were exclusively CIs (not later transitioned to agents) lacked documented assessment of risk, [REDACTED]
[REDACTED]
[REDACTED]
70. NSIRA understands that the evaluation of risk is a dynamic exercise conducted at various inflection points throughout the course of an investigation. However, there is an absence of meaningful and documented risk assessment. While handlers may have conversations with their CIs, what is notable is that the RCMP has no process in place to aggregate information, detect outstanding vulnerabilities, or to determine [REDACTED]
[REDACTED].
71. A further weakness was observed with respect to "annual interviews" for CIs. Interviews were not always conducted because the threshold for these administrative interviews was not met. Given the value of these interviews in providing an independent assessment of the CI's welfare, the threshold should be adjusted to ensure that interviews are conducted on a more frequent basis, and with a higher proportion of CIs.

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Recommendation 4. NSIRA recommends that the RCMP improve its risk assessment framework for confidential informants. At a minimum, the framework should:

- consider the safety of the confidential informant;
- consider the particular circumstances of the confidential informant;
- aggregate information that allows for the detection of outstanding vulnerabilities; and
- provide for consent from the confidential informant that is considerate of the risks involved.

Recommendation 5. NSIRA recommends that RCMP lower the threshold to conduct administrative interviews so they are conducted with greater regularity and with a greater proportion of confidential informants.

Chapter III: Ministerial Accountability

Part 1: Ministerial Direction – National Security Investigations in Sensitive Sectors

Finding 6. NSIRA found that the RCMP has not demonstrated special care in its national security investigations in sensitive sectors, contrary to obligations under the Ministerial Direction – National Security Investigations in Sensitive Sectors.

Finding 7. NSIRA found that the RCMP has an inadequate framework to ensure the appreciation of the cumulative impact of national security investigations in Canadian Fundamental Institutions.

72. The Ministerial Directions governing the RCMP handling of sensitive sectors [Canadian Fundamental Institutions] was issued in 2003. The RCMP was directed to:
- take special care...with respect to RCMP's [National Security] investigations...which have an impact on, or which appear to have an impact on, fundamental institutions of Canadian society. Primary amongst these institutions are those in the sectors of academia, politics, religion, the media and trade unions.³
73. The RCMP is required to demonstrate “special care” when an investigation impacts, or may appear to impact, a sensitive sector. Attention must also be paid to the impact an investigation may have on a designated group or community. A sensitive sector request is required as soon as an investigation “impacts, or appears to impact” a Canadian Fundamental Institution.⁴
74. Investigations that impact Canadian Fundamental Institutions require a particular sensitivity to individuals’ freedom of conscience, expression and association, as well as a higher level of accountability and particular management and control. In order to manage and properly consider the use of human sources in sensitive sector reporting, regular oversight is required from the most senior levels of management.
75. The sensitive sector request requires the investigative team to list a number of aspects of the investigation, including how closely the sensitive sector is tied to the

³ Ministerial Direction National Security Investigation in Sensitive Sectors, 2003.

⁴ Ibid.

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investigation, what techniques are being used and what the impact will be on the sensitive sector.

76. In the review sample, the focus of the sensitive sector requests were limited to [REDACTED] associated with a Canadian Fundamental Institution. In instances where the target of investigation [REDACTED] such as [REDACTED] [REDACTED] a sensitive sector approval would be required for each [REDACTED]. Yet, this approach still risks being under inclusive of [REDACTED]. [REDACTED] While the RCMP acknowledges that investigations that touch on Canadian Fundamental Institutions may impact communities beyond [REDACTED] [REDACTED] listed in sensitive sector requests, the documentation only considers the impact to [REDACTED]. This means that communities or [REDACTED] that could also be impacted are overlooked.
77. In other instances, sensitive sector requests were overly broad, requesting approval for “all religious institutions in [REDACTED]” or “all mosques in [REDACTED].” Similarly, the renewal times requested, while generally renewed every [REDACTED] [REDACTED], were listed in some investigations as “until the end of investigation”. These requests were all approved, though subject to modification in later requests.
78. Investigations that touch on sensitive sectors, while focusing on individuals, may impact wider communities. In several investigations, the targets were [REDACTED] in a religious or ethnic community, [REDACTED]. The use of human sources in an investigation, particularly where the investigation does not result in criminal charges, could have wide and long lasting impacts on these communities.
79. Sensitive sector requests are divided into “primary” and “non-primary” targets. Whether a target is “primary” or “non-primary” dictates what level of approval is required for the sensitive sector. A “primary” target requires approval from the Assistant Commissioner Federal Policing National Security. “Non-primary” requires approval from a senior level officer.
80. The RCMP distinction between “primary” and “non-primary” is poorly defined in the RCMP policy and inconsistently applied across investigations. In the Operations Manual “primary” is defined as “if the sensitive sector is the focus of the investigation” with no definitions or examples. On sensitive sector request forms, an example of a “primary” target is given:

The target [REDACTED]
[REDACTED]
[REDACTED] In this case, the institution is substantially involved in the investigation. Where the target [REDACTED]

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██████████ and there is ██████████
██████████ the institution is not substantially involved.

This example leaves a poorly defined middle ground with little guidance for officers completing sensitive sector requests.

81. In the sample there were ██████ sensitive sector requests that consider the target “primary”, ██████ that considered the target “non-primary” and ██████ that switched between “primary” and “non-primary.” The reasoning for changing between primary and non-primary was not explained in the requests.
82. Further, across the sample of investigations, these policies were inconsistently applied. For example, where the targets of the investigation were ██████████ religious institution, and where ██████████ ██████████ the religious institution was listed as “non-primary.” By contrast, a separate investigation that noted infrequent attendance at a religious institution by the target and lacked discernible connection between the institution and the investigation still required “primary” approval.
83. The use of a police agent was included in the sensitive sector approval requests. The RCMP considers an agent to be an intrusion into a sensitive sector, and approval must be obtained for use of an agent in a Canadian Fundamental Institution.
84. RCMP policy does not require investigators to seek sensitive sector approval to use CIs in national security investigations in sensitive sectors. This is true regardless of which Canadian Fundamental Institution was part of the investigation. This underestimates the social impacts of police informant presence within these institutions as well as the associated reputational risk to the RCMP.
85. The exception is if the SDU proactively recruits a CI due in part to ██████████ ██████████ This would require a sensitive sector approval. Subsequent use of the CI in a sensitive sector does not require additional approval. In practice, this leaves a gap in policy, as sources recruited ██████████ ██████████ ██████████ would not require approval. NSIRA saw several examples of sources recruited ██████████ sensitive sector ██████████ with no approval sought.
86. The sensitive sector approval process does not allow for standardized consideration of the impact, nor does it demonstrate thoughtfulness in how an investigation may be viewed by wider society. Often assessments of the impact on a sensitive sector are limited to “none” even in cases where the investigation could lead to the arrest of prominent community leaders. This demonstrates a lack of thorough consideration on the repercussions an investigation can have on a community.

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87. NSIRA notes that only in one case from the sample did the RCMP consider the broader impacts on a community. The RCMP noted that suspected [REDACTED] [REDACTED] [REDACTED] and that the investigation “may appear to focus on a particular religion.” Further, the sensitive sector requests notes that the investigation would attract scrutiny and “could potentially harm relations with [REDACTED] community.” These considerations do not appear in later sensitive sector requests.
88. The RCMP acknowledged in briefings that possible alternative investigative techniques and considerations of impact are sometimes conducted verbally and may not be reflected in the approvals of sensitive sector requests. In the majority of cases there was no written consideration for the impact the investigation would have on the Canadian Fundamental Institution.
89. A rejected sensitive sector request must be reported to senior officials. The RCMP reported that there were no rejected sensitive sector requests in the review sample time range.
90. The officer responsible for completing the sensitive sector form must make their own judgement without any guidance from training or written policy. The exchanges observed in the review sample show that alterations or challenges to approving sensitive sector forms were made along timelines, or scope of the investigation, but never on the impact to a sensitive sector. There is no record of investigations being modified or denied because of impact to a sensitive sector.
91. While the RCMP maintains a database of sensitive sector requests, it has acknowledged that this is used as an administrative tracking mechanism and is not reported to higher levels. The RCMP does not aggregate sensitive sector data. As a result, the RCMP has no ability to conduct long term analysis on the cumulative impacts on sensitive sectors subject to investigations.
92. In its current iteration, the sensitive sector approval process provides no ability for the RCMP to demonstrate special care in regard to sensitive sectors.

Recommendation 6. NSIRA recommends that the RCMP create a specialized Sensitive Sector Unit that is responsible for monitoring and aggregating information on the RCMP’s activities as they relate to Canadian Fundamental Institutions, assessing the impact of these activities on the community, and conduct long-term analysis of the cumulative effects.

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4. Conclusion

93. The general policies and procedures governing the recruitment and use of human sources, and the reporting requirement in national security matters are in need of serious attention. Going forward, the RCMP will need to reconsider governance of the Human Source Program, such that risk to CIs is more appropriately considered and accurately communicated to the CI.
94. Sustained attention by policy makers will be required to ensure that the proper oversight and accountability structures are in place. The RCMP will need to ensure that policy addresses the unique challenges associated with frontline policing and the decentralized divisional model; and that risk analysis and decisions are comprehensive and properly documented.
95. Significant changes are required to address the shortcomings associated with the recruitment and use of CIs in investigations related to Canadian Fundamental Institutions. Sensitivities involved with carrying out national security investigations that affect Canadian Fundamental Institutions require not only a higher level of accountability, but also particular focus on monitoring, management and control.

Annex A. Findings and Recommendations

NSIRA made the following findings and recommendations in this review:

Finding 1. NSIRA found that the RCMP's dated human source policy does not provide a sufficient framework for the consistent application of the Source Development Unit methodology in the proactive recruitment of human sources.

Finding 2. NSIRA found that the risk assessment for agents is adequate because it is comprehensive and details the management of risk as a shared responsibility involving multiple independent stakeholders.

Finding 3. The risk assessment framework for confidential informants is inadequate. The current assessments of risk:

- are not well documented and as such do not provide adequate or reliable information to decision makers; and
- are primarily focused on operational security and risk to the investigation, as opposed to risk to the confidential informants.

Finding 4. RCMP's discharge of its duty of care towards agents is satisfactory because the current process:

- considers a wide range of risks;
- ensures that obligations for informed consent are met;
- accounts for risk mitigation measures;
- provides for administrative interviews; and
- includes independent third party assessments.

Finding 5. NSIRA found that the RCMP over relies on the promise of confidentiality and does not adequately consider risk to confidential informants.

Finding 6. NSIRA found that the RCMP has not demonstrated special care in its national security investigations in sensitive sectors, contrary to obligations under the Ministerial Direction – National Security Investigations in Sensitive Sectors.

Finding 7. NSIRA found that the RCMP has an inadequate framework to ensure the appreciation of the cumulative impact of national security investigations in Canadian Fundamental Institutions.

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Recommendation 1. NSIRA recommends that the RCMP update its human source policy to, at a minimum, include:

- a centralized framework that requires the Human Source Program policy centre to establish:
 - clear thresholds and guidance on the appropriate criteria for the use of proactive recruitment methods in national security investigations;
 - strong oversight and accountability by monitoring and tracking policy compliance; and
- entrenched methodology principles, including for the conduct of a standardized approach to the assessment of risk to human sources in all national security investigations.

Recommendation 2. NSIRA recommends that the RCMP revise its risk assessment framework for confidential informants to require officers to consider all applicable risks to the confidential informant, and to aggregate and document those risks, thereby providing for a full accounting.

Recommendation 3. NSIRA recommends that the RCMP adjust the parameters for the conduct of agent interviews so that agent feedback is more descriptive concerning their experience; and documented with greater frequency.

Recommendation 4. NSIRA recommends that the RCMP improve its risk assessment framework for confidential informants. At a minimum, the framework should:

- consider the safety of the confidential informant;
- consider the particular circumstances of the confidential informant;
- aggregate information that allows for the detection of outstanding vulnerabilities; and
- provide for consent from the confidential informant that is considerate of the risks involved.

Recommendation 5. NSIRA recommends that RCMP lower the threshold to conduct administrative interviews so they are conducted with greater regularity and with a greater proportion of confidential informants.

Recommendation 6. NSIRA recommends that the RCMP create a specialized Sensitive Sector Unit that is responsible for monitoring and aggregating information on the RCMP's activities as they relate to Canadian Fundamental Institutions, assessing the impact of these activities on the community, and conduct long-term analysis of the cumulative effects.