Court File No. T-1347-20

FEDERAL COURT

B E T W E E N:

BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

Applicant

- and -

ROYAL CANADIAN MOUNTED POLICE COMMISSIONER BRENDA LUCKI, ATTORNEY GENRERAL OF CANADA, and HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA as represented by THE MINISTER OF PUBLIC SAFETY AND SOLICITOR GENERAL

Respondents

AFFIDAVIT OF HARSHA WALIA
(Affirmed November 19, 2020)

I, Harsha Walia, Executive Director, of 306 – 268 Keefer Street, in the City of Vancouver, Province of British Columbia, AFFIRM THAT:

1. I am the Executive Director of the B.C. Civil Liberties Association ("BCCLA") and as such have personal knowledge of the facts and matters hereinafter deposed to, save and except where same are stated to be made on information and belief, and where so stated, I verily believe them to be true.

The BCCLA

2. The BCCLA is a charitable, non-partisan, unaffiliated advocacy group. It was incorporated in 1963 pursuant to the *British Columbia Society Act*. The objects of the BCCLA include the promotion, defence, sustainment and extension of civil liberties and human rights throughout British Columbia and Canada.

3. The BCCLA has several thousand supporters from across the country. The BCCLA has seventeen employees, including an Executive Director, a Litigation Director, and a Policy Director. These employees are responsible for the work of the organization, and they give the BCCLA a unique status in this country as a member-driven organization with the resources of a full-time staff devoted exclusively to civil liberties and human rights.

4. The BCCLA has a volunteer board of directors that directs the organization's policy and agenda. Through its board, the BCCLA taps the skills and energies of a wide range of academics, professionals, and community members with experience and interest in the field of civil liberties. This gives the BCCLA the benefit of their collective expertise in considering the difficult questions raised by civil liberties.

5. The BCCLA works in furtherance of its objectives in a variety of ways:

   a. The BCCLA prepares position papers and makes submissions to governmental bodies at the federal, provincial, and municipal levels concerning the advancement of civil liberties and human rights and the implications for civil liberties and human rights of proposed legislative and policy initiatives;

   b. The BCCLA engages in public education, by commenting on current civil liberties and human rights issues in various news media, by participating in conferences and other public events at which civil liberties and human rights are discussed, by publishing newsletters and producing reports and other publications regarding civil liberties and human rights issues, and by maintaining a website containing many of the BCCLA's position papers and other public documents;

   c. The BCCLA provides information assistance to individuals who complain to us about certain violations of their civil liberties or human rights, including assistance in pursuing administrative and informal remedies; and

d. The BCCLA takes action in its own right when it perceives violations of civil liberties or human rights, either by launching complaints with the government or other administrative agencies, or by appearing in court as a plaintiff, applicant, or intervener in legal proceedings that raise civil liberties issues.

6. Police accountability is an integral part of the BCCLA's mandate. The BCCLA has an extensive history of engaging in advocacy and education on this issue. Some examples include:

a. Filing police complaints on its own behalf and assisting members of the public in filing police complaints;

b. Making submissions to the Oppal Commission on Municipal Policing in B.C. about the citizen complaints process (1993);

c. Making submissions to the Davies Commission Inquiry into the Death of Frank Paul on the investigation and prosecution of police-involved deaths (2007-2011);

d. Participating in the Braidwood Commission on the Death of Robert Dziekanski, where the BCCLA argued that the use of force by RCMP officers in that case was grossly excessive, unreasonable, and unjustified (2008);

e. Intervening in many significant cases about limitations imposed by s. 8 of the *Charter* on police search and seizure powers, including *R. v. Vu*, 2013 SCC 60; *R. v. Fearon*, 2014 SCC 77, *R. v. Marakah*, 2017 SCC 59, and *R. v. Jones*, 2017 SCC 60;

f. Intervening in appeals about police complaints, including *Berg v. Police Complaint Commissioner*, 2006 BCCA 225 and *Florkow v. British Columbia (Police Complaint Commissioner)*, 2013 BCCA 92;

g. Making submissions to the National Inquiry into Missing and Murdered Indigenous Women and Girls, where the BCCLA provided recommendations to improve accountability, complaint mechanisms, and community relations between policing systems and Indigenous women,girls, and two spirit people (2018);

h. Filing a complaint with the Office of the Police Complaints Commissioner against the Vancouver Police Department respecting the practice of police "street checks" (2018);

i. Creating the "Policing Indigenous Communities Initiative", a multi-year project that seeks to address the overrepresentation and disproportionate impact of policing on Indigenous peoples in British Columbia. The initiative has three main areas of focus: police accountability in Indigenous Communities in northern BC, access to justice and rights violations at the bail stage in rural and remote Indigenous communities, and public awareness-raising, and legal education. (2019-ongoing);

j. Advocating for the Vancouver Police Board, the Province of British Columbia, and the City of Vancouver and City of Victoria to ban street checks (2020); and

k. Hosting public education events about policing, including "Who's Policing the Police? Police Oversight and Accountability in Canada" (2020), "Policing Black and Indigenous Lives in Canada: A Digital Teach-In" (2020), and "Racism in Policing and Surveillance Tech" (2020).

The RCMP Commissioner's Delays in Responding to Complaints

7. The failure of the RCMP Commissioner to respond to interim reports from the Civilian Review and Complaints Commission for the RCMP ("CRCC") in a timely manner is a serious and systemic issue. In the 2019-2020 CRCC Annual

Report, the CRCC Chairperson characterized these lengthy delays as an issue of "significant concern." She noted that the average response time has risen to 17 months. Attached hereto and marked as **Exhibit A** to this my Affidavit is a copy of the 2019-2020 CRCC Annual Report, as obtained from the CRCC website.

8. The CRCC and its predecessor, the Commission for Public Complaints Against the RCMP ("CPC"), have expressed concerns about these lengthy delays for years. This issue was also raised in the CPC Annual Reports for 2009-2010, 2010-2011, and 2011-2012 and the CRCC Annual Reports for 2016-2017 and 2017-2018. Attached hereto and marked respectively as **Exhibits B, C, D, E, and F** to this my Affidavit are copies of these annual reports, all obtained from the CRCC website.

9. According to the CRCC, on December 11, 2019, the CRCC and the RCMP signed a Memorandum of Understanding in which the RCMP Commissioner committed to responding to CRCC interim reports within 6 months of receiving them. Attached hereto and marked as **Exhibit G** to this my Affidavit is a copy of this Memorandum of Understanding, as obtained from the CRCC website.

10. The serious consequences of these delays were illustrated during the militarized policing crisis on Wet'suwet'en territories in January-March 2020. The CRCC's findings and recommendations with respect to its earlier investigation into the RCMP's response to anti-shale gas protests in Kent County, New Brunswick in 2013 would have been extremely relevant to public debate concerning the RCMP's conduct in Wet'suwet'en territories. However, the CRCC was unable to release its final report into the Kent County investigation during the Wet'suwet'en crisis because the RCMP Commissioner had not yet responded to the interim report, despite having received it in March 2019.

11. On January 15, 2020, the BCCLA assisted two individuals who were denied entry to the RCMP exclusion zone established on Wet'suwet'en territories, Delee Alexis Nikal and Cody Thomas Merriman (Wedlidi), in filing complaints with the CRCC.

12. On January 29, 2020, the BCCLA, along with the Wet'suwet'en Hereditary Chiefs and the Union of BC Indian Chiefs, wrote to the Chairperson of the CRCC, Michelaine Lahaie, to initiate a policy complaint and public interest investigation regarding the improper and unlawful actions of the RCMP in implementing and enforcing a checkpoint and exclusion zone in Wet'suwet'en territories. The complaint and call for investigation were also supported by West Coast Environmental Law and Pivot Legal Society. Attached hereto and marked as **Exhibit H** to this my Affidavit is a true copy of this letter.

13. On February 6, 2020, the BCCLA published an open letter expressing serious concerns about the RCMP exclusion zone on Wet'suwet'en territories. Attached hereto and marked as **Exhibit I** to this my Affidavit is a true copy of this letter.

14. On February 9, 2020, the BCCLA and the Union of BC Indian Chiefs wrote to Chairperson Lahaie to provide an update to the policy complaint. The letter expressed alarm about the expanding nature of the RCMP exclusion zone. Attached hereto and marked as **Exhibit J** to this my Affidavit is a true copy of this letter.

15. On February 13, 2020, Chairperson Lahaie responded to the policy complaint. In her letter, she noted that "the Commission has in the past conducted an extensive and thorough investigation into many of the same issues, in the *Chairperson-Initiated Complaint and Public Interest Investigation Into the RCMP's Response to Anti-Shale Gas Protests in Kent County, New Brunswick.*" She explained that the interim report in that matter had been sent to the RCMP Commissioner in March 2019 and the CRCC was still awaiting the RCMP Commissioner's response. Chairperson Lahaie wrote: "Because the Kent County report has not yet been made public, I believe it is important to inform you and the public of the issues it discusses and the findings and recommendations it makes, as these are directly related to the issues you raise in your correspondence." Her letter includes a summary of relevant findings and recommendations from the interim report. Attached hereto and marked as **Exhibit K** to this my Affidavit is a true copy of this letter.

Attached hereto and marked as **Exhibit K** to this my Affidavit is a true copy of this letter.

16. In June 2020, the CRCC submitted its 2019-2020 Annual Report to Minister Bill Blair. This report is previously referred to and attached as Exhibit A. The report stated:

> The old adage that justice delayed is justice denied is highly relevant in this situation. The impact of the delay in receiving Commissioner's responses to Commission interim reports was brought to fore in January 2020, specifically during the protests on Wet'suwet'en traditional lands.
>
> At that time, the British Columbia Civil Liberties Association (BCCLA), and indeed, several third party complainants called upon the Commission to launch an investigation into the RCMP's response to protestors in the Wet'suwet'en territory. Many of the issues raised mirrored those addressed in the Commission's Chair-Initiated Complaint and Public Interest Investigation into the RCMP Response to Protests in Kent County, New Brunswick.
>
> Rather than launching an investigation to look into matters previously contemplated by the Commission, I chose to release, in the absence of a reply from the Commissioner, select findings and recommendations from the Kent County report. The findings and recommendations made in that report had broad, far-reaching impact on policing that I determined the Canadian public should be able to access.

17. On November 12, 2020, the CRCC released its Final Report into the RCMP's Response to Anti-shale Gas Protests in Kent County, New Brunswick. The report contained numerous findings and recommendations with respect to stop checks, physical searches, and exclusion zones. Attached hereto and marked as **Exhibit L** to this my Affidavit is a copy of this report, as obtained from the CRCC website.

18. The criminalization and policing of Wet'suwet'en land defenders is not the only case where the failure of the RCMP Commissioner to respond to a CRCC interim report in a timely manner has had significant consequences. On November 2, 2020, CBC published an article entitled "This man died in RCMP custody while a report that might have saved his life sat on a desk." CBC reported that Michael Mullock was having a stroke, with no alcohol or drugs in his system, when he died in a RCMP drunk tank. The CRCC has sent an interim report to the RCMP

Commissioner two years earlier about a very similar case at the same RCMP detachment. The RCMP Commissioner had not responded to that interim report when Mr. Mullock died. Attached hereto and marked as **Exhibit M** to this my Affidavit is a copy of this article.

19. The CRCC refers to another disturbing complaint on its website that was resolved in 2019-2020. According to the summary on the CRCC website, a woman arrested and in RCMP cell blocks had her arm broken during a struggle to forcibly remove her bra. She was left alone, topless and with a broken arm in an RCMP cell, with no medical attention because the RCMP officers believed she was "faking". The CRCC made several adverse findings about RCMP conduct in this case, but, according to the CRCC, it took the RCMP nearly four years to respond the CRCC interim report. Attached hereto and marked as **Exhibit N** to this my affidavit is a summary of this complaint from the CRCC website.

Freedom of Expression

20. The RCMP Commissioner has not responded to the CRCC interim report regarding its investigation into the BCCLA's February 2014 complaint. Therefore, the CRCC cannot complete and release its final report and the BCCLA cannot express its opinion about this report. I personally as Executive Director of the BCCLA want to speak about the recommendations and findings in the CRCC's final report with communities who have been impacted by police surveillance, the public, and journalists, but I cannot do so until it is released.

21. The BCCLA has previously publicly commented on numerous reports released by the CRCC and the CPC. For example, in February 2017, the BCCLA issued a press release responding to the CRCC's Final Report on Policing in Northern British Columbia. Attached hereto and marked as **Exhibit O** to this my Affidavit is a true copy of this press release. In March 2009, the BCCLA issued a press release responding to the CPC's report on searches that took place on Canada Day 2008 in Victoria, B.C. Attached hereto and marked as **Exhibit P** to this my Affidavit is a true copy of this press release. In March 2008, the BCCLA issued a

press release responding to the CPC report into the public disclosure of the RCMP's income trust criminal investigation during a federal election. Attached hereto and marked as **Exhibit Q** to this my Affidavit is a true copy of this press release.

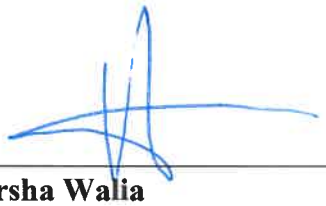
22. I make this affidavit in support of the application for *mandamus* and declaratory relief.

AFFIRMED BEFORE ME at the City of Vancouver, in the Province of British Columbia, on November 19, 2020)

Jessica Magonet)

A Commissioner for taking Affidavits for British Columbia.)

Jessica Magonet
Barrister + Solicitor
BC Civil Liberties Association
306 - 268 Keefer St
Vancouver, BC V6A 1X5



Harsha Walia

Exhibit "A"

This is Exhibit " A " referred to in the
affidavit of Harshan Walia
sworn before me at Vancouver, BC
this 19th day of November 2020

Jessica Magonet
A Commissioner for taking Affidavits
For British Columbia

Civilian Review and Complaints Commission for the RCMP

Commission civile d'examen et de traitement des plaintes relatives à la GRC

ANNUAL REPORT
2019-2020

Canada

The Civilian Review and Complaints Commission for the RCMP (the Commission) is an agency of the federal government, distinct and independent from the RCMP.

VISION: The CRCC will become the national leader for independent review of policing activities through the provision of a relevant, timely and transparent complaint process.

MISSION: Deliver a robust complaint process which holds the RCMP accountable for its activities and the conduct of its members.

MANDATE: As set out in Parts VI and VII of the *Royal Canadian Mounted Police Act*, the mandate of the Commission is to:

- receive complaints from the public about the conduct of RCMP members;
- conduct reviews when complainants are not satisfied with the RCMP's handling of their complaints;
- initiate complaints and investigations into RCMP conduct when it is in the public interest to do so;
- review specified RCMP activities;
- report findings and make recommendations; and
- promote public awareness of the complaint process.

STRATEGIC OBJECTIVES:

- Strengthening the public complaint process.
- Strengthening the Commission's review and investigative capacity.
- Enhancing relations with provincial and territorial governments, as well as police and federal review bodies.
- Conducting specified activity reviews of RCMP programs, policies and practices.
- Increasing outreach, public education and engagement efforts.

The Civilian Review and Complaints Commission for the RCMP can be found online at:
www.crcc-ccetp.gc.ca or www.complaintscommission.ca.

Telephone from anywhere in Canada: 1-800-665-6878

TTY: 1-866-432-5837

Minister of Public Works and Government Services

Cat. No.: PS75-2

ISSN: 2369-3118

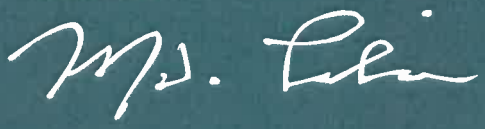
The Honourable Bill Blair, P.C., C.O.M., M.P.

Minister of Public Safety and Emergency Preparedness
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Minister,

Pursuant to section 45.52 of the *Royal Canadian Mounted Police Act*, I hereby submit the annual report of the Civilian Review and Complaints Commission for the RCMP for the 2019–2020 reporting period for tabling in Parliament.

Yours truly,



Michelaine Lahaie

Chairperson

June 2020

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MESSAGE FROM THE CHAIRPERSON



The year 2020 has brought unprecedented public scrutiny of police conduct. Video recordings of police interactions with the public have become commonplace on the internet and the public has grown increasingly vocal in expressing their views on acceptable police conduct and their expectation that police be held accountable.

For the Civilian Review and Complaints Commission for the RCMP, this scrutiny has translated into increased public complaints and requests for review. Indeed, fiscal year 2019-20 was the third year in a row that the number of public complaints about RCMP member conduct rose. Given this new reality, we must continually review our processes and remain engaged with stakeholders to ensure that we understand what Canadians expect from our agency.

To that end, at the beginning of the fiscal year, I undertook extensive stakeholder engagements, with a specific focus on the provinces covered by RCMP contract policing. These engagements provided insight into RCMP policing challenges particular to each province and territory and served as an opportunity to the take the pulse of police operations across the country.

These engagements also represented an opportunity to explain the Commission's mandate to senior government officials, to meet with the leadership of the RCMP and to bolster critical relationships with provincial oversight bodies and special investigation units.

In December 2019, the Commission and the RCMP signed their first Operations Memorandum of Understanding (MOU). While the signing of an MOU may seem like a relatively routine occurrence in government, this MOU, among other things, imposes timelines for the RCMP to respond to Commission reports.

> POLICE MUST SECURE THE WILLING COOPERATION OF THE PUBLIC IN VOLUNTARY OBSERVANCE OF THE LAW TO BE ABLE TO SECURE AND MAINTAIN THE RESPECT OF THE PUBLIC.
>
> - PRINCIPLES OF LAW ENFORCEMENT, SIR ROBERT PEEL, 1829

While the *Royal Canadian Mounted Police Act* defines the Commission's jurisdictional boundaries and legislates that the Commission establish service standards for all of our activities, it does not impose the same demand on the RCMP with respect to establishing service standards. This MOU, published on our website, both fills that legislative gap and establishes agreed upon processes for the sharing of information.

I join many of my predecessors in expressing my dismay about the length of time that it takes for the Commissioner to provide a response to Commission interim reports, with the average length of time for a response now having risen to 17 months.

This issue is of significant concern, as lengthy delays serve to obscure transparency, dilute the effects of findings and reduce or eliminate the value of recommendations.

Canadians have a right to know if the Commission's findings and recommendations have been accepted and indeed, if RCMP policies, procedures and training have been adjusted as a result. The old adage that justice delayed is justice denied is highly relevant in this situation. The impact of the delay in receiving Commissioner's responses to Commission interim reports was brought to fore in January 2020, specifically during the protests on Wet'suwet'en traditional lands.

At that time, the British Columbia Civil Liberties Association (BCCLA), and indeed, several third party complainants called upon the Commission to launch an investigation into the RCMP's response to protestors in the Wet'suwet'en territory. Many of the issues raised mirrored those addressed in the Commission's Chair-Initiated Complaint and Public Interest Investigation into the RCMP Response to Protests in Kent County, New Brunswick.

Rather than launching an investigation to look into matters previously contemplated by the Commission, I chose to release, in the absence of a reply from the Commissioner, select findings and recommendations from the Kent County report. The findings and recommendations made in that report had broad, far-reaching impact on policing that I determined the Canadian public should be able to access.

As the federal agency tasked with overseeing the RCMP, the Commission has a duty to play a coordination and leadership role within the Canadian police oversight community. To that end, in October 2019, I was pleased to host my counterparts from oversight bodies from across the country.

The Commission began hosting these meetings over a decade ago and I was privileged this year to be able to re-invigorate this important forum and bring together agency heads to discuss issues of common concern. The meeting tackled issues affecting a number of areas of modern policing, including trauma-informed interview techniques, the effects of police culture, and issues specific to Indigenous policing. I look forward to strengthening the bonds amongst all Canadian police oversight bodies and enhancing our joint expertise in the coming years.

This past year brought two significant changes to the Commission's work—one immediate and one future. The coming into force of The *National Security and Intelligence Review Agency Act* created the National Security and Intelligence Review Agency (NSIRA) to handle public complaints related to national security.

This new legislation shifted jurisdiction for public complaints about RCMP activities that are closely related to national security from the CRCC to the NSIRA. As the two agencies charged with oversight of the RCMP, the CRCC and the NSIRA have established a positive working relationship, including the standing up of a working group to consider public complaints related to national security. The Commission looks forward to continuing to build upon this burgeoning but critical relationship.

Acting on recommendations flowing from Justice O'Connor's report of the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar outlining the need for Canada Border Services Agency (CBSA) activities to be reviewed by the same body as the RCMP, the government, in January 2020, tabled legislation to create an independent review body for CBSA.

Complaints about the conduct of CBSA officers are handled internally, with no ability to request an independent review of an internal investigation. The new legislation addresses this gap in oversight. The CRCC would be renamed the Public Complaints and Review Commission (PCRC) and would have dual review agency responsibility for the RCMP and the CBSA. The Commission is actively preparing to take on this new and exciting challenge. We are well placed to take on the role of oversight body of the CBSA.

As with many federal agencies, the Commission was challenged to react quickly to the COVID-19 pandemic. While the pandemic proved to be a challenge on many levels from a personnel perspective, it also acted as a forcing function to change processes. Sometimes, a crisis can lead us to review the way that we do business and to find new ways to fulfill our mandate. I am pleased to say that the Commission transitioned exceptionally and, at every turn, Commission employees focused on ensuring that Canadians were well-served as we all learned how to work remotely.

The COVID-19 pandemic will continue to pose challenges in the coming year. The CRCC looks forward to taking on these challenges in what has become the "new normal" and will continue to deliver a robust complaint process for all Canadians, with RCMP accountability at the centre of all that we do.

THE COMPLAINT & REVIEW PROCESS

THE PUBLIC COMPLAINT PROCESS

The Commission accepts complaints about the on-duty conduct of RCMP members from individuals:

- Directly involved;
- Who witnessed the conduct itself;
- Authorized to act on behalf of the complainant.

When a complaint is made, typically the RCMP carries out the initial investigation into the complaint and reports back to the complainant.

The Chairperson can also initiate a complaint. Chairperson-initiated complaints allow the Chairperson to set the scope of the investigation of a public complaint. These complaints are investigated in the same manner as a complaint from a member of the public.

A complaint must be made within a year of the alleged conduct occurring.

Requests to review the RCMP's handling of a public complaint must be made within 60 days of receiving the RCMP's formal response to a complaint.

THE REVIEW PROCESS

If a complainant is not satisfied with the RCMP's handling of their complaint, they may request that the Commission conduct a review of the RCMP's investigation.

If the Commission is satisfied with the RCMP's investigation, the Chairperson issues a **Satisfied Report**, thereby ending the review process.

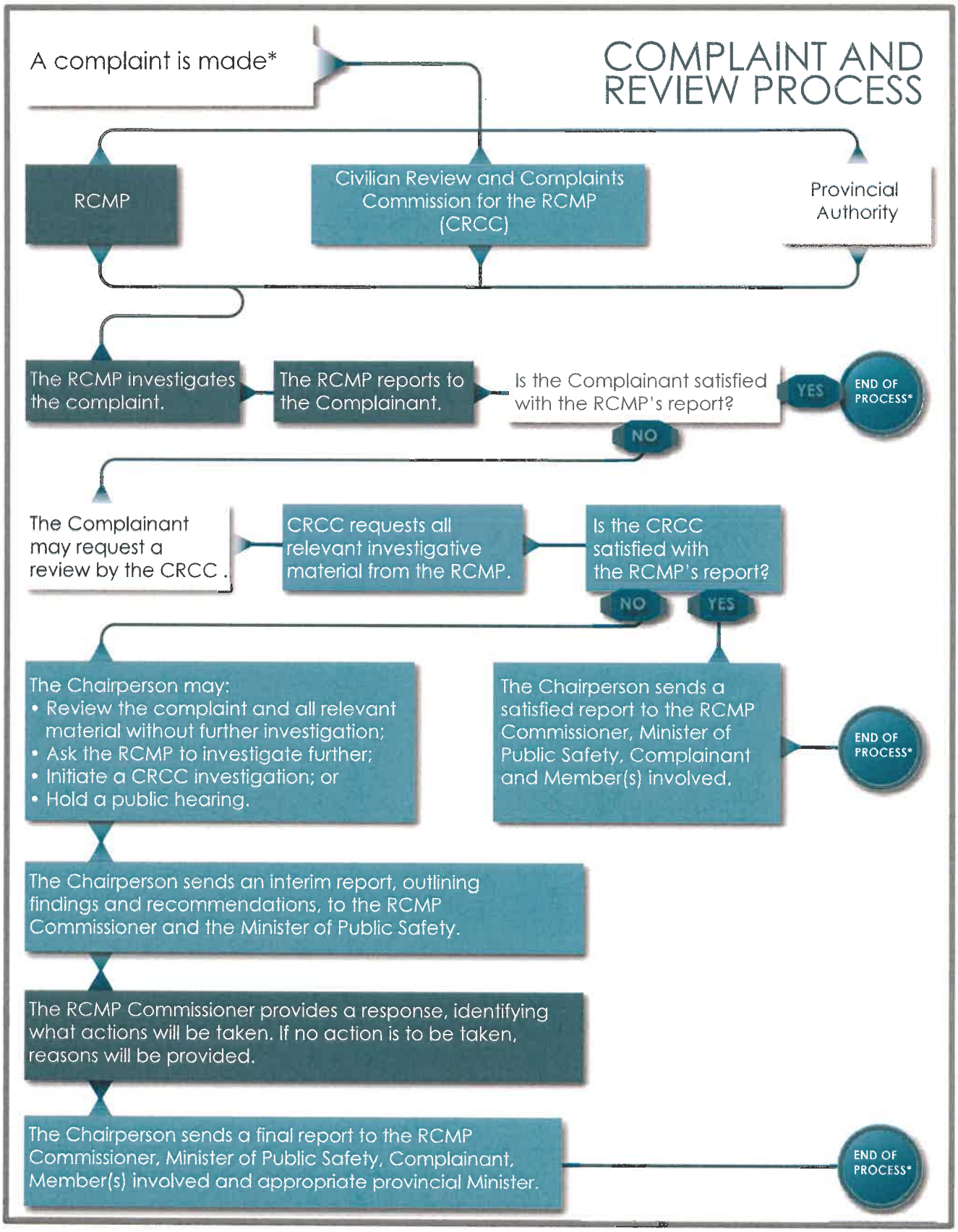
If the Commission finds the RCMP did not conduct a thorough investigation, the Chairperson can request that the RCMP make further enquiries.

If the Commission is not satisfied with the RCMP's handling of the complaint, the Chairperson will issue an **Interim Report**, outlining various findings and recommendations directed at the RCMP.

Once the **Interim Report** has been reviewed by the RCMP, the RCMP Commissioner gives notice, identifying which recommendations the RCMP will act on. If no action is to be taken, the Commissioner must provide reasons.

After receiving the **Commissioner's Response**, the Chairperson considers the RCMP's position and prepares a **Final Report**. This completes the Commission's review process.

COMPLAINT AND REVIEW PROCESS



* The Chairperson can initiate a complaint. In addition, at any stage of the process, the Chairperson may institute an investigation or a hearing where it is considered in the public interest to do so.

To learn more about the complaint and review process, visit the Commission's website.

THE CIVILIAN REVIEW & COMPLAINTS COMMISSION FOR THE RCMP

2019 · YEAR IN REVIEW · 2020

Complaints

The public lodged **3,641** complaints

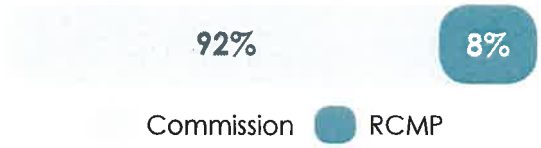
2,317

of those complaints met the criteria laid out in section 45.53 of the *Royal Canadian Mounted Police Act*

The public lodged **22%** more complaints than the previous year



Complaints lodged with the Commission vs. with the RCMP



How does the Commission receive complaints?


55% Online


5% Mail


34% Phone


4% Fax

SERVICE STANDARDS

94%
of complaints were sent to the RCMP within the **7-day** service standard

42%
of Satisfied & Interim reports were completed within the **120-day** service standard

78%
of Final reports were delivered within the **30-day** service standard

TOP ALLEGATION CATEGORIES

- Neglect of duty
- Improper attitude
- Improper use of force
- Improper arrest
- Improper search of premises
- Irregularity in procedure

THE CIVILIAN REVIEW & COMPLAINTS COMMISSION FOR THE RCMP

2019 · YEAR IN REVIEW · 2020

Reviews

The Commission issued

394

review reports

- **313** Satisfied Reports
- **57** Interim Reports
- **24** Final Reports

The RCMP Commissioner accepted approximately

76% of Commission **recommendations**

85% of adverse Commission **findings**

ONGOING INVESTIGATIONS

The Commission has the following public interest investigations and systemic reviews underway:

- RCMP's Investigation of the Death of Colten Boushie
- RCMP's Policies and Procedures regarding Street Checks
- RCMP's Policies and Procedures regarding Strip Searches
- RCMP Use of Force against Elderly Couple
- RCMP's Bias-Free Policing Model
- RCMP's Crime Reduction-Type Units

To learn more, visit the Commission's website

The Commission received **296** requests to review the RCMP's handling of public complaints

TOTAL EXPENDITURES

Salaries	7.1 M
Operating Costs	2.4 M
Employee Benefit Plans	1.0 M
Total	10.5 M

Note: Numbers represented are in millions

CRCC FINDINGS AND RECOMMENDATIONS

RCMP DELAYS IN RESPONDING IMPACT PUBLIC CONFIDENCE IN THE COMPLAINT PROCESS

174

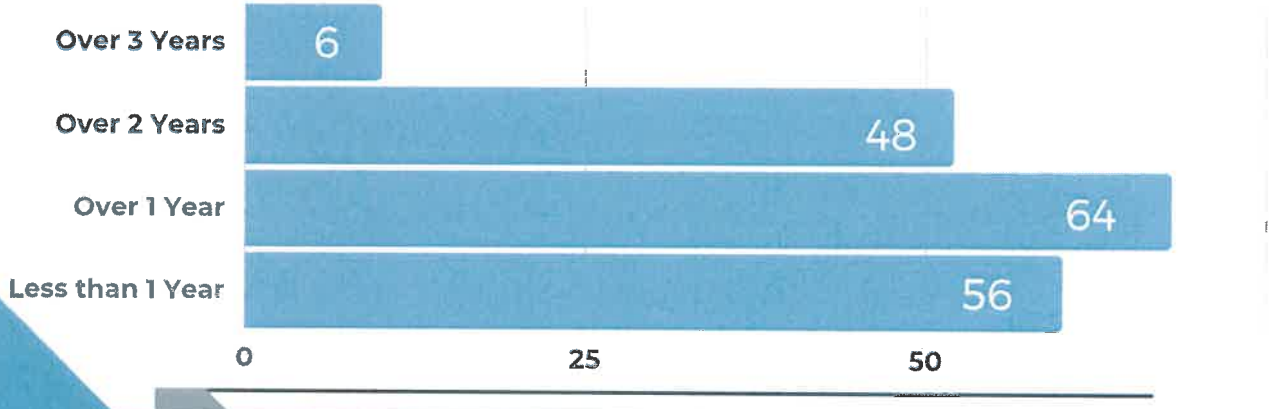
AS OF MARCH 31, 2020 A TOTAL OF **174** INTERIM REPORTS WERE WAITING FOR A COMMISSIONER'S RESPONSE

538 days

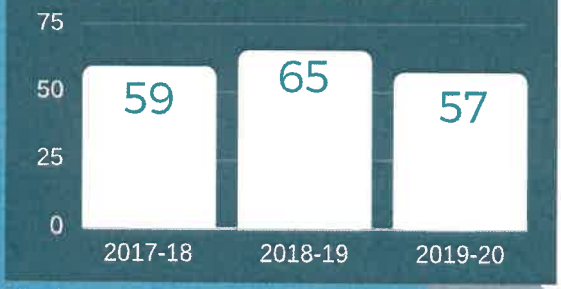
THE AVERAGE TIME THAT AN INTERIM REPORT HAS BEEN WAITING FOR A COMMISSIONER'S RESPONSE IS **538** CALENDAR DAYS

Note: these reports are still waiting for a response; this is not the average time to receive a response

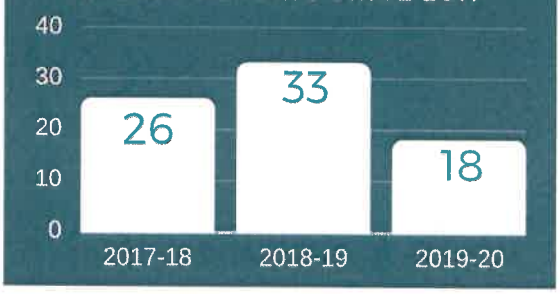
INTERIM REPORTS AWAITING COMMISSIONER'S RESPONSE



THE COMMISSION HAS ISSUED **181** INTERIM REPORTS SINCE 2017*



THE RCMP HAS RESPONDED TO **77** INTERIM REPORTS SINCE 2017*



*Fiscal years are between April 1 and March 31

THE CRCC AND THE RCMP SIGNED AN OPERATIONAL MEMORANDUM OF UNDERSTANDING IN DECEMBER 2019 SETTING OUT SERVICE STANDARDS AIMED AT PROVIDING THE PUBLIC WITH TIMELY REPORTS INTO CONCERNS ABOUT RCMP MEMBER CONDUCT.

The MOU between the CRCC and the RCMP is available on the Commission's website.

SAMPLE REVIEW FINDINGS

The public complaint process entitles complainants who are not satisfied with the RCMP's investigation and handling of their complaint to have it independently reviewed by the Commission.

The following are examples of findings and recommendations made by the Commission during the last reporting year.

RCMP RESPONSE DISPROPORTIONATE: ALTERNATIVE APPROACH WOULD HAVE YIELDED BETTER &SAFER RESULTS

Disproportionate RCMP members executed a search warrant at a home they mistakenly believed was linked to a break and enter investigation. An occupant of the home who was arrested during the police search filed a complaint, which included allegations that the RCMP members:

- Failed to comply with a judicial requirement on the face of the warrant;
- Unnecessarily used force to break down a locked door;
- Used excessive force, including the drawing and displaying of firearms; and
- Unreasonably arrested the occupant.

The RCMP's investigation into the public complaint supported only the first allegation. The Commission's review concluded that the RCMP's disposition of the complaint was unreasonable. Specifically, the Commission found that the failure of the RCMP members to comply with a judicial requirement on the face of a search warrant rendered the entire search inconsistent with section 8 of the *Canadian Charter of Rights and Freedoms* and was therefore unreasonable.

The Commission also concluded that there were no exigent circumstances to justify breaking down the locked door and conducting a forced entry. Entering through a separate unlocked door (which was available to them) would have been more respectful and more likely to promote voluntary compliance with police rather than a dynamic entry via the locked door. While the chosen approach may have been appropriate to a high-risk situation, no objective evidence was articulated to establish such a risk in this case.

The Commission also expressed concern with respect to the drawing and displaying of firearms. An overemphasis on the display of firearm or military-style tactics risks losing public approval and respect. Police must be extremely mindful of the public reaction to their actions. The public perception that police act in a heavy-handed or unreasonable manner can easily lead to a breakdown of police–community relations.

In this case, there was no objective evidence to support a heightened risk assessment. The decision to have multiple RCMP members enter the home with firearms drawn was unreasonable and disproportionate to the objective evidence available to them. The Commission also found that the involved RCMP members failed to comply with the RCMP's internal policy, which required them to file a specific report concerning the drawing and displaying of firearms.

With respect to the occupant's arrest, the Commission found that the RCMP members lacked the objective reasonable grounds to arrest them and also raised concerns with the length and purpose of their detention.

The Commission considered the totality of the situation and concluded that the RCMP investigation was hindered by tunnel vision and failed to objectively assess the available evidence. Alternative approaches likely would have yielded better and safer results. The police approach to this matter was completely disproportionate to the gravity of the criminal offence under investigation and was wholly unreasonable.

The Commission made a total of 12 recommendations to the RCMP, including:

- The delivery of operational guidance, mentoring, or training to the involved RCMP members;
- The involvement of a use of force expert to assist in refining the risk assessment skills of the involved RCMP members;
- Consideration to require mandatory operational plans within the division when executing search warrants; and
- Distribution of the Commission's report to the Detachment Commander of the involved detachment for the purpose of improving investigative quality going forward.

ARREST FOR OBSTRUCTION ON AN INDIGENOUS RESERVE WARRANTED BUT RCMP RESPONSE REQUIRED AWARENESS AND SENSITIVITY

Members of the RCMP were investigating an incident involving a weapon on a First Nations reserve. An RCMP member from the Integrated Police Dog Services Unit was attempting to track the suspect, who had fled on foot, with a police service canine.

A woman (who was not the suspect that police were searching for) was present in the area of the search. An RCMP member directed her repeatedly to return to her residence but she did not immediately leave the area. The RCMP member arrested her for obstruction. During the arrest, the woman pulled her arms away and went limp. Another RCMP member carried her to the police vehicle. She was transported to the RCMP detachment and spent two hours in cells.

The woman complained alleging that RCMP members:

- Arrested her without justification and used excessive force in performing the arrest;
- Failed to properly cover up her bare chest during the arrest; and
- Intentionally damaged her necklace.

The RCMP's final report into the public complaint did not support any of the allegations.

The Commission concluded that it was reasonable to arrest the complainant for resisting or obstructing a peace officer, and that the force used in performing the arrest was reasonable.

The Commission further found that the complainant's allegation that her chest had become exposed during the arrest was not corroborated. There was insufficient information to conclude that the arresting members had improperly removed articles of clothing, or that they had allowed the complainant's chest to be improperly exposed during the arrest.

There was also insufficient information to conclude that RCMP members had intentionally damaged the complainant's necklace. The force applied by the arresting members, and the resistance provided by the complainant, may have caused the chain of the necklace to break.

However, the Commission deemed it necessary to comment on the woman's treatment at the RCMP detachment following the arrest even though this specific issue was not part of the complaint.

At the detachment, the complainant was searched and placed in a cell for two hours, during which time she showed signs of distress. The prisoner log book indicated that the complainant was "held for investigation."

The Commission discussed the special considerations applicable to the arrest and detention of Indigenous persons. The Commission stated that the overrepresentation of Indigenous groups in the criminal justice system is widely recognized in Canada.

Furthermore, the impact of colonialism continues to reverberate across Indigenous communities. Commissioners of the RCMP have repeatedly acknowledged that the conduct of its members has systematically contributed to some of the grave injustices faced by modern Indigenous peoples. Historical events are inextricably linked to the policing of Indigenous communities, where a lack of trust between police and the community are central challenges to effective policing. Police response to criminal incidents in such communities requires awareness and sensitivity to these fundamental contextual factors.

Contributing to safer and healthier Indigenous communities is one of the five current strategic priorities for the RCMP. As part of achieving this objective, the RCMP has recognized the value of the following relevant initiatives:

- Working collaboratively with the communities to ensure enhanced and optimized service delivery by developing relevant and culturally competent police services;
- Maintaining and strengthening partnerships with Indigenous communities, policing and government partners, stakeholders and with Indigenous organizations;
- Promoting and using alternative / community justice initiatives for Indigenous people.

The Commission found no indication that the RCMP members whose conduct was the subject of the complaint had considered or applied the above principles when they attended the First Nations reserve where the complainant was arrested. While the complainant's arrest may have been necessary to preserve the integrity of a criminal investigation, there was no clear reason for the subsequent decision to transport the complainant to an RCMP detachment and to place her in a cell for two hours "for investigation."

The Commission concluded that while the involved RCMP members' conduct generally fell within the range of reasonableness, it was important for the members to evaluate their decisions in the context of the relevant strategic priorities for the RCMP. The Commission reminded the RCMP members that every response to an incident on an Indigenous reserve is an opportunity to improve Indigenous policing, to build community trust, and to demonstrate sensitivity to the historical and modern injustice experienced by Indigenous peoples.

RCMP APOLOGIZES TO FAMILY FOR LACK OF COURTESY AND COMPASSION FOLLOWING THE DRUG OVERDOSE DEATH OF A FAMILY MEMBER

Multiple callers reported an intoxicated person squatting in the middle of a main street on a cold winter evening. Two RCMP members responded and found the individual sleeping in a snowbank. The RCMP members approached and noted signs of impairment. Wearing insufficient winter clothing for the freezing conditions and unable to recall their address, the impaired person was arrested for public intoxication and detained at a local remand centre.

At the remand centre, a nurse examined the impaired person within minutes and cleared the person for incarceration. The nurse concluded that the impairment was alcohol related and the person was placed in a cell designed for intoxicated detainees. A few hours later, the person died. The medical examiner later concluded that opioid drug intoxication was a contributing factor in the death and noted that no alcohol was detected in the person's blood.

The family complained that the RCMP's communication with the family was unreasonable and that the impaired person should have been taken to the hospital instead of the remand centre.

The RCMP agreed that the communication with the family was unreasonable and offered an apology to the family.

The Commission's review concluded that the RCMP's finding and apology was reasonable. The Commission noted that the RCMP member's actions contravened the RCMP's policies and that the family deserved to be treated with courtesy, compassion, and respect, in a manner consistent with the core values of the RCMP.

The Commission agreed with the RCMP's conclusion that the arrest and detention for intoxication in a public place was reasonable based on signs of impairment from alcohol—signs that were observed and confirmed by a medical professional. The Commission observed that, since the death, the RCMP has introduced new policy and training to identify and respond to opioid use and overdoses

RCMP JUSTIFIED IN ISSUING ROADSIDE LICENCE SUSPENSION TO IMPAIRED DRIVER

RCMP members smelled marijuana as they approached the driver of a vehicle parked on the side of the road. The driver admitted smoking prescription marijuana following an anxiety attack while driving. The RCMP members observed some signs of impairment by the driver and issued a roadside licence suspension.

The driver filed a public complaint alleging that the roadside licence suspension was discriminatory on the basis of disability.

The RCMP's investigation did not support the allegation.

The Commission agreed with the RCMP that the complainant chose to consume marijuana while in the driver's seat of the vehicle. Treatment of the medical condition's symptoms did not require the complainant to do so.

Under provincial legislation, police are only required to have a reasonable suspicion that a person has consumed a drug that affects their physical or mental ability in order to issue a roadside license suspension. The Commission found that the physical evidence, the driver's admission of marijuana consumption, and the driver's behaviour provided the necessary grounds to issue the suspension.

RCMP RESPONSE TIME AND INVESTIGATION OF COLLISION REASONABLE

The complainant had parked on the shoulder of a rural roadway to browse a yard sale. When they were finished, the complainant prepared to make a left turn into a nearby driveway so that they could turn the car around and head back in the opposite direction. The complainant saw a car approaching in their rearview mirror but they believed it was safe to turn. However, as they began to turn, the other car hit their vehicle. Neither driver was seriously injured.

In their public complaint, the complainant was very concerned by the amount of time it took for the RCMP member to come to the scene, and they alleged that the RCMP member did not conduct a proper investigation.

The RCMP did not charge the other driver with any offences, but the complainant believed that the other driver was speeding. The complainant was adamant that the other driver was at fault, and they believed that the RCMP should have conducted a collision reconstruction to examine the tire marks on the highway to estimate the speed of the other vehicle. The complainant also believed that the RCMP member's supervisor had been rude and refused to provide a copy of the accident report.

The Commission found that the RCMP member responded as quickly as possible and within a reasonable time, given the large area that they were responsible for and the fact that they were responding to another priority matter far from the scene when they got the report of the collision. They acted appropriately by assessing the scene, recording the relevant details, and ensuring public safety.

In terms of the investigation, the Commission found that the RCMP member conducted a reasonably thorough investigation in the circumstances of a minor collision. The complainant was at the hospital by the time the RCMP member arrived, but the RCMP member took a statement from the other driver in the collision, interviewed potential witnesses, asked another RCMP member to take a statement from the complainant, and completed an accident report.

The Commission noted that it would be unrealistic and unreasonable to expect a collision reconstruction for a collision where there was no criminal offence alleged, and no serious injuries. A collision reconstruction is an expensive and time-consuming operation that involves specially trained experts, highly specialized equipment, and road closures.

While the complainant was very concerned about who was "at fault" in the collision, such questions are generally a matter for civil courts or the insurers.

> The role of the police is to investigate whether any criminal or regulatory offences were committed and to prepare a report outlining the facts they discovered, not to decide "fault."

The complainant believed that the other driver should have been charged with speeding, but the other driver had a credible version of events, stating that they left tire marks and crossed the road's dividing line because they braked and tried to avoid the collision. The Commission found that there was insufficient evidence to support charges.

Finally, the Commission found that the RCMP member's supervisor had declined to provide a copy of the entire accident report because RCMP policy limited the information that they could give out. It was open to the complainant to seek the report through their insurer or the province. In the circumstances, the Commission found on a balance of probabilities that the supervisor had not been rude.

RCMP INVESTIGATION INTO SUDDEN DEATH FLAWED: MEDICAL EXAMINER PROVIDED WITH INACCURATE INFORMATION

RCMP members investigated the sudden death of a person found in a residential garage. The RCMP suspected that the cause of death was suicide by carbon monoxide poisoning. There were several vehicles in the garage with varying amounts of fuel remaining. The investigators took only one formal statement during the investigation and relied for the most part on the medical examiner's findings to conclude their investigation.

It was later learned that the police gave the medical examiner inaccurate information about the fuel types and amounts in some of the vehicles in the garage. Despite this error being known, no steps were taken by either the investigator's supervisor or the public complaint investigators to ensure that the medical examiner was given the correct information. The family's legal counsel filed a complaint alleging that the RCMP failed to conduct a reasonable investigation.

The RCMP's investigation into the public complaint did not support the allegation.

The Commission's review concluded that the RCMP's decision was unreasonable. Specifically, the Commission found that it was unreasonable for the RCMP to give inaccurate information to the medical examiner regarding the vehicles in the deceased's garage, and that this error was not corrected by a supervisor or by RCMP members involved later in the public complaint process.

The Commission's recommendations included the following:

- The RCMP should apologize to the complainant for the failure to conduct a reasonably thorough investigation into the sudden death.
- The RCMP members involved in the sudden death investigation should receive operational guidance about the requirement to conduct reasonably thorough sudden death investigations and providing correct information to the medical examiner in sudden death investigations.
- The RCMP should continue its investigation into the sudden death by obtaining statements from the witnesses identified in the letter of complaint and provide this additional information to the medical examiner for the medical examiner's further consideration regarding the manner of death.
- The public complaint investigators should receive operational guidance about the requirement to conduct reasonably thorough public complaint investigations.

The RCMP Commissioner did not agree that the investigation was unreasonable. She acknowledged that there was an error related to the status and fuel amounts of the various vehicles in the garage; however, she felt that this type of error could be made by any professional.

The RCMP Commissioner also said that it was reasonable for the investigators to not take additional statements, given that the cause of death had already been determined.

In its final report, the Commission maintained its finding that the investigation was unreasonable. The Commission found that the RCMP Commissioner's response overlooked the fact that the cause of death was based in part on the incorrect information that was provided to the medical examiner.

The Commission recognized that the time lapse since the incident was now sufficient to have concern over the recall abilities of the witnesses as well as the trauma and impact from having to relive an emotional time.

The Commission concluded that the provision of the correct information to the medical examiner for consideration was the most effective and empathetic manner to determine whether any further action should be taken.

PERCEIVED BIAS OR CONFLICT OF INTEREST IN THE PUBLIC COMPLAINT PROCESS MUST BE AVOIDED

A man was found unresponsive in a creek and was pronounced dead shortly thereafter. RCMP members attended the scene and determined that there did not appear to be anything suspicious about the man's death.

The Coroner concluded that the man died of drowning and that it was reasonable to conclude that he fell into the creek accidentally.

A relative of the deceased submitted a complaint in which they alleged that RCMP members did not conduct a thorough investigation into the passing of the deceased, nor was the follow-up investigation done thoroughly. The RCMP did not support the complainant's allegations.

The Commission found that the RCMP members conducted a reasonably thorough investigation into the man's death, considering that there did not appear to be any suspicious circumstances or any information suggesting that a criminal offence had taken place. Also, following expressions of concern by the relative, RCMP members conducted a reasonably thorough follow-up review of the investigation.

The RCMP members involved in the initial investigation spoke with the deceased's wife and interviewed the last person to have seen the man alive. They also inspected and photographed the scene. The information obtained indicated the man had been working on the trails leading to waterfalls.

The first RCMP member on scene concluded that "[a]t this time there is nothing suspicious about the death." In the circumstances, this was a reasonable conclusion. The RCMP member took steps to ascertain the circumstances surrounding the man's death, and to determine whether it was suspicious, in accordance with RCMP policy.

From the information available to the Commission, there did not appear to be any evidence to suggest that a criminal offence had occurred. The Commission further noted that the provincial Coroner, the only authority who may determine the cause of death according to RCMP policy, classified the death as an accidental drowning by means of falling into a creek.

The relative also took issue with the allegedly inadequate follow-up review of the investigation following their expression of concern to the RCMP. The Commission found that, following the expression of concerns by the relative, RCMP members conducted a reasonably thorough follow-up review of the investigation into the man's death.

A number of RCMP members, including senior members, reviewed the file and analyzed the relative's allegations. Follow-up interviews and conversations also took place with the deceased's wife, which further confirmed the information indicating that the death appeared to be accidental.

All these members concluded that no further investigation was necessary, as there existed no suspicious circumstances to suggest that a criminal offence took place.

The Commission noted that the report of the first RCMP member on scene summarized their actions and the events that occurred at the scene, and that the RCMP member included relevant information in the file. However, the RCMP member should have included greater detail in their initial report.

Although it did not affect the outcome of the Commission's review, the Commission reminded the RCMP member of the importance of detailed record keeping. This matter was raised with the RCMP member by the senior member, and the first member completed a supplementary report detailing their actions and the events of that day more completely. The Commission was satisfied that appropriate remedial action had been taken.

Also, in the request for review of the RCMP's handling of the public complaint, the relative questioned the propriety of having the public complaint investigation conducted by an RCMP member who was involved in the initial investigation.

> The RCMP's *National Public Complaints Guidebook* states that, when assigning an investigator, the RCMP must consider "[a]ctual or perceived risks or any conflicts of interest which may impact on the member's ability to conduct the investigation. If an actual conflict exists or if the perceived conflict of interest is of significant concern seek out another investigator."

Although the senior RCMP member who conducted the public complaint investigation was not the primary investigating officer in this case and, as such, was not a subject member of the public complaint, the senior member was involved in the investigation at the scene, albeit in a limited role.

There was no information to suggest that the senior RCMP member conducted the public complaint investigation in a biased or partial manner. The member conducted the public complaint investigation, but the decision maker with regard to the complaint was a different, more senior RCMP member.

The Commission acknowledged that, in detachments with a small number of RCMP members, there can sometimes be a dearth of senior members available to conduct public complaint investigations. Although it did not affect the outcome of the Commission's review of this matter, the Commission reminded the RCMP that perceived bias or conflict of interest in the public complaint process should be avoided. Accordingly, wherever practicable, members who have been directly involved in the incident being complained of should not act as the public complaint investigator in relation to that incident. Both the senior member and their superior were provided with copies of the Commission's report.

Civilian Review & Complaints
Commission for the RCMP
www.complaintscommission.ca

Exhibit "B"

This is Exhibit " B " referred to in the
affidavit of Harsha Walia
sworn before me at Vancouver, BC
this 19th day of November 20 20

Jessica Magonet

A Commissioner for taking Affidavits
For British Columbia

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COMMISSION FOR PUBLIC COMPLAINTS AGAINST THE RCMP

2009-2010

ANNUAL REPORT

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WHO WE ARE AND WHAT WE DO

The Commission for Public Complaints Against the RCMP is an independent body established in 1988 to receive and review complaints about the conduct of regular and civilian RCMP members in the performance of their policing duties. Its mission is to contribute to excellence in policing through civilian review.

The CPC ensures that complaints about the conduct of RCMP members are examined fairly and impartially. Its findings and recommendations help identify, correct and prevent the recurrence of policing problems caused by the conduct of specific RCMP members or by flaws in RCMP policies or practices.

VISION: Excellence in policing through accountability.

MISSION: To provide civilian review of RCMP members' conduct in performing their policing duties so as to hold the RCMP accountable to the public.

MANDATE: As set out in Part VII of the *Royal Canadian Mounted Police Act*, the mandate of the Commission is to:

- receive complaints from the public about the conduct of RCMP members;
- conduct reviews when complainants are not satisfied with the RCMP's handling of their complaints;
- hold hearings and carry out investigations; and
- report findings and make recommendations.

STRATEGIC OBJECTIVES

- Increase public awareness of the role and services of the CPC.
- Strengthen the complaint and review processes.
- Improve the relevance of review recommendations and identify continuing, emerging and new complaint trends.
- Support management excellence and maintain a workplace of choice.
- Provide advice on the creation of a new review mechanism for the RCMP.

HOW TO GET IN TOUCH WITH US

You can find the Commission for Public Complaints Against the RCMP on the Internet at **www.cpc-cpp.gc.ca** or **www.complaintscommission.ca**. All documents cited in this report may also be found there.

To contact us by e-mail:

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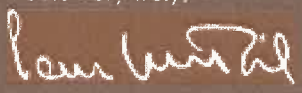
Minister of Public Works and Government Services
Cat. No. PS75-2010
ISBN 978-1-100-51314-0

The Honourable Vic Toews, P.C., Q.C., M.P.
Minister of Public Safety
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Minister,

Pursuant to section 45.34 of the *Royal Canadian Mounted Police Act*, I hereby submit the annual report of the Commission for Public Complaints Against the RCMP for the 2009- 2010 fiscal year, for tabling in Parliament.

Yours very truly,



Ian McPhail, Q.C.
Interim Chair

June 2010

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* The RCMP maintains two Conducted Energy Weapons in its inventory – the M26 and X26 TASER®

CHAIR'S MESSAGE



Building Confidence in Policing for Citizens

In January 2010, I was privileged to take on the responsibility of Interim Chair of the Commission for Public Complaints Against the RCMP (CPC). My motivation for accepting the position was based on being asked to play a role in helping a key organization transition to a new mandate which I believe is as important to the RCMP as it is to the Canadian public.

As an independent review body and informed interlocutor, the CPC is uniquely positioned to bring the public's perspective to critical policing issues which can heavily impact the RCMP's standing in the public eye. TASER® use and the issue of the police investigating their own members are two such topics.

The CPC has a history of being forthright in identifying deficiencies—be they institutional or individual.

When we are accused of being too soft on the RCMP by critics, and being too critical by the RCMP, we know we probably have the balance about right.

That said, despite how the media may on occasion portray the relationship between our two institutions, and as hard-hitting as some of our reports may have been, the RCMP in fact has accepted the vast majority of our recommendations which are after all aimed at improving the performance of the Force.

We are proud of our record of fairness and impartiality. A credible and effective regime of civilian oversight of the RCMP is an essential mechanism for the public and the RCMP itself.

My vision for the CPC in the short term is simple: I want to consolidate the excellent work of my predecessor by maintaining strict service standards in response times to complaints and reviews. I want to strengthen the complaint and review processes and I want to make it easier for citizens to access the system.

There is another important objective I have as Interim Chair, and that is to ensure that the working relationship between the CPC and the RCMP rests on a solid foundation of mutual respect and trust. There will, however, be occasions where we will just have to agree to disagree.

In terms of the future, as has been consistently recommended by CPC Chairs over the years, by the O'Connor Commission, the Brown Task Force, various Parliamentary and Senate Committees and of course, the RCMP itself, the creation of a new oversight regime was announced in Budget 2010. The proposed legislation is currently before Parliament.

As Interim Chair, I am optimistic that a strengthened oversight mandate will indeed address what RCMP Commissioner Elliott has referred to as a "credibility challenge." We understand that the public's expectation of accountability from their public institutions, and particularly from their police forces, has evolved, and the bar has been raised significantly.

On a final note, I believe the RCMP is an institution vital to the safety and well-being of Canadians across this land. We've all grown up in a country where the Red Serge and Stetson were unique Canadian symbols of pride. Canadians want the RCMP to succeed. At the CPC, we believe we can play a role in helping the RCMP meet the peerless standards Canadians expect of it.

> **"When we are accused of being too soft on the RCMP by critics, and being too critical by the RCMP, we know we probably have the balance about right."**

CPC REPORTS AND FINDINGS

ONGOING PUBLIC CONCERN SURROUNDING RCMP CONDUCTED ENERGY WEAPON (TASER®) USE

The use of the TASER® by the RCMP continues to generate significant expressions of public concern. As these concerns have continued to build over recent years and involve the use of conducted energy weapons by police forces generally in North America and other democratic countries, the Commission continues its work in this important area.

Chair-initiated Complaint & Public Interest Investigation into Deaths Proximal to TASER® Use

Ongoing concerns about the use of TASERs® prompted a Chair-initiated complaint and public interest investigation in January 2009. Specifically, the complaint is aimed at examining relevant incidents between 2001 and 2009 to identify potential trends.

This investigation will also determine whether existing RCMP policies, procedures and guidelines are adequate.

In November 2009, the Chair expanded his complaint to include the July 2003 in-custody, TASER®-related death of Mr. Clay Alvin Willey following a request from the Solicitor General of British Columbia.

The CPC has appointed its own independent lead civilian investigator. The investigation is ongoing and it is expected that an Interim Report will be delivered to the RCMP by summer 2010.

Review of the RCMP's Use of the Conducted Energy Weapon (TASER®) for 2008

The CPC reviewed the RCMP's use of the TASER® for the 2008 calendar year.

Key findings of the report indicate that RCMP members are showing greater restraint in the use of the weapon overall.

- RCMP TASER® use declined 30% in 2008 from 2007; and
- actual TASER® deployment declined to 51%, when withdrawn from holster, compared to 72% the previous year.

This change seems to reflect a greater use of the weapon as a deterrent, and may also reflect a greater recognition by suspects of the TASER® along with its effects.

The RCMP announced a number of changes to its TASER® policy on May 4, 2010. (See "Recently Implemented Recommendations" on page 12 for more on the new policy.)

To that end, the CPC is currently working with the RCMP with respect to issues of:

- member training including potential scenarios;
- reporting mechanisms; and
- policy development.

Additionally, the CPC is continuing to discuss concerns regarding TASER® use as it relates to those who are most vulnerable and in high-risk populations.

In the fiscal year 2010-2011, the CPC will be publicly releasing its review of the RCMP's use of the TASER® for the 2009 calendar year.

Frank Lasser

In April 2009, the Chair released his final report into the 2008 use of the TASER® on Frank Lasser. During the incident, Mr. Lasser, a patient at the Royal Inland Hospital in Kamloops, B.C., allegedly threatened Kamloops RCMP members with a knife. Members subdued the then 82-year-old Mr. Lasser by use of a TASER®.

The Chair determined that RCMP members acted appropriately by using the TASER® on Mr. Lasser as a last resort to disarm him after all other attempts had failed.

Throughout this incident, Mr. Lasser's behaviour could reasonably be described as posing a threat of grievous bodily harm or death to hospital staff, police and even himself. Under the circumstances, the Chair concluded that use of the TASER® was justified.

Inuvik Minor

The CPC investigation into a March 2007 incident, in which an RCMP member deployed the TASER® on an unruly 15-year-old female at the Arctic Tern Young Offenders Facility in Inuvik, N.W.T., found no justification for the use of the weapon on the juvenile.

The Chair made recommendations relating to TASER® policy and commented on systemic issues and the need for a broad review of the handling of public complaints in the North. The RCMP Commissioner agreed with the majority of the Chair's findings and recommendations but has not agreed to conduct a review of Northern issues.

Robert Dziekanski

The death of Robert Dziekanski in October 2007 at the Vancouver International Airport prompted the Chair to initiate a complaint and public interest investigation. In the report, the Chair made 23 findings and 16 recommendations aimed at improving RCMP training, policies and procedures so that such tragedies do not occur in the future. While the RCMP Commissioner has not yet provided a formal response, the RCMP, as previously noted, announced a new policy that addresses many of the CPC's concerns as they relate to the use of the TASER®.

A full list of the CPC's recommendations and findings are available on the CPC's website.

POLICE INVESTIGATING THE POLICE: TOWARDS A NEW MODEL

Over the years, the CPC has frequently addressed allegations regarding the impropriety of police officers investigating other officers who are accused of serious misconduct.

Kevin St. Arnaud

The Chair found the use of force by the RCMP justified in the death of Kevin St. Arnaud in December 2004. Mr. St. Arnaud was shot by an RCMP member in the aftermath of a break-in at a local pharmacy. However, the Chair identified several deficiencies on the part of members first on the scene and those who conducted the related criminal investigation. The Chair urged the RCMP to strengthen its procedures relating to use of force experts, suggested best practices for primary investigators involved in investigating police conduct, recommended the implementation of policy to provide direction to on-scene members in major cases involving the investigation of police conduct, and clarifications to Major Case Management policy.

The RCMP Commissioner accepted the CPC's recommendations and noted that the relevant policies were in the process of being developed or reviewed. The CPC continues to monitor the RCMP's actions in this regard.

Chair-initiated Complaint & Public Interest Investigation into Police Investigating Police

This complaint and public interest investigation to examine the issue was a critical undertaking for the CPC requiring a significant commitment of financial and human resources.

With the objective of identifying the most appropriate model for the RCMP's handling of criminal investigations into its own members (involving serious injury, sexual assault or death), the CPC:

- undertook a detailed analysis of current media, political, and academic debate on the issue to determine a baseline for discussion;
- sought public submissions on the issue to help inform the debate;
- assessed the adequacy of current RCMP policy guiding member action when investigating another member;
- reviewed a sample of 28 RCMP investigations where member actions were alleged to have resulted in serious injury, sexual assault or death between 2002 and 2007 (the appropriateness of each case was assessed against specific criteria which included: line management, level of response, timeliness, conduct, and compliance with policy); and
- researched alternate investigative models and conducted interviews with domestic and international bodies.

Key Recommendations

The CPC's final report, which was issued August 11, 2009, included a number of recommendations regarding procedural changes designed to reinforce best practices in such situations and the potential creation of dedicated investigation units. The Chair called for immediate action on the part of the RCMP to ensure that serious member-involved incidents are no longer investigated by the RCMP itself but rather by external agencies.

More specifically, the CPC called for the RCMP to implement the following processes immediately:

- A National RCMP Member Investigation Registrar should be created to coordinate both the development of national policy and the handling of member investigations. This would also address the lack of data collection or monitoring of member investigations that the CPC found during this review.
- All member investigations involving death should be referred to an external police force or provincial criminal investigative body. There should be no RCMP involvement in the process. A CPC Observer should also be present to ensure transparency.
- The process for all member investigations involving serious injury or sexual assault should be jointly determined by the CPC and the National RCMP Member Investigation Registrar to:
    - refer the investigation to an external police force or a provincial body; or
    - deploy an RCMP HQ Critical Incident Member Investigation Team; and
    - ensure that a CPC Observer is embedded in the investigation.

It was further recommended that when created, the new RCMP review body be given the legislative mandate to:

- refer an RCMP member investigation to another police force or to another criminal investigative body in Canada;
- monitor any criminal investigation relating to a member of the RCMP; and
- undertake joint investigations with like-mandated bodies at either the provincial or municipal level.

The CPC believes that the combined mandatory and legislative changes outlined above would set a highly credible "gold standard" for criminal investigations of RCMP members.

RCMP Policy Enhancements

On February 4, 2010 the RCMP announced its new *External Investigation or Review Policy*. The policy incorporates a number of the CPC's recommendations (see "Recently Implemented Recommendations" on page 12 for more on the new policy).

This is an important step forward for the RCMP. The CPC would encourage the RCMP to adopt all of its recommendations and in particular create a centralized function to track and monitor these investigations.

"The CPC believes that the combined mandatory and legislative changes outlined above would set a highly credible 'gold standard' for criminal investigations of RCMP members."

ONGOING NOTABLE COMPLAINTS

IN-CUSTODY DEATHS

Raymond Silverfox

In December 2008, Raymond Silverfox of Whitehorse, Y.T. went into medical distress in RCMP cells and later died in hospital. The Chair initiated a complaint focused on policies regarding access to medical treatment for persons detained in RCMP custody, particularly when alcohol consumption is a factor.

The April 2010 Coroner's inquest revealed particularly disturbing details of the case related to the apparent indifference of RCMP members to Mr. Silverfox while he was detained.

The RCMP delivered its investigative report to the Commission in March 2010. The Commission's review is ongoing.

Robert Knipstrom

In November 2007, the Chair initiated a complaint into the in-custody death of Robert Knipstrom and deployed an Independent Observer to monitor the impartiality of the RCMP's investigation into his arrest. During his arrest, Mr. Knipstrom was subjected to hand techniques, the application of pepper spray, a TASER®, a baton and he subsequently died in hospital. The CPC Observer concluded that there were no identified issues of impartiality.

In January 2009, in order to expedite the investigation of this matter, the Chair expanded his initial complaint to include a public interest investigation led by a civilian investigator.

The CPC completed its investigation and provided its report to the RCMP in November 2009. The CPC is awaiting the RCMP Commissioner's response.

Christopher Klim

The December 2007 shooting death of Christopher Klim is currently being investigated pursuant to a Chair-initiated complaint, particularly in light of concerns regarding persons being apprehended under mental health legislation.

The RCMP-led investigation into the Chair's complaint has been marred by unacceptable delays. These concerns have been raised with the RCMP.

Cheryl Anne Bouey

The June 2008 in-custody death of Cheryl Anne Bouey in Prince George, B.C. prompted a Chair-initiated complaint. Ms. Bouey was found unresponsive in her cell after being arrested by the Prince George RCMP. The Chair asked whether RCMP policies regarding the proper care and safety of persons detained in cells are adequate.

The RCMP delivered its investigative report into this incident in March 2010. The CPC's review is ongoing.

Valeri George

The September 2009 shooting death of Valeri George in Fort St. John, B.C. also prompted a Chair-initiated complaint. Mr. George was shot by RCMP Emergency Response Team (ERT) members as he fled

his home several days after allegedly shooting at a vehicle containing his spouse and children. The Chair's complaint is particularly concerned with the use of force by the RCMP ERT members.

The investigation is ongoing.

John Simon

John Simon was fatally shot by the RCMP in Wagmatcook, N.S. in December 2008. Due to increasing public concern about the RCMP's handling of the incident, a Chair-initiated complaint and public interest investigation was launched in March 2010. The complaint will examine all aspects of this tragic matter including the RCMP's response on that day, and its training, policies and procedures. The Commission will also examine the conduct of the RCMP members involved in the subsequent investigation to ensure that it was carried out impartially and in a timely manner.

The investigation is ongoing.

POLITICALLY SENSITIVE INVESTIGATIONS

The Chair launched a public interest investigation into allegations that RCMP members failed to adequately investigate the alleged surreptitious and illegal taping of a national political party caucus meeting. The CPC's investigation found that the RCMP members acted appropriately and performed their investigation in accordance with standard investigative procedures.

It is important to note that the CPC's 2008 report into the RCMP's disclosure of its investigation into the income trust leak addressed similar concerns regarding politically sensitive investigations and the requirement for the RCMP to develop a clear policy relating to investigations that touch upon the federal electoral process.

ADDITIONAL REVIEWS & FURTHER INVESTIGATIONS OF NOTE

During 2009-2010, the CPC's reviews and further investigations dealt with such varied issues as the provision of information to foreign law enforcement bodies, criminal investigation quality, and the use of force. It should be noted that in some cases the RCMP has responded to the CPC's recommendations and that such responses are addressed in the section "Recommendations Awaiting Implementation."

The following are examples of reviews and notable investigations from the past fiscal year.

Provision of Evidence

- In one instance, the RCMP provided items seized from the complainant, who was arrested pursuant to an immigration warrant, to U.S. authorities. The CPC decried such a practice as inconsistent with the *Mutual Legal Assistance in Criminal Matters Act* and recommended the amendment of RCMP policy to address such issues.

Quality of Criminal Investigation

- One review was requested by the parents of a woman who was shot in her home and died after being found by a neighbour four days later. The RCMP had been called to the area on the night of the shooting, and the CPC

found that the attending members failed to properly investigate a report that shots had been fired.

Use of Force

- In one instance, after trying to choke himself, a complainant was left naked in his cell, where he was subject to the TASER®, hit his head purposely on a toilet seat and was subsequently placed in a restraint chair for over two hours. The CPC concluded that the length of time in the restraint chair was excessive.

- In another review involving the use of force, an individual stole a large commercial truck and led RCMP members on a dangerous vehicle pursuit down major roads and highways during the early morning rush hour. While fleeing the stolen vehicle, the individual was hit by an RCMP police dog service vehicle. The CPC concluded that while the pursuit was appropriate, review of the policy should be undertaken to ensure that safety concerns are addressed.

- In a third review, RCMP members attempted a covert takedown resulting in injury to the complainant, who was wrongly identified as a suspect. The CPC found that the members, who were in plain clothes, had failed to identify themselves and had carried out an improper arrest. It also recommended the review of RCMP policy regarding the identification of undercover officers.

Neglect of Duty

- In one instance, RCMP members decided to lodge a man appearing fairly intoxicated in cells until sober. The man went to sleep once in cells but it was later observed that he was not breathing and had no pulse, and he died shortly thereafter. The CPC concluded that the deceased had not been monitored in full compliance with policy.

Review of Policing in the North

Through its reviews, the CPC has identified potential areas of concern regarding RCMP member conduct and the public complaint process in the North.

The nature of policing in Canada's North is unique with a particular need for a strong relationship between members of the RCMP and the public.

The CPC is working at the request of the Yukon government and the RCMP to review public concerns about policing in the territory aimed at ensuring that the RCMP is responsive and accountable to the needs of Yukon citizens.

INDEPENDENT OBSERVER PROGRAM

Originally undertaken in 2007 following the CPC's review of the in-custody death of Ian Bush as a pilot project in "E" Division (British Columbia), the Independent Observer Program (IOP) is aimed at:

- ensuring that RCMP investigations into incidents where RCMP members' actions have resulted in serious injury or death are conducted without concern for impartiality;
- enhancing public confidence in RCMP-led investigations into its own members with respect to the impartiality of the RCMP team conducting the investigation.

IOP Assessment of Impartiality and Independence

A CPC Independent Observer, along with a liaison member from the RCMP's Office of Investigative Standards and Practices, attends the locale of the incident and is fully briefed throughout the investigation. Access to the operational file of the investigation is also provided so that the Independent Observer is able to assess impartiality. That assessment is done using four primary criteria:

- **Line management:** Whether there are any actual or perceived conflicts of interest between the subject members and those conducting the investigation. In addition, whether the management structure and reporting relationships are appropriate.
- **Appropriate level of response:** Whether the investigative team's response to the incident is proportional to the seriousness of the incident. This includes training, experience, and professional accreditation.
- **Timeliness of the response:** Whether there were any delays in the investigative team's response to the incident.
- **Conduct:** Whether the investigative team members' conduct is consistent with section 37 of the *RCMP Act*.

The Independent Observer confines the assessment to these four considerations and does not examine the investigation with regard to issues such as adequacy or direction. That said, the Observer is a helpful set of eyes and ears for the CPC and can lead to the Chair determining that it is appropriate to examine the matter more closely and initiate a complaint. Following each IOP incident, summary and status reports are posted on the CPC website.

The IOP was initiated on seven occasions during the past year.

Location	Date engaged
Gibsons, B.C.	April 1, 2009
Surrey, B.C.	July 15, 2009
North Cowichan/ Duncan, B.C.	September 19, 2009
Hazelton, B.C.	September 26, 2009
Buick Creek/ Fort St. John, B.C.	October 1, 2009
Nanaimo, B.C.	October 23, 2009
Smithers, B.C.	November 21, 2009

CPC RECOMMENDATIONS: ACCOUNTABILITY TO THE PUBLIC

While addressing cases involving the conduct of individual RCMP members, the Commission also aggressively seeks to identify systemic problems that frequently generate complaints.

The Commission launched a number of Chair-initiated complaints in 2009-2010, creating a comprehensive factual picture of police activities and enabling the Commission to examine RCMP practices on a detachment, division and national basis.

This approach allows the Commission to better inform the RCMP Commissioner, the Minister of Public Safety and the Canadian public of the true nature and scope of problems that have tended to be viewed as isolated events.

To foster greater public debate on these important issues, the Commission will continue to publish key reports on its website.

RECENTLY IMPLEMENTED RECOMMENDATIONS

External Investigations Policy

As previously mentioned, the RCMP announced in February 2010 its new policy governing investigations where there is a serious injury or death of an individual involving an RCMP employee or where the matter is of a serious or sensitive nature.

In these cases, rather than investigating its own members the RCMP will request an external law enforcement agency or other duly authorized investigative agency to conduct the investigation.

A recurring area of concern

continues to be the lack of adequate notes being taken by RCMP members involved in incidents subject to complaints. The absence of thorough and contemporaneous note-taking by members hampers the Commission's ability to review incidents and is an area that the RCMP Commissioner agrees ought to be improved.

If an independent external investigation is not feasible, the policy outlines additional requirements. These include:

- bringing in officers from a different province from where the incident occurred to conduct the investigation;
- the appointment of an independent observer; and
- providing for independent review.

If the RCMP must investigate its own members, cases will be assigned a team of at least two officers who will be screened for any actual or perceived conflict of interest.

The CPC is also encouraged by the fact that the policy limits the potential of bias by directing that the rank of the primary investigator will, whenever possible, be higher than that of the subject being investigated.

TASER® Use Policy

The RCMP announced a number of changes to its conducted energy weapon policy in May 2010. The changes went a long way towards addressing previous recommendations made by both the CPC and the Braidwood Commission.

The key change in the opinion of the CPC is the definition provided for situations where a trained RCMP member might use a TASER®, namely: "situations where a subject is causing bodily harm or the member believes on reasonable grounds that the subject will imminently cause bodily harm."

The new threshold requirement for TASER® use should help reduce the risk of 'usage creep' previously identified by the CPC. The change, along with the recognition that additional precautions be taken before using the weapon, was a prudent move on the part of the RCMP.

The CPC has some remaining concerns which it will be discussing with the RCMP. In addition, the CPC will follow up on new training standards to see how the RCMP's policy will be applied to day to day policing.

> **"The new threshold requirement for TASER® use should help reduce the risk of 'usage creep.'"**

RECOMMENDATIONS AWAITING IMPLEMENTATION

Examples of the Commission's recommendations that remain outstanding include:

CPC Recommendation	CPC Report	Date
A policy on sensitive investigations UPDATE: The RCMP is developing a draft policy.	Report into Disclosure by the RCMP of its Investigation Regarding the Taxation of Canadian Corporate Dividends and Income Trusts	March 2008
A policy regarding members' duty to account UPDATE: The RCMP has prepared a draft and Commission comments have been provided.	Final Report on Chair-Initiated Complaint into the Shooting Death of Ian Bush Final Report on Chair-Initiated Complaint into the Shooting Death of Kevin St. Arnaud	November 2007 March 2009
A policy relating to RCMP members properly identifying themselves in undercover investigations	Final Report into a Public Complaint	April 2009
A policy dealing with requests for exhibits consistent with the *Mutual Legal Assistance in Criminal Matters Act* UPDATE: The RCMP has prepared a draft policy.	Final Report into a Public Complaint	April 2009
A policy dealing with RCMP use of the TASER® UPDATE: The April 2010 RCMP CEW policy change addressed many of the CPC's concerns.	RCMP Use of the Conducted Energy Weapon (CEW) Final Report	June 2008
A policy regarding civil disputes to which the police have been called UPDATE: The RCMP has agreed to provide the CPC with a copy of the finalized policy.	Final Report into a Public Complaint	January 2009

IMPROVING THE COMPLAINT SYSTEM

TRACKING OF PUBLIC COMPLAINTS

CPC Review of the RCMP Public Complaints Record

Since 2007, the CPC has carried out an annual in-depth examination of the entire RCMP public complaints system. This project has a number of goals but is particularly aimed at providing an empirical foundation to assess how effectively the RCMP public complaints system is functioning overall.

The CPC's Review of the Record report for calendar year 2008 called for a number of enhancements to be made to the system, namely that:

- previous recommendations be implemented by the RCMP;
- complaints be tracked more effectively; and
- policies regarding complaint withdrawal and informal resolutions be clarified.

This report is an important public reporting and management tool in identifying areas requiring particular attention to enhance client service delivery.

The RCMP has taken a number of steps in response to the CPC's recommendations. In addition to clarifying policy directives and clearing up a number of historic complaints, the RCMP's National Public Complaint Unit has put in place a searchable database to track and monitor the public complaint process. This system will be key to helping ensure that public complaints are being handled consistently and in accordance with policy and public expectations.

Research into Systemic Concerns

Beyond tracking complaints, the CPC is also continuing its research into areas of particular concern to the public such as issues related to in-custody deaths and police training programs addressing interactions with people suffering from mental health-related issues.

CREATING A "NO WRONG DOOR" APPROACH TO CIVILIAN OVERSIGHT IN CANADA

Intent on maximizing the level of service delivery to Canadians, the CPC continues to work diligently with its provincial partners to harmonize police oversight processes to the extent possible under existing law. A critical aspect of these harmonization efforts is creating a "no wrong door" approach to the intake of complaints about the police no matter which agency they belong to. The goal is to minimize frustration felt on the part of complainants and to streamline the intake processes.

Police Complaints Related to the Olympic Games

During the Vancouver 2010 Winter Olympic Games, policing services were provided by the RCMP-led Integrated Security Unit, which was made up of RCMP members as well as officers from police services from across Canada. Municipal police officers from B.C.'s lower mainland also played a primary role in policing the Games.

The CPC worked with provincial police oversight bodies to coordinate the receipt of public complaints with respect to the conduct of RCMP members as well as all non-RCMP officers from outside of B.C. This meant that the Commission was prepared to accept complaints regarding all police conduct at/or connected to the Olympic Games.

The CPC's National Intake Office received ten complaints related to police conduct during the Olympic Games. None of these complaints raised broad concerns regarding the security operations during the Games.

The extensive preparations undertaken by the RCMP prior to the opening of the Olympic Games contributed significantly to what culminated as a very well-run event.

The model of partnership and engagement put in place for the 2010 Olympic Games will provide valuable guidance for assessing police/public interaction during the G8/G20 Summits in June 2010.

ORGANIZATIONAL AND BUSINESS IMPROVEMENTS

Internet Enhancements

As part of its ongoing commitment to ensuring greater public access to its reports and recommendations, the CPC has greatly expanded the amount of information available on its website this past year.

For example, a section of the website features a number of reports which highlight both areas for improvement as well as instances of exemplary police conduct.

In addition to providing its insights on the handling of key aspects of the public complaint process, the CPC will be publishing a series of articles on various issues which have consistently resulted in complaints from the public. These articles are not proposing to provide RCMP members with legal advice or override RCMP policy. Rather, the purpose is to promote best practices, share the CPC's perspective on these important issues, and the lessons that can be learned in this area from the civilian public complaint review process.

Management & Employee Engagement

The CPC promotes management excellence and has established an integrated human resources and business plan framework to establish and maintain the CPC as an employer of choice. Results from the most recent Public Service-wide Employee Survey (2008) confirmed that employee engagement is significantly higher at the CPC than compared to the Public Service as a whole. The CPC attaches great importance to integrated planning and management accountability. Both are central to ensuring that the CPC remains a healthy organization which retains and attracts competent, committed and engaged employees.

THE COMPLAINTS & REVIEW PROCESS

ENQUIRIES, ALTERNATIVE DISPUTE RESOLUTIONS AND FORMAL COMPLAINTS

The Commission remains focused on offering the public a range of options for the handling of RCMP complaints or concerns. To this end, when a member of the public contacts the Commission, they are provided with same-day access to an experienced analyst who then assesses the needs of that person and identifies possible options for a way forward to addressing their concerns.

Enquiries

Enquiries may include requests for information about police authority, obtaining assistance in furthering an investigation or gaining an understanding of the role of Crown counsel. This alternative measure appreciably decreases the demands placed on the complaint system.

Alternative Dispute Resolution (ADR)

The Commission employs skilled analysts, trained in mediation, who function as neutral and objective intermediaries to assist with conflict resolution between the public and the RCMP.

Commission analysts clarify what the roles and responsibilities of the parties are, establish logistics for communications and assure the individual that the formal complaint process remains an option in the event of an unsatisfactory outcome. In many instances, these types of conflicts are resolved within a few days.

It should be noted that statutory offence allegations or those alleging excessive use of force or other serious matters are not considered to be appropriate for ADR.

> **"When a member of the public contacts the Commission, they are provided with same-day access to an experienced analyst."**

Formal Complaints

A formal complaint involves a complainant and a CPC analyst completing an official complaint form. The complaint is then written up and sent to the RCMP for investigation.

If the complainant is dissatisfied with the RCMP's investigation, he or she can request that the CPC conduct a review of the investigation.

For example, the same allegation of lack of professionalism on the part of an RCMP member could be managed in three ways:

Enquiry

If a motorist is spoken to by an officer at a traffic stop in a manner which the motorist believes is inappropriate and wants to express his concerns without entering into the formal complaint process, or even providing his name, the analyst will listen to the issues described by the citizen, record the details and provide them in a written report to the detachment commander. The process is identified as an Enquiry.

Alternative Dispute Resolution

Another motorist in similar circumstances may wish to participate in an alternative dispute resolution process rather than lodge a formal complaint. After clarifying the individual's issues and goals, a CPC analyst will facilitate discussions with the RCMP in an effort to reach a solution that is satisfactory for both the complainant and the RCMP.

Formal Complaint

A different motorist in this situation may wish to lodge a formal complaint and participate in an investigation, receive a written response from the RCMP and have the ability to request the Commission to conduct an independent review. This process is identified as a Formal Complaint.

Receipt of all Complaints in the First Instance

The CPC now has access to complaints received by the RCMP itself. This important development allows the CPC to fully assess *all* complaints made against the RCMP.

REVIEW OF PUBLIC COMPLAINTS

If a complainant is not satisfied with the RCMP's response to their formal complaint, they have the right to request that the CPC independently review the propriety of the conduct and the RCMP's handling of the matter.

Upon receiving a request for review, the CPC:

- requests all relevant information regarding the complaint;
- analyzes and examines the information provided by both the complainant and the RCMP; and
- issues a report making recommendations aimed at improving RCMP conduct and policies and procedures.

If the Commission is satisfied with the actions of the RCMP and the manner in which it addressed the complaint, it will issue a "Satisfied Report."

Interim Reports, Commissioner's Notices and Final Reports

On the other hand, if the Commission finds fault or is otherwise not satisfied, it will issue an "Interim Report" outlining its findings and recommendations to the Commissioner of the RCMP and the Minister of Public Safety.

The RCMP Commissioner prepares a response—the Commissioner's Notice—in which he describes what action the RCMP has taken or will take in light of the findings and recommendations. The CPC then prepares its final report—the Final Report After Commissioner's Notice (FACN)—which is sent to the complainant and the members involved.

The Commission may make recommendations that:

1. Address members' individual conduct.
2. Address members' behaviour for an entire detachment or unit.
3. Address deficiencies in a divisional (provincial) policy.
4. Address a deficiency in an RCMP-wide policy.

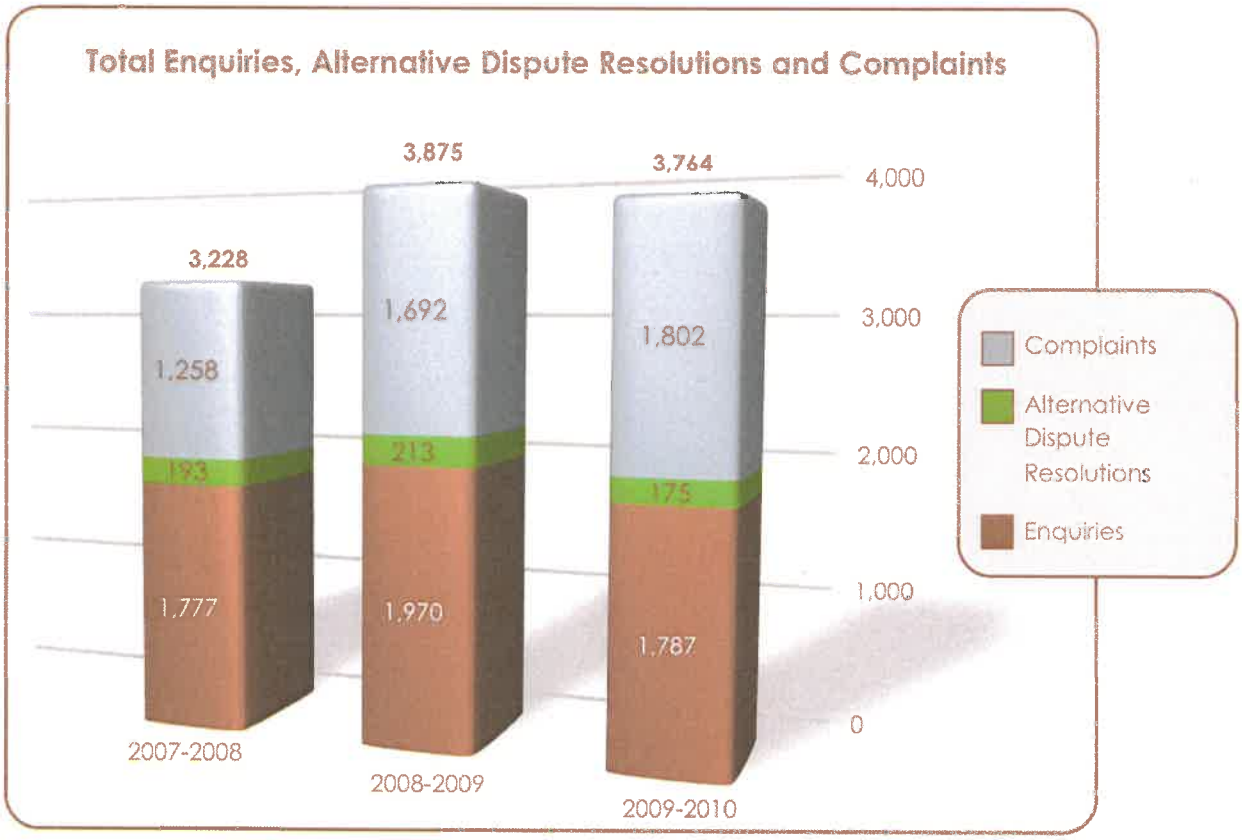
The CPC remains committed to ensuring that its recommendations are remedial in nature, focused on addressing more systemic concerns and preventing problems from arising in the future.

> **"The CPC remains committed to ensuring that its recommendations prevent problems from arising in the future."**

OUR TARGETS AND PERFORMANCE FOR 2009-2010

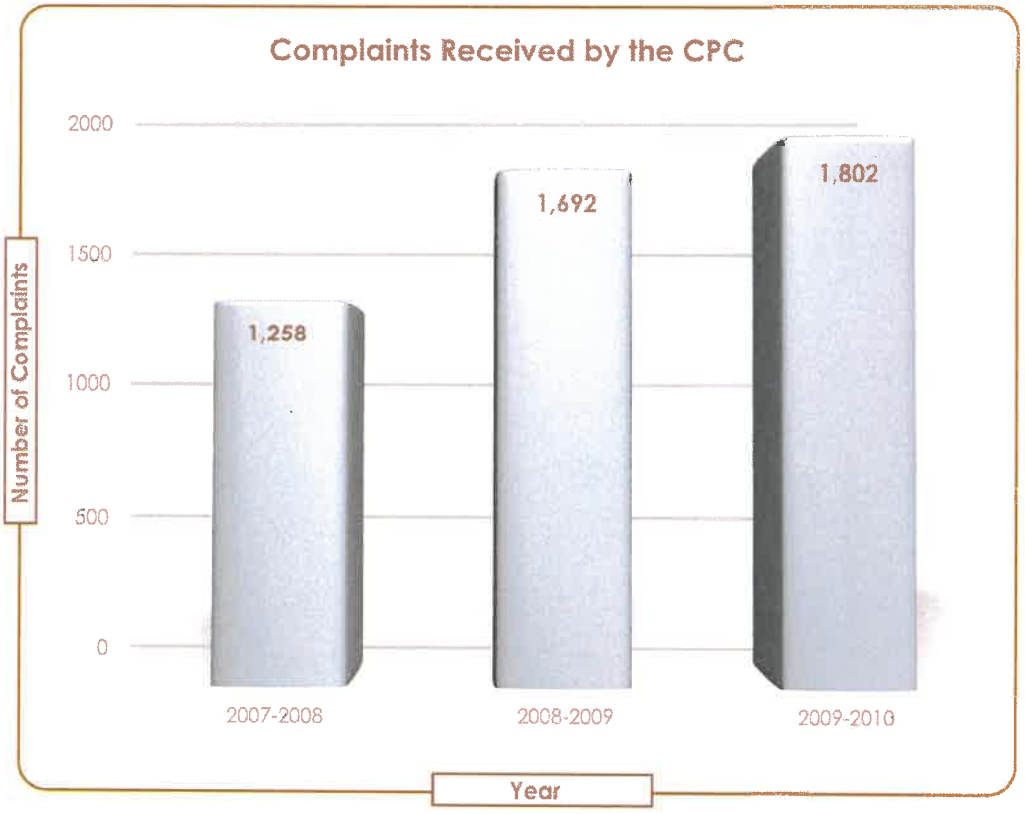
Much of the Commission's work continues to centre on providing direct service to Canadians concerned about the actions of members of the RCMP.

The CPC's National Intake Office in Surrey, B.C. has seen a steady increase in complaints over the past three years. Specifically, it processed 3,764 general enquiries, alternative dispute resolutions ("ADRs"), and formal complaints against the RCMP this year.



While the overall number of complaints against the RCMP (i.e. the total of those lodged directly with the RCMP and CPC) have remained relatively constant, complaints sent directly to the CPC have increased by a total of 43% over the past two years.

This increase is likely due to the public's greater awareness of the CPC and the option of pursuing a complaint through its independent process. As a consequence, complaints submitted directly to the RCMP have declined. The CPC now directly receives approximately 70% of all complaints with the rest being lodged with the RCMP (other than a small number lodged with a provincial body).



> **Complaints sent directly to the CPC have increased by a total of 43% over the past two years.**

COMPLAINT TRENDS

The type of issues raised in complaints in 2009-2010 followed similar trends from previous years. The most common complaint issue relates to member attitude. This category of alleged complaint can include dismissive, rude, non-responsive or biased behaviour on the part of the member as well as behaviour that is seen to be unfair or lacking empathy.

The second most common complaint issue identified by the Commission relates to the quality of RCMP criminal investigations. This complaint issue is identified as such when the complainant feels that the criminal investigation included improper witness interviews, improper evidence handling and examination, timeliness issues, concealment of facts, or misleading reports.

Other complaint issues relate to arrest, vehicular incidents and issues surrounding allegations of police physical abuse.

10 Most Common Complaint Issues	% of Complaint Issues
Attitude other than abusive language	19.2
Criminal investigation quality (RCMP) other than note-taking	13.8
Arrest	8.2
Vehicular Incidents	7.7
Police physical abuse other than restraints	6.8
Detention	5.8
Alcohol/Drugs	5.5
Search and seizure	3.8
Property mishandling	2.6
Abusive language	2.4

REVIEW TRENDS

This year the CPC was asked to review the RCMP's handling of 202 complaints. The CPC notes that the complex nature of the issues raised in these review requests continues to increase.

Of these reviews, the Commission delivered a total of 191 reports:

- 149 Satisfied Reports;
- 42 Interim Reports.

The CPC received 25 Commissioner's Notices from the RCMP.

The CPC observed a continuing trend of the RCMP Commissioner agreeing in large part with the findings and recommendations made by the CPC. Of the number of adverse findings made, the Commissioner agreed with 89% of them. Furthermore, he accepted 82% of the CPC's recommendations.

SERVICE STANDARDS

When handling a formal complaint against the RCMP, the aim of the CPC is to shepherd each complaint through the complaint process—from the initial lodging of the complaint through to its conclusion—as timely as possible and within one calendar year.

Conducting the full range of complaint investigation and review within the one calendar year target is dependent upon the RCMP's response times. Of the number of complaints subject to review requests, 61% met the one-year time frame—an improvement over previous years.

Action	Number of Days Recommended by the CPC
Complaint received by CPC and forwarded to RCMP	4 days
RCMP investigates and delivers a report to the complainant	180 days
If complainant is dissatisfied with RCMP report, CPC requests all material from RCMP	4 days
CPC commences review process • RCMP forwards material to the CPC (within 30 days) • CPC conducts review and sends interim report to RCMP*	120 days
RCMP responds	30 days
CPC issues final report to complainant and RCMP	30 days

* If however, the CPC is satisfied with the RCMP's investigation, the review process ends and a final report is provided to the complainant as well as the RCMP at this time.

The CPC has hit full stride with the implementation of its internal performance-based service standards and continues to look for ways to build efficiencies by working with the RCMP in tracking response times. The CPC recommends that the RCMP apply service standards to the response times as outlined in the table above.

These actions are aimed at enhancing the ability of complainants, RCMP members and Canadians to hold the CPC and the RCMP accountable for a timely response to public complaints.

Delivery of Relevant Materials

As indicated in last year's Annual Report, the CPC's ability to complete its reports thoroughly and expeditiously is dependent upon the RCMP providing all materials relevant to the complaint in a timely manner.

During this past year, the RCMP's Divisional Professional Standards units have significantly improved their response times with the majority of materials being delivered within the 30-day objective. These improvements have played a major role in enhancing the timely response to complainants and RCMP members.

While the materials are coming to the CPC in a much timelier manner, in many cases key documents are missing. This means that they then have to be requested from the RCMP. Due to the unnecessary delays these follow-up requests cause to the review process, the CPC will be working with the RCMP to ensure that a consistent approach to providing documents to the CPC is followed by all RCMP divisions.

Interim & Satisfied Reports

The CPC remains committed to ensuring that at least 80% of its reports are finalized within 120 days of receiving the request for review. This year, the CPC achieved a performance rate of 95%.

Timeliness of Commissioner's Notices

In last year's Annual Report, the CPC commented positively on the efforts made by the RCMP Commissioner in fulfilling his commitment to work through the backlog of Commissioner's Notices and delivering all those outstanding from 2007 and 2008 by the end of March 2009.

This year, however, as can be seen by the table below, the backlog of Commissioner's Notices has returned. While the CPC acknowledges the significant strains that the security obligations in connection with the Winter Olympics in Vancouver had on the RCMP, permitting the accumulation of Commissioner's Notices causes major delays in the system which in turn threaten the integrity of the public complaint process.

Outstanding Commissioner's Notices
as of March 31, 2010

Number of Days	Number of Outstanding Notices	Average Number of Days Outstanding
Less than 30 days	3	11
From 30 to 60 days	1	43
From 61 to 180 days	19	122
From 181 to 365 days	10	218
Over 365 days	1	371

The CPC strongly encourages the RCMP to implement service standards aimed at ensuring the timely delivery of responses to the CPC's Interim Reports.

Final Reports

The CPC has a 30-day service standard for completing FACNs after receiving a Commissioner's Notice. In the past fiscal year, the Commission delivered 25 FACNs to the RCMP, 84% of which were within the Commission's 30-day service standard.

STAKEHOLDER ENGAGEMENT/ COMMUNITY OUTREACH

During the past two years, the CPC has steadily increased its outreach capability. Engagement with key stakeholder groups such as municipality associations, police boards, provincial oversight bodies and aboriginal groups is vital to helping increase awareness of an individual's right to initiate a complaint against the conduct of an RCMP member when merited. Feedback from stakeholder engagements across the country has confirmed that knowledge of access to an independent and impartial complaint process increases the degree of confidence in how the complaint will be handled.

STAKEHOLDER ENGAGEMENT

The CPC participated in the annual conferences of the National Association of (Aboriginal) Friendship Centres (NAFC), the Canadian Association of Police Boards, the Federation of Canadian Municipalities, the Union of B.C. Municipalities, the Alberta Association of Urban Municipalities and the Saskatchewan Association of Rural Municipalities to explain the mandate of the CPC and the services that it provides.

In November 2009, representatives of the Commission undertook a series of meetings with mayors of B.C. municipalities policed by the RCMP, including Richmond, Surrey, Maple Ridge, Pitt Meadows, Chilliwack, Langley, North Vancouver, Coquitlam and Prince George. The CPC also met with officials from the Native Women's Association of the Northwest Territories and held a workshop at the Yellowknife Tree of Peace Friendship Centre.

In addition, information was provided to numerous community and cultural groups, as well as elected officials from all three levels of government. Native court workers, legal aid groups and mental health associations were also approached.

Overall, there was a high degree of interest in the work of the CPC, complaint trends, and the enhancement of police accountability.

NEW MEDIA

As part of its outreach program, the CPC created a short video using its staff to explain the CPC's role, intake and review processes and how to access its services. This tool is available on the CPC's website which has been updated to be more user-friendly. Additionally, the CPC produced a companion video in collaboration with the NAFC, using staff from both organizations in December 2009 to explain the complaint process. The video was specifically designed for aboriginal audiences and will be showcased at the NAFC annual general meeting in Alberta during the summer of 2010.

The Commission's ongoing collaboration with the National Association of Friendship Centres was commended for a second consecutive year in the *Canadian Multiculturalism Act's* Annual Report 2008-2009.

CROSS-COUNTRY COLLABORATION

One of the initiatives sponsored by the CPC was to create a forum of heads of police review bodies across Canada to meet annually to share best practices, identify emerging issues and enhance working relationships. This is a practitioner's forum offering practical advice, strategies and information on the civilian oversight of police touching on criminal, complaints and disciplinary processes. The fall 2009 session covered such issues as the need for protocols for complaints flowing from the 2010 Olympics, police interaction with aboriginals, and the importance of effective communications.

INTERNATIONAL INITIATIVES

On the international front, the CPC met with counterparts at the UK Independent Police Complaints Commission in the fall of 2009, as well as the Home Office and the Professional Standards Directorate of the Metropolitan London Police. A CPC representative presented at the Australian Public Sector Anti-Corruption Conference 2009 and was subsequently invited to share best practices with the New Zealand Independent Police Conduct Authority. CPC staff also made presentations at the annual conferences of both the National Association for Civilian Oversight of Law Enforcement and the Canadian Association of Civilian Oversight of Law Enforcement. In addition, the Chair of the CPC spoke at the following events:

- The Defence Counsel Association of Ottawa Conference;
- The Canadian Criminal Justice Association Congress;
- The Ottawa Roundtable on Security and Intelligence;
- A Forum co-sponsored by Simon Fraser University and the Ministry of Public Safety and Solicitor General on Investigation Complaints Against the Police: Models, Options and Issues; and
- The Annual Meeting of the Canadian Association of Police Boards.

> **"Engagement with key stakeholder groups is vital to helping increase awareness of an individual's right to initiate a complaint against the conduct of an RCMP member when merited."**

CHALLENGES AND OPPORTUNITIES

The Commission was highly encouraged by the Budget 2010 commitment to create a new review mechanism for the RCMP. Additionally, the continuation of $3.1 million in interim CPC funding for fiscal year 2010-2011 indicated strong government support for this organization's current mandate which seeks to enhance public confidence in the RCMP through greater accountability.

In terms of the creation of a modern police oversight model, the CPC has urged the government to address a number of critical issues. These include:

- greater access to RCMP-held information;
- ability to self-initiate broader-based reviews as opposed to being complaints-driven;
- ability to work cooperatively with other agencies (provincial and federal);
- stewardship of the RCMP complaints process; and
- improved powers of inquiry without having to resort to a full-blown inquiry to compel witnesses and examine documents.

On June 14, 2010, the Minister of Public Safety tabled the *Ensuring the Effective Review of RCMP Civilian Complaints Act*.

The Commission looks forward to the opportunity to participate in and inform the public debate on the proposed new legislative framework for the civilian oversight of the RCMP. It is vitally important to all Canadians that we get it right. The Commission considers it a key responsibility to promote a system which is forward-looking and provides Canadians with the assurances that appropriate checks and balances are in place.

"The Commission looks forward to the opportunity to participate in and inform the public debate on the proposed new legislative framework for the civilian oversight of the RCMP."

APPENDIX 1: FINANCIAL STATEMENT*

Commission for Public Complaints Against the RCMP Budget and Expenditures

Actual Spending	2009-2010	Planned Spending	2010-2011
Salaries	4,234	Salaries	4,746
Operating expenditures	2,713	Operating expenditures	2,744
Total	6,947	Total	7,490

Notes:

i. Subject to year-end adjustments

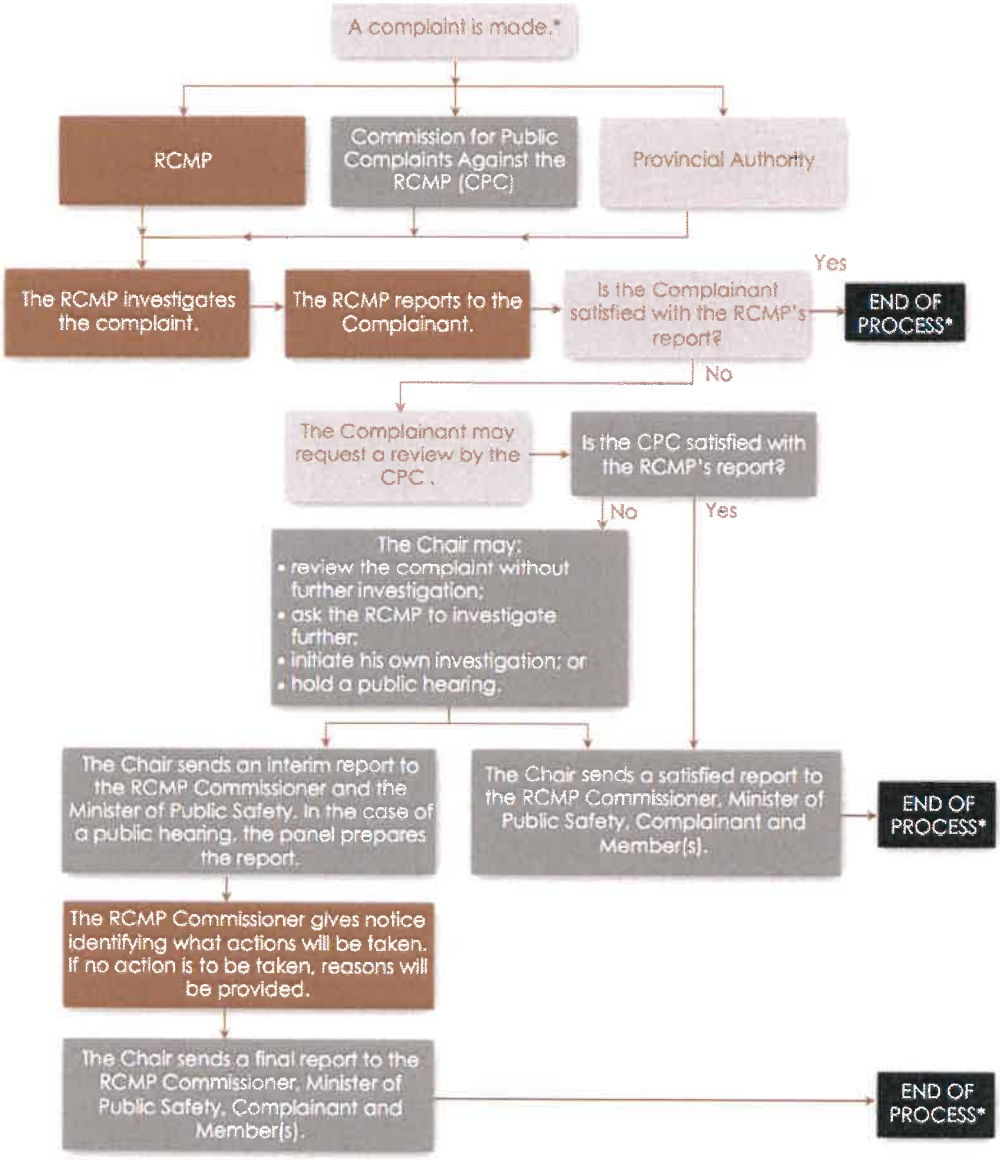
ii. In 2009-2010 received additional funding from Treasury Board Management Reserve to support its work ($1,465K salaries and $1,195K operating expenditures)

iii. In 2010-2011 planned spending includes Treasury Board Management Reserve funding ($1,465K salaries and $1,195K operating expenditures)

iv. Figures do not include employee benefit plans (EBP) or accommodation costs

* in thousands

APPENDIX 2:
THE COMPLAINTS PROCESS



* The Chair can initiate his own complaint. In addition, at any stage of the process, the Chair may institute an investigation or a hearing where he considers it advisable in the public interest.

Exhibit "C"

This is Exhibit " C " referred to in the affidavit of ...Harsha Walia.....
sworn before me at ..Vancouver, BC
this ...19th... day of ...November....20 20

.....
A Commissioner for taking Affidavits
For British Columbia

Commission for
Public Complaints Against the
Royal Canadian Mounted Police

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COMMISSION FOR PUBLIC COMPLAINTS AGAINST THE RCMP

2010-2011

ANNUAL REPORT

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Canada

WHO WE ARE AND WHAT WE DO

The Commission for Public Complaints Against the RCMP (CPC) is an independent body established in 1988 to receive and review complaints about the conduct of regular and civilian RCMP members in the performance of their policing duties. Its mission is to contribute to excellence in policing through civilian review.

The CPC ensures that complaints about the conduct of RCMP members are examined fairly and impartially. Its findings and recommendations help identify, correct and prevent the recurrence of policing problems caused by the conduct of specific RCMP members or by flaws in RCMP policies or practices.

VISION: Excellence in policing through accountability.

MISSION: To provide civilian review of RCMP members' conduct in performing their policing duties so as to hold the RCMP accountable to the public.

MANDATE: As set out in Part VII of the *Royal Canadian Mounted Police Act*, the mandate of the Commission is to:

- receive complaints from the public about the conduct of RCMP members;
- conduct reviews when complainants are not satisfied with the RCMP's handling of their complaints;
- hold hearings and carry out investigations; and
- report findings and make recommendations.

STRATEGIC OBJECTIVES

- Increase public awareness of the role and services of the CPC.
- Strengthen the complaint and review processes.
- Improve the relevance of review recommendations and identify continuing, emerging and new complaint trends.
- Support management excellence and maintain a workplace of choice.
- Provide advice on the creation of a new review mechanism for the RCMP.

HOW TO GET IN TOUCH WITH US

You can find the Commission for Public Complaints Against the RCMP on the Internet at **www.cpc-cpp.gc.ca** or **www.complaintscommission.ca**. All documents cited in this report may also be found there.

To contact us by e-mail:

- for reviews: **reviews@cpc-cpp.gc.ca**
- for general enquiries: **org@cpc-cpp.gc.ca**

Telephone from anywhere in Canada: 1-800-665-6878
TTY: 1-866-432-5837

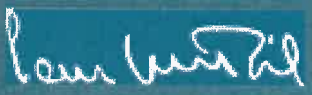
Minister of Public Works and Government Services
Cat. No. PS75-2011

The Honourable Vic Toews, P.C., Q.C., M.P.
Minister of Public Safety
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Minister,

Pursuant to section 45.34 of the *Royal Canadian Mounted Police Act*, I hereby submit the annual report of the Commission for Public Complaints Against the RCMP for the 2010-2011 fiscal year, for tabling in Parliament.

Yours very truly,



Ian McPhail, Q.C.
Interim Chair

June 2011

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*The RCMP maintains two conducted energy weapons in its inventory — the M26 and X26 TASER®.

CHAIR'S MESSAGE



Greater police oversight improves public confidence in policing

The Commission for Public Complaints Against the RCMP prides itself in maintaining a consistent, even-handed approach in the examination of RCMP member conduct. The Commission's findings and recommendations improve policing services offered to the public across the country. The Commission continues to identify and examine policing issues of significance to the public and the RCMP itself.

The Commission has also prepared the groundwork for the transition to the long-awaited and much-needed legislation which will create a new RCMP review and complaints commission with expanded powers.

Bill C-38, which outlined these changes, was introduced in Parliament on June 14, 2010. The Commission was forthright in its observations and assessment of the proposed legislation, providing feedback to the Minister of Public Safety and making its perspective public on its website. Bill C-38 did not advance beyond first reading before the 2011 federal election call. There is scope for the Bill to be revisited and for issues identified in the review of Bill C-38 to be deliberated. Moving forward on a new mandate is important for several reasons:

- a greater degree of oversight which has been widely accepted as essential—including by the RCMP itself; and
- stability for the Commission to more effectively discharge its mandate.

The Commission looks forward to working with the government to bring enhanced legislation into effect and to implementing these reforms.

In the past year, the Commission issued Final Reports into the in-custody deaths of Robert Dziekanski at the Vancouver International Airport and John Simon in Wagmatcook, Nova Scotia. The recommendations made by the Commission in both reports were largely accepted by the RCMP, which will make changes to policies, procedures and training.

Past Commission reports into TASER® use and the issue of the police investigating the police ultimately resulted in the adoption of Commission recommendations and significant changes in RCMP policies.

The effects of these changes have been noted over the past year, as the threshold for use of the TASER® by front-line police officers has been raised and external police forces have been rapidly deployed to conduct investigations into serious incidents involving RCMP members.

Despite the creation of several provincial, independent, civilian-led units to conduct criminal investigations of all serious incidents involving police, public complaints regarding RCMP member conduct continue to be the sole purview of the Commission.

The Commission's role in bringing an informed public perspective to policing issues was further underlined by an invitation from the government of the Yukon Territory and the RCMP to participate in a review of policing issues in that territory. In addition, the Commission is in the process of conducting its public interest investigation of RCMP involvement and member conduct at the G8 and G20 summits.

In performing its work, the Commission continues to be guided by the tenet that in order to be effective, review must be timely. I remain concerned that extensive delays in the response of the RCMP Commissioner to the Commission's recommendations continue to occur. Just over 50% of the RCMP Commissioner's Notices have been delayed for more than six months, and two have been delayed for over a year (see page 23 for more details).

As in past reports, I encourage the RCMP to give appropriate priority to its professional standards capacity to ensure that these delays are reduced or eliminated altogether. An improvement with respect to timeliness and the adoption of service standards would contribute to an enhanced public perception and credibility of the RCMP.

As public scrutiny of police conduct continues to increase, so too does the need for transparency and accountability. The Commission's role in examining RCMP member conduct, making recommendations for change, and acting as the primary mechanism for RCMP accountability across the country, remains integral to supporting public confidence in the police. While confidence remains high nationally according to the results of the RCMP's public opinion survey conducted by Harris-Decima in 2010, I believe more can be done. The passage by Parliament of an effective bill to create a new review and complaints regime will provide greater assurance to the public that a strong, independent, third-party oversight body will work to protect the public interest. This in turn will assist the RCMP in maintaining its reputation as an iconic Canadian institution.

An improvement with respect to timeliness and the adoption of service standards would contribute to an enhanced public perception and credibility of the RCM

CIVILIAN OVERSIGHT OF THE POLICE

POLICE INVESTIGATING THE POLICE

The past several years have seen numerous media reports and public discussions reflecting concerns about the independence and thoroughness of police criminal investigations into the conduct of other police officers.

Investigations of RCMP members resulting from a number of high profile cases including that of Ian Bush, who was shot and killed by an RCMP member in 2005 and the 2007 death of Robert Dziekanski, have highlighted the issue of police investigating police both domestically and internationally.

RCMP Policy on External Investigations or Reviews

In response to the Commission's August 2009 report into Police Investigating Police, the RCMP announced, in February 2010, a new policy requiring independent external investigations whenever:

- there is a serious injury or death of an individual involving an RCMP employee, or;
- it appears that an employee of the RCMP may have contravened a provision of the *Criminal Code* or other statute and the matter is of a serious or sensitive nature.

The Commission's report made a number of recommendations to address the potential for perceived or actual bias or conflicts of interest when members of the RCMP are called upon to investigate a member of the same force.

Although all of the cases that the Commission reviewed in detail showed that the investigators acted professionally, there were nevertheless cases identified where the potential for perceived bias or conflicts of interest were present.

The Commission recommended that RCMP cases that involve serious injury, death, or matters of a serious or sensitive nature be investigated by a separate police force or civilian agency.

The RCMP announced that it will refer all matters that meet the established criteria to a provincially or federally established regime to conduct the investigation, where one exists. Where no such regime has been established, the RCMP will request an external law enforcement agency or other duly authorized investigative agency to conduct the investigation.

The RCMP accepted the notion that public confidence in the investigation of serious or sensitive cases is vital to public confidence in the force itself. The Commission has noted that the RCMP has been applying the policy following serious incidents. In addition, it was reflected in the language of Bill C-38. The degree to which the new mechanism will be applied needs to be monitored in order to determine how it will influence the public perception of police investigating the police.

Independent Observer Program (IOP)

In 2007, the Commission implemented a pilot project to observe and assess the impartiality of RCMP investigations into serious or high-profile incidents such as in-custody deaths in British Columbia ("E" Division). The protocol was formalized in late 2008.

During the past year, the IOP was invoked only once, in the case of the RCMP-involved shooting of Wilbert Bartley Jr., as the implementation of the new *RCMP External Investigation or Review Policy* mandated that investigations of serious incidents involving RCMP members be undertaken by external police forces. Nonetheless, the Commission remains engaged in monitoring such incidents, with a view to assessing whether the new policy adequately addresses the concerns of the CPC.

The CPC looks forward to a clarification of the role of the observer in the new legislation.

RCMP TASER® USE

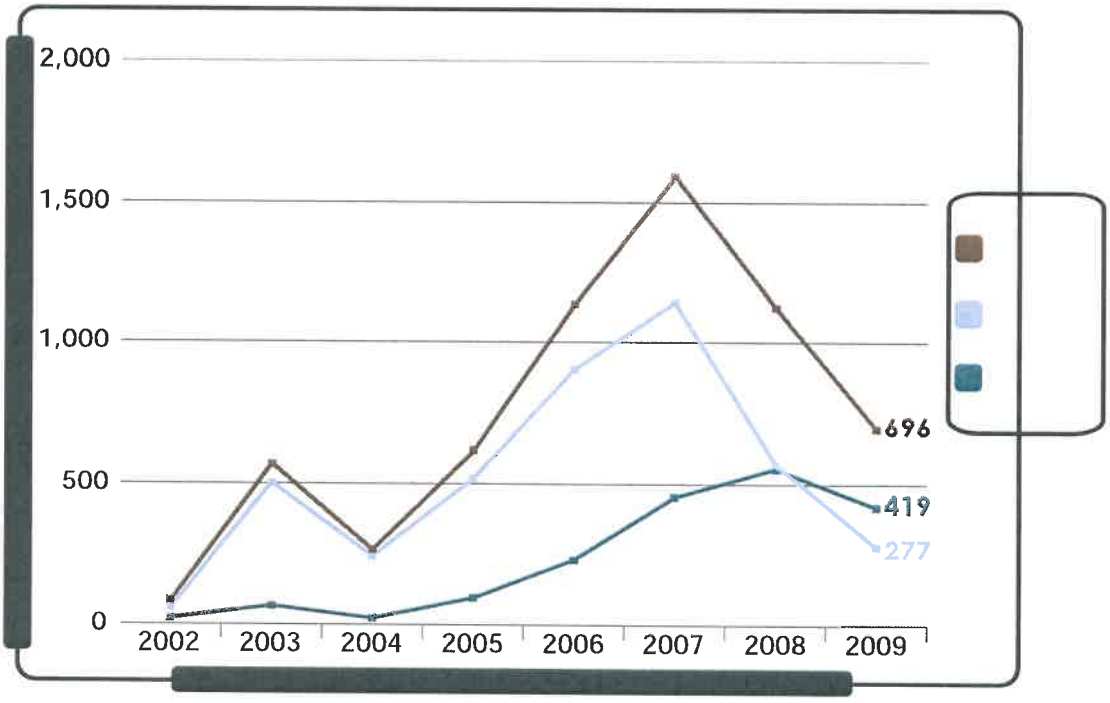
Since the Commission began monitoring RCMP TASER® use three years ago, a significant movement towards reduced deployments has been noted. The Commission is encouraged by the progress made by the RCMP through policy and operational changes, which are reflected in the trend towards decreasing front-line usage and increasing use of the weapon as a deterrent.

Review of the RCMP's Use of the Conducted Energy Weapon (TASER®) for 2009

This report, published in June 2010, contributes to the CPC's ongoing effort to monitor RCMP TASER® use in the public interest. The report, which included an examination of 696 TASER® usage reports, concluded that:

- TASER® use (i.e. threatened or actual deployment of weapon) dropped 38% in 2009 and continued a downward trend evidenced in previous years; and
- the TASER® has increasingly been used as a means of deterrence and a tool for compliance. For the first time ever, actual deployments (i.e. push-stun or probe mode) accounted for less than 50% of all TASER® usage.

Trends in TASER® Usage and Deployment



It is important to note that the CPC continues to closely monitor TASER® use by the RCMP on vulnerable and at-risk populations, including youth (13–17 years of age) and those individuals suffering from mental illness.

Of the 36 TASER® reports involving youth in 2009:

- 69% of the cases saw only the threatened use of the TASER®; and
- 31% of the cases involved the actual deployment of the weapon.

Moreover, 50% of youths who were subjected to a TASER® deployment were under the influence of a substance (usually alcohol) and were most likely to be:

- male;
- aged 16-17; and
- armed with a weapon (typically a knife).

Cases involving mentally ill individuals represented almost one-quarter of all TASER® deployments. Of the 135 TASER® reports involving those suffering from mental illness:

- the TASER® was deployed 50% of the time (which is higher than the deployment rate of 39% for cases where mental illness was not an issue).

Those identified as suffering from mental illness and who were subjected to a TASER® deployment were most likely to be:

- male
- between the ages of 20 and 29;
- armed with a weapon (typically a knife); and
- under the influence of a substance (normally alcohol or prescription drugs).

The use of this weapon, as well as the related policies and training, continues to evolve and the Commission is working with the RCMP to ensure that members are properly trained and that the TASER® is utilized and monitored effectively.

The Commission's monitoring of TASER® use during the past three years has undoubtedly contributed to clearer policy and enhanced accountability. The Commission looks forward to continuing this important role with respect to TASER® use as well as use of force more broadly.

Robert Dziekanski

The death of Robert Dziekanski in October 2007 at the Vancouver International Airport prompted the Chair to initiate a complaint and public interest investigation.

In the report submitted to the RCMP in late 2009, the Chair made 23 findings and 16 recommendations aimed at improving RCMP training, policies and procedures to minimize the risk of such tragedies occuring in the future.

In February 2011, the RCMP accepted 22 of the 23 findings made by the Commission.

In addition, the RCMP is in the process of addressing all 16 CPC recommendations. The CPC is satisfied with the RCMP's response to the report, which is consistent with the movement towards clearer TASER® policy and a higher threshold for TASER® use.

A full list of the CPC's recommendations and findings are available on the CPC's website.

Chair-initiated Complaint and Public Interest Investigation into In-Custody Deaths Proximal to TASER® Use

Ongoing concerns about the use of the TASER® prompted a Chair-initiated complaint and public interest investigation in January 2009. Specifically, the complaint examined relevant incidents between 2001 and 2009 to identify potential trends.

As with any public interest investigation, the CPC appointed its own independent lead civilian investigator.

The report found that those who succumbed to an in-custody death proximal to TASER® use often shared several similarities, such as being male, highly agitated, suspected of being under the influence of a drug, and subject to pre-existing medical conditions. The report also concluded that typically, the RCMP members involved followed the relevant policy respecting use of force.

The report presented several recommendations for change including:

- additional training on dealing with those with mental illness;
- enhanced guidelines for consistent documentation; and
- increased reporting.

The Commission also recommended clearer protocols with respect to the use of restraints, hog-ties and choke-holds.

The CPC completed its investigation and provided its report to the RCMP in August 2010. The CPC is awaiting the RCMP Commissioner's response.

POLICING ISSUES IN THE NORTH

Review of Yukon's Police Force

In April 2010, the Yukon government and the RCMP invited the Commission to participate in a "Review of Yukon's Police Force."

The Review was initiated in the wake of concerns regarding the manner in which some members of the RCMP were interacting with the communities they serve.

One of the priorities of the Review was to "review how public complaints relating to the RCMP in the Yukon are currently dealt with and to make recommendations on any required improvements."

The Commission's approach to contributing to the Review included three interrelated yet distinct phases in order to obtain a fulsome picture of the existing public complaint process in the Yukon.

The Commission:

- carried out on-site detailed reviews of RCMP public complaint files lodged between January 1, 2005, and May 31, 2010;
- met with a number of community stakeholders in the Yukon, recognizing that, typically, many do not engage in the formal public complaint process; and
- obtained input from individual RCMP members stationed in the Yukon.

The Review was initiated in the wake of concerns regarding the manner in which some members of the RCMP were interacting with the communities they serve.

Stakeholder groups took the opportunity to candidly express their sentiments, concerns and ideas for policing in the Yukon. A number of key areas for concern were identified, including:

- wide-spread public perception that too many inexperienced RCMP members were being sent to the Yukon;
- the need for acutely intoxicated people to be handled differently beyond putting them in the "drunk tank"; and
- greater sensitivity and respect by the RCMP in its interactions with members of the Aboriginal community, women in domestic violence situations, and mental health patients in distress.

The Commission delivered its comprehensive report, with stakeholder group recommendations, in August 2010.

Many of the observations, including the general lack of awareness of the right to make a complaint about RCMP member conduct to the Commission, were echoed in the Review of Yukon's Police Force final report, "Sharing Common Ground."

The Commission has committed to launching a Yukon-specific pilot project in the summer of 2011 to enhance awareness of the complaint process.

SPECIFIC INCIDENT OF CONCERN

RCMP Disciplinary Matters

John Simon was fatally shot by the RCMP in Wagmatcook, Nova Scotia, in December 2008. Due to increasing public concern about the RCMP's handling of the incident, a Chair-initiated complaint and public interest investigation were launched in March 2010.

The CPC completed its investigation and provided its report to the RCMP in December 2010. It found that while the intentions of the responding RCMP members were to peacefully resolve the incident, significant errors in judgement and poor decision-making resulted in one of the members entering Mr. Simon's home. This ultimately led to Mr. Simon, who had pointed a rifle at the member, being fatally shot.

As part of its investigation, the CPC also examined the conduct of those members involved in the handling of this matter after the shooting. The CPC found that the RCMP disciplinary process was applied in a confusing and uncoordinated way by the RCMP managers involved. The RCMP has addressed the deficiency through the issuance of a directive to all Commanding Officers.

The RCMP responded to the CPC report in March 2011, and the CPC's Final Report was issued that same month. The RCMP accepted 10 of the Commission's 12 findings and agreed with all 11 recommendations.

The CPC found that the RCMP disciplinary process was applied in a confusing and uncoordinated way by the RCMP managers involve

ONGOING NOTABLE COMPLAINTS

IN-CUSTODY DEATHS

Raymond Silverfox

In December 2008, Raymond Silverfox went into medical distress in Whitehorse, Yukon, RCMP cells and later died in hospital. The Chair initiated a complaint focused on policies regarding access to medical treatment for persons detained in RCMP custody, particularly when alcohol consumption is a factor.

The April 2010 Coroner's inquest revealed particularly disturbing details of the case related to the apparent indifference of RCMP members to Mr. Silverfox while he was detained.

The RCMP delivered its investigative report to the Commission in March 2010. The CPC completed its review and provided its report to the RCMP in September 2010.

[Note: The CPC received the RCMP Commissioner's response in May 2011 and made its final report public in June 2011.]

Robert Knipstrom

In November 2007, the Chair initiated a complaint into the in-custody death of Robert Knipstrom in Chilliwack, British Columbia. Additionally, an Independent Observer was appointed to monitor the impartiality of the RCMP's investigation into his arrest. The CPC Observer concluded that there were no identified issues of bias.

During his arrest, Mr. Knipstrom was subjected to punches, members' attempts to take him to the ground, pepper spray, a TASER® and a baton; he subsequently died in hospital.

In January 2009, in order to expedite the investigation of this matter, the Chair expanded his initial complaint to include a public interest investigation led by a civilian investigator.

The CPC completed its investigation and provided its report to the RCMP in November 2009. The CPC is awaiting the RCMP Commissioner's response.

Christopher Klim

In December 2007, the Chair initiated a complaint into the shooting death of Christopher Klim in Vernon, British Columbia. The complaint was launched in light of concerns regarding persons being apprehended under mental health legislation.

The RCMP delivered its investigative report to the Commission, and the Commission's review is ongoing.

Cheryl Anne Bouey

The June 2008 in-custody death of Cheryl Anne Bouey in Prince George, British Columbia, prompted a Chair-initiated complaint. After inflicting harm on herself, Ms. Bouey was found unresponsive in her cell. The Chair asked whether RCMP policies regarding the proper care and safety of persons detained in cells are adequate.

[Note: The Commission delivered its interim report to the RCMP in May 2011.]

Valeri George

The September 2009 shooting death of Valeri George in Fort St. John, British Columbia, also prompted a Chair-initiated complaint. Mr. George was shot by RCMP Emergency Response Team (ERT) members as he fled his home several days after allegedly shooting at a vehicle containing his spouse and children. The Chair's complaint is particularly concerned with the use of force by the RCMP ERT members.

The RCMP's investigation into this Chair-initiated complaint is ongoing.

PUBLIC INTEREST INVESTIGATIONS

Incident in Kamloops RCMP Detachment Cells

In response to a complaint made by the Elizabeth Fry Society of Greater Vancouver, the Commission, in September 2010, initiated a public interest investigation into an incident which occurred at the Kamloops RCMP Detachment in British Columbia. The complaint related to the conduct of those RCMP members involved in the monitoring of two unidentified women allegedly engaged in sexual activity while incarcerated in the detachment cells on August 18, 2010.

The investigation is examining whether the RCMP members or other persons appointed or employed under the authority of the *Royal Canadian Mounted Police Act* (RCMP Act) involved in the incident complied with all relevant laws and policies, as well as whether such policies are adequate.

G8/G20 Summits

In November 2010, the Commission, acting on a complaint lodged by the Canadian Civil Liberties Association (CCLA) about the conduct of unidentified RCMP members, launched a public interest investigation into specific aspects of the G8 and G20 summits.

The complaint relates to the following four issues and incidents to the extent that RCMP members were involved:

- G8/G20 planning;
- infiltration and surveillance (if any) of individuals or groups before and during the summits;
- use of force, detentions and arrests during the summits; and
- conditions at the Eastern Avenue detention facilities in Toronto.

The Commission is currently in the process of conducting interviews and reviewing documentation provided by the RCMP to assess RCMP members' conduct in relation to the areas raised by the complaint.

ADDITIONAL REVIEWS & FURTHER INVESTIGATIONS OF NOTE

The CPC's reviews and further investigations dealt with a variety of issues. Some of those issues included actual or perceived conflicts of interest on the part of public complaint investigators, the use of restraint mechanisms for uncooperative detainees, use of force, disclosure of information to third parties, and involvement in civil disputes.

It should be noted that in some cases the RCMP has responded to the CPC's recommendations and that such responses are addressed in the section "Recommendations Awaiting Implementation."

The following are examples of reviews from the past fiscal year.

Conflict of Interest

Investigation independently reviewed due to perceived bias

A complainant filed a series of public complaints relating to a contentious dispute with neighbours and the RCMP. The Commission identified a perceived conflict of interest on the part of the assigned RCMP public complaint investigator.

Following the CPC's recommendations, the RCMP agreed to have the entire investigation reviewed by a qualified investigator from another province.

Use of Restraint Mechanisms

Use of restraint chairs and spit hoods should be proportionate

In one incident, a complainant stated that he was kept in a restraint chair and spit hood while in custody.

The Commission found the initial use of the restraints reasonable due to the complainant's combative behaviour, but specified that, as per RCMP policy, the restraints should not have been used once the complainant calmed down.

Use of Force

Use of force appropriate in response to violent individual

In one case, RCMP members were pursuing an individual who had fled the scene of a crime and hidden from police. Once found, the individual, who was known to be violent and was near several potential weapons, refused to cooperate and continued to struggle. RCMP members deployed pepper spray, a TASER® in push-stun mode, and finally a police service dog (PSD).

The Commission found the use of force by RCMP members reasonable in this instance due to the individual's combative behaviour and the threat posed.

Dog bite of unarmed and suicidal individual deemed inappropriate

In another case, a PSD was deployed to track and apprehend a reportedly suicidal individual. The PSD found the individual, but then bit and held him while he lay on the ground. The Commission acknowledged that the handler did not order the PSD to bite, but nevertheless found that he bore responsibility for the use of force.

The CPC recommended that relevant RCMP training policies be reviewed and modified as required. The CPC is awaiting the RCMP's response.

Disclosure of Information to Third Parties

RCMP provides information to of ficials of a foreign state

A Canadian inmate of a foreign prison complained that an RCMP member had inappropriately provided documentation in respect of one of the inmate's correspondents to the prison authorities of the foreign state.

The Commission concluded that the member's actions were inconsistent with the relevant policy and privacy legislation, and recommended that the policy be clarified. The CPC is awaiting the RCMP's response.

Employee fired for link to suspected criminal

An employee of a provincial corrections facility complained that she was fired after her name was linked to that of a person with known criminal associations in a law enforcement information bulletin.

The Commission found that the bulletin was distributed by the RCMP in keeping with privacy legislation and RCMP policy, and had a valid purpose.

Civil Disputes

Police involvement could improperly prejudice landlord

RCMP involvement in civil disputes continues to be an issue raised regularly with the Commission. In one such review this year, RCMP members instructed a landlord to allow a tenant to remove his belongings following his purported eviction.

The Commission found that the members had inappropriately involved themselves in a civil dispute, and potentially prejudiced the landlord's position. The Commission recommended that the RCMP implement policy regarding involvement in civil disputes. The CPC is awaiting the RCMP's response.

Attempts at resolution did not constitute improper involvement

In one case, RCMP members were called to keep the peace while a customer retrieved personal property following a dispute regarding payment. The members attempted to resolve the dispute, and the parties eventually reached a compromise.

The Commission concluded that although the dispute was civil in nature, once the members were on the scene their attempts to keep the peace were reasonable, and they did not become inappropriately involved in the civil matter.

CPC RECOMMENDATIONS: ACCOUNTABILITY TO THE PUBLIC

As in past years, the Commission made numerous recommendations beyond those dealing specifically with individual member conduct. As part of its mandate, the Commission seeks to examine policies, procedures and guidelines which inform or influence the individual member conduct complained of, and to identify perceived gaps or deficiencies in those instruments. As a result, the Commission is able to make recommendations aimed at improving specific RCMP policies, guidelines and/or training standards.

In examining and making recommendations aimed at correcting systemic problems, the Commission's goal is to identify areas of improvement for the RCMP, while at the same time informing the federal Minister of Public Safety and the public of its concerns. To that end, the Commission follows up with the RCMP on the status of recommendations the Commissioner has indicated will be implemented, and publishes key reports on its website.

This year, the RCMP introduced several key policies addressing longstanding Commission recommendations.

RECENTLY IMPLEMENTED RECOMMENDATIONS

Responsibility to Report Policy

In its Final Reports regarding the in-custody deaths of Ian Bush, Kevin St-Arnaud and Robert Dziekanski, the Commission recommended that the RCMP implement policy regarding the duty of members involved in or present at significant police events to provide an account of their actions and what they may have witnessed in a timely manner. Such contemporaneous documentation is critical to ensuring comprehensive review of police action, and lengthy delays in preparation and production are not consistent with transparency and accountability. The RCMP responded to those recommendations by announcing, in September 2010, a new policy regarding members' responsibility to report.

The new policy is intended to balance members' legal rights with investigational imperatives, while emphasizing the importance of transparency and accountability to public trust. The policy requires that involved members immediately provide a detailed preliminary report concerning the event witnessed, as well as a later comprehensive report. The policy outlines the responsibilities in this regard of members and of their supervisors, who are to ensure that reports are made as required.

The CPC recognizes the positive steps taken by the RCMP in ensuring that significant events involving police are comprehensively documented.

In examining and making recommendations aimed at correcting systemic problems, the Commission's goal is to identify areas of improvement for the RCMP.

Note-taking Broadcast

The issue of the adequacy of members' notes has been one of concern in recent years, and the Commission has made a number of recommendations aimed at correcting those deficiencies. In March 2011, the Senior Deputy Commissioner of the RCMP issued a broadcast in advance of a formalized, updated policy regarding members' notebooks.

The broadcast highlights the importance of notes in documenting relevant details, refreshing members' memories after a period of time has passed, and articulating actions which have been taken. It emphasizes that electronic databases and file systems, while integral policing tools, cannot substitute for a member's handwritten notes, and instead are intended to supplement those notes.

Notably, the broadcast includes guidance not only for members, who bear direct responsibility for their notes, but also for supervisors, who are charged with monitoring members' notebooks monthly to ensure compliance and addressing any deficiencies identified.

The CPC is encouraged by the rigorous guidelines set out in the broadcast, and believes that the policy, once formalized, will provide a comprehensive framework for both members and supervisors. The initiative highlights the importance of members' notes, which are vital to thorough reviews of member conduct.

RECOMMENDATIONS AWAITING IMPLEMENTATION

Commission recommendations resulting in policy commitments from the RCMP Commissioner which remain outstanding include:

Policy Commitment	CPC Report	Commitment Date
A policy on releasing details regarding sensitive investigations	Report into Disclosure by the RCMP of its Investigation Regarding the Taxation of Canadian Corporate Dividends and Income Trusts	February 2008
A policy regarding civil disputes to which police have been called	Final Report into a Public Complaint	December 2008
A policy dealing with requests for exhibits consistent with the *Mutual Legal Assistance in Criminal Matters Act*	Final Report into a Public Complaint	March 2009
A review of national public complaints policies and the development of appropriate training modules	Report following a Public Interest Investigation into a Chair-initiated Complaint Respecting the Use of a Conducted Energy Weapon in Inuvik, Northwest Territories	December 2009
Clarification of policy with respect to contacting callers when responding to 9-1-1 calls	Final Report into a Public Complaint	September 2010
A policy with respect to members reviewing their own reports	Final Report into a Public Complaint	September 2010

IMPROVING THE COMPLAINT SYSTEM

TRACKING OF PUBLIC COMPLAINTS

CPC Review of the RCMP Public Complaints Record 2009

Under the authority of the RCMP Act and beginning in 2007, the CPC embarked on an annual, in-depth examination of the entire RCMP public complaints system. This project provides an empirical foundation to assess how effectively the RCMP public complaints system is functioning overall at the divisional, regional and national level.

At the end of each calendar year, the RCMP provides the Commission (typically within six months) with all completed public complaints (known as dispositions) that were both received and finalized within the previous calendar year.

The Commission then analyzes the data and makes its findings and recommendations public.

Based on the findings of the Review of the RCMP's Public Complaint Records project for calendar year 2009, and also recognizing the importance of further strengthening the public complaint process, the Commission made several recommendations to the RCMP, namely that:

- the RCMP clarify its policies and procedures amongst its members regarding the different types of public complaint dispositions, particularly around the acceptance of informal resolutions dealing with serious allegations;
- the RCMP continue to standardize its public complaints policies and procedures across the country by developing a national policy and handbook and by offering training; and
- the Commissioner of the RCMP, to enhance consistency and adherence to policy, revise his delegated authority with respect to the issuance of Notices of Direction for terminations from the detachment level to, at a minimum, the level of officer (or non-commissioned officer) in charge of the Divisional Professional Standards units.

The CPC's Review of the Record project continues to be an important public reporting and management tool in identifying areas of the public complaints system requiring further attention by the RCMP. While work still remains, the RCMP has taken a number of steps in response to some of the CPC's previous recommendations.

While work still remains, the RCMP has taken a number of steps in response to some of the CPC's previous recommendation

For instance, in December 2009, the RCMP's National Public Complaints Unit launched a new database to store, track, monitor and analyze public complaints and their disposition. Among other things, this new system should assist the RCMP in handling public complaints consistently and in accordance with policy, legislation and public expectations.

Research into Systemic Concerns

In addition to tracking public complaints, the CPC is also continuing its research into areas of particular concern to the public.

For instance, in 2009, the Commission began the Multiple Complaint Member Project. This project is an early warning system designed to identify RCMP members who are subject to three or more public complaints, where the allegations are serious in nature (e.g. improper use of force, improper use of firearms), within a 12-month period.

Once a member is identified under the current criteria, the Commission shares this information with the RCMP, which is then able to communicate the information to the relevant division and/or detachment.

WORKING WITH PROVINCIAL PARTNERS

The CPC continues to work with its provincial partners to harmonize police oversight processes to the extent possible under existing law. This includes:

- creating a "no wrong door" approach to the intake of complaints about the police; and
- ensuring that Canadians receive the benefit of the expertise and experience of all police oversight bodies across the country.

Police Complaints Related to the G8/G20 Summits

The CPC worked with Ontario's Office of the Independent Police Review Director (OIPRD) for several months prior to the G8 / G20 summits. This ensured that the respective provincial and federal police complaints mechanisms worked seamlessly and that the public had a "no wrong door" means of making complaints. The CPC's Chair and the Director of the OIPRD have agreed that the CPC will continue to liaise to the extent possible with the OIPRD during its G20 police complaint reviews to ensure that all police involved in the security operations are held fully accountable for improper actions.

Canadian Association of Civilian Oversight of Law Enforcement (CACOLE)

The Commission worked with CACOLE's executive team to launch a new bilingual, user-friendly website that provides easy access to information about CACOLE, its mandate and its annual conference. The website can be found at www.cacole.ca.

Federal & Provincial Oversight Partners Annual Meeting

In October, the Commission held its annual forum for heads of police review organizations across Canada. The group meets to share best practices, identify emerging issues and enhance working relationships.

The fall 2010 session covered such issues as:

- G8/G20 summit-related security;
- police culture and workplace issues;
- standards for use of force expert opinions;
- national TASER® use;
- on-duty/off-duty conduct; and
- the media's perspective on the importance of the work of police review bodies.

ORGANIZATIONAL AND BUSINESS IMPROVEMENTS

CPC's Internet Presence	User-friendly formats for reports Annual reports available in PDF, XHTML as well as Flipbook Expanded website capabilities Improved ease of navigation Public availability of video content CPC videos posted on YouTube
Management & Employee Engagement	National Work-Life and Well-Being Study by Dr. Linda Duxbury and Dr. Chris Higgins Overall conclusion that CPC can be considered a "best practice" employer, especially when it comes to issues regarding work-life balance.
Funding	Interim Funding Continuation of interim funding for fiscal year 2010-2011 ensured that service standards and outreach programs remained in place for the Canadian public.

THE COMPLAINTS & REVIEW PROCESS

ENQUIRIES, ALTERNATIVE DISPUTE RESOLUTIONS AND FORMAL COMPLAINTS

The Commission remains focused on offering the public a range of options for the handling of complaints or concerns. To this end, when a member of the public contacts the Commission, they are provided with same-day access to an experienced analyst who then assesses the needs of that person and identifies possible options for a way to address their concerns.

Enquiries

Enquiries may include requests for information about police authority, obtaining assistance in furthering an investigation or gaining an understanding of the role of Crown counsel. This alternative measure appreciably decreases the demands placed on the complaint system.

Alternative Dispute Resolution (ADR)

Commission analysts serve as objective intermediaries to assist with conflict resolution between the public and the RCMP, when appropriate.

It should be noted that statutory offence allegations or those alleging excessive use of force or other serious matters are not considered to be appropriate for informal resolution.

Formal Complaints

When a complaint is filed with the CPC, an analyst works with the complainant to define the nature of the allegations and formalize the complaint. The complaint is then sent to the RCMP for investigation.

If the complainant is dissatisfied with the outcome of the RCMP's investigation, he or she can request that the CPC conduct a review.

For example, the same allegation of lack of professionalism on the part of an RCMP member could be managed in three ways:

Enquiry

If a motorist is spoken to by an officer at a traffic stop in a manner which the motorist believes is inappropriate and wants to express his concerns without entering into the formal complaint process, or even providing his name, the analyst will listen to the issues described by the citizen, record the details and provide them in a written report to the detachment commander.

Alternative Dispute Resolution

Another motorist in similar circumstances may not wish to lodge a formal complaint. After clarifying the individual's issues and goals, a CPC analyst can facilitate discussions with the RCMP in an effort to reach a solution that is satisfactory for both the complainant and the RCMP.

Formal Complaint

A different motorist in this situation may wish to lodge a formal complaint and participate in an investigation, receive a written response from the RCMP and have the ability to request that the Commission conduct an independent review.

REVIEW OF PUBLIC COMPLAINTS

If complainants are not satisfied with the RCMP's response to their formal complaint, they have the right to request that the CPC independently review the propriety of the conduct and the RCMP's handling of the matter.

Upon receiving a request for review, the CPC:

1. requests all relevant information regarding the complaint;
2. analyzes and examines the information provided by both the complainant and the RCMP; and
3. issues a report making findings and recommendations aimed at improving RCMP conduct, policies and procedures.

If the Commission is satisfied with the actions of the RCMP and the manner in which it addressed the complaint, it will issue a "Satisfied Report."

Interim Reports, Commissioner's Notices and Final Reports

On the other hand, if the Commission is not satisfied with the actions of the RCMP and the manner in which it addressed the complaint, it will issue an "Interim Report" outlining its findings and recommendations to the Commissioner of the RCMP and the Minister of Public Safety.

The RCMP Commissioner prepares a response—the Commissioner's Notice—in which he describes what action the RCMP has taken or will take in light of the findings and recommendations. The CPC then prepares its final report—the Final Report After Commissioner's Notice—which is sent to the complainant and the members involved.

The Commission may make recommendations that address individual member conduct or broader policy issues.

The CPC remains committed to ensuring that its recommendations are remedial in nature, focused on addressing more systemic concerns and preventing problems from arising in the future.

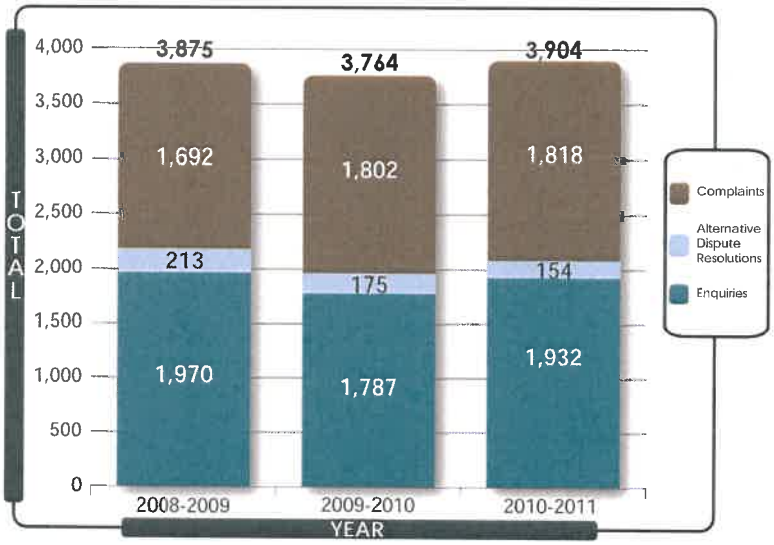
The CPC remains committed to ensuring that its recommendations are remedial in nature, focused on . . . preventing problems from arising in the future.

TARGETS AND PERFORMANCE FOR 2010-2011

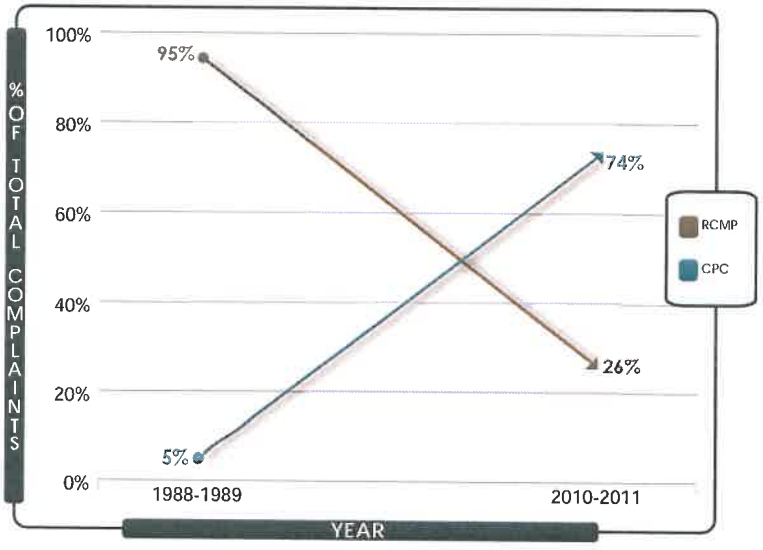
PUBLIC COMPLAINT PROCESS

Much of the Commission's work continues to centre on providing direct service to members of the public concerned about the actions of members of the RCMP.

The CPC's National (Complaint) Intake Office in Surrey, British Columbia, processed 3,904 general enquiries, alternative dispute resolutions, and formal complaints against the RCMP this year.



Both the overall number of complaints and the number of complaints sent directly to the CPC has continued to increase annually. The CPC now receives just over 70% of all complaints directly from the public with the RCMP receiving the rest.



COMPLAINT TRENDS

The types of complaint issues raised in 2010-2011 followed similar trends from previous years.

The most common complaint issue relates to RCMP member attitude. This category can include behaviours that are perceived to be:

- dismissive;
- rude;
- non-responsive;
- biased;
- unfair; or
- lacking in empathy.

The second most common complaint issue relates to the quality of RCMP criminal investigations. This issue can arise when the complainant feels that the criminal investigation:

- was not thorough;
- was improperly carried out;
- was not timely;
- lacked witness interviews;
- included mishandled evidence and examinations; and
- contained inaccurate reports.

REVIEW TRENDS

This year the CPC was asked to review the RCMP's handling of 222 complaints.

The most common review issues relate to the quality of RCMP criminal investigations, member attitude and arrest.

Issues regarding RCMP member use of force and search and seizure were also well-represented in the CPC's review reports.

The CPC notes that the complex nature of the issues raised in review requests continues to increase.

The Commission issued a total of 223 review reports in the current year. Of these:

- 176 reports, or 79%, were Satisfied Reports, issued in cases where the CPC was satisfied with the RCMP's disposition of the complaint.
- 41 reports, or 18%, were Interim Reports, issued in cases where the CPC was unsatisfied and made recommendations to address any deficiencies.
- The remaining 6 reports, or 3%, included those issued in response to Chair-initiated complaints, and those in which the complainant withdrew their request for review.

10 Most Common Complaint Issues	% of Complaint Issues
Attitude other than abusive language	19.4
Criminal investigation quality (RCMP)	14
Improper Arrest	9
Incidents arising from traffic stops	7.5
Police physical abuse	6.4
Detention	5.8
Incidents involving alcohol/drugs	5.7
Search and seizure	3.4
Property mishandling	2.3
Incidents involving restraints	2.3

SERVICE STANDARDS

When handling a formal complaint against the RCMP, the aim of the CPC is to steer each complaint through the complaint process—from the initial lodging of the complaint through to its conclusion—in as timely a manner as possible and ideally within one calendar year.

Conducting the full range of complaint investigation and review within the one calendar year target is dependent upon the RCMP's response times.

Action	Number of Days Recommended by the CPC
Complaint received by CPC and forwarded to RCMP	4 days
RCMP investigates and delivers a report to the complainant	180 days
If complainant is dissatisfied with RCMP report, CPC requests all material from RCMP	4 days
CPC commences review process RCMP forwards material to the CPC (within 30 days) CPC conducts review and sends interim report to RCMP*	120 days
RCMP responds	30 days
CPC issues final report to complainant and RCMP	30 days

* If, however, the CPC is satisfied with the RCMP's investigation, the review process ends and a final report is provided to the complainant as well as the RCMP at this time.

The CPC continues to emphasize its internal performance-based service standards, consistent with its view that to be effective, it is imperative that review be timely. It is in furtherance of this principle that the CPC recommends, as it has in past reports, that the RCMP apply service standards to its response times as outlined in the table above.

These actions are aimed at enhancing the ability of complainants, RCMP members and Canadians to hold the CPC and the RCMP accountable for a timely response to public complaints.

Interim & Satisfied Reports

The CPC remains committed to ensuring that at least 80% of its reports are finalized within 120 days of receiving the request for review. This year, the CPC achieved a performance rate of 97%.

Timeliness of Commissioner's Notices

The timeliness of the RCMP Commissioner's Notices, which are responses to the Commission's Interim Reports that the RCMP is required by statute to provide, has been the subject of comment for the past two years.

While the RCMP made a significant effort to clear its backlog in 2009, the backlog returned and has continued to grow this year. Although the CPC received 38 Commissioner's Notices from the RCMP, most were in response to Interim Reports sent to the RCMP in the previous fiscal year. Just over 50% of the outstanding Commissioner's Notices have been outstanding for more than six months, and two have been outstanding for over a year.

The CPC's concern regarding the delay in the provision of Commissioner's Notices continues to grow, as these delays threaten the integrity of the public complaint process. The CPC cannot finalize its reports and provide them to complainants or the subject RCMP members until the Commissioner's Notice is received.

Once again, the CPC strongly encourages the RCMP to implement service standards aimed at ensuring the timely delivery of responses to the CPC's Interim Reports.

Final Reports

The CPC has a 30-day service standard for completing its Final Reports after receiving a Commissioner's Notice. In the past fiscal year, the Commission delivered 37 Final Reports to the RCMP, 97% of which were within the service standard.

Outstanding Commissioner's Notices
as of March 31, 2011

Number of Days	Number of Outstanding Notices	Average Number of Days Outstanding
Less than 30 days	1	20
From 30 to 60 days	4	50
From 61 to 180 days	12	107
From 181 to 365 days	20	253
Over 365 days	2	477

STAKEHOLDER ENGAGEMENT/ COMMUNITY OUTREACH

Over the past two years, the Commission has steadily increased the number of outreach engagements throughout the country.

Stakeholder groups such as municipality associations, police boards, provincial oversight bodies, Aboriginal groups and organizations, mental health associations, and groups which assist newly arrived immigrants, are all vital to helping increase awareness of an individual's right to make a complaint against the conduct of an RCMP member.

With limited available outreach resources, the Commission has been prudent in selecting where and with whom it conducts outreach activities.

The Public's View on Police Oversight

An EKOS survey undertaken in May 2010 found that 70% of respondents had moderate to high confidence in the bodies responsible for overseeing the activities of Canada's law enforcement and security agencies. Moreover, the survey concluded that 65% of people are comfortable bringing complaints to the Commission.

Partnership with the National Association of Friendship Centres

The Commission has sought out partnerships and engagement with community-focused organizations like the National Association of Friendship Centres (NAFC). With the NAFC's network of 117 Friendship Centres and seven provincial/ territorial associations nationwide, it provides culturally enhanced programs and services to urban Aboriginal people.

The Commission and NAFC jointly produced a video aimed at helping improve accessibility and awareness of the police complaints process amongst Aboriginal audiences. For a third consecutive year, the CPC was commended for this effort in the *Canadian Multiculturalism Act's* Annual Report 2009-2010.

In particular, the Skookum Jim Friendship Centre in Whitehorse, Yukon, played a large role in assisting the Commission with community outreach efforts to help ensure that the opinions and perspectives of stakeholder groups were fully taken into account during the comprehensive 2010 Yukon Police Review.

Stakeholder Engagement

Commission staff have spoken directly to a large number of members from the following organizations at outreach events, meetings and annual general meetings held in the past year:

- the Federation of Canadian Municipalities;
- the Canadian Association of Police Boards;
- the Association of Municipal Administrators;
- the Canadian Mental Health Association;
- various immigrant services organizations;
- women's shelters;
- the Salvation Army;
- the Fetal Alcohol Syndrome Society;
- Yukon Council for First Nations;
- Native Court Workers; and
- ten municipal associations from across Canada.

Feedback has consistently been positive in terms of support for an independent complaints process and the perception of fairness to complainants and police officers alike.

Police and Legal Community Engagement

The Commission Chair and staff have spoken at and participated in a variety of policing and legal conferences across the country including the Canadian Institute's Law of Policing conference in November 2010, and the annual conferences of the Canadian Association of Civilian Oversight and Law Enforcement and the U.S. National Association of Civilian Oversight and Law Enforcement. The Commission also hosts an annual federal/provincial meeting with provincial police oversight bodies.

The Commission engages with the RCMP on an almost daily basis. This interaction ranges from complaint file management to face-to-face meetings between the Commission Chair and the RCMP Commissioner. The Commission Chair and the Senior Director of Operations also spent time at the RCMP training depot in Regina, Saskatchewan, to get a first-hand look at current recruit training.

Feedback has consistently been positive in terms of support for an independent complaints process and the perception of fairness to complainants and police officers alik

CHALLENGES AND OPPORTUNITIES

Over the past several years, a number of independent inquiries and task forces have all recommended enhanced civilian oversight of the RCMP.

During this period, the goal of the Commission has been to ensure that it is providing the best possible service to the public under the existing legislative framework in order to better position itself to meet expectations under a new mandate.

To that end the Commission has:

- structured itself to streamline processes;
- implemented and respected service standards (while urging the RCMP to do the same);
- focused more resources on outreach; and
- focused on trend analysis (e.g. use of the TASER®, police investigating the police, and data analysis on complaints nationally and by region).

The Commission believes these types of initiatives are encouraging the RCMP to improve its internal handling of individual complaints, as well as to implement national policies which will hopefully lead to better training, and consequently to fewer incidents of conflict with the public.

This would not have been possible without interim funding over and above the Commission's resource base, which has been approved by the government annually over the past four years, including fiscal year 2011-2012.

This provides financial stability through to March 31, 2012. The Commission looks forward to the newly elected government reaffirming its commitment to pursue an enhanced accountability regime for the RCMP within this timeframe. This would permit the Commission to move seamlessly to a new mandate without losing the significant investments made to date, and to play a more robust role in maintaining and strengthening public confidence in the RCMP.

The Commission believes these types of initiatives are encouraging the RCMP to ... implement national policies which will hopefully lead to ... fewer incidents of conflict with the public.

APPENDIX 1: FINANCIAL STATEMENT

Commission for Public Complaints Against the RCMP
Budget and Expenditures

2010-2011
Actual Spending[1]

Salaries	4,249
Operating Expenditures	2,597
Total	6,846

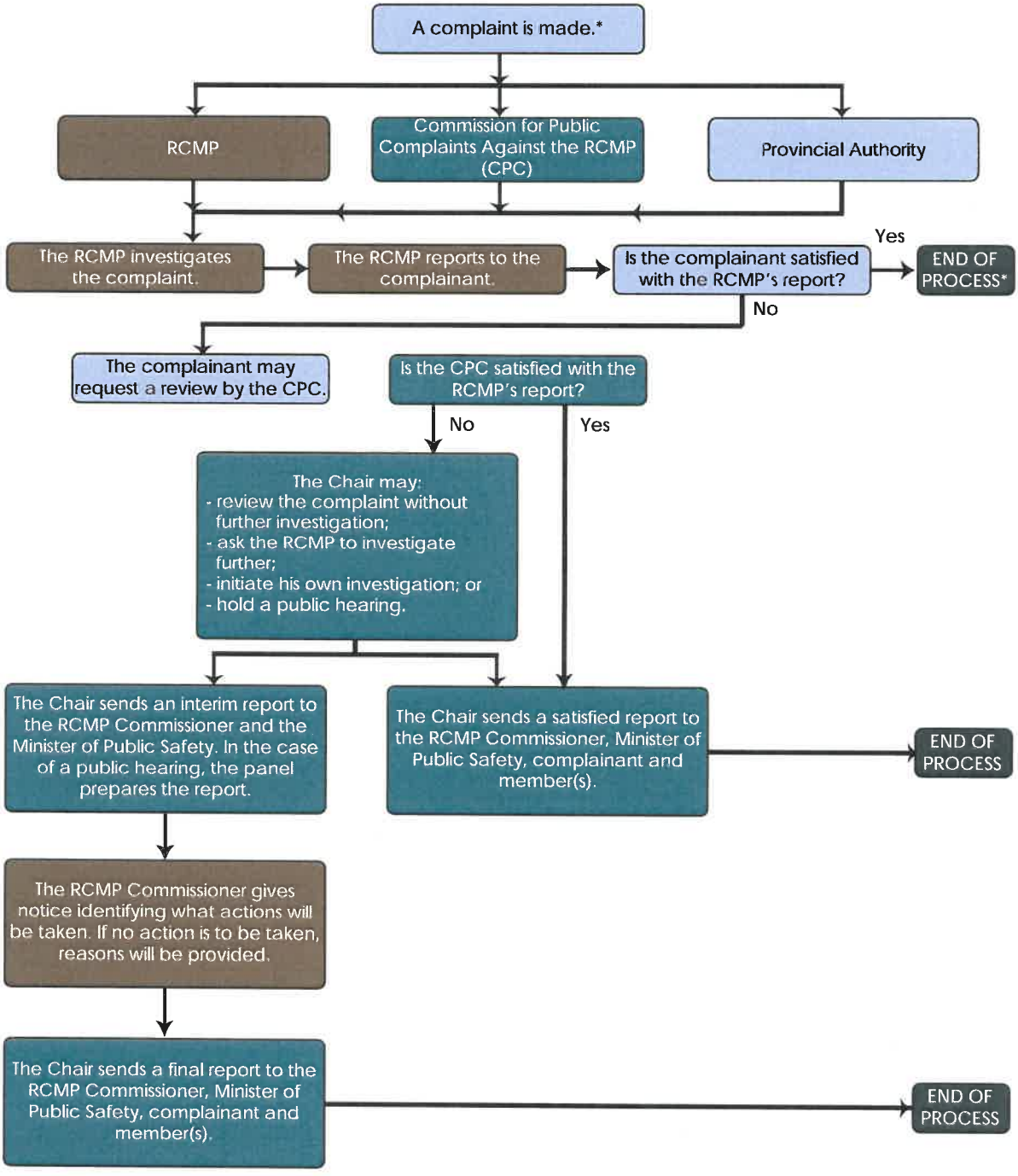
2011-2012
Planned Spending[1]

Salaries	4,746
Operating Expenditures	2,744
Total	7,490

Notes:

1. Numbers represented are in thousands.
2. In 2010-2011, the CPC received additional funding from Treasury Board Management Reserve to support its work ($1,465K salaries and $1,195K operating expenditures).
3. In 2011-2012, planned spending includes the renewal of such interim funding (as received in 2010-2011).
4. Figures do not include employee benefit plans (EBP) or accommodation charges.

APPENDIX 2:
THE COMPLAINTS PROCESS



* The Chair can initiate his own complaint. In addition, at any stage of the process, the Chair may institute an investigation or a hearing where he considers it advisable in the public interest.

Exhibit "D"

This is Exhibit " D " referred to in the
affidavit of Harsha Walia
sworn before me at Vancouver, BC
this 19th day of November 20 20

Jess P. Magonet

A Commissioner for taking Affidavits
For British Columbia

Commission on the Public Complaints Against the Royal Canadian Mounted Police

Commission on Chartered Public Complaints Commissions Conduite du Canada



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COMMISSION FOR PUBLIC COMPLAINTS AGAINST THE RCMP

2011-2012

ANNUAL REPORT

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Canada

WHO WE ARE AND WHAT WE DO

The Commission for Public Complaints Against the RCMP (CPC) is an independent body established in 1988 to receive and review complaints about the conduct of regular and civilian RCMP members in the performance of their policing duties. Its mission is to contribute to excellence in policing through civilian review.

The CPC ensures that complaints about the conduct of RCMP members are examined fairly and impartially. Its findings and recommendations help identify, correct and prevent the recurrence of policing problems caused by the conduct of specific RCMP members or by flaws in RCMP policies or practices.

VISION: Excellence in policing through accountability.

MISSION: To provide civilian review of RCMP members' conduct in performing their duties so as to hold the RCMP accountable to the public.

MANDATE: As set out in Part VII of the *Royal Canadian Mounted Police Act*, the mandate of the Commission is to:

- receive complaints from the public about the conduct of RCMP members;
- conduct reviews when complainants are not satisfied with the RCMP's handling of their complaints;
- hold hearings and carry out investigations; and
- report findings and make recommendations.

STRATEGIC OBJECTIVES

- Increase public awareness of the role and services of the CPC.
- Strengthen the complaint and review processes.
- Improve the relevance of review recommendations and identify continuing, emerging and new complaint trends.
- Support management excellence and maintain a workplace of choice.
- Provide advice on the creation of a new review mechanism for the RCMP.

HOW TO GET IN TOUCH WITH US

You can find the Commission for Public Complaints Against the RCMP on the Internet at www.cpc-cpp.gc.ca or www.complaintscommission.ca.
All documents cited in this report may also be found there.

To contact us by e-mail:

- for general enquiries: org@cpc-cpp.gc.ca
- for reviews: reviews@cpc-cpp.gc.ca

Telephone from anywhere in Canada: 1-800-665-6878
TTY: 1-866-432-5837

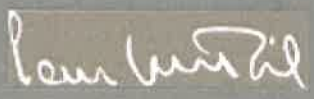
Minister of Public Works and Government Services
Cat. No.: PS75-2012E-PDF
ISSN: 1700-5361

The Honourable Vic Toews, P.C., Q.C., M.P.
Minister of Public Safety
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Minister,

Pursuant to section 45.34 of the *Royal Canadian Mounted Police Act*, I hereby submit the annual report of the Commission for Public Complaints Against the RCMP for the 2011-2012 reporting period for tabling in Parliament.

Yours very truly,



Ian McPhail, Q.C.
Interim Chair

June 2012

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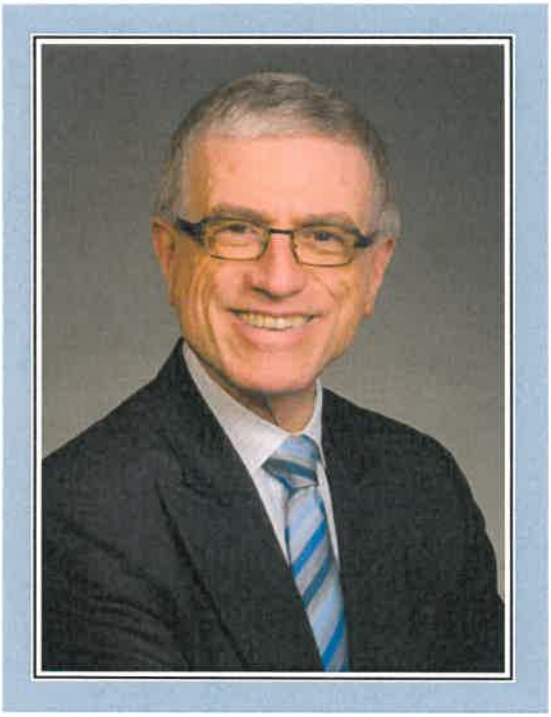
CHAIR'S MESSAGE



Enhancing the accountability of the RCMP and public trust in policing

The Commission for Public Complaints Against the RCMP (CPC) continues to identify and address the policing issues of daily concern to Canadians. The Commission examines the conduct of RCMP members in relation to specific complaints and monitors wider trends and developments in RCMP policy and practices. Its objective is to provide recommendations that will enhance the accountability of the RCMP and contribute to the public's trust and confidence in it and its members.

Within the past year, the Commission issued Final Reports into the in-custody deaths of Raymond Silverfox in Whitehorse, Yukon, Robert Knipstrom in Chilliwack, British Columbia, and Clay Willey in Prince George, British Columbia. The Commission's findings in these reports were largely accepted by the RCMP, and many of its recommendations have already been implemented. For example, significant strides have been made in the Yukon to address the issue of acutely intoxicated persons and how the police respond to and care for these individuals. The Commission continues to monitor this sensitive area with the cooperation of the RCMP. The RCMP has also continued to monitor and strengthen its policies concerning use of force, an issue the Commission has addressed in a number of its recommendations in the current and previous years.

The Commission finalized its review of policing activities related to the 2010 G8/G20 Summits. Given the integrated nature of policing at this event and the volume of documentation originating from different police services, cooperation with the Ontario Office of the Independent Police Review Director was integral to the success of the Commission's review. Although the RCMP's direct interaction with the public was limited during the Summits, the Commission was able to review the planning and security activities leading up to and during the events, and respond to public concerns in that respect.[1]

1 The Commission released its public interest investigation into the actions of RCMP members at the 2010 G8/G20 Summits on May 14, 2012.

Continuing public and media scrutiny of the RCMP increases the importance of the Commission's role of providing unbiased, independent reviews and recommendations.

Following several high-profile claims by members of the RCMP and concerns expressed by the public and by the government, the Commission began an investigation in November 2011 into issues of workplace harassment in the RCMP. The Commission has since undertaken a review of all reported instances of harassment since February 2005. The Commission also invited submissions from RCMP members, employees and members of the public in respect of the issue, and continues to conduct interviews with interested stakeholders. The Commission's independent investigation aims to provide a credible, accurate depiction of the degree to which the RCMP adheres to its own policies, practices and guidelines in dealing with workplace harassment, and to provide concrete recommendations for improvement, if required.

Continuing public and media scrutiny of the RCMP increases the importance of the Commission's role of providing unbiased, independent reviews and recommendations. In order for the Commission to succeed in informing the public and enhancing police accountability, review must be comprehensive and timely. Although the Commission continues to express concern with respect to lengthy delays in RCMP responses to its reports, it expects that the commitment of the new RCMP Commissioner to issue such responses in a more timely fashion will address those delays and strengthen the integrity of the public complaint process and ultimately enhance public confidence in the RCMP.

New legislation and an enhanced mandate will increase the new RCMP review body's ability to examine systemic and policy issues, allow more rigorous and expansive access to documents, and recognize the importance of service standards in ensuring timely and effective review. The Commission continues to support the government's efforts to implement these legislative changes.

New legislation and an enhanced mandate will support the Commission's efforts in maintaining the confidence of Canadians in the RCMP.

- Ian McPhail, Q.C.

CIVILIAN OVERSIGHT OF THE RCMP: MAJOR INITIATIVES

2010 G8 & G20 SUMMITS

The Commission continued work on its public interest investigation in response to a complaint lodged by the Canadian Civil Liberties Association in November 2010 into the conduct of RCMP members involved in providing security at the 2010 G8/G20 Summits in Huntsville and Toronto.

The Commission interviewed a total of 38 people and reviewed over 40,000 pages of documents and hours of RCMP video surveillance.

To supplement the investigation and in light of the integrated nature of the security operation, the Commission sought an independent legal opinion regarding the specific authorities and responsibilities vested in participating police agencies and their members throughout the Summits. The opinion also examines the impact of the *Public Works Protection Act* regulation on RCMP members, as well as the statute's interaction with the *Foreign Mission and International Organizations Act*.

The investigation focused on the planning and operations of Summit security, as this was the primary responsibility of the RCMP. The Commission's investigation concluded that RCMP members were not involved in high-profile incidents at Queens Park or The Esplanade in Toronto on June 26, 2010, nor were RCMP members involved in the arrests at the University of Toronto in the early hours of June 27, 2010. A number of RCMP Public Order Units were deployed in downtown Toronto during the G20 Summit, including at Queen Street and Spadina Avenue on June 27, 2010. The investigation revealed that the RCMP was not involved in any use of force incidents in either Huntsville or Toronto.

The Commission has, however, recommended a number of improvements to RCMP policy and practice in the areas of:

- the approvals of intelligence investigations;
- record keeping;
- integrated post-event debriefings; and
- the clarification of operational policies with policing partners.

The Commission also emphasizes the importance of document management and storage practices that would facilitate post-event review of major security initiatives like the G8/G20 Summits.

[NOTE: The Commission's report, complete with detailed findings and recommendations, was released in May 2012.]

POLICING ISSUES IN THE NORTH

Yukon Pilot Project

In April 2010, the Yukon government and the RCMP invited the Commission to participate in a "Review of Yukon's Police Force."

The Review was initiated in the wake of concerns regarding the manner in which some members of the Yukon RCMP were interacting with the people and communities they serve.

Following the Review, the Commission launched a pilot project aimed at enhancing knowledge of the Commission's activities in the territory. The pilot project commenced in July 2011 and Commission staff travelled regularly to the Yukon and met with various stakeholders, including community organizers, RCMP members as well

as various provincial and municipal government resources. A Yukon-specific guide to complaints and reviews was created and distributed to various organizations, as well as brochures outlining the Commission's activities. The Commission's efforts were well-received and relationships were fostered throughout the territory.

While challenges remain, the Commission has seen an increase in the number of enquiries referred to its complaint office since 2010. The Commission will continue to build upon its success to ensure greater public awareness of the oversight process.

RCMP CONDUCTED ENERGY WEAPON USE

Since the Commission began monitoring RCMP conducted energy weapon (CEW)[2] use four years ago, a trend towards decreased front-line usage and increased use of the weapon as a deterrent has been noted. The Commission is encouraged by the progress made by the RCMP.

Chair-Initiated Complaint and Public Interest Investigation into In-Custody Deaths Proximal to Conducted Energy Weapon Use

Ongoing concerns about the use of the CEW prompted a Chair-initiated complaint and public interest investigation in January 2009. Specifically, the investigation examined relevant incidents which occurred between 2001 and 2009 to identify potential trends.

The report found that those who succumbed to an in-custody death proximal to CEW use often shared several similarities, such as being male, highly agitated, under the influence of a drug, and having pre-existing medical conditions. The report also concluded that typically, the RCMP members involved followed the relevant policy respecting use of force.

2 The conducted energy weapon (CEW) is more commonly known by its commercial brand name, TASER®.

While challenges remain, the Commission has seen an increase in the number of enquiries referred to its complaint office since 2010.

The CPC completed its investigation and provided its report to the RCMP in August 2010. It presented several recommendations for change, including:

- additional training on dealing with those with mental illness;
- enhanced guidelines for consistent documentation; and
- increased reporting.

The Commission received the RCMP Commissioner's response in January 2012. He substantially agreed with the Commission's findings.

The RCMP Commissioner also agreed with all but one of the Commission's recommendations, a national tracking database which would have given the RCMP alone the responsibility of maintaining in-custody death statistics across the country. The Commission considered that the RCMP's current practice reasonably reflects the objective of that recommendation.

[NOTE: The Commission is aiming to publish its final report in summer 2012.]

RCMP Use of the Conducted Energy Weapon, 2010

In terms of the genesis and evolution of the Commission's work on CEWs, the Commission launched its detailed assessment of the RCMP's use of the CEW in 2007 when the Honourable Stockwell Day, then federal Minister of Public Safety, asked the Commission to undertake a "review of the RCMP's protocols on the use of the CEDs[3] and their implementation, including compliance with such protocols." This resulted in the Commission issuing the *RCMP Use of the Conducted Energy Weapon (CEW) – Final Report* in June 2008.

3 Conducted energy devices

Following these reports, the Commission began to systematically analyze the RCMP's use of the CEW on a yearly basis. The first of these reports, released in March 2009, looked at the RCMP's CEW usage for calendar year 2008. And, in June 2010, the Commission published its analysis of the RCMP's use of the CEW for calendar year 2009.

The RCMP provided the Commission with 2010 CEW data from its new Subject Behaviour / Officer Response (SB/OR) Reporting System in June 2011. Consistent with several recommendations previously made by the Commission, the RCMP had implemented this comprehensive on-line use of force reporting system across Canada on January 1, 2010. This database, which consists of information entered by the member responsible for any use of force as soon as possible after the incident, captures data pertaining to use of force by an RCMP officer, including threatened use, un-holstering or the deployment of a CEW.

Among some of the key findings, CEW use (i.e. threatened or actual deployment of the device) by RCMP officers dropped 14% in 2010 and continued a downward trend observed since 2008. In addition, the percentage of reports resulting in the actual deployment (as opposed to the threatened use) of CEWs dropped significantly from 2009; the 2010 figure reflects an ongoing trend whereby CEWs have increasingly been used as a means of deterrence, without the device having to be deployed.

Specific plans regarding the Commission's future research and analytical work related to the RCMP's use of force, and the CEW in particular, have yet to be determined. At a minimum, the Commission will continue to closely monitor the RCMP's use of the device.

[NOTE: The full text of the Commission's latest report, examining the RCMP's use of the CEW from January 1, 2010, to December 31, 2010, is scheduled for release in summer 2012.]

WORKPLACE HARASSMENT

In November 2011, the Commission launched a Chair-initiated complaint and public interest investigation in response to widespread reports concerning RCMP members who alleged that they had been harassed in their workplaces.

The complaint and the investigation focuses on:

- whether RCMP members notified of allegations of harassment and conducting investigations into those allegations followed all proper legislation, policies and procedures; and
- whether existing policies, procedures and guidelines are adequate to ensure that such allegations are dealt with fairly, effectively and thoroughly.

The Commission issued a call for submissions from any interested party in February 2012. The Commission is currently reviewing all relevant documentation and conducting interviews.

> **I am satisfied that, given recent events, there are reasonable grounds for me to conduct a review of RCMP procedures pertaining to workplace harassment.**
>
> - Ian McPhail, Q.C.
> November 2011

NOTABLE COMPLAINTS

COMPLETED CHAIR-INITIATED COMPLAINTS & PUBLIC INTEREST INVESTIGATIONS

Raymond Silverfox

In December 2008, Raymond Silverfox went into medical distress in Whitehorse, Yukon, RCMP cells and later died in hospital. The Chair initiated a complaint focused on RCMP policies regarding access to medical treatment for persons detained in RCMP custody, particularly when alcohol consumption is a factor.

The CPC completed its review and provided its report to the RCMP in September 2010. The report made 39 findings and 17 recommendations. In particular, it found that certain RCMP members and guards on duty:

- failed to comply with policy requiring that intoxicated prisoners be asked to provide a breath sample prior to incarceration;
- failed to ensure that Mr. Silverfox's cell was safe and habitable;
- performed an insufficient number of physical checks in respect of Mr. Silverfox; and
- did not properly communicate information amongst themselves.

The Commission recommended that all members of the Whitehorse RCMP Detachment, as well as guards and matrons employed by the Detachment, be provided with training or further guidance:

- on creating a respectful environment and interacting in a manner consistent with the RCMP's core values;
- regarding signs and symptoms of impairment, and medical conditions that may arise therefrom;
- related to the importance of and the need for meaningful, thorough and consistent communication with respect to persons in custody at the Whitehorse RCMP Detachment; and
- by local medical professionals addressing the recognition of medical issues arising from alcohol or drug consumption.

All of the Commission's findings and recommendations were accepted by the RCMP Commissioner in his May 2011 response. The Commission's final report was released in June 2011.

> **[T]he RCMP's response to the Commission's report reflects its commitment to positive changes in Yukon policing and should represent a model for other jurisdictions.**
>
> - Ian McPhail, Q.C.
> June 2011

In response to one of its recommendations, the Commission recently received the first of three yearly reports from the RCMP's "M" Division regarding member and guard responses to incidents involving acutely intoxicated individuals. The Commission was pleased to note the degree to which such responses are documented and tracked, as was demonstrated by the comprehensive record provided by the RCMP.

Robert Knipstrom

In November 2007, the Chair initiated a complaint into the in-custody death of Robert Knipstrom in Chilliwack, British Columbia.

During his arrest, Mr. Knipstrom was subjected to punches, members' attempts to take him to the ground, pepper spray, a CEW and a baton. He subsequently died in hospital as a result of the effects of cardiac arrest and acute ecstasy intoxication.

In January 2009, in order to expedite the investigation, the Chair expanded his initial complaint to include a public interest investigation led by a civilian investigator.

The CPC completed its investigation and provided its report to the RCMP in November 2009.

The CPC made 28 findings and 4 recommendations in its report, concluding that the RCMP members involved in the case acted reasonably. Specifically, the Commission found that the use and subsequent deployment of the CEW on Mr. Knipstrom was reasonable in the circumstances, and that the members appropriately sought and obtained medical treatment for Mr. Knipstrom.

The CPC did, however, identify several issues with the RCMP's investigation of the incident that had the potential of creating a perception of bias, and made recommendations aimed at preventing such situations in the future.

Following a nearly 21-month delay, the RCMP Commissioner provided his response to the Commission in August 2011. He accepted all but two of the CPC's findings and agreed, wholly or in part, with all but one of the CPC's recommendations. Those areas of disagreement have since been addressed with the implementation of the RCMP's *Responsibility to Report Policy* and the *External Investigation or Review Policy*.

Clay Willey

In July 2003, Clay Willey was arrested by members of the Prince George RCMP Detachment in British Columbia. Mr. Willey was aggressive with the members, and a significant amount of force was used to subdue him both during his arrest and following his arrival at the Detachment, including the use of CEWs. It was determined that Mr. Willey should be transported to the hospital; he went into cardiac arrest in the ambulance and died the following morning. The cause of death was determined to be a cocaine overdose.

The Chair initiated a complaint in November 2009 in recognition of concerns expressed about the level of force used in the incident. In its report, provided to the RCMP in November 2010, the Commission found that while the use of force used to arrest Mr. Willey was reasonable given the circumstances, members failed to treat Mr. Willey with respect or decency during his transportation from the police vehicle to cells. The Commission also made several recommendations, most of which had been addressed through policy changes since Mr. Willey's death.

The RCMP Commissioner responded to the Commission's report in January 2012, agreeing with all of the Commission's findings and recommendations. The Commission's final report was released the same month.

ONGOING INVESTIGATIONS

Christopher Klim

In late December 2007, RCMP members in Vernon, British Columbia, attended Christopher Klim's residence in order to apprehend him pursuant to a mental health warrant. Believing that Mr. Klim was in the process of fatally harming himself, the members breached the door to Mr. Klim's apartment and entered with their guns drawn. Mr. Klim engaged the RCMP members with two knives in his hands. A CEW was applied to Mr. Klim, but one of its probes did not make contact. Mr. Klim advanced towards the RCMP members and was shot. He died as a result of his wounds.

That same month, the Chair initiated a complaint into the shooting death of Mr. Klim. The complaint was launched in light of concerns regarding persons being apprehended under mental health legislation.

The Commission completed its review and provided its interim report to the RCMP in September 2011.

[Note: At the time of publication, the Commission was still awaiting the Commissioner's response to its report.]

Cheryl Anne Bouey

The June 2008 in-custody death of Cheryl Anne Bouey in Prince George, British Columbia, prompted a Chair-initiated complaint. After inflicting harm on herself, Ms. Bouey was found unresponsive in her cell. The Chair asked whether RCMP policies regarding the proper care and safety of persons detained in cells are adequate.

The Commission completed its review and provided its interim report to the RCMP in May 2011.

[Note: At the time of publication, the Commission was still awaiting the Commissioner's response to its report.]

Incident in Kamloops RCMP Detachment Cells

In response to a complaint made by the Elizabeth Fry Society of Greater Vancouver, the Commission initiated a public interest investigation in September 2010 into an incident which occurred at the Kamloops RCMP Detachment in British Columbia. The complaint related to the conduct of those RCMP members involved in the monitoring of two unidentified women engaging in explicit sexual activity while detained in detachment cells on August 18, 2010.

The investigation examines whether the RCMP members or other persons appointed or employed under the authority of the *Royal Canadian Mounted Police Act* (RCMP Act) involved in the incident complied with all relevant laws and policies, as well as whether such policies are adequate.

The Commission completed its investigation and provided its interim report to the RCMP in March 2012.

Valeri George

The September 2009 shooting death of Valeri George in Fort St. John, British Columbia, prompted a Chair-initiated complaint. Mr. George was shot by RCMP Emergency Response Team (ERT) members as he fled his home several days after allegedly shooting at a vehicle containing his spouse and children. The Chair's complaint is particularly concerned with the use of force by the RCMP ERT members.

The RCMP's investigation into this Chair-initiated complaint is ongoing.

Charlene Danais

In August 2011, Charlene Danais was taken into custody by RCMP members and placed in cells in Assumption, Alberta. She was found unresponsive in her cell early the next morning and pronounced dead after being transported to the hospital.

The Chair initiated a complaint shortly thereafter, asking whether the involved members complied with policies relating to persons held in RCMP custody, and examining the adequacy of those policies.

The RCMP's investigation into this Chair-initiated complaint is ongoing.

Conducted Energy Weapon Use on 11-year-old

In April 2011, RCMP members responded to an emergency call from a residence in Prince George, British Columbia, where an adult had been stabbed. The 11-year-old suspect in the incident was located on a nearby property. A CEW was used on the boy, believed to be armed with a weapon, when he exited that property; he was then taken into custody and transported to hospital for assessment.

The Chair initiated a complaint in order to examine the circumstances of the incident, and particularly the use of CEWs in respect of children.

The RCMP's investigation into this Chair-initiated complaint is ongoing.

ADDITIONAL REVIEWS & FURTHER INVESTIGATIONS OF NOTE

This year, the CPC's reviews and further investigations dealt with a variety of issues, including:

- actual or perceived conflicts of interest on the part of public complaint investigators;
- the use of restraint mechanisms for uncooperative detainees;
- use of force;
- disclosure of information to third parties; and
- involvement in civil disputes.

The following are examples of reviews from the past fiscal year.

Use of Force

Use of CEW reasonable in respect of violent and resistant individual

The driver of a truck fled a traffic stop; RCMP members caught up to the vehicle at a residence and arrested the driver for failing to stop for police. The driver ignored the members and a physical altercation ensued, culminating in one of the members deploying his CEW twice in probe mode.

The Commission issued a final report, finding that the use of the CEW was reasonable and necessary to arrest and restrain a violent individual who refused to submit to the members' clear and repeated commands.

Search and Seizure

No consent existed when object of search was not revealed

An RCMP member stopped the complainant's vehicle for failing to signal a turn. The member asked if he could search the interior of the vehicle; the complainant consented and a search was conducted.

RCMP policy requires that consent given in such context be informed. The Commission concluded, based on statements provided by those involved, that the true object of the traffic stop was to search for controlled substances in the vehicle. In failing to articulate that to the complainant, the member did not obtain proper consent. The Commission is awaiting the RCMP Commissioner's response.

Arrest and Detention

Arrest for failing to provide identification deemed unreasonable

The complainant, who appeared to be hitchhiking, was stopped by an RCMP member and asked for identification. When he refused to provide identification, he was arrested for obstructing a police officer. He was not charged.

The Commission concluded that the complainant was not obliged to provide identification absent a reason for the request. No such reason being articulated, the Commission found that the arrest for obstruction was unreasonable in the circumstances. The Commission additionally found that the member did not properly provide the complainant with his rights pursuant to the *Canadian Charter of Rights and Freedoms* (Charter). The Commission is awaiting the RCMP Commissioner's response.

Failure to provide Charter rights for second offence unreasonable

Members of a municipal police service arrested the complainant for uttering threats. The municipal police then notified the RCMP of the arrest, as they noted that the complainant was the subject of an outstanding warrant for a separate offence. RCMP members attended the municipal police premises to interview the complainant. They did not advise him of his rights pursuant to the Charter.

The Commission noted that where there is more than one reason for detention, all reasons must be disclosed to the detainee. Similarly, where a new reason arises, the police have an obligation to so inform the detainee and to offer him or her the right to counsel. The Commission found that the RCMP members failed to provide the complainant with his rights, as required. The Commission is awaiting the RCMP Commissioner's response.

Family Disputes

Supervisor inappropriately reviewed file regarding his own complaint

An RCMP member contacted his own detachment while off-duty to complain that his teenaged daughter may be having a relationship with an adult male. The matter was cursorily investigated and the couple determined to be similarly aged. Nonetheless, the investigator met with the young man and provided him with material concerning the age of consent.

The Commission concluded that the perception existed that the investigation was influenced by the fact that the complainant was a more senior member of the detachment, and that the member was in a conflict of interest, as he reviewed the investigation in question in his capacity as acting supervisor. In doing so, the member was privy to all of the details of the investigation, including private information, that would not have been available to any normal member of the public who had brought forward such a complaint. The Commission is awaiting the RCMP Commissioner's response.

Complaint concerning personal matter was adequately investigated

A complainant alleged that an RCMP member had been having an affair with her husband, resulting in neglect of duty. The complainant had reported the matter to the RCMP and was dissatisfied with the investigation conducted.

The Commission concluded in its final report that the issue was a personal matter, that the investigation conducted was sufficient under the circumstances, and that the member had not neglected her duties.

PUBLIC ACCOUNTABILITY

As part of its mandate, the Commission seeks to examine policies, procedures and guidelines which inform or influence the individual member conduct complained of, and to identify perceived gaps or deficiencies in those instruments.

In examining and making recommendations aimed at correcting systemic problems, the Commission's goal is to identify areas of improvement for the RCMP, while at the same time informing the federal Minister of Public Safety and the public of its concerns. To that end, the Commission follows up with the RCMP on the status of recommendations the Commissioner has indicated will be implemented.

This year, the RCMP responded to a single major outstanding recommendation previously made by the Commission by implementing its policy regarding the removal of property in civil disputes.

The Commission is still waiting for the implementation of other recommendations accepted by the RCMP, one of which has been outstanding for over four years.

[T]he Commission's goal is to identify areas of improvement for the RCMP, while at the same time informing the federal Minister of Public Safety and the public of its concerns.

RECENTLY IMPLEMENTED RECOMMENDATIONS

Removal of Property in Civil Disputes

A number of the Commission's Final Reports in past years have recommended that the RCMP implement policy regarding the involvement of members in civil disputes. Specifically, the Commission called for guidelines surrounding the nature and limitation of such involvement in order to provide clarity to members and to the public alike.

In March 2012, the RCMP implemented a policy specifically in respect of the removal of property in civil disputes.

The new policy clarifies those situations which necessitate the involvement of RCMP members, which should in most cases be limited to keeping the peace. The policy addresses incidents, including domestic property disputes and tenancy issues, and provides guidance for members in acting pursuant to judicial orders.

RECOMMENDATIONS AWAITING IMPLEMENTATION

Commission recommendations resulting in policy commitments from the RCMP Commissioner which remain outstanding include:

Policy Commitment	CPC Report	Commitment Date
A policy on releasing details regarding sensitive investigations	Report into Disclosure by the RCMP of its Investigation Regarding the Taxation of Canadian Corporate Dividends and Income Trusts	February 2008
A policy dealing with requests for exhibits consistent with the *Mutual Legal Assistance in Criminal Matters Act*	Final Report into a Public Complaint	March 2009
Clarification of policy with respect to contacting callers when responding to 9-1-1 calls	Final Report into a Public Complaint	September 2010
A policy with respect to members reviewing their own reports	Final Report into a Public Complaint	September 2010
Amendment of national policy with respect to prisoner logbook documentation and reviews and the clear identification of the roles and responsibilities of supervisors and commanders	Final Report into a Chair-initiated Complaint Regarding the In-Custody Death of Mr. Raymond Silverfox	May 2011
Revision of and improvement to RCMP policy with respect to the provision of medical assistance, in consultation with medical professionals	Final Report into a Chair-initiated Complaint Regarding the In-Custody Death of Mr. Raymond Silverfox	May 2011

An effective review and complaints regime requires that recommendations be implemented in a timely fashion.

- Ian McPhail, Q.C.

TIMELINESS OF COMMISSIONER'S NOTICES

The timeliness of the RCMP Commissioner's Notices, which are responses to the Commission's Interim Reports that the RCMP is required by statute to provide, has been the subject of comment for the past three years.

Commissioner Bob Paulson publicly stated in February 2012 that he was committed to responding to the Commission in a timely manner, and that procedures had been changed in order to respond to Commission reports more quickly. The Commission views steps such as this one as positive; in the interest of accountability and confidence in the public complaint process, reducing the backlog must be a priority.

The CPC received 24 Commissioner's Notices from the RCMP in the current year, 50% of those being received in the last quarter. The Commission is encouraged by the progress made by Commissioner Paulson. Nonetheless, at the close of the year, 51 Commissioner's Notices remained outstanding. The Commission remains concerned at this increasingly large number; 75% of the outstanding Commissioner's Notices have been outstanding for more than six months. Of those, over half have been outstanding for more than a year.

As the CPC has continued to state, these delays threaten the integrity of the public complaint process. The CPC cannot finalize its reports and provide them to complainants or the subject RCMP members until the Commissioner's Notice is received.

Once again, the CPC strongly encourages the RCMP to assign the necessary resources to ensure the timely delivery of responses to the CPC's Interim Reports.

Outstanding Commissioner's Notices
as of March 31, 2012

Number of Days	Number of Outstanding Notices	Average Number of Days Outstanding
Less than 30 days	0	N/A
From 30 to 60 days	5	59
From 61 to 180 days	8	138
From 181 to 365 days	17	259
Over 365 days	21	509

IMPROVING THE COMPLAINT SYSTEM

TRACKING OF PUBLIC COMPLAINTS

CPC Review of the RCMP's Public Complaint Record, 2010

In accordance with paragraph 45.47*(b)* of the RCMP Act, the Commission established the Review of the RCMP's Public Complaint Record Project (Review of the Record) in 2007 with the primary objective of examining, on an annual basis, all completed complaint dispositions stemming from public complaints against the RCMP.

At the end of each calendar year, the RCMP provides the Commission (typically within six months) with all completed public complaints (known as dispositions) that were received and finalized within the previous calendar year. The Commission then analyzes the data and makes its findings and recommendations public.

Data collected for the 2010 Review of the Record report was based on all completed public complaint dispositions received by the Commission before July 1, 2011 (2,030), with a recorded complaint date between January 1, 2010, and December 31, 2010.

The three most common complaint allegations were "Neglect of Duty" (35%), "Improper Attitude" (20%) and "Improper Use of Force" (10%). These allegations have represented the three most common factors motivating civilians to lodge public complaints against the RCMP since this project began in 2007.

Once received by the RCMP, there are three ways in which a public complaint can be resolved. In 2010, the RCMP issued a Final Report in 51% of all cases, entered into an informal resolution in 34% of cases, and issued a Notice of Direction (termination) in 10% of cases. As of April 2010, the withdrawal of complaints was no longer an option under RCMP policy.[4] This change in policy was a positive step by the RCMP and served to alleviate concerns with withdrawn dispositions, which were identified in previous Review of the Record reports. However, the Commission remains concerned that the RCMP has, in some cases, continued to informally resolve more serious allegations (e.g. "Improper Use of Force").

The Commission will continue to work closely with the RCMP to identify trends and issues in order to improve the quality of, and enhance public confidence in, the public complaints system.

The Review of the Record provides national and regional perspectives on how the RCMP responds to public complaints across the country.

- Ian McPhail, Q.C.

4 In 2010, the RCMP accepted a complaint withdrawal in 4% of cases.

TARGETS AND PERFORMANCE FOR 2011-2012

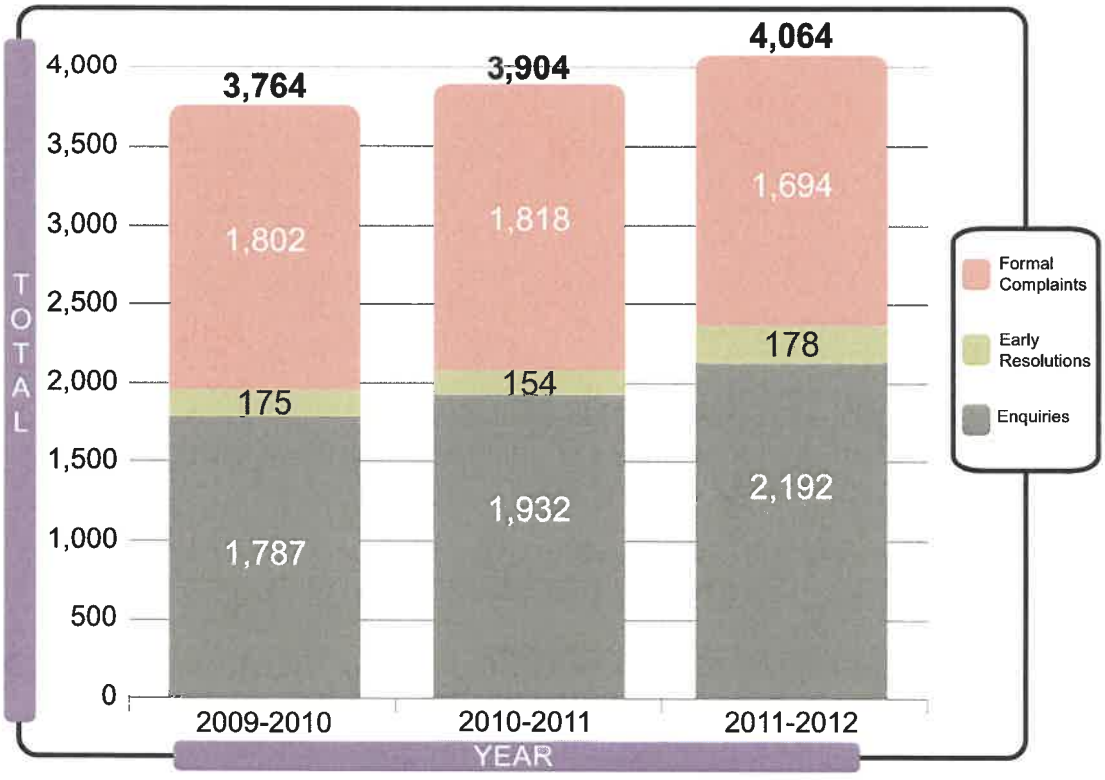
PUBLIC COMPLAINT PROCESS[5]

Much of the Commission's work continues to centre on providing direct service to members of the public concerned about the actions of RCMP members.

The CPC's National (Complaint) Intake Office in Surrey, British Columbia, processed 4,064 general enquiries, early resolutions, and formal complaints against the RCMP this year.

In 2011-2012, the CPC continued to receive approximately 70% of all complaints directly from the public, with the RCMP receiving the rest.

Total Formal Complaints, Early Resolutions and Enquiries



5 A full explanation of the complaints and review process can be found in Appendix 2.

COMPLAINT TRENDS

The type of complaint issues raised in 2011-2012 followed a similar trend to previous years.

The most common public complaint issue relates to RCMP member attitude. This category can include behaviours that are perceived to be:

- dismissive;
- rude;
- non-responsive;
- biased;
- unfair; or
- lacking in empathy.

The second most common complaint issue relates to the quality of RCMP criminal investigations. This issue can arise when the complainant feels that the criminal investigation:

- was not thorough;
- was improperly carried out;
- was not timely;
- lacked witness interviews;
- included mishandled evidence and examinations; and
- contained inaccurate reports.

The third most common complaint issue relates to improper arrest. This category can include arrests involving:

- invalid warrants;
- failure to provide a reason for the arrest;
- inappropriate use of mental health arrest provisions;
- lack of evidence; and
- failure to provide Charter rights, or right to legal counsel.

10 Most Common Complaint Issues	% of Complaint Issues
Attitude other than abusive language	18.9
Criminal investigation quality (RCMP)	14
Improper arrest	9.6
Incidents arising from traffic stops	7.2
Police physical abuse	6.4
Detention	5.8
Incidents involving alcohol/drugs	5.7
Search and seizure	3.2
Property mishandling	2.7
Incidents involving restraints	2.7

REVIEW TRENDS

This year, 259 complainants were not satisfied with the RCMP's handling of their complaint and asked the CPC for a review of the RCMP investigation.

The most common review issues relate to the quality of RCMP criminal investigations, member attitude and arrest.

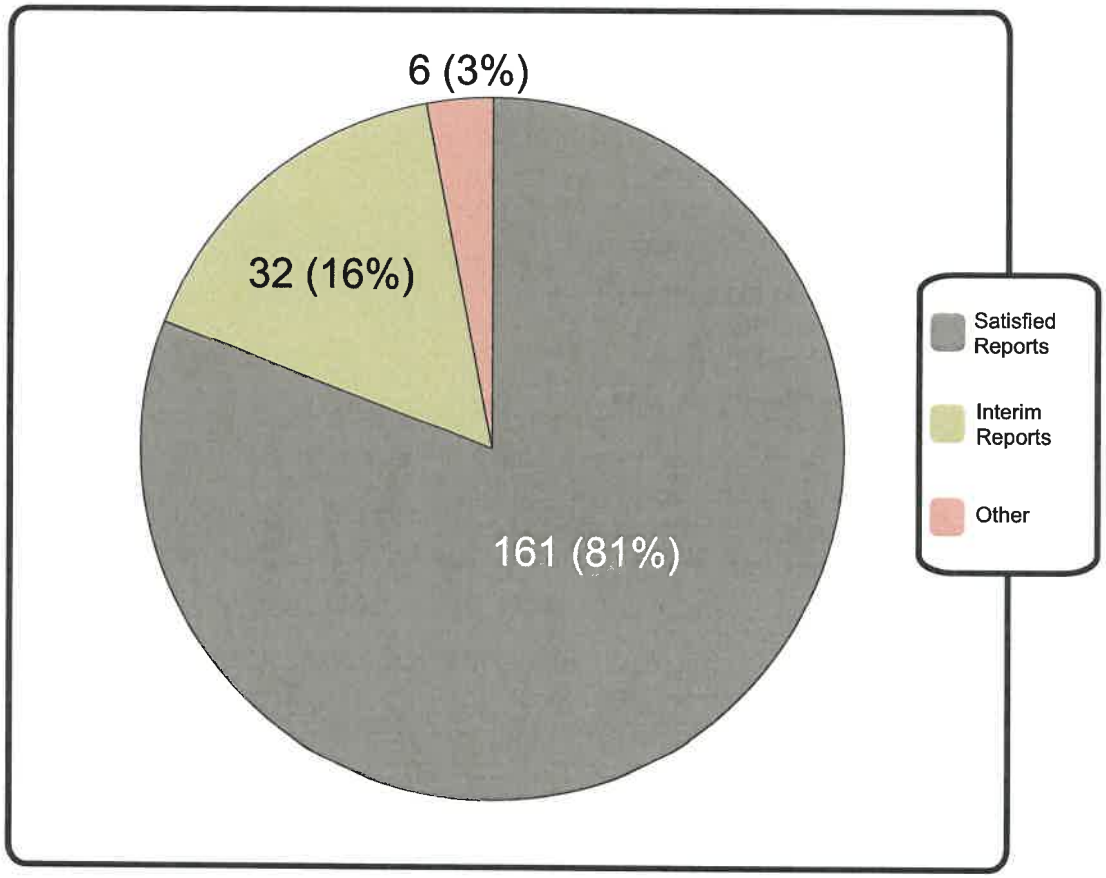
Issues regarding RCMP member use of force and search and seizure were also well-represented in the CPC's review reports.

The Commission issued a total of 199 review reports in the current year. Of these:

- 161 reports, or 81%, were Satisfied Reports, issued in cases where the CPC was satisfied with the RCMP's disposition of the complaint.
- 32 reports, or 16%, were Interim Reports, issued in cases where the CPC was not satisfied with the RCMP's disposition of the complaint and in most cases made recommendations to address any deficiencies.
- The remaining 6 reports, or 3%, included those issued in response to Chair-initiated complaints, and those in which the complainant withdrew his or her request for review.

The RCMP Commissioner accepted approximately 88% of the Commission's adverse findings and 84% of its recommendations.

CPC Decisions: Satisfied vs Interim Reports



SERVICE STANDARDS

When handling a formal complaint against the RCMP, the aim of the CPC is to steer each complaint through the process—from the initial lodging through to its conclusion—in as timely a manner as possible and ideally within one calendar year.

Conducting the full range of complaint investigation and review within the one calendar year target is dependent upon the RCMP's response times.

Action	Number of Days Recommended by the CPC
Complaint received by CPC and forwarded to RCMP	4 days
RCMP investigates and delivers a report to the complainant	180 days
If complainant is dissatisfied with RCMP report, CPC requests all material from RCMP	4 days
CPC commences review process - RCMP forwards material to the CPC (within 30 days) - CPC conducts review and sends interim report to RCMP*	120 days
RCMP responds	30 days
CPC issues final report to complainant and RCMP	30 days

* If, however, the CPC is satisfied with the RCMP's investigation, the review process ends and a final report is provided to the complainant as well as the RCMP at this time.

The CPC continues to enforce its internal performance-based service standards, consistent with its view that to be effective, it is imperative that review be timely. It is in furtherance of this principle that the CPC recommends, as it has in past reports, that the RCMP apply service standards to its response times as outlined in the table above.

These actions are aimed at enhancing the ability of complainants, RCMP members and Canadians to hold the CPC and the RCMP accountable for timely responses to public complaints.

Interim & Satisfied Reports

The CPC remains committed to ensuring that at least 80% of its reports are finalized within 120 days of receiving the request for review. This year, the CPC achieved a performance rate of 96%.

Final Reports

The CPC has a 30-day service standard for completing its Final Reports after receiving a Commissioner's Notice. In the past fiscal year, the Commission delivered 21 Final Reports to the RCMP, 90% of which were within the service standard.

STAKEHOLDER ENGAGEMENT / PUBLIC EDUCATION

Over the past three years, with the benefit of interim funding, the Commission has steadily increased its number of stakeholder engagements throughout the country.

Organizations such as municipality associations, police boards, provincial oversight bodies, Aboriginal groups and organizations, mental health associations, and groups which assist newly arrived immigrants, are all vital to helping increase awareness of an individual's right to make a complaint against the conduct of an RCMP member.

Aboriginal Community

One of the Commission's long-standing goals in terms of stakeholder engagement has been to build and consolidate relationships with target populations, such as Aboriginal and ethno-cultural communities.

Key activities included attending various national conferences, establishing partnership meetings with key national Aboriginal organizations and the creation of Aboriginal-specific print media and promotional material to enhance and encourage access to the complaints process by Aboriginal groups.

Stakeholder Engagement

In addition to making inroads with the Aboriginal community, Commission staff have attended numerous public education events, conferences and annual general meetings held across the country in the past year, including:

- the National Conference on Mental Health;
- the National Association of Friendship Centres Annual General Meeting and Youth Forum;
- the Assembly of First Nations Annual General Assembly; and
- several municipal association conferences from across Canada.

These events have provided the Commission with the opportunity to increase awareness of the complaints process and receive feedback from important stakeholders.

Feedback has been consistently positive in terms of support for an independent complaints process and the perception of fairness to complainants and police officers alike.

Police and Legal Community Engagement

The Commission continues to pursue training opportunities for its staff relating to policing practice. The RCMP has provided the Commission with training and demonstrations relating to its use of force policy and techniques, and has facilitated visits to its Depot Division in order for Commission staff to become familiar with training offered to cadets and to regular members.

These collaborative activities have allowed the Commission to keep abreast of relevant changes in policing policy and practice, while at the same time enabling staff to provide education, information and resources relating to the Commission's mandate and processes.

The Commission also continues to participate in relevant Continuing Legal Education opportunities in order to enhance the knowledge of its legally trained staff, and to deliver presentations relating to its function.

Feedback has been consistently positive in terms of support for an independent complaints process and the perception of fairness to complainants and police officers alike.

In addition, the Commission liaises with members of the legal community in order that they may provide training, and also contribute expertise to the Commission's ongoing projects. By doing so, the Commission fosters greater understanding of its role among those who may be called upon to provide advice with respect to issues in which the Commission is engaged.

WORKING WITH PROVINCIAL PARTNERS

The CPC continues to work with its provincial partners to harmonize police oversight processes to the extent possible under existing law. This includes:

- creating a "no wrong door" approach to the intake of complaints about the police; and
- ensuring that Canadians receive the benefit of the expertise and experience of all police oversight bodies across the country.

Police Complaints Related to the 2010 G8/G20 Summits

The CPC worked with Ontario's Office of the Independent Police Review Director (OIPRD) for several months prior to the 2010 G8/G20 summits. This ensured that the respective provincial and federal police complaints mechanisms worked seamlessly and that the public had a "no wrong door" means of making complaints.

Given the integrated nature of the summit security operation, the Commission Chair and the Director of the OIPRD found it necessary to cooperate to the extent possible on their respective reviews to ensure that all police services involved in the security operations were held accountable.

Commission and OIPRD officials liaised regularly regarding the progress of their respective reviews, in particular, the disclosure of RCMP documents. Both the Commission and the OIPRD received and reviewed significant volumes of RCMP documents in a coordinated fashion.

Canadian Association of Civilian Oversight of Law Enforcement

The Commission continued working with Canadian Association of Civilian Oversight of Law Enforcement's (CACOLE) executive team to maintain and update its website in order to ensure easy access to information about CACOLE, its mandate and its annual conference. The website can be found at www.cacole.ca.

Federal & Provincial Oversight Partners Annual Meeting

In October, the Commission held its annual forum for heads of police review organizations across Canada. The group meets to share best practices, identify emerging issues and enhance working relationships.

The fall 2011 session covered such issues as:

- the Aboriginal community's perspective on police oversight;
- police strip searches;
- policing major events in Canada;
- social media and its effects on police oversight; and
- mental health issues in the correctional system.

CHALLENGES AND OPPORTUNITIES

The RCMP continues to face regular public criticism over member conduct and the manner in which the institution responds to such behaviours. There is a growing demand for police accountability and increasing reports of an erosion of public trust in the ability of the organization to meet public expectations.

The Commissioner of the RCMP has indicated that the organization is on the brink of losing the public trust it needs in order to do its job effectively. However, he has also signaled that this crisis of public confidence can be addressed, in part, through effective independent review of the issues that challenge the RCMP's credibility. This was evident through enhanced RCMP collaboration with the Commission during the G8/G20 Summits review and in respect of the ongoing CPC-led systemic review of workplace harassment complaints within the RCMP.

On June 20 2012, the Government of Canada tabled Bill C-42 which is intended to strengthen the RCMP review and complaints process and support a re-invigoration of police accountability, through more effective independent civilian review of the conduct of the RCMP and its members.

Bill C-42 presents an opportunity to pursue long-standing systemic issues as well as shine a light on new concerns emerging from the realities of policing in the 21st century. The RCMP is vital to the safety and well-being of Canadians. Canadians want it to succeed. These reforms will support the RCMP's efforts in maintaining the confidence of Canadians and delivering the police services Canadians expect and rightly deserve. The Commission will continue to play its part in ensuring that the RCMP remains an accountable and trustworthy institution that Canadians believe it can and must be, while simultaneously ensuring a smooth transition into a new complaints and review mechanism.

There is a growing demand for police accountability and increasing reports of an erosion of public trust in the ability of the organization to meet public expectations.

APPENDIX 1: FINANCIAL REPORT

Commission for Public Complaints Against the RCMP
Budget and Expenditures

2011-2012 Actual Spending	
Salaries	5,604
Operating Expenditures	2,277
Total	7,881

2012-2013 Planned Spending	
Salaries	5,314
Operating Expenditures	2,745
Total	8,059

Notes:

1. Numbers represented are in thousands.
2. In 2011-2012, the CPC received additional funding from Treasury Board Management Reserve to support its work ($1,465K salaries and $1,195K operating expenditures).
3. In 2012-2013, planned spending includes the renewal of such interim funding (as received in 2011-2012).

APPENDIX 2: THE COMPLAINTS & REVIEW PROCESS

ENQUIRIES, EARLY RESOLUTIONS AND FORMAL COMPLAINTS

The Commission remains focused on offering the public a range of options for the handling of complaints or concerns. To this end, when a member of the public contacts the Commission, they are provided with access to an experienced analyst who then assesses the needs of that person and identifies possible options for a way to address their concerns.

Enquiries

Enquiries may include requests for information about police authority, obtaining assistance in furthering an investigation or gaining an understanding of the role of Crown counsel. This alternative measure appreciably decreases the demands placed on the complaint system.

Early Resolution

Commission analysts serve as objective intermediaries to assist with conflict resolution between the public and the RCMP, when appropriate.

It should be noted that complaints involving statutory offence allegations or those alleging excessive use of force or other serious matters are not considered to be appropriate for early resolution.

Formal Complaints

When a complaint is filed with the CPC, an analyst works with the complainant to define the nature of the allegations and formalize the complaint. The complaint is then sent to the RCMP for investigation.

If the complainant is dissatisfied with the outcome of the RCMP's investigation, he or she can request that the CPC conduct a review.

REQUESTS FOR REVIEW

If complainants are not satisfied with the RCMP's response to their complaint, they have the right to request that the CPC independently review the propriety of the members' conduct and the RCMP's handling of the matter.

Upon receiving a request for review, the CPC:

1. requests all relevant information regarding the complaint; and
2. analyzes and examines the information provided by both the complainant and the RCMP.

If the Commission is satisfied with the actions of the RCMP and the manner in which it addressed the complaint, it will issue a "Satisfied Report."

Interim Reports, Commissioner's Notices and Final Reports

On the other hand, if the Commission is not satisfied with the actions of the RCMP and the manner in which it addressed the complaint, it will issue an "Interim Report" outlining its findings and recommendations aimed at improving RCMP conduct, policies and procedures to the Commissioner of the RCMP and the Minister of Public Safety.

The Commission may make recommendations that address individual member conduct or broader policy issues.

The RCMP Commissioner prepares a response—the Commissioner's Notice—in which he describes what action the RCMP has taken or will take in light of the findings and recommendations. The CPC then prepares its final report—the Final Report After Commissioner's Notice—which is sent to the complainant and the members involved.

For example, the same allegation of lack of professionalism on the part of an RCMP member could be managed in three ways:

Enquiry

If a motorist is spoken to by an officer at a traffic stop in a manner which the motorist believes is inappropriate and wants to express his concerns without entering into the formal complaint process, or even providing his name, the analyst will listen to the issues described by the individual, record the details and provide them in a written report to the detachment commander.

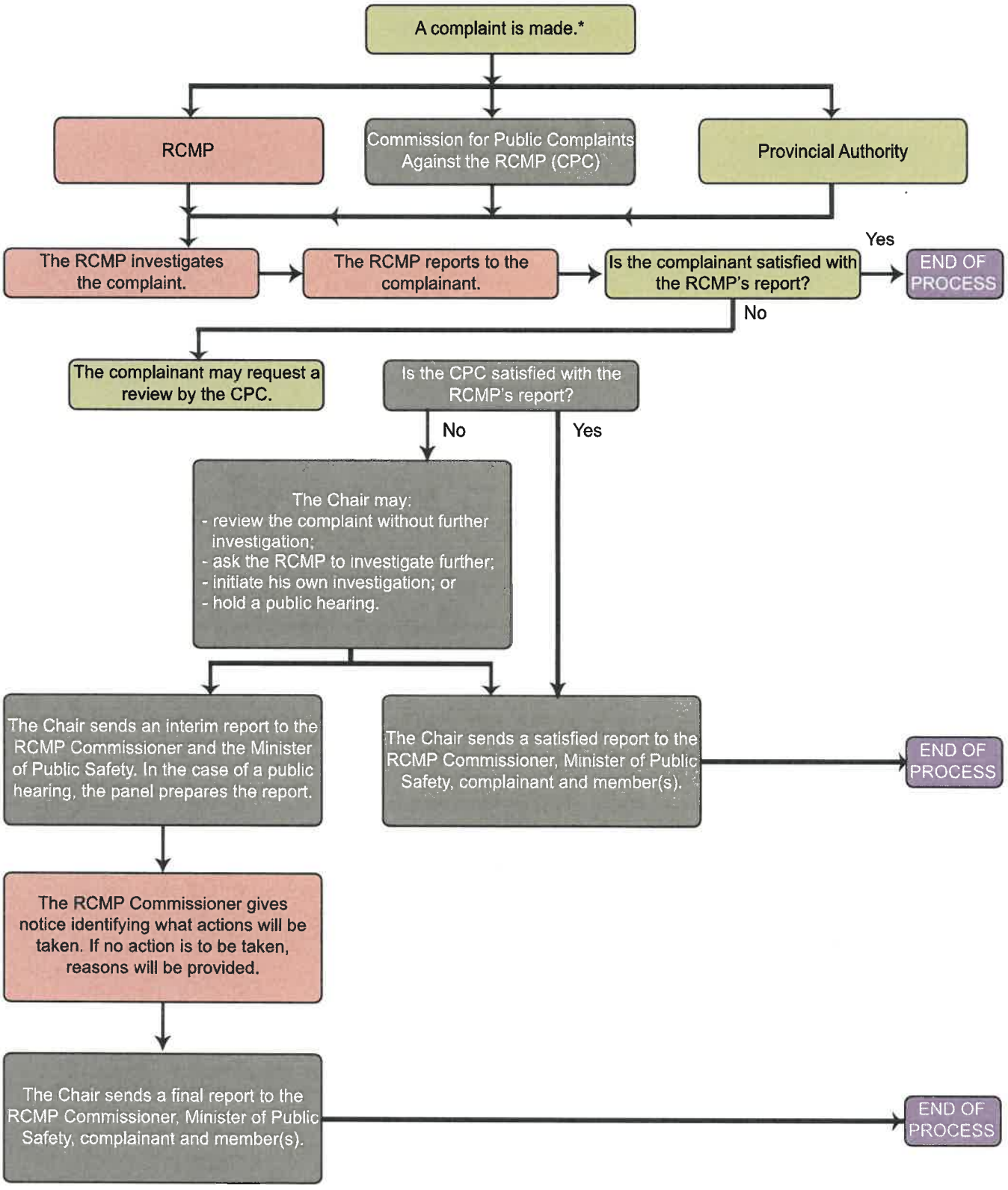
Early Resolution

Another motorist in similar circumstances may not wish to lodge a formal complaint. After clarifying the individual's issues and goals, a CPC analyst can facilitate discussions with the RCMP in an effort to reach a solution that is satisfactory for both the complainant and the RCMP.

Formal Complaint

A different motorist in this situation may wish to lodge a formal complaint and participate in an investigation, receive a written response from the RCMP and have the ability to request that the Commission conduct an independent review.

FORMAL COMPLAINT & REVIEW PROCESS FLOWCHART



* The Chair can initiate his own complaint. In addition, at any stage of the process, the Chair may institute an investigation or a hearing where he considers it advisable in the public interest.

Exhibit "E"

This is Exhibit " E " referred to in the
affidavit of Harsha Walia
sworn before me at Vancouver, BC
this 19th day of November 2020

Jessica Magnet

A Commissioner for taking Affidavits
For British Columbia

Civilian Review and Complaints Commission for the RCMP

Commission civile d'examen et de traitement des plaintes relatives à la GRC

ANNUAL REPORT
2016-2017

Canada

The Civilian Review and Complaints Commission for the RCMP (the Commission) is an agency of the federal government, distinct and independent from the RCMP.

VISION: Excellence in policing through accountability.

MISSION: To enhance the accountability of the RCMP by providing civilian review of RCMP activities and member conduct.

MANDATE: As set out in Parts VI and VII of the *Royal Canadian Mounted Police Act*, the mandate of the Commission is to:

- receive complaints from the public about the conduct of RCMP members;
- conduct reviews when complainants are not satisfied with the RCMP's handling of their complaints;
- initiate complaints and investigations into RCMP conduct when it is in the public interest to do so;
- review specified RCMP activities; and
- report findings and make recommendations.

STRATEGIC OBJECTIVES:

- Ensure an effective public complaint process.
- Increase the Commission's investigative capacity.
- Undertake reviews of specified RCMP activities.
- Enhance relations with provincial and territorial governments, as well as police review bodies.
- Increase public education and engagement.

The Civilian Review and Complaints Commission for the RCMP can be found online at:
www.crcc-ccetp.gc.ca or www.complaintscommission.ca.

Telephone from anywhere in Canada: 1-800-665-6878

TTY: 1-866-432-5837

Minister of Public Works and Government Services

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The Honourable Ralph Goodale, P.C., M.P.

Minister of Public Safety and Emergency Preparedness
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Minister,

Pursuant to section 45.52 of the *Royal Canadian Mounted Police Act*, I hereby submit the annual report of the Civilian Review and Complaints Commission for the RCMP for the 2016–2017 reporting period for tabling in Parliament.

Yours truly,



Ian McPhail, Q.C.

Chairperson
June 2017

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MESSAGE FROM THE CHAIRPERSON



This past year marked a number of important milestones for the Commission.

This year marked the first anniversary of the CRCC's new Intake Unit and its move to the national capital region. Our public complaint, review and investigation teams operating in concert has allowed us to streamline processes, provide better service to the public and reallocate funding to new programs for the Commission.

For example, in 2016, following our investigation into policing practices in northern British Columbia, and amidst growing public concern surrounding policing in remote communities generally, the Commission established an office in British Columbia.

This will facilitate direct relationships with stakeholders and allow us to conduct more public complaint investigations in the first instance and more closely monitor those left to the RCMP, thus modernizing our delivery service to better reflect the government's priority of improving the relationships with Indigenous peoples.

Significant inroads have been made during the last twelve months to increase public awareness of the Commission's role and I am encouraged by our developing relationships with a number of communities and Indigenous peoples.

Initial feedback from our partners in British Columbia indicates that we are on the right path. I am confident that we are advancing an oversight model that has potential for implementation in other parts of Canada and thereby contributing to the RCMP's ability to enhance public trust.

> **“I am confident that we are advancing an oversight model that has potential for implementation in other parts of Canada and thereby contributing to the RCMP’s ability to enhance public trust.”**

As the government strives to strike a better balance between strengthening national security and upholding Charter and privacy rights, senior Commission staff participated in Public Safety Canada’s examination of review agencies. Furthermore, I had the opportunity to appear before the House and Senate committees on Public Safety and National Security to share my thoughts as to how the Commission could work collaboratively with a Committee of Parliamentarians charged with overseeing the government’s national security accountability framework.

Regrettably, the follow-up report to our 2013 Public Interest Investigation Report into Workplace Harassment in the RCMP found that our recommendations, which were aimed at addressing harassment and fostering respectful workplaces, have not been adequately implemented to date.

The 2017 follow-up report found that harassment remains a serious and persistent problem for the RCMP and that RCMP culture needs to change.

Since the public release of the report into workplace harassment in the RCMP, the Commission has heard from many serving and former RCMP members who endorse the findings and recommendations. The Commission recommended that the Minister of Public Safety professionalize elements of the RCMP organizational structure and moreover, that steps be taken to modernize the RCMP’s governance structure. If implemented, I believe the recommendations would contribute to enhancing public trust in this important Canadian Institution.

With the process of selecting the next Commissioner underway, I look forward to working with the RCMP as partners in the police accountability framework.

THE COMPLAINT & REVIEW PROCESS

THE PUBLIC COMPLAINT PROCESS

The Commission accepts complaints about the on-duty conduct of RCMP members from individuals:

- Directly involved;
- Who witnessed the conduct itself;
- Authorized to act on behalf of the complainant.

Complaints about RCMP member conduct can also be made by the Commission Chairperson if the Chairperson determines that there are reasonable grounds to investigate. Chairperson-Initiated Complaints are processed in the same manner as a complaint from a member of the public.

A complaint must be made within a year of the alleged conduct occurring.

If the Commission Chairperson is of the opinion that it would be in the public interest for the Commission to investigate a complaint instead of the RCMP, the Commission will conduct a Public Interest Investigation. Public Interest Investigations can be launched in relation to a complaint received from a member of the public, or as a result of a Chairperson-Initiated Complaint.

The Commission may refuse to deal with a complaint if it:

- Is not filed within a year of the occurrence;
- Concerns decisions regarding disciplinary measures;
- Has been, or could be, more appropriately dealt with through a different process; or
- Is trivial, frivolous, vexatious or made in bad faith.

A complaint can be lodged with:

- The Commission;
- Any RCMP member;
- The provincial authority responsible for receiving complaints against police in the province in which the subject of the complaint took place.

THE REVIEW PROCESS

When a complaint is made, typically the RCMP carries out the initial investigation into the complaint and reports back to the complainant.

If a complainant is not satisfied with the RCMP's handling of their complaint, they may request that the Commission conduct a review of the RCMP's investigation.

Upon such a request, the Commission obtains all relevant material from the RCMP and assesses the RCMP's investigation of the complaint.

> The Commission is an independent agency and does not act as an advocate either for the complainant or for RCMP members.

The role of the Commission is to make findings after an objective examination of the information available and to make recommendations that improve policy and performance of the RCMP and its members.

If, in conducting its review, the Commission finds the RCMP did not conduct a thorough investigation, the Chairperson can request that the RCMP make further enquiries.

Following its review, if the Commission is satisfied with RCMP's handling of the complaint, the Chairperson issues a **Satisfied Report** to the RCMP Commissioner, the Minister of Public Safety, the complainant, and the member(s) involved, thereby ending the review process.

If, at the conclusion of the review, the Commission is not satisfied with the RCMP's handling of the complaint, the Chairperson will issue an **Interim Report**, outlining various findings and recommendations directed at the RCMP, which will be sent to the RCMP Commissioner and the Minister of Public Safety.

Once the **Interim Report** has been reviewed by the RCMP, the RCMP Commissioner gives notice, identifying which recommendations the RCMP will act on. If no action is to be taken, the Commissioner must provide reasons.

After receiving the **Commissioner's Response**, the Chairperson considers the RCMP's position and prepares a **Final Report**. This report is then provided to the RCMP Commissioner, Minister of Public Safety, the complainant, the member(s) involved, and the appropriate provincial Minister. This completes the Commission's review process.

> Complainants must request a review within 60 days of receiving the RCMP's formal response to their complaint.

The Commission's complaint and review process chart can be found in Appendix A.

THE YEAR IN REVIEW

PUBLIC COMPLAINTS

This year, the public lodged 2,761 complaints (of these complaints, 2,291 were lodged with the Commission, while 470 were made directly to the RCMP).

Of the total number of complaints received, 2,301 met the criteria laid out in section 45.53 of the *Royal Canadian Mounted Police Act* and were assigned to a public complaint investigator.

As with previous years, the top five allegation categories for public complaints in 2016-17 were:

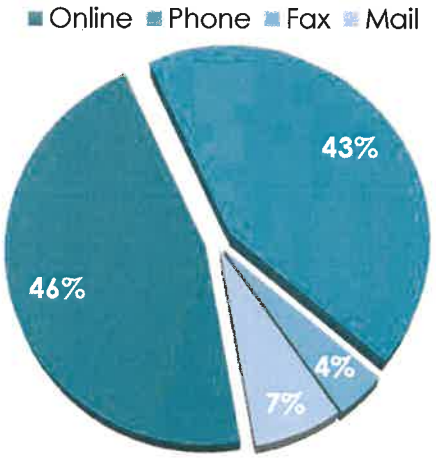
- Neglect of Duty
- Improper Attitude
- Improper Use of Force
- Irregularity in Procedure
- Improper Arrest

A detailed summary of all complaint allegation types can be found in Appendix C.

During the last twelve months, the Commission streamlined its complaint process to make it more accessible for the public and more efficient for the Commission's intake team. Improvements were made to processes related to its Case Management System, creating efficiencies and allowing for more robust statistical data analysis.

Additionally, the Commission actively promoted the use of its online complaint form, which led to a significant increase in the number of complaints filed online. This being said, Commission staff continued to process the same number of complaints lodged using its toll-free phone number.

HOW THE PUBLIC SUBMITS COMPLAINTS TO THE COMMISSION



As well, a newly designed information package was developed to provide complainants with an overview of the process. This new tool serves as a reference for complainants, explaining both the role of the Commission and the role of the RCMP.

NEW REQUESTS FOR REVIEW

If a complainant is not satisfied with the RCMP's handling of their public complaint, legislation allows for the complaint to be referred to the Commission for review. This year, the Commission received 233 new requests for review.

COMMISSION PUBLIC COMPLAINT REVIEW REPORTS

This year, the Commission issued 238 public complaint review reports, including:

- 167 reports (75%) agreeing with the RCMP's handling of the complaint.
- 57 interim reports (25%) disagreeing with the RCMP's handling of the complaint and/or making recommendations to the RCMP Commissioner.

The Commission issued 14 Final Reports after receiving the Commissioner's Response to findings and recommendations made by the Commission.

RCMP COMMISSIONER'S RESPONSES

This year, the RCMP Commissioner accepted approximately 82% of the Commission's adverse findings and 79% of its recommendations.

At this time, the Commission is awaiting the RCMP Commissioner's response to over 70 interim reports. The Commissioner's response forms part of the Commission's final report. Some of these interim reports have been with the RCMP for over a year. Complainants frequently contact the Commission to express their frustration over the RCMP's delays in responding to interim reports, which prevents the timely resolution of their cases.

The Commission's recommendations vary in response to the individual complaints being reviewed, and, while some are based on broader organizational policies and processes, many are specific to the complaint in question.

Commission recommendations may include:

- Members receive guidance or further training;
- RCMP policies, procedures or guidelines be clarified or amended;
- Supervisors receive guidance on their roles and responsibilities;
- Public complaint investigators receive guidance or further training regarding their role in the public complaint process;
- Public complaint investigations be carried out even though the RCMP had determined that such investigations were not necessary; and,
- The complainant be provided with an apology.

SAMPLE REVIEW FINDINGS

The public complaint process entitles complainants who are not satisfied with the RCMP's investigation and handling of their complaint to have it independently reviewed by the Commission.

The following are examples of findings and recommendations made by the Commission during the last reporting year.

Police Service Dog Bites a Suspect During his Apprehension by RCMP Members

The complainant's son fled from police upon being told that he was under arrest for breaching court-imposed conditions. In the ensuing chase, he was located by a police service dog (PSD) and was bitten. He suffered injuries that required surgery. The complainant alleged that excessive force was used in the apprehension of her son.

In its report disposing of the complaint, the RCMP did not support the complainant's allegations.

The Commission concluded in its Interim Report that the subject member unreasonably deployed his PSD by placing him in a cardboard dumpster, that the subject member did not maintain sufficient control over the PSD once deployed, and that his application of foot strikes in an attempt to disarm and secure the complainant's son was reasonable in the circumstances.

In his Response to the Commission's Interim Report, the RCMP Commissioner stated that he disagreed with the findings that the subject member unreasonably deployed the PSD by placing him in the cardboard dumpster, and that the subject member did not maintain sufficient control over the PSD. The Commissioner made no mention of the finding with respect to the subject member's application of foot strikes in his Response. Consequently, the Commissioner did not support the Commission's recommendations with respect to providing the subject member with operational guidance, or reviewing the PSD's history to determine whether the PSD is suitable for continued deployment and/or requires retraining.

The Commission expressed particular concern with the Commissioner's failure to acknowledge the lack of control that the subject member had over the police service dog, especially given the subject member's own admissions regarding the difficulty he had in getting the PSD to release the subject. After considering the Commissioner's Response, the Commission was satisfied that its findings and recommendations, as detailed in the Interim Report, were supported and reiterated them in its Final Report.

Use of Force During Apprehension Under Mental Health Legislation

The complainant threatened to kill herself and left her home in a distraught state. After a family member contacted the RCMP, the complainant was apprehended under provincial mental health legislation and taken to a hospital for examination. She alleged that the RCMP used excessive force when apprehending her, and that the RCMP member involved refused to remove her handcuffs when she complained of the pain they caused.

In such a circumstance, the police officer was justified under the *Criminal Code* in using reasonable force to apprehend the complainant.

The RCMP did not support the allegations in its report disposing of the complaint.

The Commission determined that, having reasonable grounds to believe that the complainant had a mental disorder and that as a result of that disorder was likely to cause harm to herself, the RCMP member was authorized to apprehend the complainant under mental health legislation.

The Commission found that the force used was reasonable and not excessive.

The Commission also determined that the use of handcuffs was reasonable in the circumstances and that it was reasonable to wait until the arrival at the hospital to remove them from the complainant.

Entry into a Residence Following a Complaint of Domestic Violence

Mr. A filed a complaint including an allegation that RCMP members unlawfully entered his residence in response to a criminal complaint of domestic violence. The RCMP did not support this allegation in its report disposing of Mr. A's complaint.

The Commission found that the RCMP members entered for the very purpose explained in the RCMP's policy on violence in relationships and that it was reasonable for them to do so.

The *Criminal Code* provides a statutory authority for a police officer to enter a dwelling house to perform an arrest or prevent the continuation of a crime even though the police officer does not have a warrant or specific authorization to enter.

The law requires that the police officer have "reasonable grounds to suspect" that entry into the residence is necessary to prevent imminent bodily harm, as the facts of this case indicated.

Alleged Inadequate Investigation and Bias

The complainants were dissatisfied with the RCMP's investigation and failure to pursue charges relative to allegations of wrongdoing they had made against employees of a city. They also took issue with the RCMP's conduct in subsequent proceedings and correspondence. Among their allegations, the complainants claimed that the RCMP could not conduct a fair and unbiased investigation because of a conflict of interest, and that senior personnel failed to properly oversee the investigation.

The Commission initiated a public interest investigation concerning the complaint.

The Commission found in its Public Interest Investigation Report that there was no information to support the allegation that senior RCMP personnel failed to oversee and direct members in conducting and completing a complete and thorough investigation; that there was no information to support the allegation that, because of a conflict of interest, the RCMP could not conduct a fair and unbiased investigation; that the communication between RCMP members and the complainants during the initial criminal investigation and subsequent correspondence was reasonable in the circumstances; and that the course of action followed by RCMP members in responding to the allegations made by the complainants against a specific member was reasonable in the circumstances, and a public complaint investigation was ultimately commenced and concluded.

The Commissioner agreed with all the Commission's findings, which were therefore reiterated in the Commission's Final Report.

CHAIRPERSON-INITIATED COMPLAINTS AND INVESTIGATIONS

Report into Workplace Harassment in the RCMP

In February 2016, pursuant to a request from the Minister of Public Safety, the Chairperson initiated a review into workplace harassment in the RCMP.

Following an extensive investigation, the Commission publicly released its report into workplace harassment in the RCMP in May 2017. The report contained 9 findings and 10 recommendations.

> Most notably, the review concluded that abuse of authority remains a significant problem in the RCMP.

The Commission found deficiencies with the RCMP's harassment policy and procedures, as well as training. More broadly, the Commission determined that the RCMP failed to introduce sustained and comprehensive measures necessary to address the problem of harassment.

Given the long-standing issue of workplace harassment, which the Commission attributes in part to the culture of the RCMP, the Commission made two recommendations to the Minister of Public Safety: direct the RCMP to professionalize elements of the organizational structure; and modernize the RCMP governance structure to introduce civilian governance and/or oversight and to enhance accountability.

RCMP Policing in Northern British Columbia

In February 2017, the Commission released its Final Report on RCMP Policing in Northern British Columbia.

Launched in consideration of concerns raised by individuals and various human rights and civil liberties organizations, the investigation examined RCMP member conduct relating to:

- the policing of public intoxication;
- the incidence of cross-gender police searches;
- the use of force;
- the handling of files involving youth; and
- the handling of missing persons reports and domestic violence reports.

While the Commission's investigation did not result in findings of systemic misconduct by RCMP members in northern British Columbia, it did find several policy and reporting weaknesses, issues with policy compliance by members, and the need for more robust training and supervision.

> The Commission's report makes 45 findings and 31 recommendations aimed at enhancing RCMP transparency and accountability through improved policies, procedures, and training, enhanced supervisory review, and better reporting.

The community engagement carried out by the Commission, a key element of its investigation, revealed a perception of RCMP bias against Indigenous peoples, and a lack of trust in the RCMP in communities throughout the region. Engagement activities also highlighted a lack of public awareness of the Commission, its role and the public complaint process.

In recognition of the need to build relationships with communities served by the RCMP, the Commission has opened an office in British Columbia to enhance its presence, increase public awareness of its role, and ensure that it is positioned to respond to public concerns and complaints about RCMP policing in British Columbia, particularly with respect to Indigenous peoples and communities.

Police-Involved Shooting of Valeri George

In December 2016, the Commission issued its Final Report on the October 2009 Chairperson-initiated complaint into the shooting death of Valeri George in Buick Creek, British Columbia.

In September 2009, Mr. George stopped a vehicle occupied by his spouse and children, and shot out the tires. He then returned to his residence. After unsuccessful attempts to speak with Mr. George over the next few days, the RCMP deployed its North District Emergency Team (NDERT) to Mr. George's residence to effect a warrant for his arrest.

After NDERT made numerous attempts to negotiate Mr. George's surrender, he drove down his driveway at a high rate of speed, while carrying a firearm. It appeared Mr. George was about to ram a barricade that had been set up by NDERT, placing at least one of the members at risk of serious harm or death. NDERT members fired at the vehicle, and Mr. George was fatally struck and died at the scene.

The Commission issued its Interim Report on the RCMP investigation of the Chairperson's complaint in June 2015.

The report contained 49 findings and 8 remedial recommendations addressing RCMP training and procedures with respect to Emergency Response Teams and critical incidents.

The Commissioner agreed with 42 of the Commission's findings, agreed with 3 findings with additional commentary, and disagreed with 4 findings.

The Commissioner agreed with 6 of the Commission's 8 recommendations; however, in several instances the Commissioner stated his support of a recommendation but outlined steps taken by, or current policies of, the RCMP that do not reasonably address the recommendation.

ONGOING INVESTIGATIONS

The Commission has over 30 Chairperson-initiated complaints and/or investigations underway. Of interest, 12 of these are led by the Commission's new office in British Columbia, of which six involve incidents where individuals were bitten by police service dogs.

The Commission's Chairperson-initiated complaints and investigations pertain to a broad range of issues, such as:

- whether the discharging of a firearm in the direction of a vehicle was reasonable;
- whether RCMP members responded in a reasonable and timely manner to a report of sexual assault by an Aboriginal youth;
- whether the forced removal of a detainee's bra was reasonable in the circumstances, in accordance with RCMP policies and whether those policies are adequate.

Of these ongoing Chairperson-initiated complaints and/or investigations, a number have been the subject of Interim Reports by the Commission, which is awaiting the RCMP Commissioner's written response to issue its Final Reports on those cases. For instance:

Chairperson-initiated Complaint into Fatal Collision

In April 2016, the Commission issued a report regarding a Chairperson-initiated complaint into a fatal collision following an attempted traffic stop. RCMP members had followed a vehicle that had failed to stop at a traffic checkpoint but discontinued the pursuit shortly thereafter. Moments later, the fleeing vehicle entered an intersection at a high rate of speed and collided with a truck, causing the death of a motorist. The Commission's report concluded that the RCMP's national policies relating to traffic checkpoints and police vehicle pursuits are inadequate, and made recommendations to improve them.

Public Interest Investigation Concerning RCMP's handling of Missing Persons Report

In June 2016, the Commission issued a Public Interest Investigation Report into a complaint relating to the RCMP's handling of a report of a missing Aboriginal woman. The young woman, who was reported missing by her mother, was eventually found murdered. In its Interim Report, the Commission found errors in the missing persons investigation and recommended changes to the RCMP's policies, procedures and training relative to the investigation of missing persons.

Complaints Concerning Witness Protection Program

In June and October 2016, and January 2017, the Commission issued three reports into complaints by persons protected under the Witness Protection Program or seeking protection under this program.

Complaint into Arrest and Detention of Aboriginal Woman

In July 2016 a complaint was received from an Aboriginal woman who had been arrested inside a home for public mischief, dragged from the home, and lodged in a jail cell for 9 hours with no charge.

She alleged that the arrest was not due to her behaviour but because she is Aboriginal.

This was a common theme in the Commission's report on policing in northern British Columbia. The Chairperson determined that it was in the public interest for the Commission to conduct the investigation itself.

The investigation revealed that poor supervision was a significant factor, and the scope was expanded by the Chairperson given that the complainant had no way of knowing this.

During the course of the investigation, it was also learned that a member of the RCMP had withheld evidence from the Commission; this matter is being handled by way of a Code of Conduct investigation.

The Commission took on this case as an example of how to better deal with Aboriginal people. The complaint investigation was not turned over to the RCMP, direct and regular feedback has been provided to the complainant, and the complainant has been provided details of the progress as the investigation continues, including receiving a summary of the Commission's findings and recommendations at the same time as the RCMP.

The matter is currently awaiting a response from the RCMP Commissioner on the findings and recommendations.

Implementation of Recommendations in Justice O'Connor's Report of the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar

In January 2016, the Chairperson initiated a review into the RCMP's implementation of the relevant recommendations contained in Justice O'Connor's *Report of the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar*.

As part of the review, the Commission is examining several aspects of the RCMP's national security activities, including:

- Centralization and coordination of national security operations
- National security training
- Domestic information-sharing
- Foreign information-sharing
- Border lookouts requests
- Detention of Canadians abroad

The intent of the review is to foster public confidence in the RCMP's national security activities by providing an independent, external examination of an operational area that may not otherwise be subject to outside scrutiny.

Police-Involved Shooting of Gregory Matters

In October 2015, the Commission issued its Public Interest Investigation Report on the shooting death of Gregory Matters in 2012 during a confrontation with an Emergency Response Team. The Commission made 57 findings and 9 recommendations concerning RCMP training, policies and procedures.

The Commission received the RCMP Commissioner's Response in this matter in January 2017.

The Commission awaits the appointment of a Vice-Chairperson to complete its Final Report in this matter.

RCMP Response to Anti-Fracking Protests

Between June and December 2013, several demonstrations resulted in confrontations between RCMP members and protestors, who were protesting the New Brunswick government's grant of permits and licences to Southwestern Energy Resources for shale gas testing and hydraulic fracturing (fracking).

The Commission received over 20 public complaints alleging improper arrest and excessive use of force, as well as a petition with more than 200 names that echoed the substance of the public complaints.

In response to this public concern, the Chairperson determined in July 2013 that the Commission would investigate these complaints itself, and the Chairperson subsequently initiated in December 2014 his own complaint into these incidents.

To date, Commission investigators have interviewed more than 120 RCMP members and civilian witnesses. As a result of its investigation, the Commission has received a significant amount of documentation (including written documentation and video evidence) from the RCMP, including as recently as March 2017.

BRITISH COLUMBIA OPERATIONS

The Commission's investigation into policing in northern British Columbia made it clear that an expanded presence in the province was required and that work with key stakeholders needed to be undertaken to build effective relationships with communities served by the RCMP.

Consequently, the Commission opened an office in British Columbia to enhance its presence in the province, increase public awareness of its role, and ensure that it is positioned to respond to public concerns and complaints about RCMP policing in British Columbia particularly with respect to Indigenous peoples and communities.

This year, the British Columbia Operations group focused its efforts on:

- Increasing the number of Commission–led investigations in the province;
- Monitoring ongoing RCMP investigations and implementation of Commission recommendations;
- Expanding public engagement with an emphasis on First Nations communities;
- Developing a more effective liaison function with key British Columbia stakeholders; and
- Fostering a greater use of informal resolution of public complaints and developing an approach that is respectful of Indigenous peoples' culture and practices.

While not exhaustive, the following provides an outline of the work being conducted by the British Columbia office:

- Twelve ongoing public interest investigations, most relating to conduct of RCMP members dealing with Indigenous peoples and reflecting problems identified in the *Policing of Northern British Columbia Report*;
- Three Chairperson-initiated public interest investigations. While two are on-going, one was completed by a Commission-led informal resolution using a psychologist;
- Outreach efforts consisting of 429 First Nations members in 13 communities; and
- Meetings with 17 different service providers and educators involving 61 people.

The progress made by the British Columbia office is encouraging, and reaction from stakeholders, including Indigenous communities, the Government of British Columbia and partner organizations, has been positive.

The Commission is playing a leadership role and through the first year of operation, setting the stage and modelling a process within the policing oversight community that is providing concrete results to the public and particularly Indigenous communities.

It is clear from this initiative that the concept of specialized processes tailored to various communities is an important and needed development in the evolution of civilian oversight of law enforcement in Canada.

PUBLIC EDUCATION AND STRATEGIC RELATIONSHIPS

The Commission's outreach efforts are focused on educating the public and building relationships with stakeholders to increase visibility of the Commission, and ensure that individuals who require its services are aware of its mandate and processes.

PUBLIC EDUCATION

For the first time in several years, public information and education materials were developed and made available in languages other than English and French to raise awareness of the Commission in northern communities.

The Commission also increased its presence on social media in an effort to reach a broader audience. This was done to promote the day-to-day work of the Commission and its outreach efforts, and increase opportunities for the public to engage with, and ask questions of, the Commission.

STRATEGIC RELATIONSHIPS

Contracting Provinces

Over the last year, the Commission continued to work with both RCMP and government officials to discuss updates on the number and nature of complaints in each province or territory. In addition, these meetings allowed the Commission to be aware of provincial and territorial government concerns and be responsive to their needs with respect to oversight of the RCMP.

Civilian Oversight Partners

In addition to attending events to expand its relationship with oversight partners, the Commission hosted its annual meeting of provincial police oversight agencies and special investigation units. This year's meeting included discussions on use of force and de-escalation techniques, as well as how, and in which circumstances, police oversight agencies should use social media.

As outgoing president of the Canadian Association for Civilian Oversight of Law Enforcement (CACOLE), the Chairperson co-hosted the Association's 2017 annual conference in Newfoundland and Labrador. Conference panelists included journalists, and representatives from both law enforcement oversight agencies and police unions. Sessions included presentations and discussion of issues such as crisis management, the civilianization of police oversight, and training for oversight agencies.

The Commission also continues its relationship with CACOLE's United States counterpart, the National Association for Civilian Oversight of Law Enforcement (NACOLE). This relationship allows both organizations to share best practices and possible solutions to common challenges faced by oversight agencies in both Canada and the United States.

CORPORATE OVERVIEW

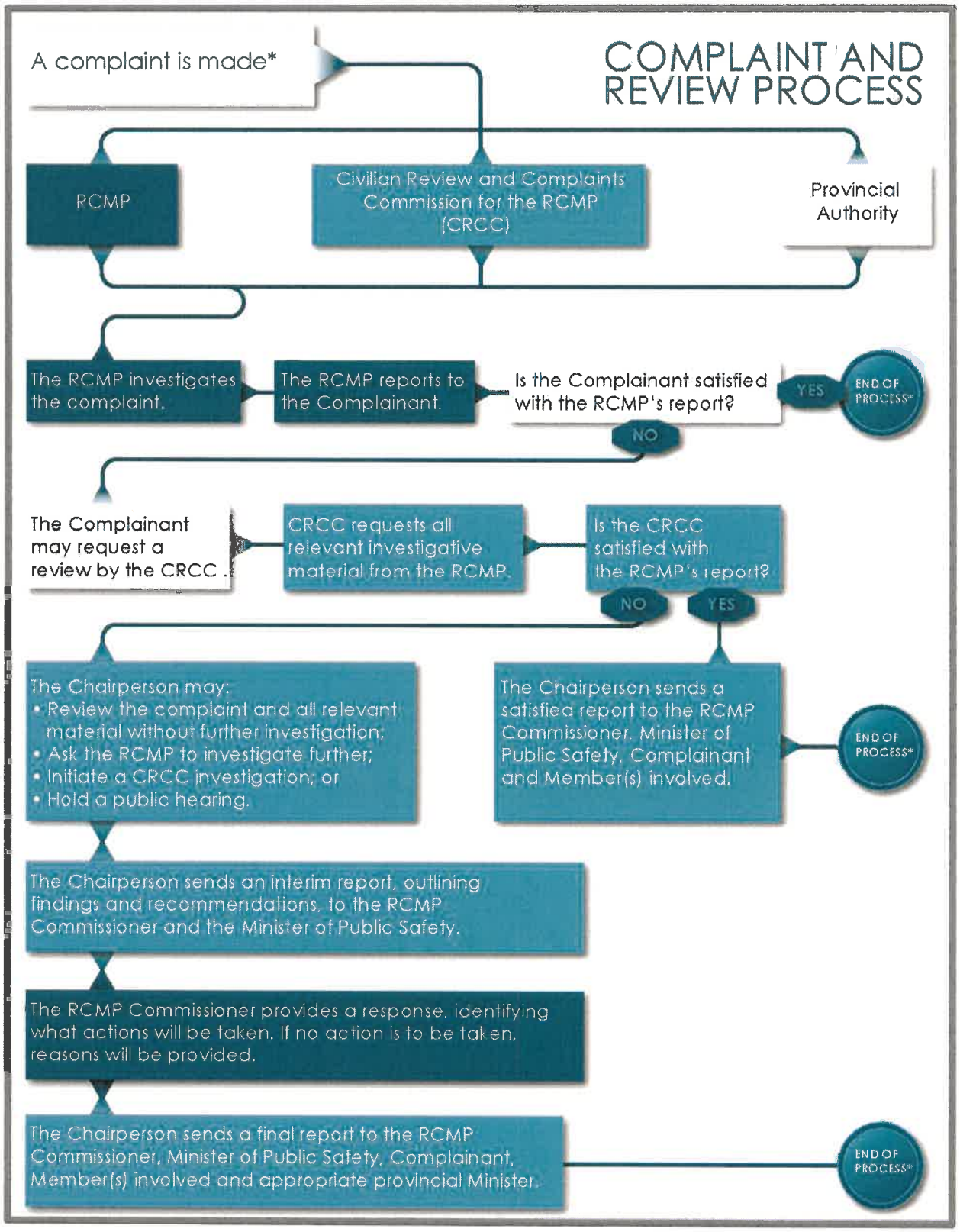
The Commission streamlined several internal processes to reallocate funds to new programs critical to its mandate.

Below are the Commission's preliminary expenditures for fiscal year 2016-2017. Adjustments to these figures will be made and final amounts will be reported in the Public Accounts of Canada.

Total Expenditures 2016–2017	
Salaries	5.8 M
Operating Costs	2.4 M
Employee Benefit Plans	0.85 M
Total	**9.0 M**

Note: Numbers represented are in millions.

APPENDIX A



* The Chairperson can initiate a complaint. In addition, at any stage of the process, the Chairperson may institute an investigation or a hearing where it is considered in the public interest to do so.

APPENDIX B – SERVICE STANDARDS

To ensure timely responses to public complaints, the following response times have been put in place by the Commission for its role in the complaint and review process:

Action	Response Time
The Commission forwards public complaints it receives to the RCMP.	4 days
The RCMP investigates and delivers a report to the complainant.	Determined by the RCMP
The Commission requests all relevant material from the RCMP upon being notified by the complainant that they are not satisfied with the RCMP's response.	4 days
The Commission conducts its review and sends either: • a Satisfied Report to the complainant, the RCMP and the Minister of Public Safety; or • an Interim Report to the RCMP with findings and recommendations.	120 days
The RCMP responds to the Interim Report.	Determined by the RCMP
The Commission issues its Final Report.	30 days

This year, 80% of complaints accepted by the Commission were forwarded to the RCMP within the 4-day service standard. Additionally, 94% were forwarded within a 10-day timeframe.

This year, 82% of the Commission's Satisfied and Interim Reports were completed within the 120-day timeframe. Furthermore, 57% of its Final Reports were delivered within the 30-day timeframe. (Of note, 86% were completed within 60 days.)

APPENDIX C – CLASSIFICATION OF COMPLAINTS

The RCMP classifies the allegations made in public complaints into 16 categories. To provide consistency for complainants, the Commission uses the same classifications. The full list, and corresponding definitions, is included here:

A - Improper Attitude	This category addresses allegations related to a member's deportment and may include behaviours that are characterized as abusive, rude, vulgar, profane, discourteous, impolite, disrespectful, sarcastic, arrogant, indifferent, angry, obnoxious, belligerent, aggressive, intimidating, threatening, combative, provoking, ridiculing, and/or mocking. Allegations may also relate to a perceived lack of impartiality or fairness, lack of empathy, lack of concern for someone's welfare, or a wanton lack of discretion.
B - Improper Use of Force	This category addresses allegations of a use of force that was unnecessary, inconsistent with the circumstances, applied too frequently, harshly, or for an excessive a duration. Allegations may include inappropriate use of soft-hand and hard-hand techniques, police holds, dog bites, tear gas or pepper spray, asps or baton, tasers, or any other weapon or instrument, whether prescribed or not.
C - Improper Use of Firearms	This category addresses an improper use of force specific to the use, display, or discharge of a firearm.
D - Irregularity in Procedure	This category addresses a violation of the intent and spirit of an "administratively enforced" statute, such as the Privacy Act, the Access to Information Act, the RCMP Act and any Force policy relating to those acts. Some of the more common allegations relate to members obtaining information, directly or indirectly, from a police data bank, without justification, and / or for reasons not consistent with a duty being prescribed by law or Force policy. Also included in this category are CRCC findings (Interim Reports) of improper termination of a public complaint.
E - Driving Irregularity	This category addresses allegations of improper or unsafe use of police transport by a member, whether in violation of any law, or without due consideration of others. In particular, it refers to public complaints about pursuits and emergency vehicle operations.

F - Neglect of Duty	This category addresses allegations that a member failed or refused to perform a duty, or provide a service that members are expected to provide, or did perform a duty or provide a service, but in a manner which does not meet RCMP standards. Included are allegations of refusal to identify oneself, refusal or failure to provide timely and adequate service, mismanagement of a public complaint, inadequate or incompetent investigations, improper care and handling of prisoners, failure to release detained persons into a safe haven at the time of release, and failure to provide adequate, prompt, and competent medical care. This category also includes relatively common allegations of deficient reporting that a member failed or refused to record/report the facts of a public complaint, a service provided, or investigation conducted. It also includes allegations that a member fabricated, recorded, or reported facts that were incorrect or untrue, or that a member concealed and/or failed to record, or report correct or true facts – referring to notebooks, occurrence reports, crime reports, reporting forms, court documents, or records of any type, including written, audio, video, audio-video, electronic, etc.
G - Statutory Offence	This category addresses allegations of violations of the Criminal Code, Federal statute, provincial statute, or municipal by-law, even though such complaints may be referred to the Crown or the appropriate RCMP Officer for decisions on possible prosecution or RCMP Code of Conduct proceedings.
H - Mishandling of Property	This category addresses allegations relating to property held in police custody. It includes loss of property (including money), unreasonable detention of property, damage to property in police custody, improper disposal of property, or failure to account for money or property.
I – Evidence Irregularity	This category addresses allegations that a member provided erroneous testimony in a judicial proceeding. It also addresses allegations that a member failed or refused to report the facts of a public complaint, a service provided, or investigation concealed, and/or failed to testify to correct or true facts.

J - Oppressive Conduct	This category addresses severe misuse of police authority or powers, aggravated harassment, unfounded, unfair, or embellished charging, and threats or intimidation via any of the foregoing.
K - Improper Arrest	This category addresses allegations of a violation of the intent and spirit of the Charter. Public complaints often allege violations of Charter section 10 (failure to inform person promptly of reason for arrest and of rights to counsel, and/or promptly provide person with opportunity to exercise rights, etc.) which are part and parcel of a proper arrest.
L - Improper Persons / Vehicles Search	This category addresses personal or vehicular searches where there is an allegation of a violation of the intent and spirit of the Charter.
M - Improper Search of Premises	This category addresses allegations of a violation of the intent and spirit of the Charter relating to the search of a premise, including unlawfully entering for the purposes of a search and/or remaining in a premise pursuant to a search.
N - Policy	This category addresses public complaints about RCMP policies or their application.
O - Equipment	This category addresses public complaints about RCMP equipment or its use.
P - Service	This category addresses public complaints about a lack of response or an inability to provide adequate, timely service. This refers to a general police service, as opposed to a specific service provided by a specific member as referred to in the Neglect of Duty category.

Exhibit "F"

This is Exhibit " F " referred to in the
affidavit of ...Harsha Walia.....
sworn before me at ...Vancouver, BC.....
this ...19th... day of ...November.....2020.

.....
A Commissioner for taking Affidavits
For British Columbia

Civilian Review and Complaints Commission for the RCMP

Commission civile d'examen et de traitement des plaintes relatives à la GRC

ANNUAL REPORT
2017 - 2018

Canada

The Civilian Review and Complaints Commission for the RCMP (the Commission) is an agency of the federal government, distinct and independent from the RCMP.

VISION: Excellence in policing through accountability.

MISSION: To enhance the accountability of the RCMP by providing civilian review of RCMP activities and member conduct.

MANDATE: As set out in Parts VI and VII of the *Royal Canadian Mounted Police Act*, the mandate of the Commission is to:

- Receive complaints from the public about the conduct of RCMP members;
- Conduct reviews when complainants are not satisfied with the RCMP's handling of their complaints;
- Initiate complaints and investigations into RCMP conduct when it is in the public interest to do so;
- Review specified RCMP activities; and
- Report findings and make recommendations.

STRATEGIC OBJECTIVES:

- Strengthen the public complaint process.
- Strengthen the Commission's investigative capacity.
- Conduct specified activity reviews of RCMP programs, policies and practices.
- Enhance relations with provincial and territorial governments, as well as police and federal review bodies.
- Increase outreach, public education and engagement efforts.

The Civilian Review and Complaints Commission for the RCMP can be found online at:
www.crcc-ccetp.gc.ca or www.complaintscommission.ca.

Telephone from anywhere in Canada: 1-800-665-6878

TTY: 1-866-432-5837

Minister of Public Works and Government Services

Cat. No.: PS75-2

ISSN: 2369-3118

The Honourable Ralph Goodale, P.C., M.P.

Minister of Public Safety and Emergency Preparedness
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Minister,

Pursuant to section 45.52 of the *Royal Canadian Mounted Police Act,* I hereby submit the annual report of the Civilian Review and Complaints Commission for the RCMP for the 2017–2018 reporting period for tabling in Parliament.

Yours truly,



Guy Bujold
Chairperson

June 2018

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MESSAGE FROM THE CHAIRPERSON



I was privileged to take on the interim leadership position at the Civilian Review and Complaints Commission for the RCMP in October 2017.

Civilian review of policing is an essential aspect of maintaining the public trust in the nature and quality of policing in Canada. Without such trust, the rule of law that underpins a successful democracy is in peril.

Since my appointment, I have developed a growing appreciation of the challenges and complexities that law enforcement bodies and their members face on a daily basis. Policing comes with great powers and thus incredible responsibility.

Law enforcement policies and decisions, and individual member actions and conduct are subject to a growing number of oversight and review bodies such as special investigation units, civilian review agencies and police boards. And all of this is happening under increasing public scrutiny and rising expectations.

The federal law enforcement review and oversight landscape is also changing. Bill C-59, currently before Parliament, outlines the mandate for a National Security and Intelligence Review Agency. Its mandate will intersect with the Commission's with respect to the review of RCMP national security investigations. In addition, there are renewed calls for the creation of a review body for the Canada Border Services Agency.

These changes are rooted in a belief that increasing the transparency and accountability of policing is essential to upholding the trust of citizens in policing and hence improving the effectiveness and efficiency of law enforcement.

For its part, the Commission has also undergone a number of changes. Existing processes and practices have been reviewed to make them more effective and efficient.

For example, the Complaints Intake Unit, in cooperation with the RCMP's National Public Complaints Directorate, created online resources that simplify the process of filing complaints for the public.

> **“A healthy tension is intrinsic to a good working relationship—it’s a question of balance. Too much tension leads to inefficiencies, while too little can create the perception of dependence, thereby compromising the accountability and credibility of both organizations.”**

The Reviews and Investigations Unit has been restructured to enhance its ability to meet service standards and eliminate the current backlog.

The Research, Policy and Strategic Investigations Unit undertook a review of the Commission’s policies to identify and incorporate ways to ensure greater consistency in the Commission’s decision-making.

The Commission faced a number of challenges in 2017-2018. To strengthen leadership, the government appointed a Vice-chairperson in March 2018. This appointment, along with the future appointment of a permanent Chairperson, will enhance the Commission’s governance structure.

As Interim Chairperson, one of my priorities was ensuring that the Commission’s relationship with the RCMP is guided by the principles of respect, professionalism, fairness, confidentiality, independence and trust.

A healthy tension is intrinsic to a good working relationship—it’s a question of balance. Too much tension leads to inefficiencies, while too little can create the perception of dependence, thereby compromising the accountability and credibility of both organizations.

I look forward to working with the RCMP’s new Commissioner to maintain an effective working relationship between the Commission and the RCMP.

It has been my distinct pleasure to lead the Commission over these last months. I am confident that the organization, heading into its 30th year of operation, is well-positioned to fulfill its mandate and continue its critical role of enhancing the Canadian public’s trust in the police.

THE COMPLAINT & REVIEW PROCESS

THE PUBLIC COMPLAINT PROCESS

The Commission accepts complaints about the on-duty conduct of RCMP members from individuals:

- Directly involved;
- Who witnessed the conduct itself;
- Authorized to act on behalf of the complainant.

Complaints about RCMP member conduct can also be made by the Commission Chairperson if the Chairperson determines that there are reasonable grounds to investigate. Chairperson-Initiated complaints are processed in the same manner as a complaint from a member of the public.

A complaint must be made within a year of the alleged conduct occurring.

A Chairperson-Initiated complaint allows the Commission Chairperson to set the scope of the RCMP's investigation of a public complaint.

If the Commission Chairperson is of the opinion that it would be in the public interest for the Commission to investigate a complaint instead of the RCMP, the Commission will conduct a Public Interest Investigation.

Public Interest Investigations can be launched in relation to a complaint received from a member of the public, or as a result of a Chairperson-Initiated Complaint.

The Commission may refuse to deal with a complaint if it:

- Is not filed within a year of the occurrence;
- Concerns decisions regarding disciplinary measures;
- Has been, or could be, more appropriately dealt with through a different process; or
- Is trivial, frivolous, vexatious or made in bad faith.

A complaint can be lodged with:

- The Commission;
- Any RCMP member;
- The provincial authority responsible for receiving complaints against police in the province in which the subject of the complaint took place.

A Public Interest Investigation is a public complaint investigation conducted by the CRCC rather than the RCMP.

THE REVIEW PROCESS

When a complaint is made, typically the RCMP carries out the initial investigation into the complaint and reports back to the complainant.

If a complainant is not satisfied with the RCMP's handling of their complaint, they may request that the Commission conduct a review of the RCMP's investigation.

Upon such a request, the Commission obtains all relevant material from the RCMP and assesses the RCMP's investigation of the complaint.

> The Commission is an independent agency and does not act as an advocate either for the complainant or for RCMP members.

The role of the Commission is to make findings after an objective examination of the information available and to make recommendations that improve policy and performance of the RCMP and its members.

If, in conducting its review, the Commission finds the RCMP did not conduct a thorough investigation, the Chairperson can request that the RCMP make further enquiries.

Following its review, if the Commission is satisfied with RCMP's handling of the complaint, the Chairperson issues a **Satisfied Report** to the RCMP Commissioner, the Minister of Public Safety, the complainant, and the member(s) involved, thereby ending the review process.

If, at the conclusion of the review, the Commission is not satisfied with the RCMP's handling of the complaint, the Chairperson will issue an **Interim Report**, outlining various findings and recommendations directed at the RCMP, which will be sent to the RCMP Commissioner and the Minister of Public Safety.

Once the **Interim Report** has been reviewed by the RCMP, the RCMP Commissioner gives notice, identifying which recommendations the RCMP will act on. If no action is to be taken, the Commissioner must provide reasons.

After receiving the **Commissioner's Response**, the Chairperson considers the RCMP's position and prepares a **Final Report**. This report is then provided to the RCMP Commissioner, Minister of Public Safety, the complainant, the member(s) involved, and the appropriate provincial Minister. This completes the Commission's review process.

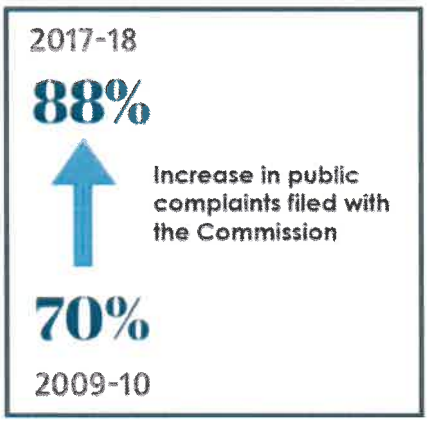
> Complainants must request a review within 60 days of receiving the RCMP's formal response to their complaint.

The Commission's complaint and review process chart can be found in *Appendix A*.

THE YEAR IN REVIEW

PUBLIC COMPLAINTS

This year, the public lodged **2,644** complaints (of these complaints, **2,328** were lodged with the Commission, while **316** were made directly to the RCMP).



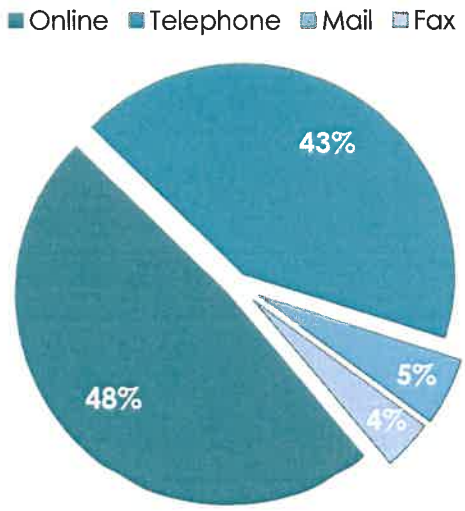
Of the total number of complaints received, **2,248** met the criteria laid out in section 45.53 of the *Royal Canadian Mounted Police Act* and were assigned to a public complaint investigator.

As with previous years, the top five allegation categories for public complaints in 2017-18 were:

- Neglect of Duty
- Improper Attitude
- Improper Use of Force
- Improper Arrest
- Irregularity in Procedure

A detailed summary of all complaint allegation types can be found in *Appendix C*.

HOW THE PUBLIC SUBMITS COMPLAINTS TO THE COMMISSION



IMPROVED PUBLIC COMPLAINT FORM

This year, the CRCC and the RCMP collaborated to develop a common public complaint form. This form is available on the CRCC's website and at every detachment.

The introduction of this standardized form contributes to the Commission's strategic goal of strengthening the public complaint process and ensures that both the CRCC and the RCMP have the complaint information required to perform their duties in a timely manner.

NEW REQUESTS FOR REVIEW

If a complainant is not satisfied with the RCMP's handling of their public complaint, legislation allows for the complaint to be referred to the Commission for review. This year, the Commission received **229** new requests for review.

COMMISSION PUBLIC COMPLAINT REVIEW REPORTS

This year, the Commission issued **247** public complaint review reports, including:

- **162** reports (**73%**) agreeing with the RCMP's handling of the complaint.
- **59** interim reports (**27%**) disagreeing with the RCMP's handling of the complaint and/or making recommendations to the RCMP Commissioner.

The Commission issued **26** Final Reports after receiving the Commissioner's Response to findings and recommendations made by the Commission.

RCMP COMMISSIONER'S RESPONSES

This year, the RCMP Commissioner accepted approximately **88%** of the Commission's adverse findings and **68%** of its recommendations.

A significant number of the Commission's interim reports await the RCMP Commissioner's response, despite some having been with the RCMP for over 18 months. Delays in receiving these responses impact the Commission's ability to conclude its reviews and investigations, and resolve public complaints, in a timely manner. Complainants frequently express frustration over these delays.

The Commission is, however, aware of RCMP efforts to address this issue, and notes that the Commissioner's Responses to Commission reports almost doubled in 2017-18 with the Commission receiving 26 responses, compared to 14 the previous year.

The Commission's recommendations vary in response to the individual complaints being reviewed, and, while some are based on broader organizational policies and processes, many are specific to the complaint in question.

Commission recommendations may include:

- Members receive guidance or further training;
- RCMP policies, procedures or guidelines be clarified or amended;
- Supervisors receive guidance on their roles and responsibilities;
- Public complaint investigators receive guidance or further training regarding their role in the public complaint process;
- Public complaint investigations be carried out even though the RCMP had determined that such investigations were not necessary; and,
- The complainant be provided with an apology.

SAMPLE REVIEW FINDINGS

The public complaint process entitles complainants who are not satisfied with the RCMP's investigation and handling of their complaint to have it independently reviewed by the Commission.

The following are examples of findings and recommendations made by the Commission during the last reporting year.

Unreasonable Arrest, Improper Search and Improper Use of Force

A man returned home in his vehicle to find two RCMP members at his residence with a warrant for his son. The members informed the man that he was driving with a suspended licence, was under arrest for driving while disqualified, and would be issued a ticket. The man proceeded to enter his home, resisting the members' attempts to stop him. The members gained control of the man and proceeded to search him. The man was ultimately released after being issued the ticket and a summons to appear in court.

The man filed a public complaint alleging that he was improperly ticketed and that members failed to advise him that he was under arrest prior to searching him and using force against him.

The RCMP investigated the complaint and found that the members involved had acted reasonably.

The Commission conducted a review of the RCMP's investigation and disagreed.

The Commission found that the arrest was not reasonable, as the arresting members did not have a warrant.

> Generally, police officers can arrest without warrant anyone found to be committing a criminal offence. As this was not the case in this instance, the members did not have grounds to arrest the complainant.

As a result, the Commission also found that both the members' search of, and use of force against, the complainant were unreasonable.

Additionally, the Commission found that the witness interviews were carried out by the supervisor of one of the subject members and that this could give rise to a reasonable apprehension of bias.

The Commission recommended that the arresting officer be provided operational guidance, and that the RCMP issue an apology to the man for his arrest. The Commission also recommended that all public complaint investigations be conducted impartially.

The RCMP Commissioner agreed with the Commission's findings and recommendations. In his response, he noted that he was satisfied that existing RCMP policies dictate the requirement that all public complaint investigations be conducted in an impartial manner. The Commissioner directed that the RCMP member who had investigated this public complaint receive operational guidance on this issue.

RCMP Had Reasonable Grounds for Arrest Following a Public Disturbance

An RCMP member arrived at a fast-food restaurant in his police vehicle and found two men arguing and yelling at one another. It appeared that the matter was escalating to the point of a physical confrontation.

The member activated his vehicle siren to get the attention of both men, and then exited his vehicle to separate them. Once aware of the presence of a police officer, one of the men calmed down immediately while the other remained aggressive, made closed fists and appeared to prepare to engage in a physical altercation.

This man began to walk away during the member's investigation, and was informed by the member that he was under arrest for causing a disturbance. The man then began directing his outbursts at the member. The member handcuffed the man without incident and he was detained in the police vehicle.

Once the man calmed down, and the member had gained an understanding of what had transpired, the member offered the man various options to assist him, including providing him an explanation of the peace bond application process.

The member ultimately released the man without charge and provided him with his business card should he need further assistance.

Later that day, the man filed a complaint alleging that his arrest was unlawful and constituted assault, and that the member involved had made improper comments to him.

The RCMP conducted an investigation and concluded that both allegations were unsupported.

Unsatisfied with this outcome, the complainant referred the matter to the Commission for review.

Recordings of the incident clearly showed the complainant in a public area screaming and cursing for five minutes. The Commission found that the RCMP member had reasonable grounds to arrest him for causing a disturbance and exercised an appropriate level of discretion in releasing him without charge once it was apparent that there would be no further disturbance.

In addition, the Commission found that comments made by the member were not unreasonable in the context of a heated interaction.

The Commission determined that the RCMP's disposition of this matter was reasonable.

Unreasonable Assault Investigation

Following a woman's report of domestic assault, two RCMP members arrived at her residence and placed her husband under arrest.

The husband, and other witnesses present, denied that an assault had taken place.

Based on the conflicting versions of events, the members concluded that they did not have reasonable grounds to charge or detain the husband. They made the decision to separate the individuals for the night, and take statements once those involved were no longer intoxicated.

The woman was taken to a women's shelter and advised that she could return to the residence the following day to pick up her belongings.

The woman filed a public complaint alleging that the RCMP members involved failed to investigate her complaint of family violence, provide her with protection to retrieve her belongings from the home, and return her phone calls. The complainant also alleged that she was removed from her home without a thorough investigation having been completed.

The RCMP investigated the complaint and did not support any of the allegations.

Following a review of the RCMP's investigation into the complaint, the Commission found that the members' decision to bring the complainant to a women's shelter was reasonable.

However, the Commission found that the investigation into the woman's complaint of assault, as well as the supervision of that investigation, were not reasonably conducted. Further, the Commission found that the RCMP should have offered her police assistance to retrieve her belongings.

The record also indicates that calls made by the complainant to the members were not returned.

The Commission made a number of recommendations, including that an apology be issued to the complainant, that an experienced investigator be assigned to investigate the woman's criminal allegation of assault, and that members involved receive close supervision, and be provided with training or operational guidance concerning RCMP policies to ensure adequate handling of family violence incidents.

The Commission also recommended that consideration be given to compensating the complainant for personal property damaged as a result of the RCMP's failure to assist her in retrieving her belongings.

While the RCMP agreed with all the Commission's findings, it did not support the Commission's recommendations with respect to conducting a new investigation into the complainant's allegation of assault, providing additional supervision for the members involved, carrying out a quality assurance exercise, or making a payment to the complainant.

The Commission reiterated all of its recommendations in its Final Report.

In addition to the main findings in this matter, this report raised concerns with the Commission's access to the RCMP's policies.

In its response to the Commission's Interim Report, the RCMP raised concerns that the Commission was relying on outdated RCMP divisional policies concerning family violence in arriving at its conclusion.

In its Final Report, the Commission noted that since it does not have direct access to the RCMP's policy suite, it must rely on the RCMP proactively providing updated policies in paper format.

The Commission noted that this issue was raised before the Senate Standing Committee on National Security and Defence in 2017, and was identified in testimony as an issue that negatively and significantly affects the Commission's ability to handle complaints in a timely and informed manner.

Access to the RCMP policy suite remains an outstanding issue.

Incomplete Investigation Leads to Unreasonable Charges

An incident of two women involved in a physical dispute was reported to the RCMP, who investigated and charged one of the women with assault with a weapon. The charge was ultimately withdrawn and both women filed, and were issued, common-law peace bonds limiting contact with one another. Alleged breaches of the peace bonds led to additional calls to the RCMP by both women.

The woman who had initially been charged by the RCMP filed a complaint against members of the local detachment alleging that the member who charged her with assault with a weapon ought to have known that there were insufficient grounds to support the charge, and that the subsequent investigation into the assault allegation was not thorough. The complaint also alleged that members of the local RCMP detachment failed to enforce the no-contact order against the other woman involved, failed to investigate a separate criminal allegation made by the complainant, and ignored requests by the complainant to destroy her fingerprints and photographs.

The RCMP's investigation into the complaint only supported the allegation concerning the request to destroy fingerprints and photographs.

Upon review, the Commission found that the RCMP's investigation into the assault allegation made against the complainant was not thorough, that it was therefore unreasonable to charge her with assault with a weapon, and that members failed to reply to legitimate enquiries from the complainant concerning requests to destroy her personal information.

With respect to the complaint of the RCMP's failure to enforce a no-contact order, the Commission found that members involved acted reasonably. The Commission also found that the RCMP conducted a reasonable investigation into criminal allegations reported by the complainant.

The Commission recommended that the RCMP issue an apology to the complainant for the handling of the investigation into the assault allegations made against her. Additional recommendations directed that the investigating member be subject to a file review to ensure that prior investigations were carried out adequately, and that he also be provided with operational guidance concerning quality of investigations and the laying of charges.

Finally, the Commission recommended that the RCMP verify whether the complainant's non-conviction has been purged from file and photographs and fingerprints destroyed.

The RCMP agreed with all the Commission's findings and generally agreed with all recommendations. With regard to the recommendation concerning a file review, the RCMP proposed an alternate course of action that would achieve the same goal; a suggestion deemed satisfactory by the Commission.

Unreasonable Arrest following Allegation of Domestic Violence

After a man reported to the RCMP that he had been assaulted by his girlfriend, the responding member knocked on the door to the residence and when the woman answered, the member asked her to step outside and placed her under arrest for assault.

As she was being escorted in handcuffs to the police vehicle, her boyfriend took photographs on his cell phone and uploaded them to Facebook.

The woman was transported to a correctional facility, lodged temporarily in cells, and ultimately charged and released. At trial, the woman was acquitted.

The woman filed a complaint alleging improper arrest, and failure on the part of the arresting member and by other members at the detachment to provide her with access to her medication.

The complaint also alleged that RCMP members failed to conduct a complete and thorough investigation into the complainant's allegation of a criminal offence with respect to the photos taken during her arrest, and the posting of those photos to social media.

The RCMP investigated the complaint and did not support any of the allegations.

The Commission found that it was reasonable for the RCMP not to investigate the matter of the photos taken during the complainant's arrest and posted to social media. The photos were taken outdoors in a public place.

As there is no law that precludes a person from taking photos in such circumstances, there was no basis for the RCMP members to begin a criminal investigation. The record does indicate that the member did ask the boyfriend, out of respect, to stop taking photos of the complainant.

However, the Commission found that it was unreasonable for the responding member to have arrested the complainant and that she was treated unreasonably while in custody.

Police officers must have reasonable grounds to arrest an individual. In this instance, the member had limited information available—having only had a brief conversation with the boyfriend—prior to making the decision to arrest the complainant, without warrant.

Further, the couple was not cohabitating—it was the complainant's apartment. The boyfriend had no legal right to be in the residence without her consent, and in his initial statement he indicated that the complainant had asked him to leave before she assaulted him.

> RCMP national policy states that when dealing with investigations concerning violence in relationships, members must "obtain statements from all victims, witnesses and accused persons."

In this case, the member did not document any attempt to obtain a formal statement or verbal account of events from the complainant or document any steps taken to conduct a primary aggressor analysis. The complainant maintained that she asked for an opportunity to provide evidence of an altercation that would have supported her version of events in which the boyfriend was the aggressor, but was ignored.

With respect to the treatment of the complainant while in custody, the RCMP did not support the allegation that the member refused to provide medication to the complainant. Rather, the member was unaware that the medication was required.

The Commission's review found that the member did not properly complete the RCMP prisoner booking form. The portion of the form that includes a field for "medication required" was crossed out by the arresting member.

> The Commission also recommended that the RCMP modify its national policy concerning prisoner handling to include a requirement to complete the prisoner booking form.

While RCMP national policy does not state that completion of this form is mandatory, had the form been completed, the complainant's need for medication would have been revealed.

The Commission recommended several remedial measures, including an apology to the complainant for her arrest and operational guidance for the arresting member.

The RCMP agreed with the Commission's findings and agreed to implement the proposed policy change.

RCMP Investigation of Domestic Dispute and Public Complaint Appropriate and Reasonable

The RCMP received a report of a domestic dispute from a man claiming that his spouse had made threats to kill him and had damaged furniture with a knife. After the man provided a statement at the local RCMP detachment, members attended the residence.

The spouse was uncooperative, refused to open the door, appeared to be in distress, and had an unidentified object in her hand. Concerned for the woman's safety, members entered the apartment using a key and consent provided to them by the husband. The woman was arrested for uttering threats, placed in handcuffs, and taken to hospital for a mental health assessment.

Following the assessment, the woman was lodged in RCMP cells for the night and released the following morning on no-contact conditions. The woman was ultimately convicted of uttering threats and acquitted on a charge of assault with a weapon.

The woman filed a public complaint alleging that her arrest and the force used were unreasonable, and that a member had failed to respond to a letter she had sent.

The RCMP conducted an investigation into the complaint and concluded that the complainant's allegations were unsupported.

Following a review of the complaint, the Commission determined that the RCMP's disposition of the matter was reasonable.

RCMP members' notes and reports were thorough, timely and consistent.

The RCMP members' version of events was consistent with the husband's criminal complaint and statement, as well as the evidence found in the home.

Further, the complainant agreed that the incident for which she was arrested did indeed occur.

Upon arriving at the home, RCMP members announced themselves and attempted to communicate with the complainant, who was uncooperative. When the RCMP members entered the residence with permission from the husband, the complainant turned off the lights and became verbally aggressive.

Responding members had reasonable grounds to arrest the complainant based on the criminal complaint made by her husband. The complainant was notified of the reason for her arrest at the time.

The force used during the arrest included a strong grip on the complainant's arm and the application of handcuffs. At the time of the arrest, the complainant was uncooperative and the knife she had allegedly used to threaten her husband had not yet been located. In light of these factors, it was deemed that the amount of force used to effect the arrest was proportional and in accordance with RCMP policy.

Regarding the complainant's allegation that her letter to an RCMP member went unanswered, the letter was not properly processed due to administrative oversight. The RCMP did nonetheless apologize for the failure to pass the letter on to the appropriate individual. The Commission was satisfied with the RCMP's apology.

The Commission was also satisfied that all appropriate RCMP policies and procedures were followed in this matter.

CHAIRPERSON-INITIATED COMPLAINTS AND INVESTIGATIONS

Police-Involved Shooting of Gregory Matters

In October 2017, the Commission issued its Final Report following a public interest investigation into the shooting death of Gregory Matters during a confrontation with an emergency response team.

The Commission's investigation of this tragedy did not identify serious, systemic shortcomings with RCMP policies or procedures.

The Commission's investigation in fact found that significant efforts were made to have Mr. Matters surrender peacefully, and that members had reasonable grounds to enter the Matters' properties without a warrant. The Commission also found that the use of lethal force against the threat posed by Mr. Matters was reasonable in the circumstances and in accordance with RCMP policy and training. The Commission made additional findings with respect to issues such as the securing of evidence, the RCMP's management of the investigation, emergency response team training, use of force options, and the RCMP's use of technology.

The Commission made a number of recommendations intended to improve RCMP operational procedures, practices, and training, including several aimed at providing members responding to crisis situations with additional non-lethal use of force options.

The Commission's Final Report including the RCMP Commissioner's response can be accessed on the Commission's website.

SCOPE OF INVESTIGATION

The Commission assessed RCMP member conduct to determine whether:

- RCMP members or other persons appointed or employed under the authority of the RCMP Act involved in the events of September 9 and 10, 2012, from the moment of initial contact through to the subsequent shooting death of Mr. Matters, complied with all appropriate training, policies, procedures, guidelines and statutory requirements;
- RCMP national, divisional and detachment-level policies, procedures and guidelines relating to such incidents are adequate; and
- Actions taken by the RCMP in response to the incident were taken in accordance with all applicable policies, procedures, guidelines and statutory requirements.

Chairperson-Initiated Complaint into Fatal Collision

In December, 2017, the Commission issued its Final Report concerning a fatal collision following an attempted traffic stop.

RCMP members had followed a vehicle that had failed to stop at a traffic checkpoint but discontinued the pursuit shortly thereafter. Moments later, the fleeing vehicle entered an intersection at a high rate of speed and collided with a truck, causing the death of a motorist.

The Commission's review of this tragedy found that members did not conduct themselves in accordance with existing RCMP policy.

The Commission also found that RCMP national policies relating to traffic checkpoints and police vehicle pursuits were inadequate.

The Commission made a number of recommendations intended to improve RCMP policies, operational procedures, practices, and training relating to checkpoint operations and police vehicle pursuits.

FINDINGS & RECOMMENDATIONS

The Commission made 6 findings and 11 recommendations.

The RCMP Commissioner:

- Agreed with 4 findings;
- Disagreed with 2 findings;
- Supported 6 recommendations;
- Disagreed with 5 recommendations.

The RCMP has accepted a majority of these recommendations and agreed to amend its national policy concerning police pursuits in a manner consistent with the Commission's recommendations.

The Commission believes that its recommendations in this matter, if implemented, will result in safer practices that will reduce the risks to police, the public, and suspects during traffic checkpoints and police vehicle pursuits.

The Commission's Final Report including the RCMP Commissioner's response can be accessed on the Commission's website.

ONGOING INVESTIGATIONS

The Commission has over **30** Chairperson-initiated complaints and/or investigations underway.

Ongoing Commission investigations can be categorized as:

- In progress;
- Subject of Interim Reports by the Commission; awaiting RCMP Commissioner's written response to issue Final Reports; and/or
- On hold pending the outcome of other proceedings or investigations that may inform the Commission's investigations (i.e. criminal trial, Coroner's Inquest).

RCMP's investigation of the death of Colten Boushie

The Commission initiated a complaint and a public interest investigation into the RCMP's investigation of the death of Colten Boushie and the events that followed.

In August, 2016, Colten Boushie was shot and killed outside Biggar, Saskatchewan on a rural farm property. Mr. Boushie's uncle, Alvin Baptiste, filed a complaint regarding the RCMP's response to the shooting, specifically the search of Mr. Boushie's mother's home, the manner in which the next of kin notification was carried out, and the nature of RCMP media releases about the shooting.

At the request of the Boushie family, the Commission is also conducting a review and further investigation of the RCMP's disposition of their complaint.

The Commission's investigation will determine whether:

- RCMP members or other persons appointed or employed under Part I of the RCMP Act involved in this matter conducted a reasonable investigation into the death of Mr. Boushie;
- Actions taken by the RCMP in response to this matter were taken in accordance with all applicable RCMP training, policies, procedures, guidelines, and statutory requirements;
- Relevant RCMP national, divisional, and detachment-level training, policies, procedures, and guidelines are reasonable; and
- The conduct of RCMP members or other persons appointed or employed under Part I of the RCMP Act involved in this matter amounted to discrimination on the basis of race or perceived race.

The Commission has received significant materials from the RCMP in this matter, and the review is underway. In addition, an investigative team has been assembled to conduct interviews and to produce expert opinions on particular issues.

RCMP Response to Anti-Fracking Protests

The Commission received more than 20 complaints related to the confrontations between protestors and members of the RCMP with regard to the shale gas testing/hydraulic fracturing ("fracking") protests in Kent County, New Brunswick in 2013.

The complaints included allegations of unreasonable arrest, failure to wear identification, interference with the right to peaceful protests, disrespectful treatment, failure to allow access to legal counsel following arrest, and failure to provide medical care.

The Chairperson deemed it in the public interest for the Commission to investigate those complaints.

During the course of the investigation, additional questions surfaced about the RCMP's response to the protests. In December 2014, the Chairperson initiated his own complaint into those events.

To date, approximately 130 civilian witnesses and RCMP members have been interviewed by Commission investigators.

The Commission has encountered a number of delays and the voluminous nature of the material in this matter has presented significant challenges. The Commission has taken concrete steps to move this file forward and to complete the report in as timely a fashion as possible.

RCMP Sexual Assault Investigation

In 2016, following concerns expressed by a trial judge regarding the conduct of RCMP members who investigated a sexual assault involving a minor, the Commission Chairperson initiated a complaint and public interest investigation focused on whether:

- RCMP members involved in the sexual assault investigation complied with all appropriate training, policies, procedures, guidelines and statutory requirements; and
- RCMP national, divisional, and detachment-level training, policies, procedures, and guidelines relating to sexual assault complaints, prisoner handling, and young persons are reasonable.

In 2014, a youth was arrested for breaching court-ordered conditions and while detained, disclosed that she had been sexually assaulted. An RCMP member noted the youth's intoxicated state and told her that he would take a statement regarding her allegations the following day.

After a number of follow-up attempts by the member, the youth returned to the detachment to provide her statement and following an investigation, the accused was convicted at trial.

While the Commission was satisfied that the sexual assault investigation was reasonably thorough and consistent with professional police practices, the Commission identified several shortcomings.

In October, 2017, the Commission issued its Interim Report and awaits the RCMP's response.

RCMP Use of Force Against Elderly Couple

In 2016, a video depicting RCMP members using force against two elderly persons was made public. In consideration of the video, coupled with concerns raised by members of the public, the Commission initiated a complaint and public interest investigation.

Following a vote during a condo meeting, an argument ensued. The situation escalated and the RCMP was called. An elderly couple, aged 76 and 75, were arrested. As the couple was being escorted out of the building by the RCMP members, the husband fell down the stairs.

The incident was captured on bystander cell phones and generated significant interest on social media.

An external police agency was called in by the RCMP to investigate the incident, which resulted in a recommendation of charges against the elderly couple. These charges were not approved by the Crown attorney.

A Code of Conduct investigation was also launched by the RCMP, which resulted in a finding that there had been no contravention of the Code of Conduct on the part of the members involved.

The Commission's investigation is examining the conduct of the members involved in the incident and whether relevant RCMP policies, practices and training were followed.

To date, Commission investigators have reviewed relevant documentation, including cell phone videos, and the investigative report and Use of Force report generated by the external police agency's independent investigation into the incident.

Upon completion of its investigation, the Commission will issue an Interim Report including its findings and any recommendations to the RCMP.

Systemic Review of the RCMP's Policies and Procedures Regarding Strip Searches

In March 2018, the Chairperson initiated a review of the RCMP's strips search policies and procedures. This review is a follow-up to the Commission's Chair-Initiated Complaint and Public Interest Investigation into Policing in Northern British Columbia. As part of the review the Commission is examining:

- The degree to which relevant recommendations made by the Commission were implemented by the RCMP;
- Whether national and divisional policies and training are adequate, appropriate, sufficient and clear; and
- Whether, in practice, the RCMP is abiding by and has the means of assessing and evaluating RCMP member compliance with relevant policies.

Although related to the Commission's review of policing in Northern British Columbia, the focus of this particular investigation is nation-wide.

Once the investigation is complete, a report containing any findings and recommendations will be provided to the Minister of Public Safety, the RCMP Commissioner, and provincial ministers responsible for policing in contract provinces. The report will also be made publicly available.

STRATEGIC RELATIONSHIPS AND PUBLIC EDUCATION

STRATEGIC RELATIONSHIPS

In addition to hosting its annual Fall meeting of provincial police oversight agencies and special investigation units, the Chairperson met individually with the heads each of these agencies to discuss opportunities for joint outreach initiatives, the collection and use of national oversight data and the resulting ability to provide the public with a more comprehensive overview of policing in Canada.

The Chairperson had the opportunity to address the RCMP Professional Responsibility Sector Symposium in January and the RCMP Senior Management Team in February 2018 to outline his views on each organization's role in building public trust.

Commission staff attended the Canadian Association of Civilian Oversight of Law Enforcement (CACOLE) annual general meeting in Winnipeg, Manitoba. Attendees included representatives from federal and provincial government, police boards, law enforcement, academia, police oversight agencies and the legal community.

Topics of discussion included the role of governance in effective civilian oversight of policing, bias-free policing, the role of use of force experts, ethics in law enforcement and the role of mediation in resolving complaints.

The Commission also continues its relationship with CACOLE's United States counterpart, the National Association for Civilian Oversight of Law Enforcement (NACOLE). This relationship allows both organizations to share best practices and possible solutions to common challenges faced by oversight agencies in both Canada and the United States.

This year, the Commission provided provinces that contract RCMP policing services with a report that compares the number and nature of public complaints in their respective provinces/territories with Canada-wide statistics.

PUBLIC EDUCATION

One of the Commission's priorities in 2017-18 was to establish and resource a regional office in British Columbia with a focus on responding to public complaints from Indigenous communities. Significant outreach efforts were expended in order to inform the Commission's approach.

From April 1, 2017, to March 31, 2018, the BC Office conducted outreach with just over 1,000 Indigenous community members across BC, including tribal governance bodies, community service providers, educators, grassroots community members and youth. Larger outreach sessions were also held with Metis Nation of BC, Nuu-chah nulth Tribal Council, Tl'azt'en, Namgis, and Gwa'sala-'Nakwaxda'xw First Nations.

The Commission also participated in a number of community workshops with the Independent Investigations Office of BC and the BC Civil Liberties Association. Collaboration with other agencies assists in increasing awareness of the distinct roles and mandates of the different oversight agencies and advocacy groups.

Public awareness and understanding of the Commission's role and processes are essential to its success. Outreach activities undertaken by the Commission have revealed that some communities and cultural groups are not well informed about the Commission's role. This lack of awareness was particularly evident in Indigenous communities.

Developing engagement and outreach initiatives that inform all parties about the services the Commission provides, and clearly outline how to access these services, will strengthen public confidence in the Commission and its capacity to ensure RCMP accountability.

CORPORATE OVERVIEW

The Commission has continued refining its internal services programs to maximize financial allocation to core program activity. A full review of staffing priorities was conducted in the fall of 2017, resulting in a re-profiling of resources to meet program demand in the Commission's Complaint Intake, Review and Investigations, and Research, Policy and Strategic Investigations units.

Significant resources were dedicated to working with central agencies to address human resource and pay system challenges and manage the impact of these on the Commission's workforce.

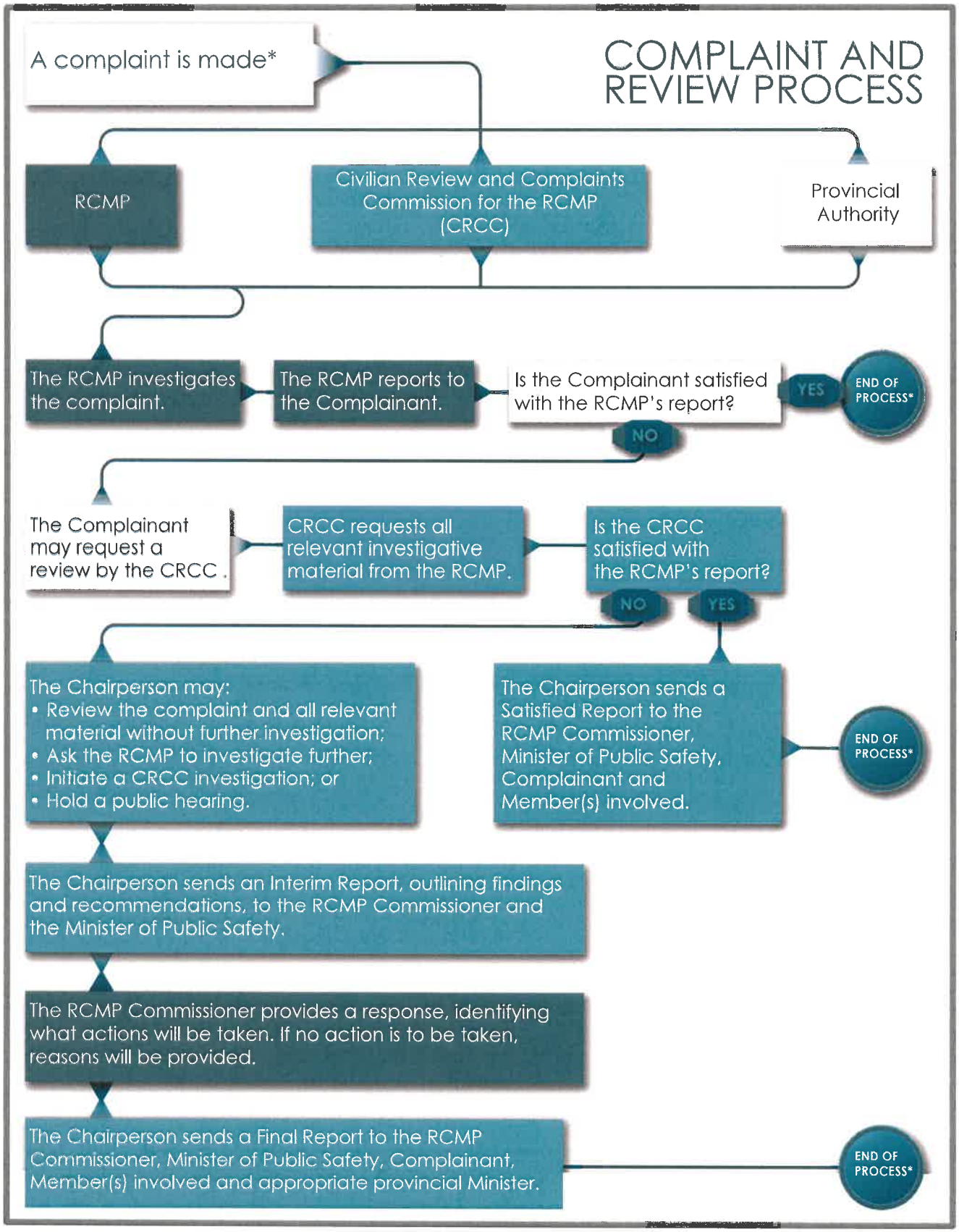
During this reporting period the Commission also made significant investments in its information technology (IT) infrastructure, as part of its five-year IT/IM plan, to ensure its operating platform is responsive to new business requirements, including; specialized investigative tools, evolving information management policy and protocols, IT security and the ever-greening of desktop and user tools and interfaces.

Below are the Commission's preliminary expenditures for fiscal 2017-2018. Adjustments to these figures will be made and final amounts will be reported in the Public Accounts of Canada.

Total Expenditures 2017–2018	
Salaries	6.7 M
Operating Costs	2.3 M
Employee Benefit Plans	0.9 M
Total	**9.9 M**

Note: Numbers represented are in millions.

APPENDIX A



* The Chairperson can initiate a complaint. In addition, at any stage of the process, the Chairperson may institute an investigation or a hearing where it is considered in the public interest to do so.

APPENDIX B – SERVICE STANDARDS

To ensure timely responses to public complaints, the following response times have been put in place by the Commission for its role in the complaint and review process:

Action	Response Time
The Commission forwards public complaints it receives to the RCMP.	4 days
The RCMP investigates and delivers a report to the complainant.	Determined by the RCMP
The Commission requests all relevant material from the RCMP upon being notified by the complainant that they are not satisfied with the RCMP's response.	4 days
The Commission conducts its review and sends either: • a Satisfied Report to the complainant, the RCMP and the Minister of Public Safety; or • an Interim Report to the RCMP with findings and recommendations.	120 days
The RCMP responds to the Interim Report.	Determined by the RCMP
The Commission issues its Final Report.	30 days

This year, **94%** of complaints accepted by the Commission were forwarded to the RCMP within the 4-day service standard.

This year, **72%** of the Commission's Satisfied and Interim Reports were completed within the 120-day timeframe. Furthermore, **88%** of its Final Reports were delivered within the 30-day timeframe.

APPENDIX C – CLASSIFICATION OF COMPLAINTS

The RCMP classifies the allegations made in public complaints into 16 categories. To provide consistency for complainants, the Commission uses the same classifications. The full list, and corresponding definitions, is included here:

A – Improper Attitude	This category addresses allegations related to a member's deportment and may include behaviours that are characterized as abusive, rude, vulgar, profane, discourteous, impolite, disrespectful, sarcastic, arrogant, indifferent, angry, obnoxious, belligerent, aggressive, intimidating, threatening, combative, provoking, ridiculing, and/or mocking. Allegations may also relate to a perceived lack of impartiality or fairness, lack of empathy, lack of concern for someone's welfare, or a wanton lack of discretion.
B – Improper Use of Force	This category addresses allegations of a use of force that was unnecessary, inconsistent with the circumstances, applied too frequently, harshly, or for an excessive a duration. Allegations may include inappropriate use of soft-hand and hard-hand techniques, police holds, dog bites, tear gas or pepper spray, asps or baton, tasers, or any other weapon or instrument, whether prescribed or not.
C – Improper Use of Firearms	This category addresses an improper use of force specific to the use, display, or discharge of a firearm.
D – Irregularity in Procedure	This category addresses a violation of the intent and spirit of an "administratively enforced" statute, such as the Privacy Act, the Access to Information Act, the RCMP Act and any Force policy relating to those acts. Some of the more common allegations relate to members obtaining information, directly or indirectly, from a police data bank, without justification, and / or for reasons not consistent with a duty being prescribed by law or Force policy. Also included in this category are CRCC findings (Interim Reports) of improper termination of a public complaint.
E – Driving Irregularity	This category addresses allegations of improper or unsafe use of police transport by a member, whether in violation of any law, or without due consideration of others. In particular, it refers to public complaints about pursuits and emergency vehicle operations.

F – Neglect of Duty	This category addresses allegations that a member failed or refused to perform a duty, or provide a service that members are expected to provide, or did perform a duty or provide a service, but in a manner which does not meet RCMP standards. Included are allegations of refusal to identify oneself, refusal or failure to provide timely and adequate service, mismanagement of a public complaint, inadequate or incompetent investigations, improper care and handling of prisoners, failure to release detained persons into a safe haven at the time of release, and failure to provide adequate, prompt, and competent medical care. This category also includes relatively common allegations of deficient reporting that a member failed or refused to record/report the facts of a public complaint, a service provided, or investigation conducted. It also includes allegations that a member fabricated, recorded, or reported facts that were incorrect or untrue, or that a member concealed and/or failed to record, or report correct or true facts – referring to notebooks, occurrence reports, crime reports, reporting forms, court documents, or records of any type, including written, audio, video, audio-video, electronic, etc.
G – Statutory Offence	This category addresses allegations of violations of the Criminal Code, Federal statute, provincial statute, or municipal by-law, even though such complaints may be referred to the Crown or the appropriate RCMP Officer for decisions on possible prosecution or RCMP Code of Conduct proceedings.
H – Mishandling of Property	This category addresses allegations relating to property held in police custody. It includes loss of property (including money), unreasonable detention of property, damage to property in police custody, improper disposal of property, or failure to account for money or property.
I – Evidence Irregularity	This category addresses allegations that a member provided erroneous testimony in a judicial proceeding. It also addresses allegations that a member failed or refused to report the facts of a public complaint, a service provided, or investigation concealed, and/or failed to testify to correct or true facts.
J – Oppressive Conduct	This category addresses severe misuse of police authority or powers, aggravated harassment, unfounded, unfair, or embellished charging, and threats or intimidation via any of the foregoing.

K – Improper Arrest	This category addresses allegations of a violation of the intent and spirit of the Charter. Public complaints often allege violations of Charter section 10 (failure to inform person promptly of reason for arrest and of rights to counsel, and/or promptly provide person with opportunity to exercise rights, etc.) which are part and parcel of a proper arrest.
L – Improper Persons / Vehicles Search	This category addresses personal or vehicular searches where there is an allegation of a violation of the intent and spirit of the Charter.
M – Improper Search of Premises	This category addresses allegations of a violation of the intent and spirit of the Charter relating to the search of a premise, including unlawfully entering for the purposes of a search and/or remaining in a premise pursuant to a search.
N – Policy	This category addresses public complaints about RCMP policies or their application.
O – Equipment	This category addresses public complaints about RCMP equipment or its use.
P – Service	This category addresses public complaints about a lack of response or an inability to provide adequate, timely service. This refers to a general police service, as opposed to a specific service provided by a specific member as referred to in the Neglect of Duty category.

Exhibit "G"

This is Exhibit " G " referred to in the
affidavit of Harsha Walia
sworn before me at Vancouver, BC
this 19th day of November 20 20

.....
A Commissioner for taking Affidavits
For British Columbia

Memorandum of Understanding between the CRCC and the RCMP

Signed December 11, 2019
by CRCC Chairperson Michelaine Lahaie & RCMP Commissioner Brenda Lucki

(collectively, the "Participants")
(cited as Operations MOU)

WHEREAS:

The *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10 (as amended)("RCMP Act") provides the legislative foundation for the RCMP and CRCC;
The RCMP is the Canadian national police force responsible for the preservation of the peace, prevention of crime and law enforcement;

The CRCC undertakes civilian review of RCMP activities as provided in the *RCMP Act*, which is integral to promoting transparency and public accountability of the RCMP;

The CRCC and the RCMP recognize the mutual institutional independence of the Participants. Nothing in this Operations MOU (Memorandum of Understanding) or any of its annexes will be interpreted in a manner that infringes, or could be reasonably seen to infringe on this independence;

The CRCC and the RCMP wish to establish procedures that will support the implementation of the public complaints regime set out under the *RCMP Act*;

The Chairperson of the CRCC and the Commissioner wish to enter into an Operations MOU respecting principles and procedures that apply to the treatment of privileged information;

The CRCC and the RCMP wish to establish a process whereby the provision of information and any dispute about access to information may be resolved expeditiously in a spirit of professional co-operation.

NOW THEREFORE, THE PARTICIPANTS INTEND AS FOLLOWS:

General Provisions

1. All provisions cited below are from the *RCMP Act* unless otherwise specified.
2. Where disputes or conflicts arise between the Participants with respect to the application, operation and interpretation of the *RCMP Act*, this Operations MOU, or any other matters that may arise in relation to the interaction of the Participants, the Participants will undertake to

resolve such issues through discussion at the appropriate level of the respective organizations.

3. The following officials are designated as the representatives for the purposes of this Operations MOU and any notices required under this MOU will be delivered as follows:

Director of NPCD	Director RPSI
73 Leikin Drive	60 Queen St
Ottawa, ON	Ottawa, ON

4. The CRCC and the RCMP will form a working group to discuss issues of mutual interest, and the working group will meet once a year unless the CRCC and RCMP decide that a meeting is not required.
5. This Operations MOU and any Appendices will be reviewed by the CRCC and the RCMP once per year; and where potential amendments are identified, these will be brought to the working group for initial discussion and the making of recommendations to the Commissioner and the Chairperson where appropriate. Amendments can be made via the process set out in paragraph 16.
6. The Participants intend that best efforts will be made to ensure that timeframes specified within the Operations MOU are met. Should the CRCC or the RCMP not be able to meet a timeframe specified in the Operations MOU, the Participant to whom the timeframe applies will notify the other of same and provide a brief explanation.
7. Each Participant will bear its own costs in carrying out its responsibilities as outlined in this Operations MOU.
8. Unless otherwise noted, the service standards contained within the Operations MOU are stated in business days. Service Standard timelines are presented in table format in Appendix A.
9. The CRCC and the RCMP will ensure that all staff having access to any information provided by either body possesses the security clearance level required by the Government of Canada. The Participants will also comply with the requirements set out in the Letter of Understanding acknowledging that Public Safety Canada will conduct the security screening for CRCC employees accessing RCMP information.
10. Areas where RCMP information is to be physically handled and stored are subject to inspection by the appropriate RCMP Departmental Security Section (DSS) and must be acceptable to DSS prior to sharing information. DSS may establish additional safeguarding requirements based on site-specific conditions.
11. A physical security site review of the CRCC's head office was completed by the RCMP in order to ensure that the CRCC's head office meets the definition of an "Operations Zone" according to the Treasury Board Directive on Security Management, Appendix B and C and the RCMP Security Manual Part 3. The CRCC's current head office (floors 2, 3 and 5 of 60 Queen St.) meets the minimum physical security requirements for an "Operations Zone". Should the CRCC move to a different head office and/or obtain additional office space, the RCMP will complete a new physical security site review of the CRCC's head office and/or office space prior to any RCMP documentation being provided to the CRCC in order to ensure

that the CRCC's new location and/or additional office space meets the definition of an "Operations Zone" according to Policy on Government Security and RCMP standards.

12. The RCMP will provide a workspace in an RCMP facility (National Headquarters, Divisional Headquarters or detachment) when requested by the CRCC in support of a review, investigation process or in situations where the requirements in paragraph 10 are not met.
13. Access to RCMP Policies and/or Manuals via electronic methods is addressed in the MOU concerning access of CRCC employees to RCMP intranet. Any request for archived RCMP Policies and/or Manuals will be made to the RCMP Policies and Publications Section using the e-mail address DirectivesHistoricalRequests@rcmp-grc.gc.ca. The RCMP will provide archived RCMP Policies and/or Manuals to the CRCC within 10 days of the CRCC's request for such information or as otherwise decided upon.
14. The Participants intend that the National Public Complaints Directorate (NPCD) will serve as the initial and primary point of contact for the CRCC staff in all matters, including:
    1. the complaint/review of the conduct of RCMP members or other persons appointed or employed under Part I;
    2. a specified activity review by the CRCC pursuant to sections 45.34 , 45.35, or 45.92 ("Specified Activity Review"); and
    3. the operation of Parts, VI, VII, VII.1 and VII.2 as it pertains to the CRCC.
15. This Operations MOU will come into effect on the date of the last signature and will remain in effect until terminated by all Participants in accordance with paragraph 17 of this Operations MOU.
16. This Operations MOU, and any Appendices to this Operations MOU, may be amended at any time with the mutual consent of the CRCC and the RCMP, and such amendments may be effected by an exchange of correspondence between the representatives.
17. This Operations MOU will be terminated six months from the date one Participant gives written notice to the other Participant of their intention that the Operations MOU may be terminated. For this purpose, notice must be given by a person occupying the position of a signatory to this Operations MOU. This Operations MOU may be terminated any time, with the mutual consent of the CRCC and the RCMP, through an exchange of correspondence between the persons occupying the positions of the signatories to this Operations MOU.

"Documentary Evidence"

18. The term "documentary evidence", as used in this Operations MOU, is any kind of evidence on which findings and recommendations produced by the CRCC are based, including paper records, electronic records, and audio and video recordings.

Powers of the CRCC

19. When issuing a summons pursuant to subsection 45.36(1) and 45.65(1) the CRCC will make best efforts to accommodate the requests of RCMP members and employees in respect of the timing and location of such activities and will afford RCMP members and employees a reasonable opportunity to seek legal assistance pursuant to the Treasury Board "Policy on Legal Assistance and Indemnification."

Public Education, Outreach and Research

20. The RCMP will support the CRCC's authority pursuant to section 45.38 to implement outreach and/or public education plansincluding dissemination and displaying of information related to the CRCC in RCMP detachments and offices.
21. The RCMP will coordinate the internal education of members and employees regarding the established complaints processes, and support their roles and responsibilities within the complaint process.
22. The Participants may jointly decide to collaborate on and/or implement a public education strategy; in doing so the roles and responsibilities, as well as the nature of the separate and distinct relationship between Participants, will be recognized.
23. The CRCC and the RCMP will strive to proactively share and exchange information, when possible, regarding each organization's respective research strategies, priorities, projects and activities.
24. The Participants may jointly decide to collaborate on a research project that will advance knowledge and understanding of issues impacting both organizations. The primary intent of such a joint endeavour is to more effectively plan for and utilize finite resources in a way that is collaborative and beneficial to both organizations.

Public Complaints

25. The CRCC and the RCMP intend to establish consistent service standards regarding the handling of all public complaints in order to provide consistent service within decided upon timelines.

Jointly Developed Public Complaint Form

26. If a member of the public chooses to file their complaint with the RCMP, the RCMP will use the jointly developed public complaint form for collection of public complaint information.
27. Where potential amendments to the jointly developed public complaint form are identified, the Participants understand that these will be brought to the Officer in Charge (OIC) Outreach, NPCD and Director of Intake for initial discussion. Approval for amendments will be made in writing by the respective organizations.

ONLINE Public Complaint Form (for RCMP use only)

28. The CRCC will provide updated technical information and links to the RCMP for the Online Public Complaint Form (for RCMP use only).
29. The CRCC will notify the RCMP of any significant access issues to the Online Public Complaint Form (for RCMP use only).
30. The RCMP will promote the use of this form internally with a goal of ensuring this online tool becomes the primary vehicle for receipt of complaint information.
31. The Participants acknowledge that the RCMP's requirement to notify the CRCC pursuant to subsection 45.53(10) will be satisfied when the RCMP completes and submits the Online Public Complaint Form (for RCMP use only) through the CRCC's website. The CRCC will forward complaints received via the Online Public Complaint Form (for RCMP use only) to the

NPCD within 10 days. The NPCD will confirm receipt of said information within 10 days of receipt.

32. For greater certainty, when the RCMP completes and submits the Online Public Complaint Form (for RCMP use only) through the CRCC's website, the Participants acknowledge that the Commissioner retains the authority to extend or refuse the time limit for making a complaint pursuant to subsection 45.36(6). The RCMP will notify the CRCC of the Commissioner's decision to refuse to extend the time limit for making a complaint as described in paragraph 45 of this Operations MOU.

Public Complaint Investigations

33. The Participants will provide within 10 days of the receipt of a complaint, the completed public complaint form and any related documentation provided by the complainant to the other Participant pursuant to subsection 45.53(10).
34. Acknowledgement by the Participants of the receipt of the completed public complaint form and related documentation will be provided within 10 days.
35. Where the CRCC receives a request from a complainant regarding a complaint over the RCMP's service standard for completing a public complaint investigation, the CRCC will contact NPCD for a status update on the file. NPCD will provide a status update within 10 days.
36. In order to ensure the impartiality of the public complaint investigation, the CRCC may request, in writing, the RCMP to assign an investigator from a separate detachment or division.
37. In these instances, the RCMP will notify the CRCC, in writing, within 10 days unless otherwise decided upon, of the outcome of this request.
38. The NPCD will provide to the CRCC a copy of a report issued pursuant to section 45.64 within 10 days of the provision of such report to the complainant.

CRCC Complaints Refusals

39. The CRCC will notify NPCD in writing within 10 days of a decision to refuse to deal with a complaint pursuant to subsections 45.53 (2), (3) or (4) except where the CRCC determines that it would not be appropriate to notify the RCMP.

RCMP Refusal or Termination of Public Complaint Investigation

40. The NPCD will provide to the CRCC a copy of a notice of direction issued pursuant to subsection 45.61(3) within 10 days of the RCMP's provision of such report to the complainant. Provision of such notice to the CRCC will constitute notification pursuant to subsection 45.61(4). A notice of direction will provide the NPCD's reasons for so directing.

Extension of Time Limit

41. The CRCC will notify the NPCD, in writing, within 10 days of a decision to refuse to extend the time limit for making a complaint except where the CRCC determines that it would not be appropriate to notify the RCMP.

42. The CRCC will notify the NPCD, in writing, within 10 days of a decision under subsection 45.53(6) to extend the one-year time limit.
43. The NPCD will notify the CRCC pursuant to subsection 45.53(7), in writing, within 30 days of a decision to refuse to extend the time limit for making a complaint.
44. The NPCD will notify the CRCC, in writing, within 10 days of a decision under subsection 45.53(6) to extend the one-year time limit.
45. Where a complaint is received by the CRCC and forwarded to the RCMP for investigation but the RCMP believes that the date of the incident falls outside the one-year time limit, the RCMP may exercise its discretion under subsection 45.53(6) to extend the one-year time limit, provide the CRCC with the notice described in paragraph 44 of this Operations MOU and investigate the complaint; or it may exercise its discretion to terminate the investigation or not commence an investigation pursuant to its authority under subsection 45.61(1).

Threats Made within Complaint Process

46. Within normal course of business in the complaint process the CRCC may become aware of a possible threat to an RCMP member, member of the public, infrastructure, the individual within the complaint process, or any other person.
47. The CRCC will immediately contact the Director of NPCD. If the Director is unreachable, for any reason, the CRCC will contact the Officer in Charge (OIC) Outreach, and if the OIC is unavailable, the CRCC will contact the detachment directly. A follow-up e-mail to NPCD will be sent immediately.
48. The NPCD will make an updated contact list available to the CRCC to ensure immediate contact can be made.

Withdrawal of Complaints

49. The NPCD will provide the CRCC with a copy of the complainant's written intent to withdraw a complaint within 10 days of learning of a complainant's desire to withdraw the complaint.
50. The CRCC will provide the NPCD with a notice, in writing, that a complaint has been withdrawn within 10 days of the CRCC receiving the complainant's request to withdraw their complaint as required under subsection 45.55(3).
51. In the event that a complaint is withdrawn by a complainant and the RCMP decides to investigate the withdrawn complaint, the RCMP will notify the CRCC within 10 days of the decision.
52. In the event that a complaint is withdrawn by a complainant and that the CRCC decides to investigate, or review the withdrawn complaint, the CRCC will notify the RCMP within 10 days of the decision.

National Security Complaints

53. NPCD will be the initial and primary point of contact for National Security related public complaints.
54. The CRCC will identify employees who will act as points of contact for the RCMP in National Security related complaint matters.

55. The CRCC may consult with the RCMP in order to make the determination that the complaint is closely related to National Security.
56. After the referral to the National Security and Intelligence Review Agency (NSIRA) and the notification of the RCMP Commissioner, the CRCC will wait 10 days before notifying the complainant of the referral to NSIRA.
57. For instances where complaints have not been initially identified as related to National Security but are later identified as such in the process, the RCMP and the CRCC will conduct discussions to establish if those complaints are closely related to National Security.

Integrated Cross-Border Complaints

58. To enable the authorities under Part VII.2, the Participants, on identification of the complaint as one related to an Integrated Cross-Border Law Enforcement Operation, must notify the other Participant.
59. The timelines established in this Operations MOU regarding the handling of investigations and reviews of complaints, as well as all related disclosure, recommendations, final reports and provincial reporting will apply.

Public Interest Investigation by the CRCC

60. If the Chairperson is of the opinion that it would be in the public interest for the CRCC to investigate a complaint, the CRCC will, within 10 days, notify the Commissioner of such decision pursuant to subsection 45.66(2).
61. Upon receipt of the CRCC's notification of a Public Interest Investigation, the NPCD will, within 10 days, identify a primary point of contact for the CRCC.
62. Upon receipt of the CRCC's request for a Divisional point of contact, the NPCD will, within 10 days, provide the information listed in Appendix B.
63. Notwithstanding paragraph 62, the Participants acknowledge that the NPCD is the first point of contact for the CRCC in a Public Interest Investigation, and remains the continuous coordinating and facilitative body during the investigation. The Participants further acknowledge that NPCD will be copied on all correspondence between the CRCC and the Division, unless otherwise decided upon.
64. The Participants understand that all relevant material requests in Public Interest Investigations will be provided in writing to NPCD. The NPCD will provide the CRCC with the requested material within 30 days of the CRCC's request.
65. Subsequent requests for relevant material will be provided in writing to the NPCD. The NPCD will provide the CRCC with the material within 15 days of the CRCC's request for such information.
66. If any of the relevant material requests described in paragraph 64 and 65 contain Privileged Information as defined in subsection 45.4(1), any examination, provision or refusal of access to such information will be dealt with in accordance with the process developed in paragraphs 90 to 99 of this Operations MOU.

Reviews

Referral of Complaints to CRCC / Relevant Material Request

67. Where a complainant requests that the CRCC conduct a review of a decision under section 45.61 or a report under section 45.64, the CRCC will notify NPCD, in writing, and request relevant material within 10 days.
68. The NPCD will provide the CRCC with the requested material within 30 days of the CRCC's request for such information.
69. Where the CRCC requires further information and/or material relevant to a referred complaint, the written request will be directed to the NPCD. The NPCD will provide such information and/or material within 15 days of the CRCC's request.
70. If any of the relevant material requests described in paragraph 67 and 69 contain Privileged Information as defined in subsection 45.4(1), any examination, provision or refusal of access to such information will be dealt with in accordance with the process developed in paragraphs 90 to 99 of this Operations MOU.

Request for further investigation

71. The CRCC will notify the Commissioner, in writing, within 10 days of a decision to request that the Commissioner direct the RCMP to investigate or further investigate a complaint pursuant to paragraph 45.71(3)(b).
72. Where the CRCC investigates or further investigates a complaint pursuant to paragraph 45.71(3)(c), the CRCC will notify the NPCD of the investigation within 10 days of the CRCC's decision to initiate an investigation or further investigate a complaint.

Consolidation of Complaints by the CRCC

73. The CRCC will, within 10 days, notify the NPCD when it has, pursuant to section 45.68, consolidated complaints for the purposes of an investigation, review, or hearing.

Reports following Reviews and Investigations

74. Upon issuing a report identified in paragraph 45.71(3)(a) or subsection 45.76(1), the CRCC will provide the Commissioner with the documentary evidence pertaining to such report within 30 days of providing the Commissioner with such report.
75. Where the CRCC issues a report pursuant to subsection 45.71(3)(a) or subsection 45.76(1), the Commissioner will provide the Chairperson with the written response required by subsection 45.72(1) or 45.76(2) within 6 months of the issuance of the report by the CRCC.
76. Where the Commissioner issues a written response pursuant to subsection 45.72(1) or subsection 45.76(2), the CRCC will provide the Commissioner with the CRCC's final report within 30 days of the receipt of the Commissioner's response by the CRCC.

Specified Activity Review

77. Unless requested by the Minister, the CRCC may consult with the RCMP prior to the recommendation to initiate a Specified Activity Review to the Chairperson. This without prejudice consultation will provide the Participants the ability to discuss the scope of the Terms of Reference (e.g. the length of time required to examine a particular activity). This will also

provide the NPCD with the advanced considerations to resource the Specified Activity Review appropriately.

78. The CRCC will notify the Commissioner in writing, within 10 days, of the initiation of a Specified Activity Review. The notification to the Commissioner will include the Terms of Reference for the Specified Activity Review.
79. Upon receipt of the CRCC's notification of a Specified Activity Review, the NPCD will, within 10 days, identify the unit's primary point of contact for the CRCC.
80. Upon receipt of the CRCC's request for a Divisional point of contact, the NPCD will, within 10 days, provide the information listed in Appendix B.
81. Notwithstanding paragraph 80, the Participants understand that the NPCD is the first point of contact for the CRCC in the Specified Activity Review investigative process, and remains the continuous coordinating and facilitative body during the review. The Participants further understand that NPCD will be copied on all correspondence between the CRCC and the Division unless otherwise decided upon.
82. The Participants understand that all relevant material requests will be provided in writing to NPCD. The NPCD will provide the CRCC with the requested material within 30 days of the CRCC's request for such information.
83. Subsequent requests for relevant material deriving from missing material will be provided in writing to NPCD. The NPCD will provide the CRCC with the missing material within 15 days of the CRCC's request for such information.
84. Any request for further/additional requested relevant material to the Specified Activity Review will be provided in writing to NPCD. The NPCD will provide the CRCC with said materials within 30 days of the CRCC's request for such information.
85. If any of the relevant material requests described in paragraph 82 to 84 contain Privileged Information as defined in subsection 45.4(1), any examination, provision or refusal of access to such information will be dealt with in accordance with the process developed in paragraphs 90 to 99 of this Operations MOU.
86. Upon completion of the CRCC's Report following a Specified Activity Review, the CRCC will provide the NPCD with a copy of the Report and any background information pertaining to the Specified Activity Review that the CRCC considers appropriate, within 10 days of the Chairperson's approval.
87. Upon receipt of the CRCC's Report following a Specified Activity Review, the Commissioner may provide a response to the CRCC with respect to any finding, recommendation and comment contained in said Report within 60 days.
88. The CRCC may make public, following the 60-day waiting period in paragraph 87 or unless decided otherwise between the Participants, the CRCC's Report following a Specified Activity Review, in whole or in part. If the Commissioner has provided a response to said Report within the 60-day waiting period, the Participants acknowledge that the response will be released contemporaneously with the CRCC's Report following a Specified Activity Review.
89. Notwithstanding paragraph 87 and 88 of this Operations MOU, the Commissioner may provide a response to a Specified Activity Review at his or her discretion.

Privileged Information

Examination of Privileged Information

90. The RCMP intends to identify any information over which it asserts a claim of privilege within 30 days of the CRCC's request for such information.
91. Where the information is identified as privileged information and under the control, or in the possession of the RCMP and is relevant and necessary to the exercise of the CRCC's powers or the performance of its duties and functions as set out in the *RCMP Act*, the RCMP will provide the CRCC with access, at an RCMP facility, within 30 days of the CRCC's request for such information.
92. Providing access to the CRCC of such information will not constitute waiver of any privilege attached without written confirmation of such waiver from the RCMP.

Provision of Privileged Information

93. Subject to the Commissioner's approval, the CRCC is entitled to be given a copy of relevant and necessary privileged information. The RCMP intends to provide the CRCC with a copy of relevant and necessary privileged information within 10 days of the Commissioner's approval.
94. The provision of such information by the RCMP will not constitute waiver of any privilege attached without written confirmation of such waiver from the RCMP.

Refusal of Access to Privileged Information

95. Where the RCMP believes that a claim of privilege exists and that the information is not relevant and necessary, the RCMP will provide the CRCC with details about the nature and date of the privileged information and will describe the document containing the information and the privilege which it deems applicable within 30 days. Following the provision of these details, the RCMP and CRCC staff, as designated by the Commissioner and the Chairperson, will determine whether the privileged information is relevant and necessary to the matter before the CRCC.
96. Any discussions that occur pursuant to paragraph 95 will be conducted without prejudice.
97. Following such discussions, the RCMP will, within 30 days of the date of completing discussions, either:
    a. Provide written verification that the CRCC acknowledges the information has been deemed not relevant or necessary; or
    b. Provide access to the information to the CRCC; or
    c. Provide the CRCC with written reasons why the privileged information is not relevant and necessary without disclosing the privileged information.
98. Where written reasons are provided in accordance with paragraph 97(c) of this Operations MOU, the Chairperson will determine whether the information is still sought by the CRCC, and if so, will communicate his or her position and written reasons to the Commissioner within 30 days of the RCMP reasons being received.
99. Upon receipt of the Chairperson's position, the Commissioner will, within 30 days, either:
    a. Direct access to the information be provided to the CRCC; or
    b. Provide the Chairperson with written reasons outlining why the privileged information is not relevant and necessary, which will constitute a refusal and reasons pursuant to

subsection 45.4(4).

Use of Privileged Information

100. Where the CRCC seeks the Commissioner's approval prior to distributing a report or other document that may contain privileged information pursuant to subsection 45.44(2), the Commissioner will indicate whether he or she approves the distribution of such document within 30 days of receipt of the CRCC's request for consultation and approval. Should the Commissioner determine that such approval will be withheld, he or she will provide written reasons for such determination to the Chairperson.
101. Where the Commissioner determines that approval for distribution of a document containing or disclosing privileged information will be withheld pursuant to subsection 45.44(3), the RCMP and CRCC staff, as designated by the Commissioner and the Chairperson, will develop a version suitable for distribution and will seek approval from the Chairperson and Commissioner for the distribution of this new version.

Use of Information Giving Rise to a Risk of Serious Harm to a Person

102. Where, pursuant to subsection 45.44(2), the CRCC seeks the Commissioner's approval prior to distributing a report or other documents that may contain information identified as giving rise to a risk of serious harm to a person as described in subsection 45.39(3), the Commissioner will indicate whether or not he or she approves the distribution of such document within 30 days of receipt of the CRCC's request for approval. Should the Commissioner indicate that such approval will be withheld, he or she will provide written reasons for such determination to the Chairperson.
103. Where the Commissioner indicates that approval for distribution of a document containing information identified as giving rise to a risk of serious harm to a person will be withheld pursuant to subsection 45.44(3), the RCMP and CRCC staff, as designated by the Commissioner and the Chairperson, will develop a version suitable for distribution and will seek approval from the Chairperson and Commissioner for the distribution of this new version.

Serious Incidents

104. Where the RCMP conducts a serious incident investigation pursuant to paragraph 45.82(2)(b), the RCMP will:
    a. notify the CRCC as required under paragraph 45.82(2)(a), no later than 2 days after the RCMP's decision to conduct the investigation, that it is investigating the serious incident;
    b. provide the Chairperson, within 10 days of the RCMP's decision to conduct the investigation, with a report outlining the efforts made to identify an investigative body or police force to conduct the investigation, as required under subsection 45.82(4); and
    c. provide the Chairperson, within 10 days of the RCMP's decision to conduct the investigation, with a report setting out the measures taken to ensure impartiality of the investigation if there is no observer appointed, as required under subsection 45.83(4).
105. Where a police force other than the RCMP conducts a serious incident investigation pursuant to subsection 45.81(2) or 45.82(1), the RCMP will, no later than 2 days after receiving

confirmation that the other police force will conduct the investigation, notify the CRCC of the serious incident, as required under paragraph 45.83(1)(a).

Appendix A

Process	RCMP Service Standard	CRCC Service Standard	MOU Paragraph
GENERAL PROVISIONS			
A working group will be formed to discuss issues of mutual interest	Will meet once a year unless CRCC and RCMP decide that a meeting is not required.	Will meet once a year unless CRCC and RCMP decide that a meeting is not required.	4
Request for archived RCMP Policies and/or Manuals	The RCMP will provide to the CRCC within 10 days of the CRCC's request or as otherwise decided upon.		13
The Operations MOU and Appendices may be amended	**at any time** with the mutual consent of the CRCC and RCMP by	**at any time** with the mutual consent of the CRCC and RCMP by exchange of correspondence	16
MOU will be terminated	six months from the date of written notice	six months from the date of written notice	17
PUBLIC COMPLAINTS			
Online Public Complaint Form			
CRCC will forward complaints received via Online Public Complaint Form to NPCD		within 10 days	31

NPCD will confirm receipt of forwarded online complaint	within 10days of receipt		31
Public Complaint Investigations			
The participants will provide the completed public complaint form and any related documentation provided by the complainant	within 10days of receipt	within 10days of receipt	33
Acknowledgement of receipt of completed public complaint form and related documentation	within 10days of receipt	within 10days of receipt	34
When CRCC contacts NPCD for a status update on RCMP's service standard for completing a public complaint investigation, NPCD will provide a status update	within 10 days		35
Upon written request that the RCMP assign an investigator from a separate detachment or division, the RCMP will notify the CRCC in writing of the outcome of this request	within 10days unless otherwise decided upon		37

NPCD will provide the CRCC with a copy of a report issued pursuant to section 45.64	within 10 days of the provision of report to complainant		38
CRCC Complaint Refusals			
CRCC will notify NPCD, in writing, of a decision to refuse to deal with a complaint		within 10 days, except where the CRCC determines that it would not be appropriate to notify the RCMP	39
RCMP Refusal of Termination of Public Complaint Investigation			
The NPCD will provide to the CRCC a copy of a notice of direction pursuant to subsection 45.61(3)	within 10 days of the provision of report to complainant		40
Extension of Time Limit			
The CRCC will notify the NPCD, in writing, of a decision to refuse to extend the time limit for making a complaint.		within 10days except where the CRCC determines that it would not be appropriate to notify the RCMP	41
The CRCC will notify the NPCD, in writing, of a decision under subsection 45.53(6) to extend the one year time limit.		within 10 days	42

The NPCD will notify the CRCC pursuant to subsection 45.53(7), in writing, of a decision to refuse to extend the time limit for making a complaint.	within 30 days		43
The NPCD will notify the CRCC, in writing, of a decision under subsection 45.53(6) to extend the one-year time limit.	within 10 days		44
WITHDRAWAL OF COMPLAINTS			
The NPCD will provide the CRCC with a copy of the complainant's written request to withdraw a complaint.	within 10 days		49
The CRCC will provide the NPCD with a notice, in writing, that complaint has been withdrawn.		within 10 days	50
In the event that a complaint is withdrawn by a complainant and the RCMP decides to investigate the withdrawn complaint, the RCMP will notify the CRCC.	within 10 days of the decision		51

In the event that a complaint is withdrawn by a complainant and the CRCC decides to investigate, or review the withdrawn complaint, CRCC will notify the RCMP.		the within 10 days of the decision	52
NATIONAL SECURITY COMPLAINTS			
After referral to NSIRA and the notification of the RCMP Commissioner, the CRCC will wait before notifying the complainant of the referral to NSIRA.		will wait 10 days	56
PUBLIC INTEREST INVESTIGATION BY THE CRCC			
If the Chairperson is of the opinion that it would be in the public interest for the CRCC to investigate a complaint, the CRCC will notify the Commissioner of such decision		within 10 days	60
Upon receipt of the CRCC's notification of a Public Interest Investigation, The NPCD will identify a primary point of contact for the CRCC	within 10 days		61

Upon receipt of the CRCC's request for a Divisional point of contact, the NPCD will provide the information listed in Appendix B of the operations MOU	within 10 days		62
The NPCD will provide the CRCC with relevant material requests in Public Interest Investigations in writing	within 30 days of the CRCC's request		64
The NPCD will provide the CRCC with subsequent requests for relevant material	within 15 days of the CRCC's request		65
REVIEWS			
Referral o Complaints to CRCC/Relevant Material Request			
Where a complainant requests that the CRCC conduct a review of a decision under section 45.61 or a report under section 45.64, the CRCC will notify NPCD, in writing, and request relevant material		within 10 days	67
The NPCD will provide the CRCC with the requested relevant material	within 30 days of the CRCC's request		68

Where the CRCC requires further information and/or material relevant to a referred complaint, the written request will be directed to the NPCD. The NPCD will provide such information and/or material	within 15 days of the CRCC's request		69
Request for Further investigation			
The CRCC will notify the Commissioner, in writing, of a decision to request that the Commissioner direct the RCMP to investigate or further investigate a complaint pursuant to paragraph 45.71(3)(b).		within 10 days	71
Where the CRCC investigates or further investigates a complaint pursuant to paragraph 45.71(3)(c), the CRCC will notify the NPCD of the investigation		within 10 days of the decision to initiate an investigation or further investigate a complaint.	72
Consolidation of Complaints by CRCC			

The CRCC will notify the NPCD when it has, pursuant to section 45.68, consolidated complaints for the purposes of an investigation, review, or hearing.		within 10 days	73
REPORTS FOLLOWING REVIEWS AND INVESTIGATIONS			
Upon issuing a report identified in paragraph 45.71(3)(a) or subsection 45.76(1), the CRCC will provide the Commissioner with the documentary evidence pertaining to such report		within 30days of providing the Commissioner with such report.	74
Where the CRCC issues a report pursuant to subsection 45.71(3)(a) or subsection 45.76(1), the Commissioner will provide the Chairperson with the written response required by subsection 45.72(1) or 45.76(2)	within 6 months of the issuance of the report by the CRCC.		75

Where the Commissioner issues a written response pursuant to subsection 45.72(1) or subsection 45.76(2), the CRCC will provide the Commissioner with the CRCC's final report		within 30 days of the receipt of the Commissioner's response by the CRCC.	76
SPECIFIED ACTIVITY REVIEW			
The CRCC will notify the Commissioner, in writing, of the initiation of a Specified Activity Review.		within 10 days of the initiation	78
Upon receipt of the CRCC's notification of a Specified Activity Review, the NPCD will identify the unit's primary point of contact for the CRCC.	within 10 days		79
Upon receipt of the CRCC's request for a Divisional point of contact, the NPCD will provide the information listed in Appendix 8 of the MOU	within 10 days		80

The Participants understand that all relevant material requests will be provided in writing to NPCD. The NPCD will provide the CRCC with the requested material	within 30 days of the CRCC's request	82
Subsequent requests for relevant material deriving from missing material will be provided in writing to NPCD. The NPCD will provide the CRCC with the missing material	within 15 days of the CRCC's request	83
Any request for further/additional relevant material to the Specified Activity Review will be provided in writing to NPCD. The NPCD will provide the CRCC with the requested materials	within 30 days of the CRCC's request	84

Upon completion of the CRCC's Report following a Specified Activity Review, the CRCC will provide the NPCD with a copy of the Report and any background information pertaining to the Specified Activity Review that the CRCC considers appropriate		within 10 days of the report being issued.	86
Upon receipt of the CRCC's Report following a Specified Activity Review, the Commissioner may provide a response to the CRCC with respect to any finding, recommendation and comment contained in said Report	within 60days		87
The CRCC may make public the CRCC's Report following a Specified Activity Review, In whole or In part.		following the 60-day waiting period (In paragraph 87 In MOU) or unless decided otherwise between the Participants	88
PRIVILEGED INFORMATION			
Examination of Privileged Information			
The RCMP will identify any information over which it asserts a claim of privilege	within 30days of the CRCC's request for such information		90

Where the information is identified as privileged information and under the control, or in the possession of the RCMP and is relevant and necessary to the exercise of the CRCC's powers or the performance of its duties and functions as set out in the *RCMP Act*, the RCMP will provide the CRCC with access, at an RCMP facility	within 30 days of the CRCC's request for such information.	91

Provision of Privileged Information

Subject to the Commissioner's approval, the CRCC is entitled to be given a copy of relevant and necessary privileged information. The RCMP intends to provide the CRCC with a copy of relevant and necessary privileged information	within 10 days of the Commissioner's approval.	93

Refusal of Access to Privileged Information

Where the RCMP believes that a claim of privilege exists and that the Information is not relevant and necessary, the RCMP will provide the CRCC with details about the nature and date of the privileged information and will describe the document containing the information and the privilege which it considers applicable	within 30 days	95

Following such discussions, the RCMP will either: 1. Provide written verification that the CRCC acknowledges the information has been determined not relevant or necessary; or 2. Provide access to the information to the CRCC; or 3. Provide the CRCC with written reasons why the privileged Information is not relevant and necessary without disclosing the privileged information.	within 30 days of the date of completing discussions	97

Where written reasons are provided In accordance with paragraph 97(c) of this Operations MOU, the Chairperson will determine whether the information is still sought by the CRCC, and if so, will communicate his or her position and written reasons to the Commissioner		within 30 days of the RCMP reasons being received.	98
Upon receipt of the Chairperson's position, the Commissioner will either: 1. Direct access to the information be provided to the CRCC; or 2. Provide the Chairperson with written reasons outlining why the privileged information Is not relevant and necessary, which will constitute a refusal and reasons pursuant to subsection 45.4(4).	within 30 days		99

Use of Privileged Information		
Where the CRCC seeks the Commissioner's approval prior to distributing a report or other document that may contain privileged information pursuant to subsection 45.44(2), the Commissioner will Indicate whether they approve the distribution of such document	within 30 days of receipt of the CRCC's request for consultation and approval.	100
Use of Information Giving Rise to a Risk of Serious Harm to a Person		
Where, pursuant to subsection 45.44(2), the CRCC seeks the Commissioner's approval prior to distributing a report or other documents that may contain information identified as giving rise to a risk of serious harm to a person as described in subsection 45.39(3), the Commissioner will indicate whether or not they approve the distribution of such document	within 30 days of receipt of the CRCC's request for approval.	102

SERIOUS INCIDENTS

Where the RCMP conducts a serious incident investigation pursuant to paragraph 45.82(2)(6), the RCMP will notify the CRCC as required under paragraph 45.82(2)(a), that it is investigating the serious incident;	no later than 2 days after the RCMP's decision to conduct the investigation	104a
Where the RCMP conducts a serious incident investigation pursuant to paragraph 45.82(2)(b), the RCMP will provide the Chairperson with a report outlining the efforts made to identify an investigative body or police force to conduct the investigation, as required under subsection 45.82(4)	within 10 days of the RCMP's decision to conduct the investigation	104b

Where the RCMP conducts a serious incident investigation pursuant to paragraph 45.82(2)(b), the RCMP will provide the Chairperson with a report setting out the measures taken to ensure impartiality of the conduct investigation if there is no observer appointed, as required under subsection 45.83(4).	within 10 days of the RCMP's decision the investigation	104c
Where a police force other than the RCMP conducts a serious incident receiving investigation pursuant to subsection 45.81(2) or 45.82(1), the RCMP will notify the CRCC of the serious incident, as required under paragraph 45.83(1)(a).	no later than 2 days after confirmation that the other police force will conduct the Investigation	105

Appendix B

[X]DIVISION

1. Unit/Detachment: NAME OF UNIT OR DETACHMENT

Name and Rank:

Position Title:

Office Phone:

Cell Phone:

E-Mail:

Additional Info/Contacts:

2. Unit/Detachment:

Name and Rank:

Position Title:

Office Phone:

Cell Phone:

E-Mail:

Additional Info/Contacts:

Date modified:
2020-10-22

Exhibit "H"

This is Exhibit "H" referred to in the
affidavit of Harsha Walia
sworn before me at Vancouver, BC
this 19th day of November 2020

Jessica Magnet

A Commissioner for taking Affidavits
For British Columbia

BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

January 29, 2020

BY MAIL AND EMAIL

Attn: Michelaine Lahaie
Chairperson, Civilian Review and Complaints Commission for the RCMP
P.O. Box 1722, Station B
Ottawa, ON K1P 0B3
Email: Michelaine.Lahaie@crcc-ccetp.gc.ca

cc: RCMP Commissioner Brenda Lucki
RCMP Deputy Commissioner Jennifer Strachan

Dear Chairperson Michelaine Lahaie,

Re: Policy Complaint Concerning RCMP Checkpoint on Morice West Forest Service Road

We are writing on behalf of the British Columbia Civil Liberties Association ("BCCLA"), the Wet'suwet'en Hereditary Chiefs, and the Union of BC Indian Chiefs ("UBCIC") to initiate a policy complaint and public interest investigation under the *Royal Canadian Mounted Police Act*. We submit this complaint regarding the improper and unlawful actions of the Royal Canadian Mounted Police ("RCMP") in implementing and enforcing a checkpoint and exclusion zone on Morice West Forest Service Road ("Morice West FSR") in Wet'suwet'en territory. This complaint and call for investigation is also supported by West Coast Environmental Law and Pivot Legal Society.

The RCMP checkpoint and exclusion zone has been in force since January 13, 2020 at the 27-kilometer mark on the Morice West FSR. We have serious concerns about the overbroad scope as well as inconsistent and arbitrary exercise of RCMP discretion in Wet'suwet'en territories. The RCMP implementation and enforcement of the exclusion zone criminalizes and impedes the movement of Wet'suwet'en people, invited guests of the Wet'suwet'en, media, legal counsel as well as food and medical supplies. RCMP interference with individual liberty is significant, arbitrary, and disproportionate to achieving the stated goal of public safety. Further, the RCMP

checkpoint and exclusion zone is in clear violation of constitutionally recognized Anuk'nu'at'en (Wet'suwet'en law) as well as the *Canadian Charter of Rights and Freedoms*.

What is happening in Wet'suwet'en territories and the over-policing of Indigenous land defenders is a matter of significant public interest. The Wet'suwet'en Nation has been in the national and international spotlight for almost two years. Additionally, in December 2019, the United Nations Committee on the Elimination of Racial Discrimination called upon Canada to "immediately halt the construction and suspend all permits and approvals for the construction of the Coastal GasLink pipeline in the traditional and unceded lands and territories of the Wet'suwet'en people, until they grant their free, prior, and informed consent."[1]

Context

The Wet'suwet'en assert continuous jurisdiction and unextinguished rights and land title. Aboriginal rights and title requires the Crown and industry to obtain consent to use Wet'suwet'en land, and to do otherwise would infringe on those inherent, constitutionally-protected rights. The Supreme Court of Canada has also recognized that constitutionally-protected Aboriginal title includes the right to use, enjoy, benefit from, occupy and pro-actively manage the land.[2] Hereditary Chiefs of all five Wet'suwet'en clans, in accordance with Wet'suwet'en law and under proper authority, have made clear that no access will be granted for Coastal GasLink Pipeline Ltd ("CGL") to operate on their territories without free, prior, and informed consent.

In January 2019, RCMP officers enforced an interim injunction obtained by CGL. Investigative reporting has since revealed the RCMP discussed and planned an excessive level of force, including lethal force, for its raid of Gidimt'en checkpoint.[3] Notes from RCMP commanders' detail "lethal overwatch is req'd" and instruct officers to "use as much violence toward the gate as you want." The planning and potential use of lethal force by RCMP was an absolutely unacceptable and abhorrent response, creating shockwaves nationally and internationally.

On December 31, 2019, the BC Supreme Court granted CGL an interlocutory injunction; an enforcement order was issued on January 7, 2020.[4] In its decision, the Court recognized that it was contending with how to properly reconcile Canadian law with Indigenous law. The BC Supreme Court acknowledged the existence of Wet'suwet'en law, noting the distinction between Indigenous and Canadian laws. The court continued to express that there are significant

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[1] U.N. CERD, Prevention of Racial Discrimination, Including Early Warning and Urgent Procedure, 100th Sess.,1, 25 November-13 December 2019.
[2] *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010; *Tsilhqot'in Nation v.British Columbia*, [2014] 2 S.C.R. 256.
[3] "Exclusive: Canada police prepared to shoot Indigenous activists, documents show," Jaskiran Dhillon and Will Parrish, *The Guardian*, December 20, 2019.
[4] *Coastal GasLink Pipeline Ltd. v. Huson*, 2019 BCSC 2264.

constitutional questions at play that could not appropriately be addressed by the court on the injunction issue as they need to be dealt with in a trial. Higher courts have recognized Indigenous law is more than just evidence, and Indigenous legal orders exist prior to Canadian legal declaration or colonial recognition.[5]

RCMP Checkpoint and Exclusion Zone

The RCMP checkpoint has been in force since January 13, 2020 at the 27-km mark on the Morice West FSR. A RCMP press release dated January 20, 2020 maintains the exclusion zone is an access control checkpoint and not an exclusion zone.[6]

We are submitting eight first-hand accounts of people denied access, or turned away from the area. Statements are included from Delee Alexis Nikal, Cody Thomas Merriman, Molly Wickham, Irina Ceric, Noah Ross, David Byron Christopher Wood, Carl Williams, and Amanda Follett Hosgood. These first-hand accounts demonstrate a consistent pattern of RCMP excluding people from the area, including Wet'suwet'en people, media, and legal counsel, and suggests the RCMP are exercising arbitrary and overbroad powers to check identification and deny people access to Morice West Forest Service Road. This, in effect, creates an exclusion zone and we stress that, irrespective of name, the RCMP have instituted and are enforcing an unnecessary exclusion zone. To this point, the RCMP informed David Byron Christopher Wood "this is an exclusion zone" when denying him access to the area.[7]

The RCMP are broadly citing "public safety" to justify restricted access at the checkpoint and shifting rationales have been provided, including:

1. Restricting access to a logging road and identifying individuals is required in case someone gets lost or stranded in a snowstorm;
2. "Safety concerns related to the hazardous items of fallen trees and tire piles with incendiary fluids;"[8]
3. To "prevent further contraventions to the BC Supreme Court ordered injunction."[9]

We stress to the Complaints Commission that neither the interlocutory injunction nor the enforcement order granted to CGL on December 31, 2019 makes any mention of travel to or residence at the various sites or camps on Wet'suwet'en territories. The RCMP checkpoint at the 27-km mark lies outside the scope of the discretionary enforcement power granted to the RCMP

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[5] *R v Marshall,* 2005 SCC 43; *Pastion v Dene Tha' First Nation,* 2018 FC 648, 2018 CarswellNat 3238; *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010 [*Delgamuukw*].
[6] "RCMP provides update on access control checkpoint on Morice West Forest Service Road," January 15, 2020. RCMP Superintendent John Brewer, Operations Commander, RCMP Community-Industry Response Group.
[7] Attached statement of David Byron Christopher Wood, p 23.
[8] "Update - Access Control Checkpoint set up along Morice West Forest Service Road," January 13, 2010, RCMP Community-Industry Response Group.
[9] *Ibid.*

by the injunction. Further, the RCMP stipulate in their latest public statement: "At this point, we are not enforcing the BC Supreme Court injunction to allow time for dialogue between the Wet'suwet'en Hereditary Chiefs, Elected Councils, Coastal GasLink and Government."[10]

On the second rationale, we note there has been no ascertainable attempt on the ground by the RCMP to either investigate or remove the fallen trees or other hazardous materials, all of which are located past the 39-km mark of the road – no such items can be found near the 27-km mark.

RCMP officers at the checkpoint have cited a range of inconsistent and shifting policies and procedures to those who were turned away, all of which are arbitrary and most of which do not correlate to any of the three rationales cited above. These include:

- Only pre-approved hereditary chiefs are allowed access;
- Only accredited journalists are allowed access;
- Only lawyers licensed to practice in B.C are allowed access;
- Only vehicles with tire chains and two-way radios are allowed access.

The restriction of access to the roads and areas beyond the 27-km mark to certain categories of people is unrelated to the RCMP's stated objective of public safety. Further, the requirement of vehicles to have two-way radios and chains has been applied inconsistently and arbitrarily. In some instances, police have stated that chains are required, despite the absence of any posted signs to that effect, good driving conditions (the Morice FSR is plowed and sanded), and the use of appropriate vehicles.[11] In other instances, sometimes on the same day, no such requirement was stated. We also emphasize to the Complaints Commission that Morice FSR is a radio-assisted road and mobile radios are not a legal requirement.[12]

Exclusion of Wet'suwet'en

On January 13, 2020, Delee Alexis Nikal and Cody Thomas Merriman (Wedlidi) were bringing food and emergency supplies in their respective vehicles. Both were separately denied entry and access at the RCMP checkpoint. This was in contravention of the RCMP's public statement stipulating "[p]ersons providing food, medicine or other supplies or services required for the well-being and safety of persons behind the blockades" would generally be permitted through.[13] Nikal and Merriman spent approximately three hours each in -37°C at the checkpoint, attempting to transport food and emergency supplies to people at the Gidimt'en camp.[14] While the RCMP

[10] "RCMP provides update on access control checkpoint on Morice West Forest Service Road," January 15, 2020, RCMP Community-Industry Response Group.
[11] Attached statements of Noah Ross and Irina Ceric.
[12] Government of British Columbia, "Resource Road Radio Communications."
[13] "Update - Access Control Checkpoint set up along Morice West Forest Service Road," January 13, 2010, RCMP Community-Industry Response Group.
[14] Attached statements of Delee Alexis Nikal and Cody Thomas Merriman, p 12-15.

maintain the RCMP checkpoint is in the interests of public safety, the highly-controlled access and prohibitions on people bringing food and emergency supplies for those residing at the camps behind the checkpoint puts many Wet'suwet'en people's health and safety at risk.

Nikal and Merriman were both informed that only Hereditary Chiefs whose names appear on a RCMP-generated list were going to be allowed access past the checkpoint. Merriman was initially told he would be allowed entry, but was then arbitrarily denied when he returned shortly later. According to Merriman, "During my first contact with the RCMP at that time, the RCMP officer told me I could go through the RCMP exclusion zone with my wife Sleydo', spokesperson of the Gidimt'en Clan of the Wet'suwet'en, and Hereditary Chief Rob Alfred. However, I needed to turn back to return the vehicle for a brief time. I returned at approximately 5 pm, and was subsequently told I could not go through the RCMP exclusion zone. I was denied entry."[15]

Restricting the movement of Wet'suwet'en people and their family members through their territories is a grave violation of Wet'suwet'en law and jurisdiction, and constitutionally-protected Wet'suwet'en rights and title. Nikal states, "I found the whole experience extremely frustrating, embarrassing, and dehumanizing. I could not believe we were being denied access to our territories as Wet'suwet'en. It was a violation of our rights as Wet'suwet'en to be on our land and a denial of our laws and system."[16]

Identification Checks

The RCMP are asking all drivers and passengers for names and identification in order to both enter and exit through the checkpoint. All the first-hand accounts point to a RCMP requirement of an identification check as a mandatory condition to entering and exiting the area. Cody Thomas Merriman states, "I witnessed someone exiting the exclusion zone and being detained for a brief period of time. The person was asked for ID simply for leaving the exclusion zone."[17]

Molly Wickham, a passenger in a vehicle, describes "Dodgson said they need the ID of everyone attempting to enter the territory. I saw the other officer copy down information from all three pieces of identification onto a clipboard before returning them to us.[18] Wickham further describes a third passenger in the vehicle being denied entry through the checkpoint *despite* providing identification. No reason was provided by the RCMP officer for refusing this passenger access.

Police power to detain and search randomly or without specific individualized grounds must be demonstrably justified. The RCMP exclusion is not a carefully tailored roadblock responding to

[15] Attached statement of Cody Thomas Merriman, p 14.
[16] Attached statement of Delee Alexis Nikaal, p 13.
[17] Attached statement of Cody Thomas Merriman, p 15.
[18] Attached statement of Molly Wickham, p 16.

serious threats to bodily harm[19] or impaired driving,[20] nor is it temporally and logistically responsive. There are no reasonable and probable grounds for RCMP officers to randomly stop vehicles passing through and require identification checks of all drivers and passengers. This establishes an investigative detention for everyone, for which there is no legal basis. The only recourse for someone, including a passenger in a vehicle, choosing to not comply with police requests for identification is to turn back from the exclusion zone. The checkpoint places an unfair, unnecessary, unjustifiable and discriminatory restriction on individual liberty, which is disproportionate to the stated overbroad goal of public safety.

The RCMP do not have the legal authority to establish random stops and check for identification, especially of passengers in vehicles, who are either entering or exiting the area. The RCMP operating in BC are subject to the *British Columbia Provincial Policing Standards*, in force since January 15, 2020. The Promotion of Unbiased Policing section mandates "the responsibility of police officers to ensure that their interactions with community members, while critical to fulfilling their duties, must be consistent with *the Canadian Charter of Rights and Freedoms* (sections 7, 9, 10 and 15) and the values they reflect, including the right to be free from arbitrary arrest and detention; to move freely in society subject only to reasonable restrictions imposed by law; and to equal protection and benefit of the law, without discrimination."[21] Furthermore, the *Provincial Policing Standards* sets out that random or arbitrary police stops, which may include a request for or the collection or recording of a person's identifying information, are not permitted. Officers are not permitted to request or demand, collect, or record a person's identifying information without a justifiable reason that is consistent with existing legal authorities and narrowly, not broadly, defined limitations granted to officers.[22]

Exclusion of the Media

On January 13, 2020, *Tyee* reporter Amanda Follett Hosgood was denied access through the RCMP checkpoint at approximately 6 pm.[23] On January 14, the Canadian Association of Journalists issued a statement urging the RCMP to "remain open and transparent, and allow media continued access to the exclusion zone in Wet'suwet'en Territory so the media can report fairly and accurately on events as they unfold."[24] Hosgood was allowed entry the following day and wrote in her report of the situation, "[b]y late Monday afternoon, officers were limiting

[19] *R. v. Clayton*, [2007] 2 S.C.R. 725.
[20] R. v. *Dedman*,[1985] 2 S.C.R. 2.; *R. v. Ladouceur*, [1990] 1 S.C.R. 1257.
[21] British Columbia Provincial Policing Standards, Subject 6.2.1 Police Stops
[22] Ibid.
[23] Attached statement of Amanda Follett Hosgood, p 26.
[24] CAJ Calls on RCMP for Transparency, Continued Unrestricted Media Access, January 14, 2020, The Canadian Association of Journalists.

media access and not allowing supporters, including some Wet'suwet'en band members, from going into the area to deliver supplies."[25]

Later in the week, on January 17, 2020, reporter Jerome Turner detailed:

> "Other journalists had been turned away from this checkpoint earlier in the week, and we had taken every precaution to make sure we wouldn't share their fate… They [the RCMP] inspected our letters and ID, noted that we were carrying copies of the press release, and refused us entry. We pushed back, gently, providing them with the names of the RCMP media relations officers who had told our editors we wouldn't have any problems. They went off to make some phone calls, and for the next 30 minutes we sat and waited. Finally the officers returned and told us we could proceed.'"[26]

Though enforcement of the interlocutory injunction is not the rationale being provided to limit media access, we emphasise that *even* in areas where injunctions are being enforced, the courts have upheld the constitutionally-protected freedom of the press. In 2019, the Newfoundland and Labrador Court of Appeal vacated an injunction and contempt court appearance it found improperly applied to a journalist charged with contempt while covering an Indigenous-led movement at the Muskrat Falls hydroelectric project site in Labrador in October 2016. The court found that subjecting journalist Justin Brake to a general 'no trespass' prohibition would "unduly and unnecessarily interfere with his function as a journalist when he was not a participant in the ongoing protests."[27] Justice Green further notes, "Aboriginal communities have been historically under-represented in the Canadian media. That makes freedom of the press to cover stories involving Indigenous land issues even more vital."[28]

Exclusion of Legal Counsel and Legal Observers

Beginning on January 22, 2020 lawyers training independent teams of legal observers were denied entry into the area by RCMP officers. Legal observers serve as independent witnesses and monitor the actions of law enforcement agencies. They do not participate in protest or risk arrest, do not interfere with police activity, and remain neutral while observing.[29]

On January 20, 2020, Carl Williams, a US-based international lawyer and Executive Director of the Water Protectors Legal Collective, and BC-based lawyer Noah Ross were informed by RCMP that the checkpoint was for public safety and were allowed to pass through upon

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[25] "'Each Moment Here Is a Victory': Wet'suwet'en Supporters Aren't Backing Down," Amanda Follett Hosgood, *The Tyee*, January 15, 2020

[26] "Crossing the RCMP checkpoint on Wet'suwet'en territory," Jerome Turner, Ricochet, January 17, 2020

[27] *Re Brake; Anderson v. Nalcor Energy*, 2019 NLCA 17, 2019 CarswellNfld 130, at para 78.

[28] Ibid, at para 81.

[29] Wet'suwet'en Call for Legal Observers, January 18, 2020.

providing identification and their bar cards.[30] However, on January 22, 2020, Carl Williams was told there was a new guideline for access and he could not enter the exclusion zone unless he was a lawyer licensed to practice in B.C.[31] The RCMP officer informed Carl Williams, "The decision has been made through our lawyer that if you are not able to practice currently in the province of BC you are not going in."[32] This policy decision is clearly disconnected from the stated rationale of "public safety" and targets the ability of Wet'suwet'en to secure access to legal counsel of their choice. Restricting access to legal counsel, potential legal remedies, and justice for Indigenous people flies in the face of the Calls to Action of the *Truth and Reconciliation Commission of Canada*.

On January 24, 2020, lawyers Irina Ceric and Noah Ross were turned away from the checkpoint. At first, Ceric and Ross were informed that they would be allowed access but the legal observer accompanying them would not be permitted to pass through because "only Hereditary Wet'suwet'en Chiefs, elected officials, people entitled to practice law in the province of BC, and medical practitioners would be permitted to cross the roadblock."[33] A few minutes later, Ross and Ceric were informed they actually could not pass through because they lacked tire chains and a two-way radio. We stress Morice West FSR is a radio-assisted road and radios are not legally mandatory. In addition, the road was plowed, sanded and clear. Ceric and Ross had observed someone passing through the checkpoint forty minutes earlier without any requirement for chains or a radio.[34] Ceric and Ross returned the following day with tire chains and a two-way radio but were not asked for either by the RCMP officer stationed at the checkpoint at the time.

On January 28, 2020, two legal observers were repeatedly informed they would be arrested unless they stood at least two car lengths away from the RCMP officers at the checkpoint. The stated reason was not obstruction of police duties, but the officer's comfort level and officer safety.[35] Legal observer David Byron Christopher Wood was also informed the checkpoint was an exclusion zone and that access was restricted.

Unreasonable and Unjustifiable Violations of Liberty Interests and Indigenous Rights

Taken together, our significant concern is that the RCMP checkpoint constitutes an exclusion zone with a range of differing, overbroad policies that are being unevenly and arbitrarily applied, have no consistent rationale, and are disconnected from any stated objective. We have very serious concerns about the overbroad scope and discretionary power of the RCMP's activities in

[30] Attached statement of Carl Williams, p 24.
[31] Attached statement of Amanda Follett Hosgood, p 26.
[32] "RCMP denying lawyers access to visit Wet'suwet'en territory," *Ricochet*, January 27, 2020, https://ricochet.media/en/2890/video-rcmp-denying-lawyers-access-to-visit-wetsuweten-territory.
[33] Attached statement of Irina Ceric, p 20.
[34] Attached statement of Irina Ceric, p 21.
[35] Attached statement of David Byron Christopher Wood, p 23.

Wet'suwet'en territories, with the impact of criminalizing and impeding the movement of Wet'suwet'en people, invited guests of the Wet'suwet'en, media, and legal counsel. The RCMP checkpoint and exclusion zone obstructs the lawful exercise of Wet'suwet'en jurisdiction and the ability of Wet'suwet'en people to freely live, govern, and access their lands. Article 26 of the *UN Declaration of the Rights of Indigenous Peoples* stipulates "Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or other-wise used or acquired."[36]

Given the context of Crown-Wet'suwet'en relations, and specifically RCMP-Wet'suwet'en relations in light of the lethal use of force discussed by RCMP in 2019, the RCMP checkpoint and exclusion zone is understood by Wet'suwet'en Hereditary Chiefs as a targeted, punitive, and colonial exercise of power. RCMP officers have on occasion refused to provide their badge numbers.[37] The RCMP checkpoint and exclusion zone is being enforced concurrent to two other policing operations. First, the RCMP have admitted to deploying air assets after initially denying the use of air surveillance flyovers and drones.[38] Second, a series of RCMP letters to fly-in helicopter companies inaccurately suggests the whole area is under an injunction and enforcement zone.[39] As a result, helicopter companies are no longer transporting passengers or supplies, such as fuel, to the areas behind the RCMP checkpoint and exclusion zone. This points to a lack of transparency, clarity and accountability in the overall policing activities of RCMP in Wet'suwet'en, and works against the RCMP's regulations to "act with integrity, fairness and impartiality, and do not compromise or abuse their authority, power or position."[40]

We further argue that RCMP enforcement of this checkpoint and exclusion zone could not be justified under the ancillary powers doctrine.[41] Overbroad access restrictions have a significant impact on individual liberty and constitute a severe deprivation of liberty interests. Police action to enforce a wide exclusion zone is not reasonably necessary or justified for the performance of their duty and the stated goal of public safety. Police interference with individual liberty in the situations described herein are significant, and both unnecessary and arbitrary to achieving their stated goal. Further, the impact on liberty interests are disproportionate relative to the stated goal.

Violations of Constitutional and *Charter* Rights

The RCMP are claiming "public safety" to institute and enforce a blanket policy with wide-reaching consequences for constitutional and *Charter*-protected rights. The BCCLA, the

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[36] United Nations, *United Nations Declaration on the Rights of Indigenous Peoples*, G.A. Res. 61st Sess., 295, (13 September 2007).
[37] Attached statement of David Byron Christopher Wood, p 23.
[38] Sarah Berman, RCMP Admits It's Monitoring Wet'suwet'en Camps by Air Now, *Vice*, January 22, 2020.
[39] Amanda Follett Hosgood, "More Confusion than Clarity around Helicopter Flights in Wet'suwet'en Camps," *The Tyee*, January 27, 2020.
[40] RCMP, SOR/2014-281.
[41] *Fleming v. Ontario*, 2019 SCC 45.

Wet'suwet'en Hereditary Chiefs, and UBCIC maintain the RCMP checkpoint is, in effect, an exclusion zone constituting a serious and unjustifiable breach of the Constitution and the *Charter*, including:

- s. 2 (b) Freedom of the press and other media of communication;
- s. 2 (c) Freedom of peaceful assembly;
- s. 2 (d) Freedom of association;
- s. 7 Right to liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice;
- s. 9 Right to be free from arbitrary detention;
- s. 35 Rights to existing Aboriginal rights.

The RCMP exclusion zone is, simply put, not *Charter* compliant. Further, the RCMP exclusion zone does not constitute a demonstrably justifiable infringement of the *Charter*. The RCMP's rationale of "general public safety" is not of pressing concern as there is no basis for claiming such an overbroad objective. Even if such an objective could be claimed, its means—of restricting classes of people—is not rationally connected to the objective, the impairment of Charter rights are significant, and there are minimal and unclear salutary effects.[42] The RCMP's own press release claims "some miscommunication" resulted in three individuals being turned away on the first day.[43] Miscommunication does not even come close to the strict test of demonstrably justifiable infringement for constitutionally-protected *Charter* rights.

Conclusion

The RCMP's responsibility to ensure public safety includes the safety of Wet'suwet'en people and their invited guests. The Constitution is the ultimate law the RCMP are charged to uphold and, as agents of the Crown, the RCMP must respect the constitutionally-protected and inherent rights of Indigenous peoples as well as *Charter*-protected rights. However, the rationale of the RCMP exclusion zone is inconsistent with the *Charter* and its implementation is undeniably vague, irrational, unfair, arbitrary, and discretionary. In light of all the foregoing, the BCCLA, the Wet'suwet'en Hereditary Chiefs, and the UBCIC call upon the Commission to treat this letter as an official complaint and to launch a full investigation into the implementation of the RCMP exclusion zone at the 27-kilometer mark on the Morice West FSR and all RCMP members involved in its enforcement. We trust the Commission will appreciate the urgency of this issue and significant public interest in the matter. In the interim, we call upon the RCMP to dismantle the exclusion zone, which seriously and significantly violates Wet'suwet'en law as well as the *Canadian Charter of Rights and Freedoms*.

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[42] *R. v. Oakes*, [1986] 1 S.C.R. 103; *Dagenais v. C.B.C.*, [1994] 3 S.C.R. 835; *Thomson Newspapers v. Canada (A.G.)*, [1998] 1 S.C.R. 877.

[43] "RCMP provides update on access control checkpoint on Morice West Forest Service Road," January 20, 2020. RCMP Superintendent John Brewer, Operations Commander, RCMP Community-Industry Response Group.

Sincerely,

Submitted by:

Harsha Walia

Executive Director,

B.C Civil Liberties Association

On behalf of the B.C Civil Liberties Association

Smogelgem, Sun House, Likhts'amisyu Clan

Woos, Clas yikh (Grizzly House)

(KLOUMKHUN OWL HOUSE)

CHIEF NA'MOKS

Dzi'Cogot.

Gisdav'wa

Lay'oh

On behalf of Wet'suwet'en Hereditary Chiefs



Grand Chief Stewart Phillip
President



Chief Don Tom
Vice-President



Kukpi7 Judy Wilson
Secretary-Treasurer

On behalf of the Union of BC Indian Chiefs

Supported by:



Jessica Clogg
Executive Director and Senior Counsel
On behalf of West Coast Environmental Law



Lyndsay Watson
Legal Director
On behalf of Pivot Legal Society

Exhibit "I"

This is Exhibit " I " referred to in the
affidavit of Harsha Walia
sworn before me at Vancouver, BC
this 19th day of November 20 20

Jessie Magnet
A Commissioner for taking Affidavits
For British Columbia

BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

Attn:

RCMP Commander Eric Stubbs, "E" Division Core Policing
RCMP Commissioner Brenda Lucki
RCMP Deputy Commissioner Jennifer Strachan

February 6, 2020

Open Letter from BCCLA re: Police Actions on Wet'suwet'en Territories

The BCCLA is highly concerned about the developing situation in Wet'suwet'en territories. We are alarmed by the institution of an overbroad RCMP exclusion zone prohibiting Wet'suwet'en people, journalists, and the public from entering and monitoring police activity. The BCCLA strongly urges the RCMP to refrain from instituting exclusion zones that prohibit the public, invited guests of the Wet'suwet'en, and media from accessing the area.

Restricting the movement of Wet'suwet'en people through their own territories is a grave violation of Wet'suwet'en law and jurisdiction, and constitutionally-protected Wet'suwet'en rights and title.

We have also received disturbing information about reporters being detained, threatened with arrest, and given instructions from RCMP about what they can photograph, including instructions not to photograph tactical gear. Freedom of the press is enshrined in the *Canadian Charter of Rights and Freedoms*. Police-enforced media exclusion zones violate the Charter by seriously impeding freedom of expression. As the Supreme Court of Canada has held, "Strong constitutional safeguards against state intrusion are a necessary precondition for the press to perform its essential democratic role effectively."

We emphasize that even in areas where injunctions are being enforced, the courts have upheld the constitutionally-protected freedom of the press. In 2019, the Newfoundland and Labrador Court of Appeal vacated an injunction and contempt of court appearance notice it found improperly applied to a journalist charged with contempt while covering an Indigenous-led movement at the Muskrat Falls hydroelectric project site in Labrador in October 2016. The court found that subjecting journalist Justin Brake to a general 'no trespass' prohibition would "unduly and unnecessarily interfere with his function as a journalist when he was not a participant in the ongoing protests." Justice Green noted, "Aboriginal communities have been historically under-represented in the Canadian media. That makes freedom of the press to cover stories involving Indigenous land issues even more vital."

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BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

The BCCLA has, along with the Wet'suwet'en Hereditary Chiefs and Union of BC Indian Chiefs, already filed a policy complaint and public interest investigation regarding the improper and unlawful actions of the RCMP in implementing and enforcing a checkpoint and exclusion zone on Morice West Forest Service Road in Wet'suwet'en territory.

We remain concerned about the overbroad scope and discretionary power of the RCMP's activities in Wet'suwet'en territories, with the impact of criminalizing and impeding the movement of Wet'suwet'en people, invited guests of the Wet'suwet'en, and media. The expansion of the RCMP checkpoint into an exclusion zone obstructs the lawful exercise of Wet'suwet'en jurisdiction and the ability of Wet'suwet'en people to freely live, govern, and access their lands. Article 26 of the *UN Declaration of the Rights of Indigenous Peoples* stipulates "Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or other-wise used or acquired." 36

The Wet'suwet'en assert continuous jurisdiction and unextinguished rights and land title. Aboriginal rights and title require the Crown and industry to obtain consent to use Wet'suwet'en land, and to do otherwise would infringe on those inherent, constitutionally-protected rights. The Supreme Court of Canada has also recognized that constitutionally-protected Aboriginal title includes the right to use, enjoy, benefit from, occupy and pro-actively manage the land.

The BCCLA stands with the Wet'suwet'en at this time and continue to vigilantly monitor RCMP activity. We remind the RCMP that the *Constitution* is the ultimate law that they are charged to uphold.

Sincerely,

Harsha Walia
Executive Director

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Exhibit "J"

This is Exhibit " J " referred to in the
affidavit of Harshe Walia
sworn before me at Vancouver, BC
this 19th day of November 2020

Jessica Magonet
.....
A Commissioner for taking Affidavits
For British Columbia

BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

February 9, 2020

BY EMAIL

Attn: Michelaine Lahaie Chairperson,
Civilian Review and Complaints Commission for the RCMP
P.O. Box 1722, Station B Ottawa, ON K1P 0B3
Email: Michelaine.Lahaie@crcc-ccetp.gc.ca

cc: RCMP Commissioner Brenda Lucki
RCMP Deputy Commissioner Jennifer Strachan
RCMP Commander Eric Stubbs, "E" Division Core Policing

Dear Chairperson Michelaine Lahaie,

Re: Policy Complaint and Public Interest Investigation Concerning RCMP Exclusion Zone and RCMP Operations on Morice West Forest Service Road

On January 29, 2020, the British Columbia Civil Liberties Association, the Wet'suwet'en Hereditary Chiefs, and the Union of BC Indian Chiefs wrote to the Commission to initiate a policy complaint and public interest investigation under the *Royal Canadian Mounted Police Act* regarding the improper and unlawful actions of the Royal Canadian Mounted Police ("RCMP") in implementing and enforcing a checkpoint and exclusion zone on Morice West Forest Service Road ("Morice West FSR") in Wet'suwet'en territory. The complaint and call for investigation were also supported by West Coast Environmental Law and Pivot Legal Society.

I am writing to you today on behalf of the BCCLA and UBCIC regarding the ongoing improper and increasingly unlawful actions of the RCMP on Morice West FSR in Wet'suwet'en territory. We ask the Commission to treat this letter as an urgent update to our previous complaint and request to initiate a policy complaint and public interest investigation in the matter. The policing of Indigenous land defenders in Wet'suwet'en territories is a matter of significant public interest.

On February 6, 2020, the RCMP formalized an exclusion zone at the 27-kilometer mark on the Morice West FSR. On February 7, 2020 the exclusion zone was moved to the 4-kilometer on the Morice West FSR and severe access restrictions have been imposed, including a prohibition on access and mobility on the road impacting Wet'suwet'en Hereditary Chiefs, Wet'suwe'ten Nation members, invited guests, media outlets, and legal observers.

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BC CLA BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

We stress to the Commission that the overbroad and arbitrary exclusion zone lies outside the scope of the injunction order. We are highly alarmed at the expanding nature of the RCMP exclusion zone, granting the RCMP discretionary, unreasonable and unjustified powers to:

1. Unlawfully detain and arrest people who are inside the arbitrary and ill-defined exclusion zone but who are not actually in breach of the injunction.[1]

2. Prohibition on access and impede the movement of Wet'suwet'en people, their invited guests, and the public on Morice FSR and in the exclusion zone.[2]

3. Seize personal property within the exclusion zone.[3]

4. Severely curtail the constitutionally-protected right to freedom of the press.[4]

There is absolutely no legal precedent nor established legal authority for such an overbroad policing power associated with the enforcement of an injunction. The implementation and enforcement of the RCMP exclusion zone in Wet'suwet'en territory is unlawful. RCMP public statements reference enforcement of the injunction order in order to justify the exclusion zone; however, no such provisions are explicitly made in the enforcement order issued on January 7, 2020. The RCMP are willfully reinterpreting the enforcement order in order to extend their policing powers. Attempting to clear an undefined area bordering more than 60 km of roadway of all people and inhabitants is an unreasonable exercise of the discretion granted to police under the enforcement order. The arbitrary RCMP exclusion zone and overbroad access restrictions are completely unjustified and unlawful, and constitute a serious violation of Indigenous rights and jurisdiction, severe deprivation of individual liberty interests, and egregious impairment of *Charter*-protected rights. We trust the Commission will appreciate the urgency of this issue and launch a full public investigation into the matter.

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[1] On February 8, 2020, 11 people including 3 legal observers, at the 27-km mark were arrested on civil contempt charges for breaching the injunction: http://bc.rcmp-grc.gc.ca/ViewPage.action?siteNodeId=2087&languageId=1&contentId=63240. Since the RCMP arbitrarily moved the exclusion zone to the 4-km mark, the 27-km camp now falls within the arbitrary exclusion zone but is well outside the scope of the injunction itself. These arrests and contempt charges are therefore unlawful.

[2] BC RCMP press release, February 6, 2020 http://bc.rcmp-grc.gc.ca/ViewPage.action?siteNodeId=2087&languageId=1&contentId=63215

[3] RCMP towed vehicles located within the exclusion zone but outside the injunction area: https://www.nationalobserver.com/2020/02/08/news/rcmp-arrest-11-more-pipeline-opponents-third-day-wetsuweten-raids

[4] Ricochet journalist detained for eight hours while covering RCMP raid: https://ricochet.media/en/2919/ricochet-journalist-detained-for-eight-hours-while-covering-rcmp-raid; Statement by Canadian Association of Journalists: https://caj.ca/blog/CAJ_calls_on_reporters_to_continue_documenting_RCMP_infringements_on_media_rights

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BC CLA BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

Sincerely,

Harsha Walia
Executive Director
On behalf of the B.C Civil Liberties Association

Grand Chief Stewart Phillip
President

Chief Don Tom
Vice-President

Kukpi7 Judy Wilson
Secretary-Treasurer
On behalf of the Union of BC Indian Chiefs

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Exhibit "K"

This is Exhibit " K " referred to in the
affidavit of ....Harsha Walia.....
sworn before me at ..Vancouver, BC
this ..19th.. day of ..November..20.20

.....
A Commissioner for taking Affidavits
For British Columbia

Civilian Review and
Complaints Commission
for the RCMP

Commission civile d'examen
et de traitement des plaintes
relatives à la GRC

Office of the Chairperson

Bureau de la présidente

February 13, 2020

BY MAIL AND EMAIL

British Columbia Civil Liberties Association
Wet'suwet'en Hereditary Chiefs
Union of B.C. Indian Chiefs
C/O Harsha Walia
Executive Director
British Columbia Civil Liberties Association
306-268 Keefer Street
Vancouver, BC V6A 1X5

Dear B.C. Civil Liberties Association, Wet'suwet'en Hereditary Chiefs, and Union of B.C. Indian Chiefs:

The Civilian Review and Complaints Commission for the Royal Canadian Mounted Police ("the Commission") received your correspondence dated January 29, 2020, in which you requested that the Commission "initiate a policy complaint and public interest investigation" regarding the implementation and enforcement by the Royal Canadian Mounted Police ("RCMP") of a "checkpoint and exclusion zone" on the Morice West Forest Service Road. This relates to the ongoing dispute concerning the Coastal GasLink pipeline project. The Commission also acknowledges receipt of your letter dated February 9, 2020, which you described as an urgent update regarding the situation.

Your letter of January 29, 2020, included statements from eight individuals affected by the checkpoint/exclusion zone, and you indicated that your request is supported by West Coast Environmental Law and Pivot Legal Society.

As these matters have not yet been investigated, I cannot comment in any way on the merits of the issues you raise, or on the current situation on or around Morice West Forest Service Road. However, in order to address your request that the Commission initiate a Public Interest Investigation into this matter, I will set out my understanding of the concerns you are raising, and their similarity to certain other issues examined by the Commission in previous cases.

You are raising concerns about the RCMP checkpoint/exclusion zone, which you allege is overbroad in scope and constitutes an "inconsistent and arbitrary exercise of RCMP discretion." You further state that you believe the actions of the RCMP criminalized and

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impeded the movement of the Wet'suwet'en people on their territory, as well as their invited guests, media, and legal counsel. It also limited the ability of people to bring food and medical supplies past the checkpoint, potentially creating unsafe conditions.

Your correspondence also expresses concern that these RCMP actions:

- constitute a significant restriction on individual liberties;
- are disproportionate to the RCMP's stated goal of maintaining public safety;
- are in violation of Anuk'nu'at'en (Wet'suwet'en law) and the *Canadian Charter of Rights and Freedoms* ("Charter"); and
- are "understood by Wet'suwet'en Hereditary Chiefs as a targeted, punitive, and colonial exercise of power," given the context of Crown–Wet'suwet'en relations "in light of the lethal use of force discussed by [the] RCMP in 2019."

You state that this matter is of significant public interest.

I also consider the issues raised in your correspondence to be of significant public interest. For this reason, the Commission has in the past conducted an extensive and thorough investigation into many of the same issues, in the *Chairperson-Initiated Complaint and Public Interest Investigation Into the RCMP's Response to Anti-Shale Gas Protests in Kent County, New Brunswick* ("the Kent County report"), relating to the RCMP's policing of anti-shale gas protests in New Brunswick. In that 116-page interim report, the Commission made 37 findings and 12 recommendations on a variety of topics related to the policing of protests, particularly with regard to Indigenous-led protests.

In accordance with the *Royal Canadian Mounted Police Act* ("the RCMP Act"), the Commission sent its report to the RCMP in March 2019, and is awaiting the RCMP Commissioner's response. Once this response is received and considered, the Commission will make its final findings and recommendations. The interim and final reports, as well as the RCMP's response, will then be made available to the public. The Commission also completed interim reports into 21 individual complaints related to the Kent County protests, and is awaiting responses from the RCMP.

It is in light of this previous report that, after careful consideration, I have decided not to initiate a public interest investigation into the matters you raise in your correspondence at this time. This is not because I do not consider these issues to be of significant importance. On the contrary, I have determined that it is not in the public interest at this time to commence such a process because the Commission has already provided extensive guidance to the RCMP, by way of the interim findings and recommendations made in the Kent County report and the 21 individual reports related to these events, about the very issues you raise with regard to the current situation in British Columbia. As such, it would not be in the public interest to possibly delay the resolution of the issues being raised by the individuals affected in this instance by conducting an extensive public interest process to examine the broader principles applicable, when the

guidance already provided by the Commission in the Kent County matter can be applied to the allegations raised here.

Because the Kent County report has not yet been made public, I believe it is important to inform you and the public of the issues it discusses and the findings and recommendations it makes, as these are directly related to the issues you raise in your correspondence. This summary of the Commission's prior analysis of these issues will hopefully serve to demonstrate the in-depth examination of these matters that has already been completed, and the guidance that has been provided to the RCMP by the Commission. This guidance may then be applied in the investigation and disposition of the public complaint in the present situation.

Summary of the Commission's Previous Findings and Recommendations

Among other topics, the issues examined in the Commission's Kent County report included:

- the use of arrest;
- the use of detention and search powers;
- the use of force;
- the adequacy of communication with members of the public;
- the planning, management, and execution of the arrests at the protest camp;
- the handling of spiritual items, and/or interference with the spiritual practices of Indigenous peoples involved in the protests;
- the role of the RCMP in the policing of protests by Indigenous peoples pertaining to Indigenous land rights, and whether there was differential treatment of Indigenous peoples compared to other protesters.

The Commission made numerous findings and recommendations about these issues. For instance, with respect to the arrests made during the anti-shale gas protests, the Commission found that, in general terms and with certain exceptions, RCMP members had reasonable grounds to arrest persons for various offences, and the force used was necessary and proportional in the circumstances. The Commission also found that in most cases, the RCMP members handled post-arrest and detention procedures in a reasonable manner and in compliance with policy.

The Commission found that in policing the protests, RCMP members demonstrated that they understood and applied the "measured approach," often demonstrating considerable forbearance in fulfilling their duty to keep the peace and ensure public safety while respecting individuals' right to protest. The RCMP command team and Crisis Negotiation Team made considerable efforts to bring stakeholders together to achieve a resolution to the conflict. The Commission also found that RCMP members did not demonstrate bias in general, or engage in differential treatment of Indigenous protesters when making arrests. Although the Commission made several findings and recommendations regarding the need for training and policy development with regard to

Indigenous cultural matters and the handling of sacred items, it found that RCMP members did not, either deliberately or unwittingly, unnecessarily interfere with Indigenous ceremonies or sacred items.

I note that the Commission's findings and recommendations must be considered in their full context in the Commission's interim report and upcoming final report, as this is meant only as a general overview.

Of particular relevance to the matters you raise, the Commission analyzed issues of stop checks, physical searches, and buffer zones/rerouting of traffic.

Stop checks

In your correspondence, you indicated that RCMP members were asking all drivers and passengers for names and identification as a mandatory condition for entering and exiting through the checkpoint. The information was being recorded by RCMP members and some people were not allowed through, despite providing identification. You raised concerns about the legality of these "identification checks."

In the Kent County report, the Commission found that there was no legal authority to require passengers to produce identification at stop checks in that case. The Commission reviewed the relevant jurisprudence and concluded that these types of "searches" could not be conducted absent judicial authorization or prior informed consent on the part of the individuals.

The Commission also expressed concern with the information being collected at the stop checks in the "check sheets" completed by RCMP members. The Commission concluded that there was no legal authority for RCMP members to conduct stop checks for the purposes of information gathering through a "general inquisition" of the occupants of the vehicle.

The Commission noted that the stop checks in that case went beyond the limited purposes for which courts have stated roadblocks could be established, for example, to prevent impaired driving or deal with cases of natural disasters, traffic accidents, or emergency investigations of a serious crime in progress, such as child abductions or escaped inmates.

Having examined the situation and reviewed the applicable principles, the Commission concluded that the concern for public safety related to unconfirmed information about the possible presence of weapons at the protest sites was not sufficient to rise to the level of an emergency criminal investigation necessitating a roadblock. The random stops were found to be inconsistent with the Charter rights of the vehicle occupants.

Physical searches

A statement from Molly Wickham, spokesperson of the Gidimt'en Clan of the Wet'suwet'en Nation, included in your correspondence stated that an RCMP member

asked her what she was bringing past the checkpoint and "looked through the car windows into the backseat using a flashlight."

In another statement, David Byron Christopher Wood, a registered nurse who was present as a "legal observer," described a separate incident in which an RCMP member "went behind our vehicle, shone a light into the back of the vehicle, and looked through the rear window at the supplies."

In the Kent County case, the Commission found that the routine searches of vehicles and individuals entering the protesters' campsite that were conducted by RCMP members were not authorized by law. The Commission noted that such searches cannot be conducted in the absence of Charter-compliant legislation, judicial authorization, exceptional circumstances such as search incident to arrest or "safety searches" during investigative detention, or informed consent.

While there were reasons to be concerned about the possibility of firearms and other weapons being brought into the demonstrators' campsite, this did not amount to exigent circumstances that could have justified the physical searches conducted by the RCMP, nor was there an imminent breach of peace that could have justified the searches.

The Commission found that the practice of searching persons entering the campsite was, in the circumstances, inconsistent with the Charter rights of the individuals involved.

To avoid such situations in the future, the Commission recommended that RCMP members involved in public order policing operations be provided with a review of law and policy related to search and seizure, including the warrant requirement and the legal grounds establishing exceptions for warrantless searches.

Exclusion zone/rerouting of traffic

Using various examples, your letter described that several individuals were not permitted to pass the RCMP checkpoint. The reasons given by RCMP members for both the establishment of the checkpoint itself and the denial of entry to specific persons were reportedly inconsistent from one member to another, and from one instance to another. Some RCMP members reportedly stated that only pre-approved Hereditary Chiefs would be allowed entry, only accredited journalists were allowed access, only lawyers licensed to practice in British Columbia would be allowed in, and/or only vehicles with tire chains and two-way radios would be granted access. Of particular concern to you was the restriction of movement of Wet'suwet'en people through their territories; you described this as a "grave violation of Wet'suwet'en law and jurisdiction, and constitutionally-protected Wet'suwet'en rights and title." You also expressed concern that some members of the media, as well as legal counsel and legal observers, were denied access past the checkpoint.

You stated that these restrictions on the movement of "certain categories of people" was unrelated to the RCMP's public safety justification, and that no injunction order from the courts mention travel to, or residence at, the various sites or camps in Wet'suwet'en territories. You expressed that, regardless of how the RCMP characterizes their actions (i.e. as a checkpoint, not an exclusion zone), they have in effect implemented an unnecessary exclusion zone that is not authorized by law.

In the Kent County case, the Commission received several complaints relating to the allegedly unnecessary rerouting of traffic away from protest sites.

Given the lack of specific details in the allegations made in the Kent County case, there was insufficient information to conclude that the road closures and rerouting of traffic in that case were unreasonable. Nevertheless, the Commission conducted an in-depth review of the applicable legal principles to determine whether "buffer zones" could be established, and under what circumstances. The Commission set out the factors to be considered to evaluate the reasonableness of such actions, including the size of the zone, who was excluded and why, and the duration of the exclusion.

The Commission reviewed the applicable legal principles, including the case law involving roadblocks related to specific situations, such as visiting dignitaries in need of protection or searches conducted prior to entering a protest site. The Commission noted that the case law provides that police have the power to create buffer zones for specific, well-defined purposes, but that this is not a general power and instead must be temporally, geographically, and logistically responsive to the circumstances.

The Commission also conducted a comprehensive review of a specific allegation involving a protester who was prevented from returning to a demonstration site after a small group of protesters began to engage in activities that constituted a criminal offence. A separate report was issued regarding this complaint, and the applicable principles were also reviewed in the Kent County report.

The Commission found that the decision to restrict the complainant's access to the protest site to prevent crime and ensure public safety was not unreasonable in the circumstances. However, the Commission noted that such interference with the liberty of individuals to circulate and peacefully protest would only be justified in specific, limited circumstances.

The Commission emphasized that it was the specific circumstances surrounding the complainant's case that led to the conclusion that the police conduct was not unreasonable in that instance. In particular, protesters were blocking the roadway and impeding the work of SWN Resources employees (constituting the offence of mischief, and conduct that was specifically prohibited by the court's injunction), and had been allowed by police to do so for a lengthy period of time. The criminal offence was ongoing at the time when the complainant's access to the site was restricted. The Commission stated that, absent those circumstances, the restriction of the complainant's ability to rejoin the protest site could have been found to be unreasonable. The Commission noted that there were other means to prevent the risk

that protesters would commit the offence of mischief from materializing, aside from preventing access to the protest site by newcomers.

The Commission reviewed the factors to be considered in evaluating whether restricting access to a protest site could be justified in a specific instance, including the degree of interference with the individual's liberties, the importance of the objective being pursued by police, and the balancing of these competing interests in the specific circumstances.

In this case, the Commission noted that the liberties at stake, involving participation in a peaceful protest, were both foundational common law civil liberties and fundamental constitutional freedoms. Conversely, the RCMP was seeking to prevent a specific and identifiable harm, in an instance where an offence was ongoing and the amount of time the complainant was prevented from accessing the protest site was limited and directly connected with the specific harm that the RCMP members were seeking to address. Under these circumstances, the Commission had to consider whether an invasion of individual rights was necessary for the peace officers to perform their duty. As well, the Commission noted that public safety was also a consideration in prohibiting persons such as the complainant and the complainant's children from accessing the site.

The Commission concluded that the difficult judgment call made by the RCMP members on the ground was not unreasonable, and that the members' actions were permissible in this specific situation. However, the Commission also emphasized that, particularly when policing a public protest, RCMP members must be cognizant of the limits of their powers, specifically in relation to curtailing protesters' ability to assemble and express themselves in a lawful manner.

The Commission specifically noted that other instances of blocking public access to roadways, especially when such actions may have directly or indirectly unnecessarily hindered the media's ability to report on the protests, may have been unreasonable. The Commission also emphasized that police may only establish "buffer zones" in accordance with the parameters detailed by the courts in the relevant jurisprudence and reviewed in detail in the Kent County report. The Commission stated that anything outside of these bounds is impermissible in a free and democratic society.

The Commission specified that decisions by the RCMP to restrict access to public roadways or other public sites must be made only with specific, objectively reasonable rationales for doing so, and should be done in a way that interferes with the rights of persons in as minimal a fashion as possible; for example, a buffer zone that is as limited in size as possible and an exclusion that is as short in duration as possible.

Other relevant issues

The Kent County report analyzed other issues related to the concerns you raise in your letter. For example, the Commission found that certain arrests were made based on an apparent misinterpretation of the conditions of the November 22, 2013, injunction. The Commission therefore recommended that the RCMP provide members engaged in the policing of public protests/public order policing with detailed, accurate interpretations of

the conditions of any injunction or unique legal provisions that they are expected to enforce.

The Commission also discussed the use of RCMP Emergency Response Team members in a "lethal over-watch" role during the tactical operation, and made interim findings and recommendations about RCMP members' training in Indigenous cultural matters and sensitivity to Indigenous ceremonies and sacred items.

Next Steps

The Commission's findings and recommendations are remedial in nature and are intended to improve policing and hold the RCMP accountable for its activities and the conduct of its members. The Commission conducts reviews of RCMP activities, and cannot direct the RCMP to take, or refrain from taking, certain actions during ongoing operations. In addition, as stated in subsection 45.74(1) of the RCMP Act, if a public interest investigation were initiated, it may be suspended until the police operation concludes if continuing the investigation would compromise or seriously hinder an ongoing criminal investigation or proceeding.

As indicated previously, the Commission takes the issues you have raised seriously. Reflecting the seriousness of these matters, the Commission has already conducted a comprehensive analysis of such issues, and other closely related issues, in its Kent County public interest investigation.

It is my understanding that the RCMP is currently reviewing the Commission's interim findings and recommendations regarding the Kent County case, and will be providing a response explaining what actions it intends to take as a result, as required by the RCMP Act. It is my hope that the RCMP will be able to use the extensive guidance provided by the Commission in the Kent County case in order to investigate and dispose of the issues you raise regarding the current situation.

For this reason, if you are agreeable to this course of action, the Commission could treat your submission as a public complaint that would be investigated by the RCMP in the first instance. To facilitate this, the Commission requires written confirmation (third party authorization) from the individuals whose statements were included in your correspondence, if they wish to have their submissions treated as part of the public complaint. The Commission would contact you directly to obtain these approvals, or if preferable could contact the individuals involved to seek their confirmation directly.

Once the RCMP's investigation is complete, should you be dissatisfied with its handling of your public complaint, upon your request, the Commission would be able to conduct an independent review of the file. It is my hope that the RCMP will be able to use the extensive guidance provided by the Commission in the Kent County case in order to examine the issues you raise regarding the current situation, and expedite its investigation of these allegations.

I must note that nothing I have stated in this letter regarding the importance of the issues you raise, and their similarity to the Kent County issues, should be taken as comments regarding the merits of the complaint presented in your letter. The individual facts of each allegation must be investigated and examined in light of applicable law and policy, and a disposition of each allegation must be made by the RCMP. Should you be dissatisfied with the disposition of the allegations, you may request that the Commission review the RCMP's disposition, at which time the Commission will examine the facts and make its own findings.

It should also be noted that the Commission is aware that, due to the passage of time, RCMP policies, procedures, and training may well have changed since the events examined in the Kent County report. In investigating your complaint, the RCMP will have to determine whether any such changes were consistent with the guidance provided by the Commission, and whether further changes are required. Similarly, the broad principles set out in the Kent County report will have to be applied to the specific facts of this case in order to make findings about the specific issues raised here.

Conclusion

For the reasons discussed above, I do not consider it to be in the public interest to commence a public interest investigation into this matter at this time, given the guidance already provided to the RCMP by the Commission on these serious issues.

It should be noted that, under the RCMP Act, it is open to me, as the Commission's Chairperson, to decide at any time to initiate a Chairperson-initiated complaint and/or public interest investigation. As such, it remains possible that I may decide to conduct a public interest investigation into matters related to the present situation, if at any time the evolving circumstances make it warranted in the public interest to do so.

I thank you for bringing these important issues to the attention of the Commission. We will await your decision on whether you wish to proceed with a public complaint before reaching out to obtain the additional documents necessary.

Sincerely,

Michelaine Lahaie
Chairperson

cc: West Coast Environmental Law
Pivot Legal Society
RCMP Commissioner Brenda Lucki
RCMP Deputy Commissioner Jennifer Strachan

Exhibit "L"

This is Exhibit " L " referred to in the affidavit of ...Harsha Walia.....
sworn before me at ...Vancouver, BC.
this ...19th... day of ...November...2020...

.....
A Commissioner for taking Affidavits
For British Columbia

Civilian Review and Complaints Commission for the RCMP

Commission civile d'examen et de traitement des plaintes relatives à la GRC

CHAIRPERSON-INITIATED COMPLAINT & PUBLIC INTEREST INVESTIGATION INTO THE RCMP'S RESPONSE TO ANTI-SHALE GAS PROTESTS IN KENT COUNTY, NEW BRUNSWICK

Final Report
November 2020

Canada

Chairperson's Statement

CRCC Report Into the RCMP's Response to Anti-shale Gas Protests in Kent County, New Brunswick

Civilian Review and Complaints Commission for the RCMP



Commission civile d'examen et de traitement des plaintes relatives à la GRC

Chairperson's Statement – Protests in Kent County, NB

Everyone in Canada has the right to express themselves, assemble peacefully and associate freely with each other.

These same rights, enshrined in the *Canadian Charter of Rights and Freedoms*, empower people to voice dissent by engaging in lawful, non-violent protest.

I recognize the challenges of policing protests, which include balancing the right to peaceful demonstration while enforcing the law and maintaining police and public safety.

Today, I am releasing my final report on RCMP actions at anti-shale gas protests in Kent County, New Brunswick.

During the investigation, my team examined a tremendous volume of videos, documents, witness statements, police records and other relevant information related to the six months of protest in 2013.

A number of issues identified in this report will resonate in many parts of Canada, where the RCMP is responsible for maintaining public order as police of jurisdiction.

Earlier this year, the British Columbia Civil Liberties Association along with the Wet'suwet'en Hereditary Chiefs and the Union of BC Indian Chiefs wrote to me twice regarding their concerns with the RCMP's "checkpoint and exclusion zone" in the ongoing dispute over the Coastal GasLink pipeline project.

As I explained in my reply, many of the public interest issues highlighted by these organizations were addressed in my final report.

I note with concern, however, that the RCMP has expressed reluctance to take action with regard to some of these findings and recommendations, and as expressed in the Kent County report, I encourage them to do so without delay.

> *The power of the police to fulfill their functions and duties is dependent on public approval of their existence, actions and behaviour, and on their ability to secure and maintain public respect.*
>
> -Sir Robert Peel

Canada's ongoing reconciliation with Indigenous people includes protecting the rights of those whose voices have been diminished by systemic sources of racism in our society.

As I stated in my report, I recommend that the RCMP require all members to review its *Native Spirituality Guide*, and that all members involved in Indigenous policing, including those who may police protests, receive training on Indigenous cultural issues.

I trust that my report, and the 21 individual complaints reviewed, will assist the RCMP in performing its important public order duties while also respecting the rights of all and, in particular, the Indigenous community's unique place in Canada.

Executive Summary

CRCC Report Into the RCMP's Response to Anti-shale Gas Protests in Kent County, New Brunswick

Civilian Review and Complaints Commission for the RCMP



Commission civile d'examen et de traitement des plaintes relatives à la GRC

EXECUTIVE SUMMARY

BACKGROUND

The right to lawful protest is a hallmark of democracy.

The Civilian Review and Complaints Commission for the RCMP (the Commission) received 21 public complaints relating to the RCMP's actions in managing protests over shale-gas exploration by SWN Resources Canada, near the town of Rexton, the Elsipogtog First Nation Reserve in Kent County and in various other parts of New Brunswick in 2013.

After considering these complaints and materials disclosed by the RCMP, the Commission's then Chairperson initiated his own complaint and investigation in December 2014, notably to review the allegations from a broader policy and practice perspective.

Following its investigation, the Commission issued a 116-page interim report with 38 findings and 12 recommendations to the RCMP. The Commission has received and considered the RCMP's response to its interim report and now issues its final report on the case.

SELECT FINDINGS & RECOMMENDATIONS

Role of the RCMP

The RCMP's primary role in any demonstration or protest is to preserve the peace, protect life and property, and enforce the law.

The RCMP's role does not include determining the legal validity of a licence or an injunction.

The Commission found that the RCMP's interactions with SWN were reasonable under the circumstances and that enforcing the law and legal injunctions did not amount to acting as private security to SWN Resources, as some claimed.

Measured Approach

The "measured approach" is a crisis-management philosophy that seeks to bring stakeholders together to work on achieving a peaceful resolution to a conflict.

The Commission found numerous examples to illustrate that RCMP members understood and applied a measured approach in planning their operations and interacting with protesters.

Surveillance and Searches

The Commission found that some of the RCMP's surveillance practices and physical searches were inconsistent with protesters' Charter rights to be free from unreasonable search and seizure.

For example, in conducting "stop checks," RCMP members randomly stopped vehicles for a purpose other than those set out in provincial highway traffic legislation. The members were not responding to an emergency, nor did they have judicial authorization to do so.

Likewise, while unconfirmed reports about the presence of weapons raised a legitimate public safety concern, searching persons entering the protesters' campsite was inconsistent with the individuals' Charter rights.

Open-Source Intelligence Gathering

While much of the RCMP conduct with regard to open-source dossiers and certain undercover operations was not unreasonable in the circumstances, the Commission had numerous concerns with the RCMP's practices and policies, and accordingly made several findings and recommendations.

For example, the Commission found that RCMP policy did not provide clear guidance as to the collection, use, and retention of personal information obtained from social media or other open sources, particularly in situations where no criminal nexus was determined.

The Commission recommended that RCMP policy: describe what personal information from social media sites can be collected, its permitted use; what steps should be taken to verify its reliability; and impose limits on its retention.

Freedom of Expression, Association and Peaceful Assembly

Several incidents or practices interfered to varying degrees with the protesters' rights to freedom of expression, association, and peaceful assembly.

The Commission's report emphasizes that police may only establish "buffer zones" in accordance with parameters set by the courts and that RCMP members must be aware of the bounds of police powers.

As such, decisions to restrict access to public roadways or sites must be specific, reasonable, and limited to minimize the impact on people's rights.

The Commission recommends that the RCMP provide its members engaged in policing protests with detailed, accurate interpretations of the conditions of any injunction they are to enforce, and to obtain legal advice as necessary.

Sensitivity to Indigenous Culture, Ceremonies, and Sacred Items

Video evidence shows that RCMP members working at the protest sites generally appeared to be aware of the need to respect sacred ceremonies and items. In spite of this, conflicts occurred. The Commission found that the RCMP members assigned to the operation did not have sufficient training in Indigenous cultural matters.

The Commission recommends that the RCMP require all members to review its *Native Spirituality Guide*, and that all members involved in Indigenous policing, including those who may police protests, receive training on indigenous cultural issues.

In the Commission's view, the RCMP should develop policy and a flexible procedure for the handling of sacred items secured during arrests at protests.

Alleged Bias against Indigenous Protesters

A number of protesters claimed that the RCMP treated the Indigenous protesters more harshly than non-Indigenous protesters.

On the available evidence, the Commission is satisfied that RCMP members did not differentiate between Indigenous and non-Indigenous protesters when making arrests, nor did they demonstrate bias against Indigenous protesters generally.

Tactical Operation of October 17, 2013

Against the backdrop of rising tension, threats, a blockade, widespread rumours of guns and explosives and the presence of outlaw bikers, senior RCMP officers decided to implement a Tactical Operational Plan, which involved, among other things, clearing the protest encampment.

The Commission determined that the RCMP had the legal authority to conduct the tactical operation of October 17, 2013, and on the balance of probabilities, it was a reasonable exercise of their discretion to do so in all the circumstances.

At the same time, the Commission believes it would have been prudent to allow more time for negotiations and a review of the injunction in court before proceeding with the tactical operation.

The decision to go ahead with the Tactical Operational Plan had significant consequences. Allowing more time for negotiation, particularly after the Crisis Negotiation Team's (CNT) negotiations had already borne fruit, would have been reasonable and desirable in the circumstances.

Crisis Negotiation Team

Throughout the blockade, the RCMP's CNT negotiated with the protesters.

The Commission found that the team made reasonable and even outstanding efforts to implement a measured approach in communicating and negotiating with the protesters in an attempt to ensure peaceful and lawful protests, and to resolve any conflicts up to the events of October 17, 2013.

The decision to isolate members of the CNT from information about operational planning, however well-intentioned, indirectly led to the unfortunate and regrettable situation of the tactical operation occurring shortly after RCMP negotiators offered tobacco to campsite protest leaders.

It is the Commission's opinion that the RCMP should have more fully informed CNT members of the overall strategy. This may have avoided regrettable misunderstandings, which in this case left some protesters feeling betrayed by negotiators.

Arrests

The available information suggests that during the spring and summer of 2013, RCMP members often showed considerable forbearance in permitting the protests to continue for a lengthy amount of time, despite the fact that protesters were sometimes acting in violation of the law.

The events of October 17, 2013, were far more dynamic and confrontational in nature and thus involved more "hard" arrests.

With some exceptions, these actions were justified. RCMP members had reasonable grounds to believe that persons had committed or were committing various offences and some protesters were displaying assaultive, resistive, and inciting behaviour.

Use of Force

Several protesters submitted public complaints contesting their arrests and alleging that RCMP members used unnecessary and excessive force against them.

Summaries of these individual complaint reports can be found here.

The Commission also received numerous complaints of a general nature regarding the RCMP's use of force during the entirety of the anti-shale gas protests, particularly during the tactical operation.

When carrying out their duties, police officers may be required to use a reasonable amount of force, as prescribed by the *Criminal Code* and RCMP policy.

The Commission concludes that, given the risks posed by the protesters' conduct, and reasonable concerns for the safety of RCMP members and the public, the use of force was generally necessary in the circumstances and was proportional to the conduct encountered by the members.

However, the Commission did find instances when the plastic tie wrap handcuffs placed on some protesters were likely tighter than necessary.

Contingency Planning

No plan can anticipate every eventuality, and allowing for discretion and flexibility in decision-making is essential in any dynamic operation.

However, it would have been reasonable for the RCMP's Tactical Operational Plan to have provided for the possibility of there being firearms and explosives at the campsite.

The Commission found that it was reasonable for the RCMP to use police vehicles as a barricade and to prioritize safety over preserving the vehicles when the situation deteriorated. The subsequent burning of the vehicles was not the RCMP's responsibility. However, the Commission also found that it would have been reasonable for the RCMP to have had a contingency plan providing for the possibility of a large number of belligerent protesters gathering on Route 134.

The Commission found that it was reasonable for the RCMP not to inform the schools about the imminent tactical operation, but that it would have been prudent to modify the plan to ensure that children were able to get to school before the operation rather than have to wait in the school buses and be exposed to a frightening situation.

RCMP'S RESPONSE TO REPORT

As required by the governing legislation, the RCMP Commissioner considered the Commission's interim investigative report and provided a written response, indicating which findings and recommendations the RCMP would act on and, if not, the reasons why.

In its response, the RCMP acknowledged a number of the Commission's findings, including several of those critical of its actions.

Furthermore, the RCMP agreed to implement several of the Commission's recommendations, including sensitivity and awareness training related to Indigenous culture and sacred items; better information sharing with crisis negotiators; and refreshers for RCMP members on law and policy for search and seizure.

However, the Commission has serious concerns about the RCMP's response to some of its findings and recommendations. Those concerns are discussed in the preface to its report.

Of note, while the RCMP indicated that it supported 8 of the Commission's 12 recommendations, it believed 3 of those required no further action.

This concerns the Commission, as these included recommendations concerning roadblocks, exclusion zones and limits to police powers. The Commission made recommendations about these issues because there were concerns about the RCMP's actions in this case.

In stating that she believed the RCMP's practices are already in line with the recommendations, the RCMP Commissioner provided no information indicating that practices have been adjusted since the Kent County events, or that the Commission's concerns have been recognized.

Further, the RCMP strongly rejected recommendations limiting collection and retention of open-source information. The Commission has serious concerns about the RCMP's approach in such matters. The Commission notes that the RCMP's response further heightened many of those concerns.

In other cases, the RCMP rejected the Commission's findings, but appropriately brought to the Commission's attention specific evidence and documents supporting a different view of the facts. This was to be expected given the exceptionally large volume of evidence. In some cases, the Commission revised its initial view based on this evidence. This is most notable on the issue of sufficient grounds for arrest in relation to an injunction. This was an example of the oversight regime functioning as intended.

However, many of the other responses rejecting the Commission's findings were of a different nature. In those cases, the RCMP did not provide any additional evidence or facts, but instead provided its own assessment of the evidence in support of its conclusion that the conduct of its members was not problematic.

Those responses raise concerns. In the Commission's view, the RCMP's right to refuse to implement findings or recommendations, and its statutory obligation to explain itself when it does so, is not meant to provide an opportunity for the RCMP to act as an appeal body with regard to the Commission's findings.

The RCMP's own views about the appropriateness of its members' actions should not be allowed to govern in a case where the independent oversight body has reached a different conclusion, and no further factual information or explanation is being offered by the RCMP. Such a process would amount to giving the RCMP *carte blanche* to come to its own conclusions about its members' actions.

CONCLUSION

Despite concerns with several elements of the RCMP's response, the Commission is confident that, if implemented, its recommendations will help the RCMP improve the policing of protests, in particular Indigenous protests, and help the national police service both enforce the law and respect the rights of all citizens.

To view the full report, click here.

Interim Report

CRCC Report Into the RCMP's Response to Anti-shale Gas Protests in Kent County, New Brunswick

Protected "A"

CIVILIAN REVIEW AND COMPLAINTS COMMISSION FOR THE ROYAL CANADIAN MOUNTED POLICE

COMMISSION'S INTERIM REPORT FOLLOWING A CHAIRPERSON-INITIATED COMPLAINT AND PUBLIC INTEREST INVESTIGATION INTO THE RCMP'S RESPONSE TO ANTI-SHALE GAS PROTESTS IN KENT COUNTY, NEW BRUNSWICK

Royal Canadian Mounted Police Act
Subsection 45.76(1)

Complainant

Chairperson-Initiated Complaint

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COMMISSION'S INTERIM REPORT FOLLOWING A PUBLIC INTEREST INVESTIGATION

BACKGROUND

[1] The Commission for Public Complaints Against the Royal Canadian Mounted Police ("the Commission")[1] received several complaints related to the confrontations between protesters and members of the RCMP with regard to the anti-shale gas testing/hydraulic fracturing ("fracking") protests in Kent County, New Brunswick, in 2013. Given the significant number of complaints and the issues raised therein, the Chairperson deemed it in the public interest for the Commission to investigate those complaints by way of a Public Interest Investigation ("PII").

[2] On July 30, 2013, he notified the Commissioner of the RCMP and the Minister of Public Safety and Emergency Preparedness that, pursuant to paragraph 45.42(3)(*c*) of the *Royal Canadian Mounted Police Act* ("the RCMP Act"), he was initiating a PII into the public complaints received pertaining to the RCMP's response to the Kent County, New Brunswick, shale gas protests in 2013. The Commission received a total of 21 individual complaints.

CHAIRPERSON-INITIATED COMPLAINT AND PUBLIC INTEREST INVESTIGATION

[3] During the course of the Commission's investigation into the individual complaints, additional questions surfaced about the RCMP's response to the protests. In December 2014, the Chairperson initiated his own complaint into those events. The issues to be examined included: the use of arrest; the use of detention and search powers; the use of force; the adequacy of communication with members of the public; the planning, management and execution of the arrests at the protest camp on October 17, 2013; the handling of spiritual items, and/or interference with the spiritual practices of Indigenous peoples involved in the protests; the role of the RCMP in the policing of protests by Indigenous peoples pertaining to Indigenous land rights; and whether there was differential treatment of Indigenous peoples compared to other protesters.

[4] In December 2014, the Chairperson notified the Commissioner of the RCMP and the Minister of Public Safety and Emergency Preparedness that the Chairperson-Initiated Complaint would be investigated as a PII.

[5] The Commission notes that the material disclosed to it by the RCMP, and generated by the Commission's investigators, was voluminous. More than 130 civilian witnesses and RCMP members were interviewed by Commission investigators. The investigation gathered more than two terabytes of documentation (including extensive

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1 As a result of the coming into force of the *Enhancing Royal Canadian Mounted Police Accountability Act* on November 28, 2014, the Commission for Public Complaints Against the Royal Canadian Mounted Police was replaced with the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police.

written documentation [approximately 50,000 files, including duplicates] and thousands of video files from the RCMP and civilian witnesses). Some delays were encountered in obtaining relevant material from the RCMP, and the material provided was disorganized. The Commission's report in this matter is based on as thorough a review as possible of the available information. The Commission also reviewed relevant jurisprudence and legislation, including the RCMP Act and the *Criminal Code*. The Commission thanks complainants and subject members for their patience.

Scope of the Commission's investigation

[6] It is not within the Commission's mandate to determine whether the land on which the exploration was conducted had been ceded to the Crown by the Mi'kmaq, or whether sufficient consultation had been conducted by the Crown before granting the exploration licences. The Commission notes that the required licences were granted to the company by the Government of New Brunswick beginning in 2010.

[7] The role of the RCMP in policing a protest or enforcing an injunction is to apply the law while respecting the rights enshrined in the *Canadian Charter of Rights and Freedoms* ("Charter"), and the rights of the Aboriginal Peoples of Canada, as set out in section 35 of the *Constitution Act, 1982*.[2] The RCMP's role does not include determining the legal validity of a licence or an injunction. As the New Brunswick Provincial Court held in *R v Colford*, a presumption that laws are not validly enacted, licences unlawfully granted, etc., would result in "anarchy and chaos":

> Whether or not the Aboriginals of New Brunswick have valid legal arguments, which when declared by a Court of competent authority would have the effect of holding them free from the obligation of paying the Sales Tax to which they object is not in issue here. All laws are presumed to be validly enacted and are binding until declared to be invalid by a Court having jurisdiction so to do. Any other presumption would result in anarchy and chaos.[3]

[8] Given this presumption, the company was therefore legally entitled to conduct the exploration and use the province's highways for that purpose. It is for this reason that a court issued an injunction attesting to the company's right to do so without being impeded by protesters. The protesters' actions may be considered through the lens of the expression of their views through protest. Nevertheless, the protesters' actions may violate the law in certain circumstances. The RCMP's primary role in any demonstration or protest is to preserve the peace, protect life and property, and enforce the law.

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2 Schedule B to the *Canada Act 1982* (UK), 1982, c 11.
3 *R v Colford* [1993] NBJ No 485, at para 18 [*Colford*].

A. INTRODUCTION

1. Background

[9] Beginning in 2010, the Government of New Brunswick granted SWN Resources Canada ("SWN"), a subsidiary of Southwestern Energy Company, licences to explore the accessibility of shale gas hydraulic fracturing (a controversial method used to extract shale gas) in the vicinity of the town of Rexton and the Elsipogtog First Nation Reserve in Kent County. Due to the location and the potential environmental impact of the exploration, protests were anticipated. In its capacity as the contract police force in the province, the RCMP was required to police these protests.

[10] It is not within the scope of this report to comment on any consultations between the New Brunswick government and Indigenous peoples of the Elsipogtog First Nation. Several of the Indigenous protesters alleged that there was a lack of adequate consultation. The RCMP was given the difficult task of refereeing between two diametrically opposed positions. On the one hand, the exploration company, SWN, had been granted a licence to explore for shale gas by the government of New Brunswick at considerable cost and was legally entitled to conduct the exploration. On the other, Indigenous persons, supported by non-Indigenous protesters, believed any exploration or shale gas fracking would destroy their water and land, which is their lifeblood. A review of the evidence collected by the Commission discloses that, with certain exceptions, the RCMP displayed exceptional forbearance in performing the very difficult task of attempting to guarantee the protesters their constitutional right to peacefully protest and demonstrate and, at the same time, enable SWN to carry out the work for which it had been granted a licence. Despite this forbearance, many of the protesters perceived the role of the RCMP as working for the contractor as private corporate security, and against them. As Pamela Ross put it:

> [T]o see an officer stand there and say well, I'm sorry, "I'm just doing my job and I'm only here for public safety," and it's like well, we feel pretty safe, so why don't you leave? "Well, we can't." And then as soon as SWN leaves, the police leave.

2. Positions of Indigenous protesters

[11] Initially, the Indigenous protesters were primarily from the Elsipogtog community located at Bass Point, close to the town of Rexton, New Brunswick. This group of protesters appears to have had no identifiable leader—a fact that created difficulty for RCMP negotiators in their attempts to follow policy guidelines by establishing rapport with protest leaders. Their Chief was often absent and appears to have taken little part in the protests. Several individuals interviewed expressed the belief that he had secretly agreed with the provincial government and SWN to permit the exploration operations.

[12] In June 2013, the Elsipogtog protesters were joined sporadically by a group apparently from Nova Scotia who claimed to be members of the Mi'kmaq Warriors Society. Later, some members of the Mohawk Warriors Society from Akwesasne joined

them. The Warriors were considerably more militant and aggressive in their approach and attracted several youthful members of the Elsipogtog community, who adopted their style and behaviour. They had a penchant for wearing camouflage clothing and engaging in aggressive taunting of the front-line RCMP members. The participation of the Warriors group significantly altered the nature of the protests and the RCMP's response.

[13] The motivation for opposing the actions of SWN was similar to that which has driven many Indigenous peoples' protests throughout Canada in the past and present—their dedication to protecting the land and water. Their justification was based on the view that the land belonged to the First Nations, as it had never been ceded to the Crown by any treaties or agreements.

[14] The relationship between the Mi'kmaq and the federal and provincial governments is governed by a series of treaties beginning in 1726. These treaties, often referred to as treaties of peace and friendship, provide for Indigenous hunting and fishing and other traditional activities. Unlike the treaties the federal government signed with western Indigenous people, which involved the surrender of land to the government, the treaties do not focus on land beyond accepting the legality of existing British settlements. The Mi'kmaq also agreed that the British might establish future settlements. Although several court cases over the years dealing with Indigenous hunting, fishing, and logging activities refer to "Crown land," there does not seem to be any legal authority that suggests that the land outside established communities has ever been ceded to the Crown. At least one court judgement acknowledges "the fact that none of the Aboriginals living in New Brunswick have ever made a general release of their lands to the Queen as have the tribes west of the Quebec border."[4]

[15] The Mi'kmaq's position is that the land belongs to them. In a letter to SWN, dated August 29, 2013, the Signigtog' District Migmag Grand Council wrote: "The Original Peoples of the Wabanaki-Migmag District of Signigtog are the legitimate authority over all of the lands and waterways of the territory that you have collaborated to exploit against our interests and in violation of our expressed directives."

3. Positions of non-Indigenous protesters

[16] In addition to Indigenous protesters, several other groups became involved in the protests. These included, among others, the Anti-Shale Gas Group, Our Environment Our Choice, Upriver Watch, Christian Peacemakers, The Council of Canadians, Moncton Anti-Fracking, and the Halifax Coalition Against Fracking. These groups primarily consisted of environmentalists and their interest in protecting the land clearly blended with the interests of the Indigenous protesters.

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4 *Colford*, *supra* note 3 at para 13.

4. Overview of anti-shale gas protests and RCMP response

[17] The protests began in early June 2013 with the arrival of the SWN equipment. They continued intermittently until SWN packed up and left in early December 2013. Although the protests were ongoing, there were specific incidents in which protesters came into conflict with RCMP members. A brief timeline of the protest activities in 2013 follows:

Routes 126 and 116

- June 5: Eighty people conducted a peaceful protest walking along Route 126 near Gallagher Ridge, New Brunswick. Ten protesters refused to obey police direction to move to allow SWN vehicles to pass. Five individuals were arrested.
- June 9: Protesters on Route 126 impeded SWN operations. Six people were arrested.
- June 14: The RCMP responded to a protest on Route 126 in Harcourt, New Brunswick. At least two individuals were arrested. They were blocking the Geokinetics (SWN sub-contractor) trucks on the road and were asked to move out of the way, but failed to comply.
- June 21: A group of protesters on Route 126 south of Rogersville, New Brunswick, suddenly walked in front of SWN Vibroseis trucks and interrupted SWN operations. Two RCMP Quick Response Teams ("QRT") were dispatched. Eleven protesters were arrested.
- June 25: Warriors from Nova Scotia arrived.
- July 27–28: Overnight protest, beginning at 3:13 p.m., at a location known as the "Ski-Doo Shack" near Route 116. The Emergency Response Team ("ERT") was deployed, and the "H" Division tactical troop was requested to provide additional support. By suppertime, 50 to 60 people were present and they advised the RCMP members that they wanted to perform a ceremonial dance in the middle of the road. The group was allowed to perform the ceremonial dance. More militant protest factions (Warriors) arrived at the Ski-Doo Shack site and SWN postponed its activities as a result.

Route 134 and Hannay Road

- September 27: The SWN and Industrial Security Limited ("ISL") staging area was moved to a fenced compound in Rexton, New Brunswick. SWN logistical and security plans for this site were shared with the RCMP. The RCMP voiced its concerns about site security to SWN.
- September 29: A group of protesters overran the entrance to the SWN/ISL compound on Route 134 (east of Rexton). By doing so, they gained a foothold at the entrance of the compound, preventing SWN from beginning their work as scheduled. A van was parked in front of the entrance to the compound and protesters prevented a tow truck from removing it. (This

was the beginning of a blockade of the compound.) Warriors moved to the site. A camp was set up.

- October 3: SWN obtained an *ex parte* interim injunction to prevent the protesters from interfering with their operations.
- October 11: The injunction order was extended to October 18, allowing protesters to contest it.
- October 13: The final draft of a Tactical Operational Plan to clear the protest site and secure the release of SWN and ISL equipment and personnel from camp on Route 134 was completed.
- October 16: SWN wanted to send two process servers to the site to serve the injunction. Inspector John Warr put SWN off until the morning of October 17. SWN was advised of the positive ground gained through negotiations thus far.
- October 16: Superintendent Gilles Maillet updated the Commanding Officer and the Criminal Operations Officer on the arrival of the "H" Division and "C" Division tactical troops. The team was expected to go through a tabletop exercise this date in the afternoon. The Tactical Operational Plan was reviewed; RCMP tactics were not expected to change. The first goal was to extract ISL staff if things did not improve with the camouflaged protesters (Warriors).
- October 16: The Crisis Negotiation Team ("CNT"), unaware of the Tactical Operational Plan, succeeded in negotiating the release of the barricaded ISL employees and having them replaced with RCMP members. Negotiations concluded with CNT members offering tobacco to members of the Warriors Society, variously seen as a "show of respect" or a "peace offering."
- October 17: The RCMP tactical operation began at 7:27 a.m. A firearm was observed during police deployment. Molotov cocktails were thrown on roadway near the compound's west gate. The RCMP fired several less lethal "sock" rounds. Police engaged in standoff with one male with a rifle. Over 200 RCMP resources were on the scene. Arrests of the core group of protesters were completed by 10 a.m. There were a total of 40 arrests as of 1:30 p.m. Five RCMP police cars were set on fire at 1:45 p.m. At 4:29 p.m., there were reports of rocks being thrown by protesters. Emergency Response Team (ERT) members fired sock rounds. By 6:39 p.m., RCMP members began to retire from the site using a controlled exfiltration plan.
- October 18: At 2 a.m., the Elsipogtog RCMP Detachment building was damaged from a thrown Molotov cocktail. Windows were also damaged.

Route 11

- November 12: SWN resumed its work.
- November 13: Protesters claimed as First Nations land an area located 1.5 kilometres north of Laketon, New Brunswick, which was being used by SWN the previous day. About 40 protesters were at this site carrying placards and moving around on the shoulder of the roadway.
- November 14: SWN resumed exploration activities along Route 11. Protest groups interfered with SWN activities. At least two persons were arrested. Protesters were seen carrying sticks, spray cans, and hunting knives. The RCMP saw this as indicative of an increased threat of violence.
- November 15: The RCMP noted that a "change in dynamics indicates a change of strategy. It paints a very volatile and dangerous situation for our staff (RCMP) and SWN."
- November 22: The Court of Queen's Bench granted a further injunction in effect until December 2.
- November 27: Three protesters were arrested for violating the injunction conditions. They were released on conditions.
- November 29: The RCMP expected SWN to move north towards the Richibucto River, but SWN brought its Vibroseis trucks to Route 134. Many protesters had rocks and sticks. Rocks were thrown at SWN trucks. RCMP members were deployed to clear the overpass. Five male protesters were arrested for violating the injunction.
- December 2: Protesters threw snowballs at RCMP members. Protester actions caused SWN to end work early this date. Seven protesters were arrested.
- December 6: SWN completed its work.

[18] The protests along Route 126 began peacefully. Although several arrests took place in June,[5] they were generally a result of practicing a form of civil disobedience—people positioning themselves in the middle of the road to prevent SWN trucks from passing and refusing to move when requested to do so by the RCMP. Some of this took the form of sacred ceremonies conducted in the roadway, which the participants insisted on completing before moving. Several of the individuals who were eventually arrested continued passive resistance and had to be physically removed.

[19] Around the end of June, a group of individuals from Nova Scotia who claimed to be leaders in the Mi'kmaq Warriors Society arrived. They left briefly at the request of some protesters from Elsipogtog, but returned in July. According to RCMP members involved in policing the protests, the Warriors espoused a more confrontational or aggressive form of protest. It is not clear to what extent they were welcomed by Elsipogtog protesters. Clearly, some did not appreciate their intervention, while others began to emulate their aggressive approach.

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[5] June 5: five arrests; June 9: six arrests; June 14: two arrests; June 21: eleven arrests.

[20] The impact of the Warriors was first apparent during the standoff at the Ski-Doo Shack on July 27–28, 2013. Shortly after that incident, SWN ceased operations and left the area. The Warriors also left.

[21] SWN returned in late September. So did the Warriors. This led to one of the main issues to be addressed in this report: the RCMP operation carried out on October 17, 2013. The lead-up began when SWN decided to use a fenced-in compound on Route 134 outside Rexton as a staging area for their vehicles, despite security concerns on the part of the RCMP. Almost immediately, the protesters parked a van blocking the exit gate and subsequently prevented a tow truck from removing the van. The protestors also cut down trees to partially block the highway and set up a camp across the road from the compound on private property, apparently with the consent of the owner.

[22] Over the next two and a half weeks, RCMP negotiators from the CNT attempted to resolve the impasse. In the meantime, operational plans were being drawn up and additional tactical troops from other divisions were being assembled for a large-scale operation to clear out the protesters, rescue the ISL personnel who had been blockaded in the compound, and allow the removal of SWN equipment. The CNT negotiators were not made aware of these plans; they continued to negotiate with the protesters, unaware of the operation scheduled for October 17, 2013.

[23] On the night of October 16, 2013, CNT members successfully negotiated the release of the ISL staff members. The negotiations ended with RCMP negotiators offering tobacco to the protest leaders, an act variously viewed as a peace offering, a show of respect, or a symbol of honourable intent. It was only at the nightly briefing with the Incident Commander that same night that the negotiators were briefed on the planned operation that was to occur the next morning. They unsuccessfully pleaded with the Incident Commander to delay the operation, as they believed that they had made a significant breakthrough and could now secure the release of the equipment. Despite these pleas, the operation went ahead the next morning. It lasted all day and could be described as a large-scale show of force against what became rioting protesters. It is noted that the interim injunction obtained by SWN on October 3, 2013, was scheduled to be addressed in court on October 18, 2013, and the protesters planned on opposing it. Not surprisingly, all of this led to a great deal of bitterness on the part of the protesters. Among other examples of this, the Elsipogtog RCMP Detachment was fire-bombed. But SWN withdrew for several weeks.

[24] In mid-November, SWN returned and this time used a facility in Moncton as a staging area. The focus of their explorations was in the area adjacent to Route 11 running north of Rexton. The Warriors seem to have left after October 17, 2013, but the fallout from the operation had created a level of mistrust among the protesters that resulted in a more confrontational relationship between them and RCMP members. By this time, a second injunction was in place and the RCMP was enforcing it. Numerous arrests occurred over the three weeks that SWN worked to complete its exploration.

Most arrests were for violations of the injunction; some of these arrests were based on an apparent misreading of the terms of the injunction. On December 6, 2013, SWN finished its explorations and left the area. The remaining fallout involved a number of court proceedings for those charged, although Crown prosecutors withdrew many of the original charges.

[25] The terms of reference of the Chairperson-Initiated Complaint list a number of issues to be considered. The balance of this report will address those issues and, where appropriate, make findings and recommendations.

B. DETENTION PRACTICES AND CONDITIONS

[26] Throughout the anti-shale gas protests, RCMP members appear to have acted consistently with the requirements of section 10 of the Charter and the RCMP's national *Operational Manual*. There were designated arrest teams within the tactical troops, and the members of those teams routinely immediately advised the arrested persons of the reason for the arrest and provided them with their rights to counsel and the primary police warning. Once arrested, persons complaining of injuries were treated by medical teams or transported to hospital. Otherwise, they were turned over to other members responsible for the transportation of prisoners to one of the local detachments, where they were provided with an opportunity to contact counsel. They were then placed in a cell and shortly afterward were interviewed by a member of the investigative team. Before beginning the interviews, the interviewer confirmed that the persons had been provided with their section 10 Charter rights and provided them with the secondary police caution. Most persons arrested were released within a few hours of their arrest. The exceptions were persons who had outstanding charges or significant criminal records. The entire process was in line with normal police practices.

[27] An addendum to the Tactical Operational Plan detailing specific procedures for handling arrested persons was put in place for the October 17, 2013 operation. Several prisoner transport buses from the Springhill and Renous federal correctional institutions were used to transport arrested persons to one of four local detachments. The addendum included a detailed checklist to be followed for arrests. This list included sections for a person's name, date of birth, rights to counsel, primary warning, as well as any injuries to be photographed and location noted. It also provided a complete action plan that detailed:

> Protesters that will be arrested at the site by QRT members will be brought on foot to the buses location near check point Est at exit 53 which is about 200 feet away after the Incident commander would have given the "green light" that the site is under control. The arresting QRT member will then provide the member responsible for each bus with the arrest form that contained information on the prisoner such as name, raison for the arrest, RTC, PW, before the subject can be placed inside of the bus. ERMT members will be at the bus location to quickly provide medical assistance to prisoners if needed.
>
> Once the bus arrives at the detachment the member responsible of the transportation of the prisoners will provide member[s] of the Investigative team

> with all documentation in regards to the arrest and then will be process by a member of street crime unit. The subject will then be decontaminated (if required) photograph[ed], fingerprint[ed], and interview will be conducted to gather evidence for further prosecution.
>
> Those prisoners that can be released will be under condition (to be determined) and those held for court will be dealt. [*sic* throughout]

[28] Over 40 protesters were arrested on October 17, 2013, and despite some overcrowding in the cells, the processing of detainees appears to have been reasonable.

[29] Persons did, however, submit complaints and express concerns. Susan Hopkins McQuarrie claimed:

> The other women with me had much thinner clothes on than I. I was shivering with cold, even with the thick sweater, and my companions were also shivering with cold. One of the women with me asked for us to be given blankets. We were told by the officer that the woman at the desk would not give them to us. After perhaps an hour or an hour and a half, we were given thin, cotton blankets which were quite inadequate to keeping us from shaking with cold.

[30] However, cell videos show that these women were provided with blankets in accordance with the national *Operational Manual*.

[31] Ms. Hopkins McQuarrie's husband, Dallas McQuarrie, said that when he was arrested he was concerned about the length of time he would be held, as he is diabetic. He said that he was told he would not be held very long, but wound up being detained from before 8 a.m. until around 1 p.m. or 2 p.m. However, the Prisoner Report document shows that he was arrested at 7:21 a.m., booked into cells at 8:39 a.m., and released on promise to appear at 10:30 a.m.

[32] Mr. McQuarrie also complained about not being fed; however, he acknowledged that he had breakfast before he was arrested and, as noted above, he was released at 10:30 a.m.

[33] Several arrested protesters complained of being denied a phone call to family members. There is, however, no requirement for police to allow a detained adult to contact anyone except their legal counsel. In some cases examined by the Commission, members did, at the request of arrested persons, nonetheless ensure that family members were contacted.

[34] An online media report alleged that a protester named Gilogoetj Dedam was violently shoved, denied water and bathroom access, and was refused the adjustment of her zip tie cuffs to the point of bruising. This media report was refuted through video files that depicted that the cell that housed Ms. Dedam, like the other cells depicted in the referenced video files, had bathroom and water facilities available to the detained

persons. There was no information available to the Commission to support the claims that Ms. Dedam was shoved or that members refused to adjust her handcuffs.

[35] In most instances during the anti-shale gas protests, several persons were arrested at approximately the same time. In fact, on October 17, 2013, the number of persons arrested surpassed 40. RCMP members involved in arrest and detention procedures were therefore dealing with multiple arrested persons concurrently. Based on the Commission's review of the available information, to the extent reasonably possible, the RCMP members charged with arrest and detention complied with the provisions of the RCMP's national *Operational Manual* in the treatment and handling of prisoners after arrest.[6]

FINDING

1) Overall, RCMP members handled post-arrest and detention procedures in a reasonable manner and in compliance with policy.

C. COMMUNICATION WITH PROTESTERS AND MEDIATION

1. Measured approach

Facts

[36] The "measured approach" is a crisis management philosophy that relies on communication, relationship building, problem solving, and the development of creative and unique measures as the crisis unfolds. The role of the police is to bring stakeholders together to work on achieving a resolution to the conflict.[7]

[37] The RCMP's Operational Plan for Shale Gas Exploration, developed in April 2012 and revised in April 2013, addresses the probable operational conditions and includes the following:

> All plans/responses are in keeping with National Policy and J Div Policy. As well, they concentrate on a Measured Approach/Non-Confrontational Model as it applies to:
>
> a. acts of civil disobedience which are dynamic and require a flexible police response;
> b. the premise that all persons have the right to lawful dissent;
> c. a public assembly, whether for lawful or unlawful activities, may require a police presence response;
> d. not all crowd situations involve civil disobedience; and
> e. the Incident Commander or delegate will be able to objectively decide at what juncture a demonstration or other act of civil disobedience requires an appropriate Level of Response/Intervention.

[38] The national *Operational Manual*, chapter 38.9., addresses the policy for policing Aboriginal demonstrations and protests. The policy describes the considerations and

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6 RCMP *Operational Manual*, chap 19. "Prisoners".

7 W. E. Bryden, "Applying a Measured Approach to Conflict," 2017.

approaches to be taken. It states that the RCMP's primary role in any demonstration or protest is to preserve the peace, protect life and property, and enforce the law. It specifically notes that the rights of the Aboriginal peoples of Canada are recognized in Part II, section 35 of the *Constitution Act, 1982* and that peaceful protests, peaceful assembly, and freedom of expression are all fundamental rights as defined under the Charter.

[39] Section 2.3. of chapter 38.9. dictates that a measured response based on accurate and timely intelligence must form the basis for the management of Aboriginal demonstrations or protests. The policy also addresses restriction of access to a disputed area. It states that public access may be restricted if the disputed area is on a reserve or private property. Access may be restricted on Crown or public property if the provincial or federal government obtains an injunction on behalf of the public.

[40] Specifically, the policy directs members to "[e]nsure every enforcement action is measured, incremental and as non-confrontational as possible . . . [and to] [a]ttempt to negotiate the conflict before taking enforcement action."

[41] In the *Tactical Operations Manual*, the underlying policy contained in chapter 2. is the use of an integrated, measured response in accordance with the Incident Management/Intervention Model ("IM/IM"). Chapter 1.1. describes the role of the Incident Commander. The Incident Commander is defined as a commissioned officer or senior non-commissioned officer responsible for coordinating, managing and responding to a critical incident. A critical incident is one that requires a specialized and coordinated response.

[42] Chapter 3.1. contains the crisis negotiating responsibilities. This part again emphasizes the commitment to resolving potentially violent situations using the least amount of force necessary. It sets out the primary objective of the CNT as the negotiation of the safe release of victims and the peaceful surrender of offenders. It should be noted that the description of the role of the CNT in chapter 3.1. of the *Tactical Operations Manual* involves hostage-taking situations, which are quite different from the scenario faced by the CNT at the anti-shale gas protests.

[43] Chapter 5.4. addresses the handling and arrest of demonstrators. It adopts the directions in Chapter 19 of the *Operational Manual* and directs the establishment of a prisoner processing team, which must be alert to the health and safety of prisoners.

[44] Chief Superintendent Wayne Gallant, "J" Division Criminal Operations Officer, indicated that the protest policing operation "can't be a police story." He said that it was a protest involving legitimate concerns, the kind that happens in democracies all the time. The interest of the RCMP is always to be neutral and impartial, and be prepared to ensure public safety for everybody involved in the protests. The goal was to act professionally, maintain public safety at all times, respect peaceful protests, and minimize active interventions by the police. He said that these were "oft repeated themes on . . . the teleconferences that I chaired."

[45] Assistant Commissioner Roger Brown, Commanding Officer, explained:

> The . . . goal was always to . . . stay within your lines. In other words, the police lines are this, the political lines are there, First Nation lines are there. Stay in your lane. My overall strategy was stay in your lane, not to allow us to veer into the political world, not to veer into the industrial (inaudible), and be able to do what I'm doing here, explain that in a way where my role is X and that's what I did.

[46] Staff Sergeant Jean-Marc Collin, who had responsibility for liaising with the provincial government, indicated that he explained to his government contact that the RCMP mandate did not include prohibiting peaceful protest, and the RCMP would not prevent people from engaging in peaceful protest.

[47] Many of the members interviewed by Commission's investigators discussed their understanding of the concept of the measured approach. Chief Superintendent Gallant saw the approach as involving the "least intervention as possible," and that the bottom line is that "we're not going to overreact." Sergeant Harry Brown, "J" Division Tactical Troop Commander, understood the approach to be "talking with the protesters and explaining what we will do and [how] we respect their side. Giving the people an informed decision on what they wanted to do." Superintendent Maillet, Incident Commander, described the measured approach as finding a way forward through communications and building rapport through negotiation and mediation. Superintendent Maillet also said that this concept was applied throughout the ranks, from the Commanding Officer all the way down.

[48] According to Staff Sergeant Jean-Marc Robichaud, who acted as Operations non-commissioned officer in charge at the protest sites, the measured approach meant "that we only react with the force that was necessary to solve the problem. We would speak to them, if that's all that was needed. We would react with the levels needed and nothing more. This is a measured response to a situation."

[49] Sergeant Lynn Couture, team leader for the "J" Division CNT, said that she was instructed to use the measured approach. She saw her role being to maintain the peace, respect the protesters, and ensure that they understood that they have the right to protest as long as they do it peacefully and they do not impede the workers from performing their job.

[50] Inspector Dennis Fraser, who was brought in as a negotiator from Alberta, said that "the measured approach, in my opinion, is not to overdo it, like not to use excessive force," coupled with negotiation.

Analysis

[51] Although there were many descriptions of the measured approach, all those involved with policing the protests who were interviewed by the Commission grasped the basic notion that what was required was a non-confrontational approach with the

least amount of intervention and a focus on negotiation and mediation. It should be noted that the persons interviewed were not given questions in advance, so were giving "off the cuff" explanations.

[52] There are a number of video recordings that show tactical troop members trying to clear the road so that SWN trucks could pass. The members demonstrated great patience in requesting cooperation from the protesters and giving them the opportunity to demonstrate before moving to enforce the requests. This was often done while the SWN trucks waited down the road. Some examples of this are in video 861, where protesters are shown blocking a line of SWN trucks. RCMP members speak to the apparent leader but the crowd continues to mull about. One man is sitting directly in front of the lead SWN truck. One of the members bends down to talk to him, apparently trying to get him to move, but he remains where he is. While this is going on, several women are conducting a drumming ceremony in front of the trucks. Eventually the crowd complies with requests from the RCMP to move to the side of the road to let regular traffic pass. The scene continues in video 862, with regular traffic passing. The drumming is continuing and the man is still sitting in front of the trucks. The combined time of the two videos is approximately 12 minutes. These two videos show a great deal of forbearance by RCMP members and illustrate the application of a non-confrontational measured approach.

[53] Another example is in video 870, which shows a group of protesters led by women drummers approaching a line of SWN trucks. RCMP members ask them to keep one lane free for regular traffic and they cooperate with this request. When the protesters reach the SWN trucks, they gather in front of them and begin demonstrating. However, they comply with the police request to leave one lane open for regular traffic. This video lasts 14 minutes.

FINDING

2) In general terms, RCMP members understood and applied a measured approach in their dealings with protesters.

2. Crisis Negotiation Team

Facts

[54] The Tactical Operational Plan provided for a CNT reporting to the Tactical Incident Commander. However, as Sergeant Couture, the member in charge of the team, pointed out, there was no negotiated resolution to be had because both sides were firm in their positions. The CNT members were essentially only there to speak to the protesters and try to keep them calm, acting more as mediators. Their approach was to try to identify leaders, particularly among the Indigenous protesters, and connect with them.

[55] This was met with mixed success, as the leadership of the protest groups seemed to be somewhat fluid. The Chief and band council from Elsipogtog maintained a hands-off approach, leading some of the protesters to believe they had worked out an

arrangement with SWN. Initially, the team attempted to establish contact with John Levi, who was said to be the band's Warrior Chief, and Amy Sock, a lawyer and respected member of the Elsipogtog community. However, it was not clear that either had solid backing from the Indigenous protesters. Later, members of the Mi'kmaq Warriors Society from Nova Scotia joined the protests and, as noted, brought with them a more aggressive and confrontational style.

[56] The CNT originally consisted of Sergeant Couture, Sergeant Don Stenger, and later Staff Sergeant Denise Vautour, who had also served as a site non-commissioned officer in charge. Sergeant Stenger is Indigenous, but not Mi'kmaw. Corporal Richard Girouard was then added to the team. He is Mi'kmaw, but does not speak the language. Constable Walter Denny and Corporal Jay Marshall were then brought in from "H" Division; they are both Mi'kmaq and speak the language. CNT members attended daily briefings with the Incident Commander.

[57] The negotiators spent most of their time interacting with Indigenous protesters, who seemed to be playing the lead role in the protests. The goal of the CNT negotiators was to encourage people to act lawfully during the protests. The CNT attempted to do this by reaching out to individual protesters who may have influence over others, and enlisting their support to ensure lawful protests.

[58] Wendell Nicholas was hired by the Elsipogtog First Nation to lead a team of "Peacekeepers." According to Constable Denny, the Peacekeepers team drafted a protocol for handling the situation; RCMP members read the protocol and interacted with the Peacekeepers group on a daily basis. The Peacekeepers would act as a buffer in an attempt to avoid arrests. When Protester A was performing a drumming ceremony on the road in July, Constable Denny said: "Rather than us members deal with [Protester A] it was Peacekeepers who would provide that buffer. When we needed to get cars going through, trucks going through, they assisted." However, the Warriors from Nova Scotia had a different way of approaching things. They were prepared to take it to the next level—the threatened use of violence—and the CNT members were trying to find a way to change that and have the Peacekeepers group take the non-violent approach and persuade the Warriors to do the same.

[59] On October 13, 2013, Inspector Fraser was brought in to assist in negotiations. He is Indigenous and had been involved in mediating Indigenous protests in other parts of the country. On the night of October 16, 2013, he and Constable Denny succeeded in negotiating with the Warriors group for the release of security personnel who had been barricaded in the SWN vehicle compound on Route 134. The significance of this will be further examined in assessing the events of October 17, 2013, and those leading up to it.

Analysis

[60] Particularly considering the difficulty in identifying protest leaders, the CNT made reasonable and even outstanding efforts to implement a measured approach in communicating and negotiating with the protesters in an attempt to ensure peaceful and lawful protests, and to resolve any conflicts up to the events of October 17, 2013. Their efforts culminated in the negotiated release of the security personnel being detained in the SWN compound and a successful breakthrough in communicating with the Warriors group, which had taken over a leadership role.

FINDING

3) Throughout the protests up to October 17, 2013, the RCMP command team and the Crisis Negotiation Team made every effort to bring stakeholders together to achieve a resolution to the conflict. These efforts were frustrated, in part, by the intractable nature of the dispute and by the absence of clear leadership on the part of the protesters.

D. SURVEILLANCE AND SEARCHES

[61] During the anti-shale gas protests policing operation, the RCMP engaged in surveillance practices and physical searches, some of which may have been inconsistent with protesters' Charter rights to be free from unreasonable search and seizure.

1. Undercover operations

Facts

[62] The RCMP engaged in an undercover ("UC") operation aimed at gaining access to Facebook communications undertaken by protesters. The purpose of this operation, as stated in the Investigational Planning document, was the following:

> UC operator will be utilized in an effort to gather as much information from social media as possible. We would instruct the operator to create a fake identification in order to gain access to the social media sites that the principal targets are using as well as other sites used to organize protests/barricades and criminal activity. Through online communications the UC [operator] will attempt to join social media groups and eventually gain access to private chat rooms and messaging.

[63] The objectives of the operation were as follows:

1. Prevent further damage to shale gas exploration equipment and harm to shale gas exploration employees.
2. Investigate previous and any future Criminal Code offences in relation to property damage to shale gas exploration equipment and/or other offences in relation to shale gas exploration employees.
3. Prevent and strategically police unlawful protests.

[64] The initial application was made on July 4, 2013, and approved shortly thereafter. The Operator was able to actively monitor the following Facebook groups:

> Shale Gas Alerts New Brunswick
> Upriver Environment Watch
> New Brunswick Is Not For Sale
> Stop Shale Gas In New Brunswick
> Wear White (invited private group)

[65] During the operation, the Operator had direct contact via Facebook with two targets, both of whom were administrators of the Shale Gas Alerts New Brunswick Facebook group. One of the administrators was actively involved in organizing demonstrations and protests. He was asking via social media for people to get names of SWN employees and their subcontractors, information about where they reside, what they do in their spare time, and so on. The Operator was able to determine that people on the social media sites had posted the location of seismic testing and encouraged both protests and damage to property. The Operator also ascertained that meetings were taking place among anti-shale gas protesters in relation to strategic planning.

[66] An application to extend the operation was made on September 16, 2013, and approved two days later. The application called for criminal analysts to monitor the private group conversations within the Facebook group, including logging in and out of the account. The application stated:

> If and when contact is requested by anyone, the Criminal Analyst will contact the investigator, who will in turn contact the Cover Person to have this task performed if deemed investigatively necessary. This subsequent contact will be done by the UCO either while on duty or during a callback depending on the investigative need.
>
> Investigators feel that much of the information in relation to the planning and strategizing of unlawful protests and illegal activities is being done on social media via private group messaging.

Analysis

[67] Although the application for approval of the UC operation followed the established procedures, neither the applicants nor the Commanding Officer who approved the operation appear to have considered that the ultimate objective (which was successful) was to obtain access to private electronic communications.

[68] In cases decided several years after the anti-shale gas protests, the Supreme Court of Canada in *R v Marakah*[8] and *R v Jones*[9] held that persons had standing to assert that judicial authorization was required to access electronic messages, which

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8 *R v Marakah*, [2017] 2 SCR 608 [*Marakah*].

9 *R v Jones*, [2017] 22 SCR 696.

constitute private communications. Even before those decisions were released in 2017, courts had held that a warrant was required to search cell phone messages,[10] and Part VI of the *Criminal Code* has for several decades required judicial authorization to intercept private electronic communications. Section 183 of the *Criminal Code* defines "intercept" as including to "acquire a communication."

[69] Part VI of the *Criminal Code* applies to communications for which there is a reasonable expectation of privacy; section 183 of the *Criminal Code* defines private communication as communication that is "made under circumstances in which it is reasonable for the originator to expect that it will not be intercepted by any person other than the person intended by the originator to receive it . . . ."

[70] In this case, from the information available to the Commission, it appears that the UC Operator (and, in the second operation, a criminal analyst, who monitored messages but was not permitted to make contact with any persons) was engaged in reading messages on the group's webpage posted by other group members, as well as receiving and sending messages directly from/to two Facebook group members (one of whom was a specific target of the investigation).

[71] RCMP records indicate that, in the first operation, the Operator "successfully gain[ed] access to a private chat room on the Facebook site SHALE GAS ALERTS NEW BRUNSWICK and initiat[ed] contact with administrator [*sic*]." The Operator also "actively monitored" other Facebook groups, as listed above. RCMP records indicate that the Operator "only had direct contact via Facebook with two targets, [name 1 redacted by the Commission] and [name 2 redacted by the Commission], but mostly [name 2]. Both . . . are administrators of Shale Gas Alerts New Brunswick." The RCMP also noted that the second person's "actual identity ha[d] not been confirmed."

[72] The law continues to adapt to the widespread use of social media, as do police practices. Questions remain as to what constitutes "private communications" on a platform such as Facebook, where some "groups" (within which electronic communications occur) may be accessed by any person with a Facebook account; membership in other groups is controlled by a group administrator.

[73] In its *Marakah* decision, the majority of the Supreme Court indicated that their ruling with regard to the private nature of text messages (sent via cell phones) in that case did not mean that persons necessarily have an objectively reasonable expectation of privacy in all electronic communications, and that each case would turn on its own facts. The majority judgement indicated, "This case does not concern, for example, messages posted on social media, conversations occurring in crowded Internet chat rooms, or comments posted on online message boards."[11]

[74] In a 2018 decision, *R v Patterson*, a justice of the Ontario Superior Court specifically rejected the claim that the accused in that matter had an objectively

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[10] *R v TELUS Communications Co*, [2013] 2 SCR 3.
[11] Ibid. at para 55.

reasonable expectation of privacy in messages shared in a Facebook group, stating that "No reasonable person would expect that communications exchanged between unidentifiable members which can be readily copied and disseminated to an unlimited audience would remain private."[12]

[75] In *R v Mills*,[13] a police officer in Newfoundland created an e-mail address and Facebook profile for a fictitious 14-year-old girl and communicated with the subject of the investigation, using a computer program to take screenshots (digital images) of their communications. The undercover police officer and the accused corresponded for approximately two months, culminating in the accused's arrest for communicating with a minor for sexual purposes.

[76] The trial judge found that Mr. Mills' section 8 Charter rights had been violated. The Newfoundland and Labrador Court of Appeal disagreed, finding that the judicial authorization requirement sections of the *Criminal Code* were not engaged in this case because there had been no "intercept" of communications. This was so because the interactions involved direct communications between two parties; a recipient of information cannot be said to "intercept" it. This was true even though Mr. Mills did not know he was speaking to a police officer; in fact, both parties were deceiving each other.[14]

[77] With regard to the question of whether Mr. Mills' expectation of privacy was objectively reasonable, the Court of Appeal found:

> Mr. Mills was using electronic social media to communicate and share information with a person he did not know and whose identity he could not confirm. On an objective analysis, as the sender of such communications, Mr. Mills must have known that he lost control over any expectation of confidentiality that he appears to have hoped would be exercised by the recipient of the messages. He took a risk when he voluntarily communicated with someone he did not know, a person he was not in a position to trust. Any subjective expectation of privacy Mr. Mills may have had was not objectively reasonable. In the absence of a reasonable expectation of privacy, section 8 of the *Charter* was not engaged.[15] [Emphasis added][16]

[78] It is reasonable to assert that persons posting messages in an online group setting have a reduced expectation of privacy in those messages by virtue of the forum in which they are shared. It is true that social media group members are in many cases essentially "unidentifiable," as persons may use a nickname, pseudonym, or an entirely fictitious persona (as was the case with the UC Operator in this matter). In fact, it is noted that the RCMP in this case had difficulty confirming the true identity of one of the

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12 *R v Patterson*, 2018 ONSC 4467 (CanLII), at para 27.
13 *R v Mills*, 2017 NLCA 12 (CanLII) [*Mills*].
14 Ibid. at para 15.
15 Ibid. at para 23.
16 Mr. Mills appealed to the Supreme Court of Canada; on May 25, 2018, the Supreme Court reserved its decision.

persons with whom the UC Operator was communicating through one of the online groups.

[79] It is also true that a person loses a considerable amount of control over his or her communication after it is shared with group members, as that message could be forwarded or otherwise shared to anyone, anywhere. Concerns have been raised about how Facebook itself handles users' communications.[17]

[80] In this case, on several occasions RCMP documents themselves referred to accessing "private" communications. On the information available to the Commission, however, it is unclear whether the communications in question engaged an objectively reasonable expectation of privacy as set out by jurisprudence.

[81] It is apparent that the parties who were communicating with, or in the (virtual) presence of, the UC Operator did not know that he was a police officer. There is a legitimate concern with regard to a chilling effect on peaceful expression of freedom of speech. Courts assess police actions with a view toward "the need to strike a fair balance between the right of the state to intrude on the private lives of its citizens and the right of those citizens to be left alone."[18]

[82] It is also the case that courts have recognized the legitimacy of undercover police work, and that it can be done in a way that does not violate privacy rights. In *R c Blais*, the Quebec Court of Appeal held that "[l]e fait que l'un des interlocuteurs est un agent de l'État sans que l'appelant ne le sache ne constitue pas, non plus, une « interception. »[19] [Translation: The fact that one of the interlocutors is an agent of the state without the appellant knowing it does not make it an "intercept."] As the Alberta Court of Appeal framed it, "[d]eception does not amount to an interception."[20] In *Duarte*, Justice La Forest explained this distinction in the following terms:

> The *Charter* is not meant to protect us against a poor choice of friends. If our "friend" turns out to be an informer, and we are convicted on the strength of his testimony, that may be unfortunate for us. But the *Charter* is meant to guarantee the right to be secure against unreasonable search and seizure. A conversation with an informer does not amount to a search and seizure within the meaning of the *Charter*. Surreptitious electronic interception and recording of a private communication does.[21]

[83] In the present case, it is unclear whether the actions of the UC Operator amounted to an "intercept" as outlined in the jurisprudence. On the one hand, it can be argued that the Operator "acquired" the information through his actions, bringing the

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17 "Facebook let some companies read private messages, access friend lists, report finds", *CBC News* (December 19, 2018), online: CBC News <https://www.cbc.ca/news/business/facebook-data-messages-privacy-1.4952243> (accessed January 29, 2019).

18 *R v Duarte*, [1990] 1 SCR 30 at para 40 [*Duarte*].

19 *R c Blais*, 2017 QCCA 1774 at para 21.

20 *R v Beairsto*, 2018 ABCA 118 at para 24.

21 *Duarte* at para 50.

conduct within the ambit of an intercept. On the other hand, an intercept requires "interference" between the sender and the recipient of the communications on the part of the police.[22] As described above, the Newfoundland and Labrador Court of Appeal in *Mills* stated: "Where there is direct communication between two people, the intended recipient cannot be characterized as having 'intercepted' a communication meant for that person."[23]

[84] The law is constantly evolving in this area, and has undergone—and continues to undergo—significant developments since this incident occurred in 2013. The information available to the Commission does not establish, on a balance of probabilities, that persons had an objectively reasonable expectation of privacy with regard to their communications through Facebook groups, or that the RCMP UC Operator "intercepted" those communications as outlined in the relevant jurisprudence. It is beyond question, however, that in a free and democratic society, any gathering of potentially "private" electronic communications by the RCMP must be done only within the strictures of the *Criminal Code*, Charter, and related jurisprudence.

FINDINGS

4) **The information available to the Commission does not establish, on the balance of probabilities, that persons had an objectively reasonable expectation of privacy with regard to their communications through Facebook groups, or that the RCMP Undercover Operator "intercepted" those communications as outlined in the relevant jurisprudence.**
5) **Any gathering of potentially "private" electronic communications by the RCMP must be done only within the strictures of the *Criminal Code*, Charter, and related jurisprudence.**

2. Open-source dossiers

Facts

[85] Before the protests began, the RCMP created dossiers on some individuals they suspected would be involved in the protests. The dossiers contained personal information including date of birth, description, home address, employment, mobile telephone number, and pictures from Facebook.

[86] An example is the dossier created for Protester B. It states that he "does not have a criminal record. He is currently employed as a [information redacted by the Commission] with [---]. In the last 8 years, he has been associated to 44 PROS occurrences [RCMP police files]. He was charged once for [---] and he is listed as suspect chargeable or subject of complaint in 10 occurrences. He was listed as a complainant and witness in 25 occurrences." It goes on to note that he has been the subject of complaint in numerous occurrences related to various incidents with another person, providing that person's name and date of birth.

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22 *R v Jones*, [2017] 2 SCR 696 at para 69.
23 *Mills*, *supra* note 13 at para 13.

[87] The dossier on Protester D includes the following information:

> [Protester D] was born in [---]. He has worked as [---]. [Protester D] has lived in [---] where he is currently writing a biography.
>
> [Protester D's] name surfaced in May 2012 as he became quite vocal as an opponent of shale gas exploration on various Facebook groups. [Protester D] posted a guide for protesters, also will post various events on Facebook. [Protester D] appears to be the one who created the Shale Gas Alerts' Facebook page and would also be going to the various sites that are posted on this page. [Protester D], along with [six other names] are all Administrators to the SHALE GAS ALERTS IN NEW BRUNSWICK's Facebook page. This page was created to report sightings related to fossil fuel exploration and is a clearing house for reports and/or photographs of water/air testing, surveying, and seismic testing.

[88] It is noted that Protester D is one of the targets whose Facebook communications were successfully targeted in the UC operation referred to above. He is also the subject of one of the check sheets from the stop checks referred to below.

[89] Another example is the dossier prepared on Protester E. Under "Open Source Information," it reads:

> [Name] along with [name], [name] and [Protester E] appear to be the most active leaders in the Kent County area. [Protester E] has been reported to be extremely security conscious. Information indicates that she has made claims that her group of contacts communicate through the use of Skype and specific codes are used when dialogue is exchanged. (Source: ---) [Protester E] actively attended the Penobsquis PotashCorp Mining Commission Hearing and encouraged others to attend as well.

[90] Similar dossiers were prepared on approximately 40 other individuals. Many of these people had no criminal record and the only basis for creating the dossiers appeared to be that they had participated in other environment-related protests.

Analysis

[91] Police are not entitled to invade a person's sphere of privacy in a manner that is inconsistent with that person's Charter rights. In *R v Plant*, Justice Sopinka of the Supreme Court of Canada wrote:

> In fostering the underlying values of dignity, integrity and autonomy, it is fitting that s. 8 of the Charter should seek to protect a biographical core of personal information which individuals in a free and democratic society would wish to maintain and control from dissemination to the state. This would include information which tends to reveal intimate details of the lifestyle and personal choices of the individual.[24]

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[24] *R v Plant*, [1993] 3 SCR 281.

[92] In *R v Ward*, the Ontario Court of Appeal held:

> [I]f the state could unilaterally, and without restraint, gather information to identify individuals engaged in public activities of interest to the state, individual freedom and with it meaningful participation in the democratic process would be curtailed. It is hardly surprising that constant unchecked state surveillance of those engaged in public activities is a feature of many dystopian novels.[25]

[93] These cases speak to the invasion of "informational" privacy. The Supreme Court of Canada in *R v Tessling* adopted as the definition of informational privacy: "[T]he claim of individuals, groups, or institutions to determine for themselves when, how, and to what extent information about them is communicated to others."[26]

[94] If such information gathering is for a legitimate law enforcement purpose, such as a reasonably based suspicion that the individuals may become involved in criminal activity, it may be acceptable. Otherwise, applying the words of the Ontario Court of Appeal in *Ward*, police may be "unilaterally, and without restraint, [gathering] information to identify individuals engaged in public activities of interest to the state." The practice of researching and assembling personal biographical information on individuals exercising their constitutional rights of peaceful assembly and freedom of speech that happen to be of interest to the state can cross the line and be considered an intrusion on their reasonable expectation of privacy.

[95] It is also noted, however, that the information in question was gathered either from police records or open sources, the former of which are of course under the control of the police, and the latter of which are by definition open to the public. The expectation of privacy with regard to such material is necessarily attenuated.

[96] It is also clear that police have a duty to maintain public safety, and intelligence gathering is one aspect of their role in doing so. Even absent indications of criminal activity or a notable threat level, with regard to protests and demonstrations, the RCMP and other police forces are routinely faced with questions as to the amount of disruption a given protest or demonstration may cause, and whether there will be any risk to participants, bystanders, police, and the general public. In answering these questions, the police act not only in a law enforcement capacity but also in an intelligence-gathering capacity.

[97] In the examples described above, it appears that the information about Protester B, Protester D, and Protester E was gleaned either from police records or open sources. There is necessarily a reduced expectation of privacy with regard to such information. There was also a legitimate law enforcement purpose of conducting a risk assessment with regard to protest activity. On the balance of probabilities, the Commission finds that

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25 *R v Ward*, 2012 ONCA 660, at para 74.
26 *R v Tessling*, [2004] 3 SCR 432, at para 23.

the open-source information gathering in the cases of Protester B, Protester D, and Protester E was not unreasonable in the circumstances.

FINDING

6) On the balance of probabilities, the Commission finds that the open-source information gathering in the cases of Protester B, Protester D, and Protester E was not unreasonable in the circumstances.

[98] As described above, however, the gathering of such information by police must be done within reasonable bounds. The Commission highlights what appeared to be a dearth of RCMP policy guidance in this area. For example, at the time of the anti-shale gas protests, it appears that RCMP policy did not provide clear guidance as to what kind of information from social media or other open sources could be collected, how it could be used, and under what circumstances it would be retained, particularly in situations where no criminal nexus was determined.

[99] The Commission commented extensively on very similar issues in its *Report Following a Public Interest Investigation Regarding Allegations that the RCMP Improperly Monitored and Disclosed Information of Persons and Groups Seeking to Participate in National Energy Board Hearings*.[27] The Commission adopts and reiterates the general findings and recommendations made in that report with regard to open-source intelligence gathering and checks on individuals.

[100] Specifically, the Commission finds that RCMP policy on the use of open sources did not provide clear guidance as to the collection, use, and retention of personal information obtained from social media or other open sources, particularly in situations where no criminal nexus was determined.

FINDING

7) RCMP policy on the use of open sources did not provide clear guidance as to the collection, use, and retention of personal information obtained from social media or other open sources, particularly in situations where no criminal nexus was determined.

[101] To that end, the Commission recommends that the RCMP provide clear policy guidance describing what personal information from social media sites can be collected; the uses that can be made of it; and what steps should be taken to ensure its reliability. The Commission also recommends that RCMP policy require the destruction of records obtained from social media sources containing personal information (such as screen captures of social media sites) once it is determined that there is no criminal nexus regarding the information. Finally, the Commission recommends that the RCMP develop a policy providing that, where the RCMP obtains personal information that is determined to have no nexus to criminal activity, the information should not be retained.

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[27] Commission File Number PC-2014-0380; Interim Report Following a Public Interest Investigation signed on June 23, 2017. As of January 25, 2019, the Commission is awaiting the RCMP Commissioner's response.

RECOMMENDATIONS

1) **That the RCMP provide clear policy guidance describing what personal information from social media sites can be collected; the uses that can be made of it; and what steps should be taken to ensure its reliability.**
2) **That RCMP policy require the destruction of records obtained from social media sources containing personal information (such as screen captures of social media sites) once it is determined that there is no criminal nexus regarding the information.**
3) **That the RCMP develop a policy providing that, where the RCMP obtains personal information that is determined to have no nexus to criminal activity, the information should not be retained.**

3. Stop checks

Facts

[102] Although Inspector Warr stated that, to his knowledge, there was no strategy of conducting traffic stops for the purpose of intelligence gathering, the evidence establishes that it did happen. Inspector Michael Payne, the "H" Division Tactical Troop Commander, was deployed to the anti-shale gas protests in October and November 2013. He stated in his interview with the investigators that when his team was positioned at a checkpoint, they were conducting checks of vehicles that approached the checkpoints.

[103] The Commission reviewed a number of check sheets completed on July 27, 2013, as well as videos and photos of stop checks. Whenever there were passengers in the vehicles, they were asked to identify themselves. Photos or video recordings were taken of licence plates, and one video shows pedestrians being required to produce identification. When vehicles were stopped, the first request made by the members was to produce identification. There was no request to produce the usual driver's licence, vehicle registration, and insurance. It is clear from the videos and the information contained in the check sheets that the purpose of the stops was not pursuant to the *Motor Vehicle Act* provision that allows police to stop vehicles to check on driver sobriety, licence, insurance, and mechanical fitness of the vehicles. In total, the Commission found nine check sheets and twelve videos of stop checks.

Analysis

[104] Although provincial legislation authorizes police to stop vehicles for the above-mentioned reasons, there is no legal authority to require passengers to produce identification. Jurisprudence has held that requiring passengers in stopped vehicles to identify themselves in the absence of lawful justification amounts to a violation of the person's section 8 Charter rights.[28] As far back as 1992, the Supreme Court of Canada

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[28] *R v Pinto*, 2003 CanLII 11404 (ON SC).

held that "[r]andom stop programs must not be turned into a means of conducting either an unfounded general inquisition or an unreasonable search."[29] A lawful traffic stop "does not and cannot constitute a general search warrant for searching every vehicle, driver, and passenger that is pulled over."[30]

[105] Passengers in a vehicle are, of course, at liberty to co-operate with police by answering their questions if they so choose, provided that they have voluntarily given informed consent and understand that they are not required to answer questions. The Supreme Court explained: "It is true that a person who is detained can still consent to answer police questions. However, that consent must be one that is informed and given at a time when the individual is fully aware of his or her rights."[31]

[106] In this case, Pamela Ross described to the Commission how she and others in a car were stopped as they approached the protest site on Airport Road in July 2013 and all were required to produce identification. As another example, video recording 20130705121405 shows an RCMP member with a note pad asking a 16-year-old male, who was a backseat passenger in a vehicle, for identifying information. While writing in her note pad, the member clarifies the spelling of the passenger's name and then asks for his date of birth, which he provides. It is unclear precisely when or where this interaction occurred, but the date stamp of the video recording suggests that it was on July 5, 2013. There appeared to be four other passengers in the vehicle, plus the driver.

[107] Check sheets reviewed by the Commission included information such as a driver's name, date of birth, address, driver's licence number, height, weight, glasses, facial hair, race, hair colour, other distinguishing features, and vehicle information. There was a section to describe where the person had been "observed." There was also a section to list whether or not a criminal record check, and/or a police database check, had been conducted on the driver. Additionally, there was a section for information about passengers in the vehicle.

[108] It is again noted that there did not appear to be any particularized concern regarding the occupants of the vehicles being stopped. It could be argued that occupants of the vehicles provided information to the RCMP of their own volition; that is to say, with consent. It is far from clear to the Commission, however, that occupants were fully aware of their rights to not answer the questions posed by the police in the circumstances; this is especially true when information was being elicited from minors, as was the case in the video recording described above. It seems likely that vehicle occupants felt that they had no option but to answer questions from the RCMP members if they wished to continue their journey.

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29 *Mellenthin v The Queen* (1992), 76 CCC (3d) 481, 1992 CanLII 50 (SCC).
30 Ibid. at p 491.
31 Ibid. at p 486.

[109] It appears that RCMP members did not have judicial authorization, or other legal authority, for conducting stop checks for the purposes of information gathering in a way that constituted a "general inquisition" into the occupants of the vehicle. This practice was inconsistent with the Charter rights of the vehicle occupants.

[110] Police have a duty to, among other things, prevent and investigate crime; within limits, they have ancillary powers under common law to carry out those duties. Courts permit police to establish random roadblocks for the purpose of deterring and investigating the serious problem of impaired driving (for example, well-known programs such as the Reduce Impaired Driving Everywhere [R.I.D.E.] program),[32] and they are also permitted to do so in what Justice David M. Paciocco described as "emergency criminal investigation[s]"[33]: for example, the "special dangers . . . of a 9-1-1 gun call," where gun-wielding persons were leaving the parking lot of a club,[34] or the apprehension of "dangerous criminals in fresh flight," where armed bank robbers were fleeing the scene of a crime.[35] Justice Binnie, in his concurring reasons in *Clayton*, further described potentially acceptable scenarios for emergency roadblocks, including the search for a kidnapped child believed to be in the trunk of a vehicle, or the search for escaped inmates in the immediate aftermath of a prison break.[36]

[111] In this case, although there was a legitimate concern for public safety given the unconfirmed information that had been circulating about weapons, this in itself did not rise to the level of an emergency criminal investigation necessitating a roadblock.

[112] As such, randomly stopping vehicles for a purpose other than those set out in provincial highway traffic legislation, without judicial authorization and in the absence of the emergency investigation of a serious crime, was on the balance of probabilities inconsistent with the Charter rights of vehicle occupants.

FINDINGS

8) **It appears that RCMP members did not have judicial authorization, or other legal authority, for conducting stop checks for the purposes of information gathering in a way that constituted a "general inquisition" into the occupants of the vehicles. This practice was inconsistent with the Charter rights of the vehicle occupants.**
9) **Randomly stopping vehicles for a purpose other than those set out in provincial highway traffic legislation, without judicial authorization and in the absence of the emergency investigation of a serious crime, was on the balance of probabilities inconsistent with the Charter rights of vehicle occupants.**

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32 *Dedman v The Queen*, [1985] 2 SCR 2; *R v Hufksy*, [1988] 1 SCR 621.
33 David M. Paciocco, "What to Mention About Detention: How to use Purpose to Understand and Apply Detention-Based Charter Rights," *Canadian Bar Review*, 2011 CanLIIDocs 90 at note 22.
34 *R v Clayton*, [2007] 2 SCR 725 at para 55 (Binnie J, concurring) [*Clayton*].
35 *R v Murray* (1999) 136 CCC 3d, 197, 1999 CanLII 13750 (QC CA).
36 *Clayton*, *supra* note 34 at para 99.

4. Physical searches

Facts

[113] During the blockade of the SWN compound on Route 134, RCMP members routinely searched vehicles and individuals entering the protesters' campsite. Staff Sergeant Vautour explained that this was done for both public and officer safety concerns because of the possibility of firearms being brought in. Chief Superintendent Gallant acknowledged that such searches are not authorized by law, but he indicated that perhaps in this situation members could have had information or observed something that would subjectively justify the searches.

[114] Although a rifle was pointed toward tactical troop members and eventually seized on October 17, 2013, the evidence is clear that, prior to that incident, there was no reliable, confirmed information that any of the protesters were in possession of firearms.

Analysis

[115] The law is, again, well established that police do not have the authority to conduct physical searches in the absence of Charter-compliant legislation or judicial authorization. A warrantless search or seizure is presumptively unreasonable.[37] Exceptions to this rule include the existence of exigent circumstances or an apprehended breach of the peace, which arises from the exercise of police ancillary powers, as discussed below in relation to section 2 of the Charter. Other exceptions can include a search incident to arrest; a "safety search" (i.e. pat-down) incident to investigative detention, if there are reasonable grounds to believe that officer or public safety is at risk; and searches based on consent.

[116] Exigent circumstances have been held to exist where there is an "imminent danger of the loss, removal, destruction or disappearance of the evidence if the search or seizure is delayed."[38] Although there was certainly reason to be concerned about the possibility of firearms and other weapons being brought into the campsite, and there was unconfirmed information to that effect, those circumstances were insufficient to justify a routine search of vehicles and individuals entering the campsite.[39] Chapter 21.4. of the RCMP's national *Operational Manual*, which addresses warrantless searches, correctly explains the concept of exigent circumstances as existing where the delay in obtaining a search warrant would result in danger to human life or safety or loss or destruction of the item to be seized.

[117] For an apprehended breach of the peace to justify stopping and searching individuals or vehicles, it must be imminent and the risk that the breach will occur must be substantial. The mere possibility of some unspecified breach at some unknown point

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37 See *Hunter v Southam*, [1984] 2 SCR 145; *R v Nolet*, [2010] 1 SCR 851 at para 21; *Goodwin v British Columbia (Superintendent of Motor Vehicles)*, [2015] 3 SCR 250 at para 99.

38 *R v Grant*, [1993] 3 SCR 223, 1993 CanLII 68 (SCC).

39 See also the discussion below of *Knowlton v R*, [1974] SCR 443, 1973 CanLII 148 (SCC) and *Figueiras v Toronto (Police Services Board)*, 2015 ONCA 208 (CanLII) [*Figueiras*].

in time will not suffice.[40] The proper process, therefore, would be to apply for a general warrant to authorize such a procedure if sufficient grounds existed.

[118] In certain circumstances, police may entirely close a public roadway; this is often authorized by statute in situations involving, for example, a traffic collision or poor road conditions. They may also do so by virtue of their ancillary common law powers related to their duty to prevent crime and ensure public safety; such circumstances will be discussed below in the "Buffer zones and re-routing of traffic" section.

[119] In this case, the persons in question had not been arrested, nor were they subject to investigative detention. Neither exigent circumstances nor an apprehended breach of the peace existed. As with the requests for identifying information from vehicle passengers discussed above, it could be argued that persons who were stopped and searched gave consent to these searches. It is again difficult for the Commission to conclude, however, that persons gave fully informed and voluntary consent to these searches in the circumstances. Voluntary consent means that the person has a "real choice."[41] It is quite likely that the persons in question felt obligated to submit to the searches if they wished to proceed into the campsite.[42]

[120] As mentioned above, although there was a legitimate concern for public safety given the unconfirmed information that had been circulating about weapons, on the balance of probabilities it appears that the practice of searching persons entering the campsite was, in the circumstances, inconsistent with the individuals' right to be secure against unreasonable search and seizure.

FINDING

10) On the balance of probabilities, it appears that the practice of searching persons entering the campsite was, in the circumstances, inconsistent with the individuals' right to be secure against unreasonable search and seizure.

RECOMMENDATION

4) That members involved in public order policing operations be provided with a review of law and policy related to search and seizure, including the warrant requirement and the legal grounds establishing exceptions for warrantless searches.

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40 *Brown v Durham Regional Police Force* (1998), 43 OR (3d) 223 (CA) [*Brown*].

41 *Syndicat Northcrest v Amselem*, [2004] 2 SCR 551 at para 98 [*Amselem*]; *Godbout v Longueuil (City)*, [1997] 3 SCR 844 at para 72.

42 It is additionally noted that this issue was canvassed in the Commission's *Chair's Report on a Public Interest Investigation* (PC-2008-1800), following a complaint from the British Columbia Civil Liberties Association, concerning the conduct of RCMP members conducting searches in the Victoria area on Canada Day, 2008. The Chairperson concluded that "although the goal of the police in this case is laudable, unfortunately, it appears that in the main these searches, such as in the case of [one complainant], were not genuine consent searches and accordingly were not authorized under" the law.

E. FREEDOM OF EXPRESSION, ASSOCIATION AND PEACEFUL ASSEMBLY

[121] The Charter guarantees the following:

> 2. Everyone has the following fundamental freedoms:
> (a) freedom of conscience and religion;
> (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
> (c) freedom of peaceful assembly; and
> (d) freedom of association

[122] As expressed by the Ontario Court of Appeal, "the right to protest government action lies at the very core of the guarantee of freedom of expression."[43]

Facts

[123] Although the Tactical Operational Plan for the policing of the protests described a focus on a measured approach/non-confrontational model "as it applies to the premise that all persons have the right to lawful dissent," several incidents or practices interfered to varying degrees with the protesters' rights to freedom of expression, association, and peaceful assembly.

[124] The practice of stopping and searching vehicles and individuals entering the protest campsite on Route 134 was discussed above, but this practice was also arguably inconsistent with protesters' freedom of expression and assembly.

[125] Other incidents that restricted protesters' peaceful assembly rights occurred in what appears to have been a misinterpretation of the terms of the second injunction, which led to several legally questionable arrests.

[126] As a result of that interpretation, members denied protesters the right to approach any SWN equipment within 20 metres, although the wording of the injunction seemed to indicate that the 20-metre rule applied to the side of the SWN trucks only. Because part of SWN's equipment was installed along the highway, the apparent interpretation was that the protesters were not allowed to stand less than 20 metres from the highway itself. This led to problematic situations, as evidenced in video 20131130_0007, where a protester cannot approach the road to access a protest site and asks the RCMP member, "How do I get to 20 metres on the side of them [the Vibroseis trucks] if you don't let us go by? We have got to fly in or what?" Video 6397 shows another occurrence of the same rule being applied. Videos 6315 and 7364 document other occurrences of protesters not being allowed to stand within 20 metres of the Vibroseis trucks as provided in the injunction. In video 7364, a protester is arrested for this reason.

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[43] *Ontario Teachers' Federation v Ontario (Attorney General)* (2000), 49 OR (3d) 257, at para 34.

1. Arrests pursuant to November 22, 2013, injunction

[127] On November 29, 2013, Protester Z was observed on Route 11 near Richibucto, New Brunswick, and was reportedly "very close (less than 20 metres) [to] the shale gas testing equipment that was operating." Members told him that he was under arrest for violating the injunction; Protester Z did not comply and instead, ran into the woods, where he was pursued and then arrested for breach of court order and resisting a police officer.

[128] A Crown prosecutor refused to pursue the charges, indicating that there was no information to suggest that Protester Z had breached the injunction, as there was no condition in the order limiting a person's distance from the *equipment*, but rather, from the trucks only. Moreover, there had not been any interference with the operation of the vehicles by the protester, nor had he caused a nuisance vis-à-vis the access or egress of the work sites. The resisting arrest charge was also not pursued, as Protester Z would likely have had a valid defence given the problematic grounds for the arrest.

[129] Similarly, on November 29, 2013, Protester Y was walking on the side of Route 11 with three other males when he was arrested for breach of court order for being "within the 250 [metre]/20 [metre] zone." The notes of one of the arresting officers read, in part, as follows: "Étant donné que ces cinq (5) individus étaient à moins de 250 mètres et à moins de 20 mètres de la route, la décision fut prise [...] de procéder à l'arrestation des 5 individus ..." [Translation: Given that these five (5) individuals were within less than 250 metres and less than 20 metres of the highway, the decision was made . . . to proceed with the arrest of these five individuals.] [Emphasis added] Protester Y fled from police and was apprehended after a brief foot pursuit. He was, therefore, also charged with resisting a police officer.

[130] The Crown prosecutor refused to pursue the charges against Protester Y for much the same reasons as in the case of Protester Z. He explained that, in his opinion, none of the conditions in the injunction had been breached by Protester Y, and he did not appear to have been causing a nuisance. The Crown prosecutor did not believe that it was in the public interest to pursue either charge.

Analysis

[131] When evaluating a member's decision to make an arrest, it is important to keep in mind that his or her role is not to determine a suspect's guilt or innocence—members do not act as judge and jury. The fact that an accused is arrested but not convicted, or that charges are not proceeded with, is not determinative of the appropriateness of the arrest. The test at trial is "beyond a reasonable doubt," and for prosecution, it is a "reasonable likelihood of conviction," both of which create a higher threshold than that of reasonable grounds.

[132] Nevertheless, RCMP members must take care to interpret legal provisions (in this case, the terms of an injunction) in a reasonable manner. The relevant section of the injunction, which was imposed by the Court on November 22, 2013, reads as follows:

> IT IS HEREBY ORDERED that the Respondents [and other persons] . . . are hereby restrained and enjoined . . . from:
>
> . . .
>
> (b) interfering or attempting to interfere, by force, threat of force, intimidation, coercion, blocking, standing or by any other unlawful means, the operation of the Applicant's vehicles along Route 11 and, without limiting the generality of the foregoing, specifically within 250 metres from the front or back of any of the Applicant's vehicles and within 20 metres of the sides of any of the Applicant's vehicles.

[133] From the available information, it appears that RCMP members made several arrests of protesters without having reasonable grounds, from an objective point of view, to believe they had committed an offence. This was apparently based on a misinterpretation of the conditions of the injunction.

[134] The Commission recommends that the RCMP provide members engaged in the policing of public protests/public order policing with detailed, accurate interpretations of the conditions of any injunction or unique legal provisions that they are expected to enforce, obtaining legal advice as necessary.

FINDING

11) On the balance of probabilities, the Commission finds that RCMP members made several arrests of protesters pursuant to the November 22, 2013, injunction without having reasonable grounds, from an objective point of view, to believe they had committed an offence. This was apparently based on a misinterpretation of the conditions of the injunction.

RECOMMENDATION

5) That the RCMP provide members who are engaged in the policing of public protests/public order policing with detailed, accurate interpretations of the conditions of any injunction or unique legal provisions that they are expected to enforce, obtaining legal advice as necessary.

2. Buffer zones and re-routing of traffic

[135] Another area of complaint by protesters was the allegedly unnecessary re-routing of traffic away from the protest sites. Ms. Ross recounted that, during protests on Route 126, RCMP members created a detour when nobody was in the road stopping traffic:

> There was some people who wanted to come in there, and they said - they were about eight kilometres down the road was the detour to take you around. And they said if you want to go in, you got to walk. And then I'm like, you know, we're bringing stuff in, we're bringing food and water (inaudible) no. You want in, you got to walk. So there was no reason for them not to allow people to go to the 126. There was nothing illegal going on there. ... So I drove down to that detour and they were stopping traffic and saying sorry, there's a bunch of people down the road, protesters down the road there, they got the road blocked off so you got to detour.

[136] According to Mr. McQuarrie, there were times when the detours prevented the media from getting to the protest sites. He felt that this affected the protesters' ability to get their message out to the public. Mr. McQuarrie said:

> The thing that disturbed me was there was consistently that one where they line up on both sides and then they would get away down the road and for example, they would not let the media in at all. Well, that's our bread and butter when we're trying to communicate that we've got a problem here, you know, and I just don't understand how they could stop someone who wants to go down a public road from going down a public road, but they would consistently do that.
>
> [Y]ou would call the media and say stuff is going to be probably happening here and they would get shut out and you would hear on the news, well, that the police closed the roads and they couldn't get in or they would say demonstrators closed the roads . . . . [T]hey closed the roads, we didn't close the road . . . . When we were out demonstrating, like we had our marshals, yes, traffic did slow down to go around us and what not, but we never closed a road once, we never tried to close a road.

Relevant legal provisions

[137] *R v Knowlton*[44] is the seminal case on the lawfulness of police action when restricting access to public areas in the context of a public gathering. In that case, the police had cordoned off an area in front of a hotel—including the sidewalk—where a foreign dignitary was to make a short stop. The appellant had indicated to two police officers that he wanted to take pictures and be allowed to proceed along that part of the sidewalk that was in the cordoned off area. Because of his insistence on his right to enter the area, he was warned that he would be arrested if he did. The appellant, however, pushed through the two police officers and was arrested.

[138] The police having interfered with the appellant's right to circulate freely on a public street, the issue in the appeal was police duty and the use of powers associated with this duty. The Court had to determine:

> (i) whether such conduct of the police fell within the general scope of any duty imposed by statute or recognized at common law; and

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44 *Knowlton v R,* [1974] SCR 443, 1973 CanLII 148 (SCC) [*Knowlton*].

(ii) whether such conduct, albeit within the general scope of such a duty, involved an unjustifiable use of powers associated with the duty.[45]

[139] Under statute, the municipal police force duties included the preservation of the peace and prevention of crime. The Supreme Court found that the official authorities were not only entitled but duty-bound to take all reasonable measures to prevent a criminal assault of the visiting dignitary, especially in light of the fact that the very same dignitary had been assaulted a few days prior:

> According to the principles which, for the preservation of peace and prevention of crime, underlie the provisions of s. 30, amongst others, of the *Criminal Code*, these official authorities were not only entitled but in duty bound, as peace officers, to prevent a renewal of a like criminal assault on the person of Premier Kosygin during his official visit in Canada. In this respect, they had a specific and binding obligation to take proper and reasonable steps. The restriction of the right of free access of the public to public streets, at the strategic point mentioned above, was one of the steps—not an unusual one—which police authorities considered and adopted as necessary for the attainment of the purpose aforesaid. In my opinion, such conduct of the police was clearly falling within the general scope of the duties imposed upon them.[46] [Emphasis added]

[140] It should be noted, however, that the powers conferred upon the police to execute their duties are not as broad as the duties themselves:

> The law imposes broad general duties on the police but it provides them with only limited powers to perform those duties. Police duties and their authority to act in the performance of those duties are not co-extensive. Police conduct is not rendered lawful merely because it assisted in the performance of the duties assigned to the police. Where police conduct interferes with the liberty or freedom of the individual, that conduct will be lawful only if it is authorized by law.[47] [Emphasis added]

[141] In *Knowlton*, an important fact was that police conduct was responsive to the circumstances known by the police.

[142] In *Figueiras v Toronto (Police Service Board)*,[48] the Ontario Court of Appeal had to determine whether police acted within the scope of their common law power when, during the 2010 G20 Summit in Toronto, they required demonstrators walking down a public street to submit to a search of their bag if they wished to access a protest site. Mr. Figueiras refused to submit to such a search and a police officer denied him the right to proceed further toward the protest site. The group of officers involved in the interaction with Mr. Figueiras had received no instructions to carry out such searches.

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45 Ibid. at p 446.
46 Ibid. at p 446–448.
47 *Figueiras*, *supra* note 39, citing *R v Simpson* (1993), 12 OR (3d) 182 (ON CA) at p 194.
48 Ibid.

[143] The essence of Mr. Figueiras' complaint was that police officers had unlawfully stopped him from travelling down a public street and prevented him from carrying on his peaceful demonstration at a location closer to the summit site.[49]

[144] In the afternoon of the day preceding Mr. Figueiras' interaction with the police, the G20 demonstration had been violent, with some of the protesters engaging in "black bloc" tactics in which they wore balaclavas, ski masks, goggles, and bandanas to conceal their identities while committing unlawful acts before fading into the crowd of peaceful protesters and changing into nondescript clothing.[50]

[145] Since the officers had no statutory authority, whether under the *Criminal Code* or otherwise, to demand that Mr. Figueiras consent to a search of his bag as a precondition to walking down a public street in the direction of his choosing, the question was whether the officers' actions where authorized under the common law ancillary powers doctrine.

[146] Even without specific statutory authority, police do have the power to restrict access to certain areas that are normally open to the public, but this is not a general power; rather, it is "confined to proper circumstances, such as fires, floods, car crash sites, and the like."[51] It is recognized at law that the police have the power to create buffer zones "for proper purposes in order to carry out their duties."[52]

[147] Where an officer's conduct has led to, at first glance, an interference with a person's liberty, courts apply a two-part test[53] to determine whether the officer's conduct falls within his or her common law ancillary powers and ask:

> (1) Does the police conduct in question fall within the general scope of any duty imposed on the officer by statute or common law?
>
> (2) If so, in the circumstances of this case, did the execution of the police conduct in question involve a justifiable use of the powers associated with the engaged statutory or common law duty?[54]

[148] The second part of the test requires a balance between the competing interests of the police duty and of the liberty interests at stake. The factors that must be weighed include:

(1) The importance of the duty to the public good;

(2) The extent to which it is necessary to interfere with liberty to perform the duty; and

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49 Ibid. at para 38.
50 Ibid. at para 7.
51 Ibid. at para 60.
52 *Fleming v Ontario*, 2018 ONCA 160 at para 49 [*Fleming*]; see also *Knowlton*, *supra* note 44.
53 The test for ancillary police powers is set out in *R v Waterfield* [1963] 3 All ER 659, and the jurisprudence that followed it.
54 *Figueiras*, *supra* note 39 at para 28.

(3) The degree of interference with liberty. This aspect of the test requires a consideration of whether an invasion of individual rights is necessary in order for the peace officers to perform their duty, and whether such invasion is reasonable in light of the public purposes served by effective control of criminal acts on the one hand and on the other, respect for the liberty and fundamental dignity of individuals.[55]

[149] In *Figueiras*, the Court concluded that the officers' conduct of stopping Mr. Figueiras while walking down a public street and preventing him from carrying on his peaceful demonstration engaged Mr. Figueiras' common law right to move unimpeded on a public highway, as well as his paragraph 2(*b*) Charter right of freedom of expression. The parties agreed that the officers' conduct met the first part of the test—that is, they were acting in furtherance of the police duty to preserve the peace. Consequently, the Court did not examine this point. On the second part of the test, the Court further found that the purported police power at issue was not grounded in statute or common law.

[150] The Court found that the police conduct at issue was not "temporally, geographically and logistically responsive to the circumstances known by the police."[56] Ultimately, the Court determined that, by stopping Mr. Figueiras and demanding a search, police officers violated his common law right to travel unimpeded on a public highway, and also his Charter right to freedom of expression.

Analysis

[151] In the present case, justification for road closures was said to be a concern for public safety. Chief Superintendent Gallant stated that the RCMP tried to keep roads open as much as possible and pointed out that Route 134 was kept open with one lane through most of the blockade in October. The road had been partially blocked by felled trees.

[152] Generally speaking, the concerns expressed about road closures were not particularized with specific dates; parties explained that the police "did it a lot" or that the RCMP "would consistently do that." This lack of detail presents challenges for the Commission's analysis of the matter. In specific instances, there may have been reasonable justifications for the police to establish a "buffer zone." The reasonableness of such an action would also depend on, among other things, the size of the zone, who was excluded and why, and the duration of the exclusion.

[153] Given the lack of particularized information in the allegations, there was insufficient information available to the Commission to conclude in general terms that road closures and the re-routing of traffic during the anti-shale gas protests was unreasonable. Likewise, there was insufficient information to support the allegation that media were unreasonably denied access to protest sites.

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55 Ibid. at para 86, citing *R v McDonald*, 2014 SCC 37, at paras 33–40 and at para 37.
56 Ibid. at para 107.

FINDING

12) Given the lack of particularized information in the allegations, there was insufficient information available to the Commission to conclude in general terms that road closures and the re-routing of traffic during the anti-shale gas protests was unreasonable. Likewise, there was insufficient information to support the allegation that media were unreasonably denied access to protest sites.

[154] That said, one specific allegation of this type was comprehensively examined by the Commission in an individual complaint. A separate report into that matter has been issued and a summary of the issues therein will be presented in this report.

[155] Protester F claimed that Corporal Guy Marquis and other members violated her right of peaceful assembly by improperly denying her access to a protest site on June 5, 2013. The complainant also asserted that she was improperly threatened with arrest for mischief should she approach the site.

[156] Protester F had briefly left the demonstration site and sought to return, when she was stopped by an RCMP member who explained that she could not rejoin the protest, as some of the protesters had begun to impede the work of SWN employees in an unlawful manner, and the member could not be certain that Protester F would not join that illegal activity. Therefore, she would have to remain at a certain distance from the protest site or face the prospect of being arrested.

[157] Viewed in isolation, the restriction of the complainant's ability to rejoin the protest may appear to be unreasonable. However, additional factors led the Commission to the conclusion that the RCMP members' conduct was not unreasonable in the circumstances.

[158] The information gleaned from the video recording and interviews lead to the conclusion that there was no legitimate concern for violence during the events. There is no indication that any breach of the peace[57] was ongoing or imminent in the area. A few protesters were involved in civil disobedience and blocking the road, while all others were complying with police instructions. One man had been arrested shortly prior to this incident and a youth was arrested shortly thereafter.

[159] The complainant was prevented from returning to the site on the basis that she would "add herself to the group." However, as noted, the vast majority of the group was complying with police instructions. In *Brown*, the Court stated that "[t]he apprehended breach must be imminent and the risk that the breach will occur must be substantial. The mere possibility of some unspecified breach at some unknown point in time will not suffice."[58] The risk that the complainant would move past the group standing on the shoulder of the road to join the three protesters standing in the middle of the road was

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57 "An act or actions which result in actual or threatened harm to someone:" *Fleming*, *supra* note 52 at para 43, citing *Brown*, *supra* note 40.

58 *Figueiras*, *supra* note 39 at para 98, citing *Brown*, *supra* note 40.

not readily apparent, and the consequences of such an event were not, in the circumstances, likely to cause harm to anyone or even impede SWN further than what was already occurring (however, as will be described below, it is notable that this in itself constituted the offence of mischief). It does not appear that the complainant was with a large group of protesters seeking entry; the available information suggests that she was accompanied by her children and an adult male.

[160] Moreover, the means chosen to reduce the likelihood of the identified risk materializing must be effective. Here, the means chosen (interfering with any "newcomer's" liberty of circulation) would not necessarily have been effective at preventing the risk of mischief from materializing. There was no way of knowing that the complainant or any other "newcomer" was more likely to stand on the road and refuse to move than the approximately 80 protesters already present on the scene. The test requires a consideration of whether an invasion of individual rights was necessary for the peace officers to perform their duty.

[161] In a narrow sense, it was difficult to conclude that blocking access to the site to "newcomers" was necessary, as described in the case law, to prevent anyone from blocking the road. One method to prevent the road from being blocked was to arrest the protesters who were not complying with police orders; as described above, members were, in fact, doing this when necessary.

[162] But broader questions were also raised. The protest and ceremony had reportedly blocked the roadway—and SWN's work—for over an hour and a half. Should the ceremony have been allowed to be conducted in that location in the first place, given that it was illegally impeding the work of SWN, or was this a reasonable use of the measured approach by the RCMP? After it had been initiated, how long was "too long" for it to be permitted to continue in the circumstances? When some people refused orders to cease, was it reasonable for police to restrict access to the site by other would-be protesters who may or may not be compliant?

[163] On that day, protesters had blocked traffic to a certain extent. Some of them had conducted a peaceful, but lengthy, ceremony in front of SWN vehicles. These actions did not amount to an unlawful assembly. These actions did not amount to a breach of the peace. These actions did, however, amount to mischief,[59] but rather than immediately arrest all the persons who were engaging in these acts, RCMP members showed considerable forbearance in permitting the protests to continue for a lengthy amount of time. Eventually, the decision was made that protesters would have to clear the road. Most did. Some did not. Those people were arrested.

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[59] Protesters refute this characterization, particularly because some of them were engaged in a drum circle or prayer circle, including "Honour Beats," which one protester explained was intended to respect the spirits. The "sacredness" of a ceremony that is arguably also being performed with another purpose in mind is a contentious issue, as is the necessity to hold such a ceremony in a certain place and time. Several protesters have submitted public complaints with regard to the alleged interference with Indigenous ceremonies by RCMP members, and this issue will be addressed in greater detail in those complaint reports, as well as in a section of this report.

The degree of interference with liberty

[164] When considering the extent of police interference with an individual's liberty, regard must be given to the cumulative impact on all the individual's liberty interests.

[165] In this instance, the complainant's rights to freedom of expression, freedom of assembly, and common law liberty to proceed unhindered down a public street were restricted in the sense that she was not allowed to rejoin the protest in the vicinity of the SWN trucks. During their interaction, Corporal Marquis mentioned an "alternative" that the police provided the complainant. It is unclear what this alternative may have been but, from RCMP records, it appears that protesters were told that they could protest farther down the road.

The balancing exercise

[166] This involves a balancing of competing interests with, on one side of the scale, the state's interest in effective policing, including crime (mischief) prevention. On the other side of the scale is a consideration of the liberty interest of citizens, including all of their civil liberties (common law and Charter rights).[60] The overall impact of police conduct on the complainant's civil liberties must be considered in the balancing exercise.

[167] On the one hand, the liberties at stake were both foundational common law civil liberties and fundamental constitutional freedoms. On the other hand, the RCMP was seeking to prevent a specific and identifiable harm: protesters had impeded the work of SWN employees, and some had refused to comply with police orders, necessitating their arrests. Eventually, the RCMP made the determination that they would not allow any other persons to join this situation. This objective was important. However, the interference with the individual rights at stake was also substantial. This is true potentially in terms of number of interferences—the complainant and possibly other protesters received the same treatment—but mostly in terms of the nature of the infringement, as the complainant was unable to rejoin the protest at that location.

[168] The Commission considered whether an invasion of individual rights was necessary for the peace officers to perform their duty. Boiled down to its essence, in this scenario the RCMP permitted some protesters to engage in peaceful civil disobedience for a considerable length of time (by one estimate, the ceremony in front of the SWN trucks lasted for in excess of one and a half hours). The actions of the protesters caused SWN employees to be impeded from carrying out their job; in fact, operations did not resume at all that day. Taking a measured approach, the RCMP allowed this protest to occur despite the persons involved technically committing mischief.

[169] At a certain point, the RCMP decided that this conduct should not be allowed to continue and the protesters would have to stop impeding access to the public highway or be arrested; this was a reasonable decision in the circumstances. As described in

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60 *Figueiras*, *supra* note 39 at paras 48–49.

detail above, most protesters complied and some did not. Although the timeline is not exactly clear, Sergeant Mike Landry's report indicates that the protesters "dispersed fairly quickly" after the arrests. It is also noted that, in the RCMP's Daily Update document dated June 6, 2013, it is described that Chief Aaron Sock of the Elsipogtog First Nation released a media statement that day (the day after the incidents in question) "asking that any demonstrations that take place be done in a peaceful and lawful [manner]."

[170] The timing of the complainant being denied access is also significant and, unfortunately, on the available information it cannot be determined conclusively. The contemporaneous video recording of the exchange between the complainant and Corporal Marquis strongly suggests that protesters were still blocking the trucks at that time. Corporal Marquis mentioned this twice and the complainant did not dispute those statements; rather, she said that she was not going to join those people but, instead, would stand 50 feet from the trucks.

[171] The protests were not violent and did not amount to a "tumultuous" assembly, but arrests were made, one forcibly. Although the RCMP were clearly animated by the imperative of stopping people from impeding SWN's work, public safety was also a consideration in prohibiting persons such as the complainant and her children from accessing the site; Corporal Marquis told the Commission's investigators that "[the members] made every effort possible to make sure everything was safe for everybody. That was [their] main concern, was public safety."

[172] Ultimately, was it reasonable for the RCMP to effectively impose a "buffer zone" as a means of carrying out their duty to prevent crime and ensure public safety in this situation? Given that a not insignificant number of protesters had been engaged in mischief (albeit in a peaceful manner and therefore with the acquiescence of the RCMP) for a considerable amount of time, thereby stopping SWN's work, and some refused to comply with police orders, leading to arrests, the Commission cannot conclude that the decision to deny the complainant's ability to rejoin the protest was unreasonable in the circumstances.

[173] In essence, this was a difficult judgment call, made more difficult because it involved restricting the fundamental rights of the complainant and possibly others in her position. The complainant may very well have had every intention of lawfully protesting. The use of the terms "unlawful protest" by some members was inaccurate, as it was not unlawful at all times; many protesters did comply with police orders. That said, viewing the situation in its whole context, a significant number of protesters did engage in mischief, stopping SWN's work for the day, and some disobeyed police orders to cease this unlawful activity. In its report regarding Protester F's complaint, the Commission found, on the balance of probabilities, that the decision to restrict the complainant's access to the protest site to prevent crime and ensure public safety was not unreasonable in those circumstances.

FINDING

13) In its report regarding Protester F's complaint, the Commission found, on the balance of probabilities, that the decision to restrict the complainant's access to the protest site to prevent crime and ensure public safety was not unreasonable in those circumstances.

[174] Nevertheless, the Commission emphasizes that, particularly when policing a public protest, members must be cognizant of the limits of their powers, specifically in relation to curtailing protesters' ability to assemble and express themselves in a lawful manner.

[175] The Commission determined that the RCMP's conduct in this particular instance was not unreasonable. That said, other instances of blocking public access to roadways, especially when such actions may have directly or indirectly unnecessarily hindered the media's ability to report on the protests, may have been unreasonable. The Commission emphasizes that police may only establish "buffer zones" in accordance with the parameters detailed by the courts in the relevant jurisprudence. Anything outside of these bounds is impermissible in a free and democratic society.

[176] As such, decisions to restrict access to public roadways or other public sites must be made only with specific, objectively reasonable rationales for doing so, and should be done in a way that interferes with the rights of persons in as minimal a fashion as possible, for example, a buffer zone that is as limited in size as possible and an exclusion that is as short in duration as possible.

RECOMMENDATIONS

6) That decisions to restrict access to public roadways or other public sites be made only with specific, objectively reasonable rationales for doing so, and if legally permissible, be done in a way that interferes with the rights of persons in as minimal a fashion as possible, for example, a buffer zone that is as limited in size as possible and an exclusion that is as short in duration as possible.

7) That, particularly when policing a public protest, members be cognizant of the limits of their powers, specifically in relation to curtailing protesters' ability to assemble and express themselves in a lawful manner.

F. SENSITIVITY TO INDIGENOUS CULTURE, CEREMONIES, AND SACRED ITEMS

1. Training/Spirituality Guide

Facts

[177] Although no accurate figures are available, it appears that the majority of the anti-shale gas protesters were Indigenous. The degree of knowledge of, and experience

with, Indigenous issues varied significantly among the RCMP members involved in policing the protests.

[178] The RCMP's *Native Spirituality Guide* is a document intended to "help police officers gain an understanding of sacred ceremonies, practices, and sacred items carried by many Native people across Canada." It discusses topics including the Circle of Life, the Medicine Wheel, the Four Powers, Ceremonies, Elders, Prayers, Pipe, Pipe Ceremonies, Fasting, Sweat Lodges, Feasting, Drums, and Spiritual Artifacts.

[179] The *Native Spirituality Guide*, which is posted on the RCMP's website, had not been read by many members who were interviewed, and many were not even aware of it. However, some members involved in the ongoing protests—particularly those dealing directly with the protesters and those in the Incident Command structure—had received some specialized training or were themselves Indigenous.

Analysis

[180] When asked whether he felt resources in "J" Division had a really good understanding of Indigenous culture, "top to bottom," Chief Superintendent Gallant, the Criminal Operations Officer for "J" Division, said: "I think it could have been better." However, he pointed to the human resources turnover in the RCMP. His view was that members may get to a level of understanding and then they leave. He did not feel that, as a Criminal Operations Officer, he was equipped with the best tools. He acknowledged that effective training should be a priority given the number of Indigenous communities in the province of New Brunswick and that the lack of comfort in cultural sensitivity in "J" Division personnel led him to reach out to other divisions for resources.

[181] Some of the comments of those directly involved with the protest policing are instructive:

- As indicated above, Constable Denny, one of the Indigenous negotiators, provided Indigenous training to about 60 members around September 26 or 27, 2013. It was a two-hour version of a five-day course given in Halifax.
- Corporal Marshall, who is of Mi'kmaw ancestry and speaks the language, had never seen the RCMP's *Native Spirituality Guide*, but he helped RCMP members understand the cultural significance of what they were about to enter into with regard to dealing with the First Nations.
- Corporal Girouard, another Indigenous RCMP member, said he was familiar with the RCMP's *Native Spirituality Guide*. In terms of conversation regarding Mi'kmaw culture and how sacred objects should be treated, he said that the guide was discussed, including how to approach sacred fires.
- Before the protests began, Staff Sergeant Vautour, a non-Indigenous negotiator, attended a session given by Constable Denny. She rated her knowledge of First Nations culture as basic. She said that she did not witness any members being disrespectful towards the First Nations community in any way.

FINDING

14) At the time the anti-shale gas protests policing operation began, with some notable exceptions, the members assigned to the operation did not have sufficient training in Indigenous cultural matters.

RECOMMENDATION

8) That the RCMP require all members to review the RCMP's *Native Spirituality Guide*, and that all members involved in Indigenous policing, including members of tactical troop/public order units involved in policing protests by Indigenous persons, be required to attend a training program that is specifically aimed at understanding Indigenous cultural issues.

[182] At least three specific instances of alleged mishandling of sacred items were brought to light during the investigation interviews.

Facts

[183] On June 5, 2013, on Route 126, in an incident recorded on video, Protester A was engaged in a drumming ceremony in front of a line of SWN trucks. The video of this incident shows that an officer in a police car with a bull horn announced that anyone who did not move off to the side of the road would be arrested. Protester A continued drumming in the middle of the road. She was accompanied by her daughter and another female. After waiting approximately five minutes, several officers approached the three women and spoke to them. Protester A's daughter and the other woman moved to the side of the road, but Protester A refused. She was arrested holding her drum and an eagle feather staff—both sacred items. As she was brought to the police van, her daughter was able to take the staff but Protester A held on to the drum. At the van, the officer appeared to attempt to take the drum from her, but Protester A resisted and eventually one of the officers recruited Protester A's daughter to take the drum.

[184] On June 9, 2013, during a protest on Route 126 near Birch Ridge, New Brunswick, a female protester was blocking the road and preventing the SWN trucks from continuing their work. The protester had a package of tobacco and made attempts to provide members with a small amount of this tobacco. Once finished offering this, the woman took the tobacco and made a line on the roadway in front of the SWN trucks, then she made a circle in front of the line, got on her knees, and began to pray. A short time later, the protester sat down in the middle of the northbound lane and began to sing. Other protesters approached but they stayed on the shoulder of the road and did not cross the white centre line. There were two or three other women singing and making music with drums. When the SWN trucks approached the location, they had to stop work. The protester was arrested and charged with mischief.

[185] The third incident was described by Mr. McQuarrie, a non-Indigenous protester:

> [A] Maliseet gentleman had a pipe and when they were arresting him, they started grabbing for the pipe and you just — the roar from the crowd went up and I thought oh boy, here we go, but somebody in command . . . he hollered, "Don't touch the pipe," and they backed off and they let the guy give the pipe to whoever gave it to him and then away he went.

[186] This incident appears to have been captured in video 6146, which shows a man with a sacred pipe being arrested. During his arrest, someone in the crowd shouts that he is holding a sacred pipe. At 11 minutes 6 seconds, an Indigenous person is seen taking custody of the pipe before the arrested protester is placed in a police vehicle.

[187] An example of how members exercised patience towards Indigenous practices is shown in a video recording found at https://www.youtube.com/watch?v=fQmWYnm-QQk. This video shows a female Indigenous protester who had strapped herself to bundles of SWN equipment, slated for helicopter transport. Five RCMP members arrive at the scene; the protester gives each member ashes and makes them promise to not be violent with her people. The members carefully explain to the woman that they are there to keep the peace and are not protecting SWN. They assure her that they will not harm her or her people. The protester eventually agrees to untie herself from the equipment.

[188] In another video, found at https://www.youtube.com/watch?v=iY-YM5GIv7k/, dated June 6, 2013, an Indigenous woman is shown drumming and praying in front of a line of "thumper" trucks. She is approached by two RCMP members and asked to move. Although the audio is poor, it appears she is explaining to the members that she needs to finish her ceremony. The members stand back and let her continue uninterrupted for approximately six minutes until she finishes. They then allow her to gather her drum and other items and walk with her away from the scene as the trucks begin their operations.

[189] In a video entitled "Elsipogtog – RCMP move in on peaceful protesters 17 October," recorded by a protester on October 17, 2013, Protester G is seen kneeling on the ground at a distance of approximately two or three metres from a police line holding a drum. A woman is kneeling approximately two metres on Protester G's right. She is holding an eagle feather high in the air. As the police line advances she is ordered to move. She does not. She disappears behind the line along with the other woman while the other protesters retreat. The Commission was unable to locate any video evidence documenting the arrest itself. Protester G said in her interview that when she was arrested she stood up, intending to put her drum into her drum bag, as the drum is sacred and it is forbidden for anyone wearing a firearm to touch it. One of the arresting officers, however, attempted to take the drum out of Protester G's hands. Protester G resisted, explaining that the member was not allowed to touch the drum and asking him to let her put it in the bag. The member continued to pull on the drum. Eventually she was able to put the drum in its bag, and it was given to a third party.

Analysis

[190] Freedom of religion under the Charter consists of the freedom to undertake practices and harbour beliefs having a nexus with religion:[61]

> . . . Defined broadly, religion typically involves a particular and comprehensive system of faith and worship. Religion also tends to involve the belief in a divine, superhuman or controlling power. In essence, religion is about freely and deeply held personal convictions or beliefs connected to an individual's spiritual faith and integrally linked to one's self-definition and spiritual fulfilment, the practices of which allow individuals to foster a connection with the divine or with the subject or object of that spiritual faith.[62]

[191] In the context of a Charter analysis, an individual must demonstrate that "he or she sincerely believes or is sincerely undertaking in order to connect with the divine or as a function of his or her spiritual faith, irrespective of whether a particular practice or belief is required by official religious dogma or is in conformity with the position of religious officials."[63]

[192] This means that the belief must be sincere, but that courts will not engage in an analysis of whether the belief is valid with regard to official religious dogma. Assessment of sincerity is a question of fact, and criteria including the credibility of a person's testimony as well as an analysis of whether the purported belief is consistent with the person's other current religious practices will be assessed.

[193] However, a religious belief does not become absolute because it is sincerely held. Once religious freedom is triggered, a court must then ascertain whether there has been non-trivial or non-insubstantial interference with the exercise of the implicated right so as to constitute an infringement of freedom of religion.[64] Even then, it may be reasonable, in the context of our democratic society, to infringe or curtail that right in certain circumstances. Section 1 of the Charter provides:

> The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

[194] In sum, "no right, including freedom of religion, is absolute."[65] If a right cannot be exercised in harmony with the rights and freedoms of others and the general well-being of citizens, the infringement to the right may be considered legitimate, and no violation of the right to freedom of religion will have occurred.[66]

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61 *Amselem, supra* note 41 at para 46.
62 Ibid. at para 39.
63 Ibid. at para 46.
64 Ibid. at para 58.
65 Ibid. at para 61.
66 Ibid. at para 164.

[195] In Protester G's case, as the arresting member indicated in his interview, he was animated with security concerns when he elected to pull on Protester G's drum. RCMP members are trained to ensure that no arrested person is allowed to enter a police transport vehicle equipped with something that could be used to inflict injury to themselves or damage the vehicle.

[196] However, as stated by Protester G, this object was of spiritual significance to her and there is no reason for the Commission to conclude that this belief was not sincere. The removal of the sacred object from her did not amount to a trivial curtailment of Protester G's rights but, on the balance of probabilities, it was justified given the context. The arrest was effected in the context of events that would be accurately described as a riot, and given that the drum stick (and, to a lesser extent, the drum) posed a security threat, the attempt to seize the drum would likely have been found legitimate by a court of law, considering all the circumstances, including democratic values, public order, and the general well-being of citizens. Courts have held, in similar contexts, that the right to religious freedom had not been engaged. This is because, as further discussed below, if a religious ceremony is held to express a political view, it may not be exercised as a sincere religious belief and section 2 of the Charter may not be engaged at all. For example, in *Colford*,[67] the Court held:

> I accept the evidence of Harry LaPorte with reference to the spiritual significance of the ceremonial drum, and the religious requirement that it be in the center of that which is going on, and further that once a chant accompanied by the ceremonial drum be [*sic*] commenced it should be completed without interruption. Without in any manner attempting to derogate from its religious significance in the Maliseet culture, there exists no right or colour of right enabling the Kingsclear band (or anyone else) to carry out religious ceremonies on a public highway. To elect to do so is to elect to breach the law. [Emphasis added]

[197] However, setting aside the Charter question, and as can be readily seen from the turn of events in this case, a reasonable accommodation can often be provided, and was indeed provided in Protester G's case when a third party was allowed to take custody of the sacred items before Protester G was placed in a police transport vehicle.

[198] Video evidence shows that members working at the protest sites generally appeared to be aware of the need to respect sacred ceremonies and items. In spite of this, conflicts occurred. Indigenous protesters sometimes held their ceremonies in the middle of the roads, effectively blocking the SWN trucks, and insisted they not be interrupted until the ceremonies were finished. Sometimes they went on for hours and eventually the participants were forcibly removed. As Corporal Marshall, himself Indigenous, said: "When you have it on a highway, it's no longer a ceremony, it's a blockade, and you will be arrested."

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[67] *Colford*, *supra* note 3 at para 31.

[199] Staff Sergeant Vautour noted: "They were using [ceremonies and sacred items] as a stalling tactic . . . one day, they blocked the road, said yeah, they're going to open it, they're just going to do some kind of ceremony . . . so we [used the] measured approach . . . Go ahead, do your ceremony. How long is this going to last? Well, it could last four hours or four days. We don't know, the elders will decide."

[200] Many RCMP officers expressed the view that when a sacred object is used with the underlying oblique intention of committing mischief or obstruction, there should be no deference to the sacred character of the object shown by police officers. This reasoning may or may not be legitimate depending on the context and on whether there is an oblique intention, as opposed to a sincerely held belief. For example, over the two and a half weeks following September 29, 2013—the day on which the protesters blocked the entry to the SWN compound by parking a van in front of its entrance—a sacred fire was lit and maintained in the middle of the compound entrance. This sacred fire and the people tending to it were, in addition to the other objects that were placed in front of the entrance to the compound, effectively preventing the SWN vehicles from leaving the compound.

[201] On October 17, 2013, the members who raided the compound had to rapidly secure the area and dismantle the small encampment blocking the entrance, including the sacred fire. This was done for security reasons and, in the Commission's view, it cannot be reasonably argued that the sacred fire had not been placed as a means to accomplish something that, over the course of the month, had clearly become illegal. Given the context, it is reasonable to conclude that the measures taken by the RCMP to secure the area were reasonable in the context.

[202] It is also worth noting that when the circumstances allowed it, the RCMP showed ample sensitivity to Indigenous culture and spirituality. For example, once the area was secured, before dismantling the tepee that had been erected in the Warriors encampment, the RCMP requested the expertise of an elder from the community for the proper ceremonies to be conducted prior to the dismantlement.

FINDING

15) The available information suggests that RCMP members did not, either deliberately or unwittingly, unnecessarily interfere with Indigenous ceremonies or sacred items.

2. Protocol for dealing with sacred objects upon arrest

[203] The RCMP's national *Operational Manual*, chapter 38.9., "Aboriginal Demonstrations or Protests," states that "[t]he RCMP's primary role in any demonstration or protest is to preserve the peace, protect life and property, and enforce the law" and reminds members that the rights of Aboriginal peoples of Canada are recognized in section 35 of the *Constitution Act*. It requires that members "ensure every enforcement action is measured, incremental and as non-confrontational as

possible . . . ." It further provides that an attempt to negotiate the conflict must be made before taking enforcement action. The policy also specifically provides:

> 4. **Supervisor/Detachment Commander**
>
> . . .
>
> 4.4. Liaise with the divisional Aboriginal Policing Services to determine any cultural or historical dynamics which may factor into the existing situation. Indigenous legal traditions and other mechanisms employed by aboriginal leadership within their tribal grouping or provincial/territorial areas may exist which could assist in these matters.

[204] The policy does not contain other guidance with regard to cultural sensitivity or any practical guidance regarding the handling of sacred objects or interference with spiritual ceremonies in the context of a protest.

[205] Part 19 of the national *Operational Manual* discusses prisoners and, more specifically, chapter 19.3. is entitled "Guarding of Prisoners and Personal Effects." Section 3.2.2.3. provides:

> If a prisoner has items of religious or cultural significance in his/her possession, e.g. an Indian medicine bundle, a prayer book, ensure the items are respectfully handled and retained for safeguarding. [Emphasis added]

[206] There is no guidance as to how a member should proceed to "ensure the items are respectfully handled and retained for safeguarding."

[207] The portion of the *Operational Manual* entitled "Prisoner Escort" does not provide any guidance on this issue.

[208] As mentioned above, the *Native Spirituality Guide* discusses topics including the Circle of Life, the Medicine Wheel, the Four Powers, Ceremonies, Elders, Prayers, Pipe, Pipe Ceremonies, Fasting, Sweat Lodges, Feasting, Drums, and Spiritual Artifacts. The guide also contains a section entitled "Treatment of Medicine Bundles by Law Enforcement Officials" in which RCMP officers are encouraged, when conducting a search, to ask the person wearing a medicine bundle to open the bundle themselves, as "the spirituality of the bundle is only violated if it is touched or opened without the carrier's permission." Other than this, the *Native Spirituality Guide* does not contain any specific guidance in relation to how and when such objects should be seized and handled when a person is arrested.

[209] In his interview with the Commission's investigators, Sergeant Brown shared what appeared to be his personal view regarding how such seizure and handling was to be made:

> Right from the beginning, we were – in my mind, if we were going to seize any ceremonial items . . . once it get [*sic*] to that point, that you know, we had to seize the item, we couldn't – we couldn't let them get in a police car with it, but that we were – we were to inform them of what we were going to do, have them place it in the trunk of the car or in a bag and that – that was the way we would treat, you know, any eagle feathers or drums or, you know, any ceremonial items. [Emphasis added]

[210] Aside from this personal view, there did not seem to be a formal procedure in place detailing how and when sacred objects should be seized and how they should be handled.

[211] Without question, the handling of sacred items is a complex issue given the competing rights and interests at stake. On the one hand, the RCMP is obligated to ensure the safety of its members as well as members of the public, maintain public order, and respect the Charter rights of protesters. For security reasons, the RCMP cannot allow an arrested person to carry a staff or a drum stick into the police vehicle following an arrest. The situation may, however, present itself differently if the object and context clearly pose no security threat to the officer or to the arrested person. In this regard, throughout the protests, RCMP members displayed sensitivity and flexibility in dealing with sacred objects, as this photograph of a person who is under arrest but nonetheless carrying an eagle feather demonstrates:



[212] In the Commission's view, reflection on the part of the RCMP is required with a view to adopting an official policy providing practical guidance to RCMP members dealing with the seizure and handling of sacred items. This policy should provide practical guidance to enable officers to make prompt and efficient decisions regarding the seizure and handling of sacred items while also remaining flexible enough to refrain from unnecessarily curtailing the arrested person's Charter rights, if and when those rights are likely to be engaged. Members should also remain open to the possibility of providing a reasonable accommodation consistent with relevant human rights legislation.

[213] It is reasonable to conclude that seizing a sacred object and putting it in the trunk of a police vehicle or in a bag, as was suggested by Sergeant Brown, may desacralize or disregard the sacredness of the object, which may not constitute a trivial curtailment of the protester's rights. Yet the safety of the officer and of the public must be ensured. Moreover, although there is nothing to suggest that this occurred in this situation, it should be emphasized that protesters cannot be allowed to use their sacred object as a stalling method to slow their arrest or the processing of prisoners, particularly in a public event such as a massive protest. This would run contrary to the Supreme Court's findings in *Amselem*, which requires the religious practice to be sincere.

[214] The Commission concludes that the RCMP should take steps to address these issues by developing a procedure for handling sacred items following an arrest, especially in circumstances where large public gatherings are held. It may be that in some cases, security concerns will be such that the item will be forcibly removed from the protester. In other cases, more flexible approaches may be acceptable. For example, the person may be allowed to carry the sacred item to the prisoner transport area, where an elder or other designated person will be responsible for taking custody of the object. This, incidentally, is what happened in Protester G's case but not, however, before the arresting officer tried to forcibly remove the sacred object from her hands.

RECOMMENDATION

9) That the RCMP initiate collaboration with various Indigenous stakeholders with a view to developing a context-specific, practical procedure providing guidance to members with regard to the handling of sacred items in various contexts.

G. ALLEGED BIAS IN DEALING WITH INDIGENOUS PROTESTERS

Facts

[215] A number of protesters claimed that the RCMP treated the Indigenous protesters more harshly that non-Indigenous protestors. In particular, they perceived that more Indigenous protesters were arrested and charged than were non-Indigenous protesters. According to witnesses, when non-Indigenous persons were arrested, they were released without charges, whereas Indigenous protesters who were arrested were taken into custody, charged, and subjected to restrictive release conditions.

[216] Jason "OK" Augustine, one of the Warriors, claimed that, on June 21, 2013, only Indigenous persons were arrested. He said that there were non-Indigenous protesters there too who were standing with the Indigenous protesters, but the police only arrested the Indigenous people and "pushed the non-Native ones back onto the line."

[217] James Emberger, a non-Indigenous protester, described an incident on Route 126 where a non-Indigenous woman who was sitting in the middle of the road blocking SWN trucks was physically moved by the police to where Mr. Emberger and his wife were at the side of the road, and kept there while Indigenous protesters were arrested. He identified the non-Indigenous woman as Pamela Ross.

[218] Ms. Ross claimed that, on June 21, 2013, when she and a friend were the only non-Indigenous people at the protest site, all the Indigenous protesters were arrested, but she and her friend were not. She added that her friend eventually "had to go out of her way to get arrested." This may have been the same incident that was referred to by Mr. Emberger.

[219] An Indigenous protester, Brian Milliea, alleged that, at one of the protests on Route 126, RCMP members separated Indigenous and non-Indigenous protesters, and then assaulted the Indigenous ones. He said that he observed an Indigenous youth being forced off the road by a SWN vehicle. He complained to the RCMP but Mr. Milliea said that they refused to investigate the complaint. (In fact, the complaint was investigated – RCMP PROS File 2013-741512.) Mr. Milliea believed that the RCMP had two sets of rules in responding to the anti-shale gas protests: one set of rules for non-Indigenous protesters and another for Indigenous protesters.

[220] Patty Musgrave recounted seeing RCMP members treating non-Indigenous protesters "differently" than Indigenous protesters and arresting proportionally more Indigenous protesters than non-Indigenous protesters. She also alleged that RCMP members treated Indigenous arrestees in a "very rough manner." She did not refer to any specific dates or events.

[221] All RCMP members who were asked to comment on the allegations of differential treatment of Indigenous protesters compared to other protesters denied that there was any such strategy. Chief Superintendent Gallant said that his messaging was quite clear and was probably the other way around—to be more careful when dealing with Indigenous protesters. Inspector Warr adamantly denied that Indigenous protesters were treated differently. He stated that when protesters were arrested, it was because there was no other choice based on what they were doing. There was no strategy. Staff Sergeant Vautour concurred, saying: "Everybody was asked the same thing, whether they're First Nations or Caucasian or whoever they were. Everybody was asked the same thing. Not everybody listened to what was asked of them."

[222] Corporal Anthony Egeilegh, a member of the "J" Division tactical troop, noted that the Indigenous protesters were more frequently arrested because they were the "people up front." There were no instructions issued to him "to go in and get Indigenous persons."

[223] Sergeant Couture agreed that Indigenous persons were arrested more frequently. However, this was reportedly because most of the non-Indigenous protesters stayed in the background, leaving it to Indigenous protesters to get the protesters' point across. Sergeant Couture observed that it appeared to be a tactic to have Indigenous women get arrested "because then it looks bad for the RCMP in the media." Video 10223, recorded on October 17, 2013, shows the tactical troop clearing Route 134 being confronted by a line of Indigenous women protesters.

[224] Similar observations were made by Sergeant Stenger of the CNT. He said that most of the non-Indigenous protesters did not stand on the road; they stood off to the side, on the shoulder. Indigenous protesters more often stood their ground when they were told to move off the road, while the non-Indigenous protesters generally complied with the direction given by RCMP members. It was Sergeant Stenger's impression that many of the Indigenous protesters wanted to be arrested, so they intentionally disregarded members' efforts to negotiate or mediate solutions to avoid conflict.

Corporal Marquis made similar comments about some of the Indigenous protesters wanting to get arrested. Sergeant Stenger stated that the RCMP members deployed to the front line of the protests demonstrated tremendous restraint in dealing with the protesters, many of whom were verbally abusive to the police officers.

Analysis

[225] In addition to the differential manner of protesting, several factors may have contributed to the allegations of bias. Some of the non-Indigenous protest groups had undergone training on how to conduct peaceful protests and had "marshals" to organize them. Edna Thompson said: "There was training done, how to behave without violence and we were to listen to the people who kept us in line." She clarified that these were members of her own group, and that "[a]s far as I could see everybody was doing that." On the other hand, Sergeant Dustin Ward, the Commander of the Elsipogtog Detachment, commented that some people with strong beliefs that were in attendance at the protests were willing to get arrested or willing to do things to get media attention. It appears, both from witness interviews and video recordings, that the Indigenous protesters were more steadfast in their dedication to stopping the entire shale gas exploration project than were the non-Indigenous protesters. This was also demonstrated by the Indigenous group setting up camps at the protest sites where they lit sacred fires and held other ceremonies and literally camped out while, as observed by Ms. Ross, most of the non-Indigenous groups went home for the night.

FINDING

16) On the available evidence, the Commission is satisfied that RCMP members did not differentiate between Indigenous and non-Indigenous protesters when making arrests, nor did they demonstrate bias against Indigenous protesters generally.

H. RCMP AND SWN RESOURCES CANADA

Facts

[226] The RCMP did not want to be perceived as acting as security for SWN. Nevertheless, it was necessary to engage with the company to know what plans SWN had—for example, where and when they planned to operate—to plan their own operations. Inspector Warr was the main liaison person. In addition to staying apprised of SWN's intentions, he attempted at times to sway them to certain realities. It was the opinion of Chief Superintendent Gallant that SWN had little understanding of the environment they were working in. He put it in these terms:

> [T]hey didn't have an appreciation of the history around First Nations protests in this country and the idea that the police wouldn't immediately respond to protests that are maybe on the edge of peaceful protest and more towards activism.

> [T]heir expectation was that this shouldn't be happening, that the police force's jurisdiction should be handling it, and handling it in their mind meant, you know, clearing the path so they could do their work.
>
> We tried to educate them. We talked to them about what the measured approach is, we talked about the history of conflict in the province of New Brunswick and in Canada, the history around First Nations, you know. So we tried to educate them to the degree we could and that that's not how we do business here. And you know, that's not what they can expect and they should invest more up front in terms of consultation and paving the way.

[227] Staff Sergeant Collin and Ms. Levi-Peters arranged a meeting between SWN representatives and Elsipogtog band members, but it does not appear that it led to any further understanding, given the diametrically opposed positions of the protesters and SWN.

[228] Despite the attempts by the RCMP to balance the rights of all stakeholders, many of the protesters to varying degrees accused the RCMP of acting as SWN's private security. One member of the Warriors made the following statement:

> The RCMP had declared war on [our] people . . . . Based on [the fact] that they worked with SWN. They weren't there working with us. They weren't standing and being by us, for us, like they were always. They chose the corporation.

[229] Another Warriors member remarked:

> [An RCMP member] admitted that they were hired by SWN and ISL. I know they were working security for SWN.

[230] Other protesters made more measured comments:

> And police said every time we're here for public safety. And we said no, you're not. You know, and then when SWN would leave, when the trucks would turn around and leave, the police would turn around and leave. And then so we would say, well, wait a minute, there's still 150 of us here. Shouldn't you be staying here for the public['s] safety? Right? Oh, it's not an - not an issue anymore because SWN is not here. So it just - it was really obvious that the RCMP were being used as, you know, corporate police. They were there for the corporation and not for the people. And that really offended a lot of people.

Analysis

[231] There was no available information reviewed by the Commission to support the first two allegations. The third allegation suffers from an error in reasoning, as the RCMP was present to keep the peace between two opposing groups. Once one group left, there clearly was no longer a need to keep the peace. The protesters were not a danger to themselves.

[232] The Operational Plan for Shale Gas Exploration stated: "The primary police concern is the safety and security of citizens and their property and to ensure that police are prepared to deal with possible interruptions to, and/or increased calls for service due to the Shale Gas Exploration in New Brunswick."

[233] The Commission reviewed SWN's *Confidential Security and Emergency Plan*. The plan sets out the role and responsibilities of the private security organization hired by SWN. The private security personnel's role with regard to the RCMP does not extend further than liaising and communicating with RCMP members. The plan contains a detailed organizational chart showing that the RCMP is a distinct entity from the private security firm.

[234] Throughout interviews with senior officers involved with policing the protests, there are comments to the effect that they did not want to be "the story." The perception of the RCMP working to facilitate the work of SWN may have arisen because actions taken to enforce the law, including court-ordered injunctions, may have had the effect of allowing SWN to carry out its work, but this was not the underlying intention of the police force. The allegations that the RCMP was acting as "private security" for SWN are unfounded and may have been based on a misunderstanding of the RCMP's role in keeping the peace and enforcing the law.

FINDING

17) The RCMP did not act as private security for SWN. Its role was to keep the peace and ensure public safety while respecting the protesters' right to protest. Based on the available information, the RCMP's interactions with SWN Resources Canada were reasonable in the circumstances.

I. TACTICAL OPERATION OF OCTOBER 17, 2013

[235] In the early morning of October 17, 2013, over 200 RCMP members were deployed to clear out the protest camp and blockade of the SWN vehicle compound on Route 134. The decision to do so and the timing of the operation became the subjects of considerable controversy.

[236] This section of the report is divided into three parts. The first part will examine the events leading up to the implementation of the tactical operation and will analyze in detail the background facts, the planning, the events of the night of October 16, 2013, and the decision to implement the operation. The second part will review the operation itself, and the third part will assess the aftermath of the operation, including its effect on relations between the RCMP and the local community.

1. Lead-up

(a) Background

[237] On September 29, 2013, SWN returned to the Rexton area after having suspended their activities in late July. The "thumper" trucks were parked in a compound on the north side of Route 134 across from its junction with Hannay Road. The compound was protected by chain link fencing. It had only one exit for vehicles. Within several hours of the vehicles being parked in the compound, a van belonging to one of the protesters was driven to the gate of the compound and parked there. Attempts to get a tow truck in to remove the van were blocked by protesters. Over the following two and a half weeks, additional items were placed in front of the gate and a sacred fire was lit and maintained, all of which effectively prevented the SWN vehicles from leaving the compound. As well, an encampment was established on private property (apparently with the owner's permission) at the corner of Hannay Road and Route 134, across from the compound, and trees were felled to the east and west of the compound, partially blocking Route 134. Adding to the tension, the Warriors group had returned and attracted a number of youths from the Elsipogtog community who were becoming increasingly aggressive. Eventually, prominent members of this group became the campsite leaders.

[238] SWN had contracted with ISL, the uniform branch of Irving Security, to provide security for its operations. During the blockade, ISL employees were stationed inside the compound to protect the SWN vehicles. At first, these employees were allowed to carry out shift changes, but on the night of October 15–16, 2013, an incident occurred where an ISL employee came out of the compound carrying a baton and encroached on the sacred fire. He was told to get rid of his baton, as individuals are not allowed to carry weapons around the sacred fire. This led to a physical confrontation with one of the Warriors youths and resulted in the ISL employees being confined inside the compound. ISL employees claimed that there were threats directed by the protesters toward the employees, consisting of death threats and threats to rape family members. Video recordings show the employees being taunted by young men in camouflage clothing.

[239] Superintendent Maillet claimed that the front-line RCMP officers were getting similar threats. He recounted: "It's one thing to be called a name. It's one thing to be told I'm going to find where you live and I'm going to rape your wife. That's something else . . . . Social media were giving the names of our members . . . and they were putting out messages that weren't true. And they were putting our officers at risk, and their families." As a result of this, members stopped wearing name tags.

[240] Throughout the blockade, the CNT was continuing to engage with all protesters, but in particular, the Indigenous groups. Inspector Fraser, an Indigenous member with experience negotiating with Indigenous protesters in other provinces, was brought in to assist the CNT. He arrived on October 13, 2013.

(b) Interim injunction

[241] On October 3, SWN brought an application before the New Brunswick Court of Queen's Bench for an *ex parte* injunction restricting the activities of the protesters. The application was brought against Lorraine Clair, James "Jim" Pictou, Peter "Seven" Bernard, Jason "OK" Augustine, Greg Cook, Wilhelmina "Willi" Nolan, Melanie Elward, Anne Pohl, Rachel Daigle, Suzanne Patles, John Doe, and Jane Doe. The application was granted and the Court order enjoined the respondents from:

> a) interfering or attempting to interfere by force, threat of force, intimidation, coercion, blocking, standing or by any other unlawful means any persons, including the Applicant and its servants, agents, contractors, suppliers and any other representatives of the Applicant, seeking peaceful and lawful passage to and from the Applicant's staging area and storage facility situated at Route 134, Rexton, Kent County, PID 25277062, or the surrounding area within 1 kilometre;
>
> b) interfering or attempting to interfere by force, threat of force, intimidation, coercion, blocking, standing or by any other unlawful means any persons, including the Applicant and its servants, agents, contractors, suppliers and any other representatives of the Applicant, along Route 134, Highway 11, or any public roadway including any interference with any of the activities related to the seismic testing program, including the vehicles, equipment, or persons engaged in those activities of the Applicant;
>
> c) hindering, interfering with or obstructing access to the Applicant's staging area and storage facility, with respect to a vehicle of any type;
>
> d) operating or stationing any vehicle, person or object in, adjacent to or in the vicinity of the Applicant's staging area and storage facility in such a manner as to obstruct or impede traffic;
>
> e) interfering with or attempting to interfere with any person or property of the Applicant and its servants, agents, contractors, suppliers and any other representatives of the Applicant;
>
> f) causing a nuisance at or adjacent to or in the vicinity of the Applicant's equipment and its servants, agents, contractors, suppliers and any other representatives of the Applicant including those activities related to the seismic testing program along Route 134, Highway 11, or any public roadway or the staging area and storage facility, in particular, conduct likely to deter persons with peaceful object from approaching, entering or leaving this site and from molesting, threatening, assaulting or intimidating the Applicant and its servants, agents, contractors, suppliers and any other of the Applicant's representatives; and
>
> g) ordering, aiding, abetting, counselling or encouraging in any manner whatsoever either directly or indirectly any person to commit any of the acts hereby enjoined.

[242] The order also authorized police officers to "arrest, remove, and remand" any persons that they had reasonable grounds to believe were contravening, or had contravened, the injunction. The order was to remain in effect until midnight on October 12, 2013.

[243] The order, however, was not served on the protesters and the matter was again before the court on October 11, 2013. At that time, the Court heard arguments on behalf of SWN for an order directing the RCMP to enforce the order. The Court refused to grant such an order but instead ordered substitutional service by way of publication in a local newspaper, and extended the injunction to October 18, 2013. The proceeding was adjourned to October 18, 2013. At the October 11, 2013, hearing, counsel appeared and advised the Court that he expected to be retained to represent the Elsipogtog Chief and council at the October 18, 2013, hearing.

(c) Tactical Operational Plan

[244] Within days of the blockade, Staff Sergeant Rick Bernard, Tactical Troop Site Commander, and Sergeant Brown, "J" Division Tactical Troop Commander, drew up an initial Tactical Operational Plan to clear the protest site and secure the release of SWN and ISL equipment and personnel. The plan was revised on October 3, 2013, and October 9, 2013, with the final draft dated October 13, 2013. The plan called for the deployment of tactical troops[68] and Emergency Response Teams[69] ("ERTs") from "H" Division (Nova Scotia) (a combined troop with "L" Division – Prince Edward Island), "C" Division (Quebec), and "J" Division, and divided the operation into four phases:

1. Pre-operational
2. Tactical troop deployment
3. Post-operational
4. De-escalation

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68 A tactical troop consists of a group of members from various detachments, units and sections who are brought together twice a year to receive training in connection with public order operations. The tactical troop is subdivided into various sections, each with specific training; for example: arrest team, crowd control, etc. See the RCMP *Tactical Operations Manual*, chap 1. "Troop Structure and Responsibilities". Once the tactical troop is deployed, it can be subdivided into Quick Response Teams of eight members who are strategically deployed throughout the protest site to respond rapidly to disruptions or public order issues.

69 An Emergency Response Team ("ERT") is a group of members comprising assaulters* and sniper/observers, specially trained in the use of various tactical procedures and weapons (see the *Tactical Operations Manual*, chap 2. "General"). An ERT may be activated to provide tactical and armed support to tactical troops. When assisting a tactical troop, ERT resources are deployed by the tactical troop commander.
*An "assaulter" means an ERT member who has successfully completed the Emergency Response Team course.

[245] The plan provided details of briefings, transportation, troop movements, arrest teams, prisoner transport, and the removal of SWN equipment and provision of an escort to a new staging area. The plan noted that 48 hours' notice would be required to mobilize the "C" Division and "H" Division troops.

(d) Factors considered

Facts

[246] Inspector Payne, "H" Division Tactical Troop Commander, said that he and the other tactical troop leaders were working on the final plans commencing on October 15, 2013. He explained that the factors supporting the need to take action were as follows:

- Intimidation, threats, and violence against security company personnel inside the compound;
- The threat of firearms being present;
- The fact that SWN equipment had been damaged at a previous worksite by Molotov cocktails;
- The fact that SWN equipment had been blockaded in the compound for almost three weeks; there were no signs of it ending and indicators suggested that it was not going to get resolved.

[247] Inspector Payne was of the view that the lawful protests had been hijacked by a criminal element that had taken control of the protest encampment.

[248] Superintendent Maillet also indicated:

> You could see it was getting to be a hot spot . . . It was a difficult environment for . . . many, many days . . . [Y]ou could see it building . . . The Warrior types, right? They were in camo gear, and wanted to be identified as Warriors . . . And then they were sort of hid[ing] their faces. They were naming different ranks. This is General and so on, trying to give themselves a structure. [*sic* throughout]

[249] On the days leading up to October 17, 2013, regular teleconferences were chaired by Chief Superintendent Gallant, and attended by members of the Incident Command group, including Superintendent Maillet and other senior officers. In addition, regular intelligence reports were provided to the Incident Commander. Most of the intelligence reports were based on information from sources inside the campsite. The reports indicated that the Warriors group, led by James Pictou, was in charge of the camp and blockade. They also provided ongoing commentary on the atmosphere within the camp. The camp occupants appeared to have anticipated that the police would conduct a raid in an effort to end the blockade. There was information that a trail system through the woods was being used by the Warriors to facilitate entry and smuggle people and weapons. Some information suggested a belief that there were long guns and handguns in the tents and in the woods, hidden, to be used to respond to threats.

However, no weapons had been observed directly by the source. The word "war" was used if police were to "attack."

[250] Other reports noted that Mr. Pictou was training young people in self-defence tactics and how to be a Warrior "in a negative way." He was described as a "very angry and violent man." On October 8, 2013, one person wearing Bacchus (an outlaw biker gang) colours was seen at the campsite. On October 10, 2013, three more such persons were present. They met with some of the Warriors, and one of the protesters said that they were there to help them. On October 11, 2013, it was reported that the Warriors in Kent County were being supported by the Mohawk Warriors and Hells Angels, and that the Warriors and their supporters would not leave the area until the SWN employees leave New Brunswick. On October 14, 2013, it was reported that the Warriors were awaiting the expiration of the injunction for police action and were seeking assistance "from all over." There were, however, still no reliable reports of firearms being at the campsite. By October 15, 2013, the occupants of the campsite were reported as believing the police would raid on October 18, 2013.

[251] During the October 16, 2013, teleconference, the only mention of threats was: "At approximately 16:12 hours, we were informed that two males dressed in camouflage (one linked to last night's incident) walked up to the compound, one had a knife on his belt, would have made some comments that 'he was going to get it at shift change.'" The notes from the teleconference mention progress being made by the CNT, but also comment that protesters have announced that they will not allow any ISL shift changes "from this point forward." Inspector Warr mentioned an ISL manager's concern for the safety of his staff following the incident with the camouflaged protester with a knife. During the teleconference call, Inspector Don Allen reported that, from the intelligence they had received, it was believed that there were no firearms at the site "at the present time."

[252] Sergeant Brown said that the decision to conduct the operation on October 17, 2013, was actually made on October 15, 2013, at 2:22 p.m. He attended a meeting with the Incident Commander Superintendent Maillet, Staff Sergeant Bernard, Staff Sergeant Robichaud, and Staff Sergeant Jean-Guy Richard, an Incident Commander from "H" Division. Staff Sergeant Robichaud confirmed that the decision to activate the plan was made by Superintendent Maillet at that meeting, and from that point forward, they started to assemble the resources that would be required to carry out the plan.

[253] The possibility that there were firearms in the campsite was commented on by several of the members interviewed by Commission investigators:

- **Superintendent Gilles Maillet**: We're getting more information, the possibility of firearms. Nothing confirmed, nothing seen, no observation, but the word was there could be firearms on scene.

- **Chief Superintendent Wayne Gallant**: . . . you have the threats of violence and stuff like that, and the intel that's back, that's in behind that from the 15th,

right, which the Commanding Officer has heard too, like talks of firearms coming in and things like that. . . . I can tell you that there was information coming in . . . that was constant throughout of that being a possibility. Nobody actually saw them . . . So you got information of varying degrees of credibility. But from multiple sources, right, that says, yeah, looks like there's firearms coming into the camp.

- **Inspector Michael Payne**: There were some threats that had been made and there was some mention of firearms. And there had been at a previous work site involving SWN, there had been some equipment damage with Molotov cocktails and that sort of thing.

- **Inspector John Warr**: Imminent danger. There was intelligence that there were firearms in the camp, that the threat level had increased, that people's lives were being threatened.

- **Corporal Jeremy Tomlinson**: I had no informant . . . who had seen firearms. A lot of talk of firearms . . . People talking about bringing in guns to having access to guns . . . I had really certain specific information . . . there was specific talk of firearms coming in . . . The latest information I had was that the group had access to firearms somewhere close by, not sure where. [*sic* throughout]

[254] Staff Sergeant Bernard, however, explained that, as there was no direct information as to the presence of firearms, just prior to the operation commencing, the decision was made for the operation to proceed under the premise that the protesters did not have firearms. At the tactical troop briefing on the morning of October 17, 2013, members were advised that it was believed that the protesters did not have firearms. As a result, the tactical troops were initially deployed in "Level 2" gear (soft hats, combat pants, and jackets).

[255] It should be noted that the RCMP hoped that deployment in Level 2 gear would help avoid confrontation. As Sergeant Brown, Commander of "J" Division tactical troop, put it: "We do not want to go in there in full tac troop gear . . . . From my experience, as soon as protesters see full tactical gear, it amps up the level of anxiety of protesters, and we didn't want to go to that." He described this strategy as being consistent with the measured approach.

Analysis

[256] The intelligence available to the Incident Commander and the Criminal Operations Officer clearly presented concerns that prompted serious consideration of the implementation of the Tactical Operational Plan. The following factors were significant:

- The apparent takeover of the protest site by the Warriors group;
- The presence of outlaw biker gang members;
- Threats to ISL employees and the use of a knife;

- The menacing behaviour of the "young Warriors";
- Information that the Warriors would not leave until SWN left the province;
- Numerous unconfirmed reports that protesters had access to firearms.

[257] There was sufficient reliable information available to Superintendent Maillet to justify the decision to implement the Tactical Operational Plan at some point in the near future.

(e) Negotiations

Facts

[258] As noted above, the CNT continued negotiating with Indigenous protesters during the blockade. The team had been augmented by adding Corporal Girouard, Constable Denny, and Corporal Marshall, all Indigenous members, and on October 13, 2013, Inspector Fraser was added. The primary focus of the negotiations during the blockade was to negotiate its resolution and allow the SWN vehicles to be removed. After the ISL employees were confined to the compound on October 16, 2013, and subjected to threats, the more immediate concern was their safe release. Throughout the blockade, the CNT members were intentionally kept uninformed about plans for the tactical operation to end the blockade. The rationale for this was said to be enabling them to continue engaging with the protesters without concern for an eventual raid on the campsite and compound.

[259] The campsite and blockade appeared to be controlled by the Warriors group, led by James ("Jim") Pictou, Jason ("OK") Augustine, and Peter ("Seven") Bernard. On the evening of October 16, 2013, Inspector Fraser and Constable Denny attended a meeting with members of the Elsipogtog community at the band office. Speakers indicated that the Warriors did not represent the community, but community members were afraid to tell them to leave. What happened next is described by Inspector Fraser as follows:

> [T]here was a big commotion outside, and then there was people that burst in the door. They – there was probably three or four of them, and they were dressed in camo and wouldn't talk or anything, stood by the door. And they – they had a spokesman that was a female. She was the spokesman. She's the one that talked. And her name ended up being Miss Clair. I believe her first name was Annie . . . and I got to talking to Annie there, and you know, and she said well, why are you meeting with these people and not us over there. I says, invite me to your community. Invite me to your camp. And so they actually did.
> [*sic* throughout]

[260] Inspector Fraser and Constable Denny then went to the camp and met with Mr. Pictou, the main Warriors spokesperson, and after some negotiation, the members were able to arrange for the ISL employees to be released and replaced with RCMP members to safeguard the compound. After this, Inspector Fraser and Constable Denny gave Mr. Pictou tobacco. Inspector Fraser assured him of his trustworthiness.

Analysis

[261] There were several opinions expressed by those interviewed by the Commission's investigators as to the meaning and significance of the giving of tobacco in Indigenous cultures. According to Constable Denny, it is a show of respect and not a peace offering. Inspector Fraser saw it as both a peace offering and a show of respect. Staff Sergeant Richard believed it to be a peace offering. Mr. Augustine, one of the Warriors present that evening, described the tobacco given by Inspector Fraser as having been wrapped in red cloth. He understood it to mean, "from now on, it is going to be peaceful, no more fighting"; it is for "respect and peace."

[262] The Commission obtained an opinion from Dr. Bonita Lawrence, Mi'kmaw, who is Chair of the Department of Equity Studies and Coordinator of the Indigenous Studies Program at York University. Dr. Lawrence wrote:

> When there has been a conflict between people, to offer tobacco wrapped in red cloth is a profound peace-making statement. For the other party to accept the tobacco signifies their willingness to make peace. In some contexts, giving and receiving tobacco signifies the end of conflict. In more complex contexts, giving or receiving tobacco is a means of demonstrating that both parties are now acting absolutely honestly and with the best of intentions, so that productive dialogue between parties can now take place.

[263] As previously described, there were different interpretations as to the specific meaning of the gifting of tobacco in this case.

[264] Neither Inspector Fraser nor Constable Denny had any knowledge of the planned operation, slated to begin the following morning, until the briefing with the Incident Commander at 11:30 p.m. on October 16, 2013. At that time, they pleaded for more time to continue their negotiations, which they believed could result in the peaceful removal of the SWN equipment.

[265] Whether the gifting of tobacco was perceived as a peace offering, a show of respect, or a symbol of honourable intent, when the Indigenous protesters at the campsite woke the next morning to find tactical troops about to "invade" their camp, it was seen by them as a serious act of betrayal.

[266] The CNT, primarily Inspector Fraser and Constable Denny, had successfully negotiated the release of the blockaded ISL employees and believed that they could arrange the peaceful release of the SWN vehicles if given more time.

FINDING

18) The decision to isolate members of the Crisis Negotiation Team from information about operational planning, however well-intentioned, indirectly led to the unfortunate and regrettable situation of the tactical operation occurring shortly after RCMP negotiators offered tobacco to campsite protest leaders.

RECOMMENDATION

10) Although there are reasonable rationales for maintaining separation between negotiators and operational planners, the RCMP should give consideration to more fully informing Crisis Negotiation Team members of the overall strategy being pursued, to avoid regrettable misunderstandings, which can damage relationships between the RCMP and members of the public.

[267] As noted above, the description of the role of the CNT in chapter 3.1. of the *Tactical Operations Manual* involves hostage-taking situations, which are quite different from the scenario faced by the CNT during the anti-shale gas protests. The Commission recommends that the RCMP consider drafting a policy that is specifically tailored to the CNT's role in the circumstances of public order policing.

RECOMMENDATION

11) The RCMP should consider drafting a policy that is specifically tailored to the Crisis Negotiation Team's role in the circumstances of public order policing.

2. Decision to implement the Tactical Operational Plan on October 17, 2013

Facts

[268] Sergeant Brown, a co-author of the Tactical Operational Plan, listed the plan's objectives as follows:

a) Ensure the safety of the protesters and the public, SWN, ISL, and the police.

b) Clear the protesters out of the encampment.

c) Re-open Route 134.

d) Secure SWN equipment from damage.

e) Secure a safe exit for ISL and SWN staff.

f) Arrest persons committing illegal acts and also arrest persons who had previously committed offences.

[269] The decision to commence the tactical operation on October 17, 2013, was made by the Incident Commander Superintendent Maillet, although it was approved by both Assistant Commissioner Brown, Commanding Officer of "J" Division, and Chief Superintendent Gallant. According to Superintendent Maillet, the decision was made on the evening of October 16, 2013. However, as already mentioned, the Tactical Operational Plan itself had been finalized on October 13, 2013, as "C" Division and "H" Division tactical troops required 48 hours' notice before deployment.

[270] The rationale for the decision, according to Superintendent Maillet, was primarily the build-up of tension from the Warriors. He described it in the following terms:

> Why? Because of where we were at. The tension, the risk of bodily harm. Like I mentioned earlier there, the ISL, being death threats towards the employees; the language of the – the core militant protesters, which were the guys in – dressed in camo, their language; knives, that knife; that bear spray; language they were using against the ISL. ISL felt they had to back out, if not somebody's going to get killed. And I got that from ISL. And at that point, I felt, you know what, we're in the position if we don't act, something is going to happen. Right? So you could see that – you see that building. Like, you could really see it building. So I said we got to do something here. [*sic* throughout]

[271] Superintendent Maillet acknowledged that Inspector Fraser and Constable Denny pleaded with him for more time when they found out about the operation at the 11:30 p.m. briefing on October 16, 2013. This was after they had negotiated the release of the ISL employees and the gifting of tobacco earlier in the evening. They felt that they were close to a peaceful resolution leading to the lifting of the blockade, but Superintendent Maillet would not budge. He felt that the RCMP members who replaced the ISL workers were also at risk, even though they were armed. He said that he could not leave them there "for days and days. Because something could have happened. That's why we took action that day . . . . The threat, even if you're armed, is still a threat. You get into a gun fight, somebody's going to get killed."

[272] Chief Superintendent Gallant recalled that the injunction was a factor in the decision, but he said that "the straw that broke the camel's back" was the necessity to get the ISL workers out of the compound. That objective had, however, already been accomplished through negotiation.

Analysis

[273] Based on its thorough review of the available information, the Commission is of the view that the RCMP had the legal authority to conduct the operation and, on the balance of probabilities, it was a reasonable exercise of their discretion to do so in all the circumstances, but it would have been prudent to allow more time for negotiations and a review of the injunction in court before proceeding with the operation.

[274] Senior RCMP officers were faced with a difficult decision. Tension had been escalating. Numerous threats had been made, both to ISL employees and RCMP members. A blockade had been imposed, the maintenance of which could reasonably be construed as constituting the offence of mischief and being in violation of the terms of the injunction. Rumours regarding the presence of guns and explosives had been circulating. Ensuring the safety of all parties had to be the RCMP's primary objective.

[275] With regard to the possibility of weapons at the protest site, in a section entitled "Officer Safety Hazards," the Tactical Operational Plan stated as follows:

> There is . . . information that firearms are readily accessible to certain individuals at the protests site [*sic*]. Up to this time, there is no confirmed sighting of firearms at the protest site . . . . [W]ill be made aware when and if firearms are seen at the protest site.

[276] Although there had been no confirmed evidence of firearms at the campsite, there was reportedly a significant amount of information to that effect. This information was repeatedly mentioned by members when discussing the rationale for the operation. Chief Superintendent Gallant noted that they were constantly receiving information from "multiple sources" of varying credibility regarding weapons being brought into the camp. Corporal Tomlinson stated that he had "really certain specific information" about weapons, and that "the group had access to firearms somewhere close by, not sure where." This intelligence turned out to be accurate; although the existence of weapons was not confirmed by the RCMP at the time the decision to commence the tactical operation was made, it is nonetheless noted that a rifle was ultimately pointed at members, two other rifles were discovered, Molotov cocktails were thrown during the operation, and other items that appeared to be improvised explosive devices were found.

[277] Intelligence had indicated that tensions were rising within the camp. The confrontational Warriors had evidently taken over leadership of the campsite. The presence of outlaw biker gang members understandably exacerbated the RCMP's concerns, as did word that protesters were seeking assistance from all possible sources. The situation took a significant turn for the worse when ISL personnel were prevented from leaving their facility. This doubtless represented an escalation in the protesters' tactics. Allowing the situation to potentially deteriorate further was not a desirable outcome.

[278] Superintendent Maillet put it in the following terms: "All I knew at the time was that the tension, the level of . . . talk from the protesters and militants was to a point where it's unacceptable . . . . I wasn't going to take that anymore. It had to stop. Right? Because we were at a level where somebody's going to get hurt." Assistant Commissioner Brown, Commanding Officer, explained: "I knew in the back of my mind at some point in time making no decision was going to be the wrong decision because things were heating up and getting to a point where even if we didn't do something there was a fear and understanding it was going to get worse."

[279] It is true that the immediate crisis was alleviated, to an extent, through negotiation between the RCMP and protesters, leading to the release of ISL employees, who were replaced by RCMP members. The situation was, however, still unstable and the issues giving rise to significant, legitimate concerns remained. Given the increasing tensions, not proceeding with the operation could potentially have led to a more explosive and dangerous confrontation at a later date. Given the terms of the injunction, the RCMP had the legal authority to conduct the operation and, on the balance of

probabilities, it was a reasonable exercise of their discretion to do so in all the circumstances.

FINDING

19) Given the terms of the injunction, the RCMP had the legal authority to conduct the operation and, on the balance of probabilities, it was a reasonable exercise of their discretion to do so in all the circumstances.

[280] In the Commission's view, however, it is also true that it would have been prudent to allow more time for negotiations and a review of the injunction in court before proceeding with the operation. The decision to go ahead with the Tactical Operational Plan had significant consequences. It is apparent that the mobilization of troops from "C" Division and "H" Division (who required, and had already been given, 48 hours' notice to mobilize) was a key consideration in the timing of the operation, but this should not have been a deciding factor. Allowing more time for negotiation, particularly after the CNT's negotiations had already borne fruit, would have been reasonable and desirable in the circumstances.

FINDING

20) It would have been prudent to allow more time for negotiations and a review of the injunction in court before proceeding with the operation. Allowing more time for negotiation, particularly after the Crisis Negotiation Team's negotiations had already borne fruit, would have been reasonable and desirable in the circumstances.

J. USE OF FORCE AND ARRESTS

[281] Several of the protesters complained of excessive force used by RCMP members in making arrests and generally dealing with protesters. Some submitted individual complaints.

[282] The Commission has reviewed video recordings of numerous arrests that occurred during the spring and summer of 2013. The reviewed videos show that, in general terms, the RCMP members made the arrests in a reasonable manner. The arrests were generally a result of protesters practicing a form of civil disobedience—positioning themselves in the middle of the road to prevent SWN trucks from passing and refusing to move when requested to do so by the RCMP. Some of this took the form of sacred ceremonies conducted in the roadway that the participants insisted on completing before moving. Several of the individuals who were eventually arrested continued passive resistance and had to be physically removed.

[283] The events of October 17, 2013, were far more dynamic and confrontational in nature and thus involved more "hard" arrests. In some instances in the wake of that operation, tensions remained high and other arrests occurred periodically.

[284] The Commission will address several examples of allegations made by the protesters who came forward to be interviewed by the Commission's investigators. As stated above, several protesters have made individual complaints, and those complaints have been examined and assessed. The individual complainants will receive reports containing the Commission's comprehensive analysis and findings in connection with them.

Law and policy with regard to arrest and use of force

[285] Police officers must establish that they have reasonable grounds to believe that an individual has committed a criminal offence prior to arresting that individual. Moreover, the grounds must be justifiable from an objective point of view; a reasonable person placed in the position of the officer must be able to conclude that there were indeed reasonable grounds for the arrest.[70]

[286] When evaluating a member's decision to make an arrest, it is important to keep in mind that his or her role is not to determine a suspect's guilt or innocence—members do not act as judge and jury. The fact that an accused is arrested but not convicted, or that charges are not proceeded with, is not determinative of the appropriateness of the arrest. The test at trial is "beyond a reasonable doubt," and for prosecution, it is a "reasonable likelihood of conviction," both of which create a higher threshold than that of reasonable grounds.

[287] Section 495 of the *Criminal Code* provides that a police officer may arrest someone without a warrant if they find the person committing a criminal offence and if the police officer believes on reasonable grounds that the arrest is necessary to prevent the continuation or repetition of the offence, and/or to identify the person.

[288] Section 129 of the *Criminal Code* states that a person commits obstruction if they "resist or wilfully obstruct a public officer or peace officer in the execution of his duty or any person lawfully acting in aid of such an officer." Section 430 of the *Criminal Code* provides that a person who "obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property" or "obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property" commits mischief. Participating in an unlawful assembly or riot is also a crime.

[289] When carrying out their duties, police officers may be required to use force. However, subsection 25(1) of the *Criminal Code* restricts the authority to use force as follows:

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[70] Salhany, Roger E., *Canadian Criminal Procedure*. 6th ed. Aurora, Ontario, Canada Law Book, c 2005. 1 v., para. 3.94.

> Every one who is required or authorized by law to do anything in the administration or enforcement of the law . . . (*b*) as a peace officer or public officer . . . is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

[290] RCMP policy and training supplement section 25 of the *Criminal Code* by explaining the members' obligations with respect to the use of force. RCMP policy and training is consistent with the requirement that the use of force in any circumstance must be reasonable.

[291] Chapter 18.1. of the RCMP's national *Operational Manual*, entitled "Arrest," provides that, when an arrest is made, "the Incident Management/Intervention Model [IM/IM] must always be applied in the context of a careful risk assessment."[71] The IM/IM provides that the main objective of any intervention is the safety of law enforcement officers and the public.[72] It acknowledges that although intervention by means of force is sometimes necessary, many occurrences can be resolved through dialogue.

[292] The principles of the RCMP's IM/IM are used to train and guide members based on situational factors to determine whether to use force, and what type and amount of force is necessary in the circumstances. Members are required to assess the risk posed by a subject, followed by a determination of the appropriate level of response, which may include the use of force. The IM/IM conveys concepts of the proportionality between a person's behaviour and the police response when considering all the circumstances.

1. Arrests

(a) Select examples of arrests during the anti-shale gas protests

Facts

Statement of Susan Levi-Peters

[293] Susan Levi-Peters stated that she was concerned that Indigenous women were being arrested by police and placed in prisoner wagons. She viewed the arrests as the women being attacked by police. Ms. Levi-Peters did not identify any incidents by date and no evidence has been found to substantiate this claim.

[294] The Commission's review noted that female protesters tended to be in the forefront of the confrontations with police. It may be that Ms. Levi-Peters was referring to the arrest of Protester A.[73]

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71 RCMP *Operational Manual*, chap 18.1. "Arrest", s 1.3.

72 RCMP *Operational Manual*, chap 17.1., "Incident Management Intervention Model", s 1.1.

73 For privacy reasons, pseudonyms will be used in this report to refer to persons who submitted individual complaints to the Commission, as opposed to persons who were interviewed specifically as part of the Chairperson-Initiated Complaint and Public Interest Investigation.

Statement of Anne Pohl

[295] Anne Pohl felt that there were too many police officers and that some of them engaged in conduct that was excessive, including the way in which two people were arrested, both of them Indigenous people. An Indigenous woman who was arrested and a young man who was of Indigenous and African-Canadian heritage, were both treated callously. One of them, she said, received an injury. She commented on the number of officers, saying it was outrageous that so many officers were needed for 12 people standing in the middle of the road. She described it as a show of force that was military in nature in a small, rural community where people's livelihoods and their property values are potentially at risk as a result of the fracking. She describes the events of June 21, National Aboriginal Day (now known as National Indigenous Persons Day), as consisting of "massive, violent arrest of Aboriginal people."

[296] The Commission viewed a recording of one forceful arrest from June 21, 2013, which involved a man breaking through police lines and throwing himself under a moving SWN truck. Several RCMP members immediately rushed to grab the man and pull him away and then arrested him. Two other men followed and were also forcibly arrested. In the circumstances, the force used was reasonable.

[297] Ms. Pohl also described the arrest of Protester A on June 5, 2013, as "horrible" and that "for those few who were affected directly that day, it was an awful thing." That arrest will be analyzed below.

Arrest of Protester A on June 5, 2013 and November 14, 2013

[298] On June 5, 2013, on Route 126, in an incident recorded on video, Protester A was engaged in a drumming ceremony in front of a line of SWN trucks. The video of this incident shows that a member in a police vehicle with a megaphone announced that anyone who did not move off to the side of the road would be arrested. Protester A continued drumming in the middle of the road. She was accompanied by her daughter and another female. After waiting approximately five minutes, several members approached the three women and spoke to them. Protester A's daughter and the other woman moved to the side of the road, but Protester A refused. She was arrested holding her drum and an eagle feather staff—both sacred items. As she was brought to the police van, her daughter was able to take the staff but Protester A held on to the drum. At the van, the members attempted to take the drum from her, but Protester A resisted and eventually one of the members recruited Protester A's daughter to take the drum.

[299] It is clear from Protester A's statements to the Commission's investigators that she knew that she was required to step off the road or face arrest if she did not comply. Moreover, the video evidence described above clearly shows that Protester A was warned several times before the members proceeded to arrest her.

[300] The video evidence, the statements of the members, and the explanations of Protester A herself reveal that when she was arrested, Protester A was conducting a spiritual ceremony in front of the Vibroseis trucks. She was warned multiple times and given many opportunities to step off the road before she was arrested. The members therefore had reasonable grounds to conclude that Protester A was committing mischief and, thus, it was reasonable for them to arrest her.

[301] The video recording of Protester A's arrest shows that she initially sat on the ground and then went limp when being carried to a police vehicle, but then appeared to actively resist the members. Her knees were bent at a 90-degree angle and she seemed to be pulling back with all her weight. As she approached the police vehicle, she placed both feet at the entrance to prevent her being placed in the vehicle and forcefully pushed back. One member was struggling with Protester A over the drum while the other two were trying to place her inside the vehicle. A conversation between Protester A and a member ensued. Protester A and the member were both holding onto the drum. The member then turned around and asked for Protester A's daughter, who was brought into the camera's view, still holding the eagle staff. After a lengthy discussion, she took custody of the drum.

[302] Protester A's actions may be placed and considered within the broader context of her engaging in a ceremony and holding items of spiritual significance, but nevertheless, Protester A did resist arrest by struggling with the RCMP members, by pulling herself back, and by bracing herself by placing her feet at the bottom of the police transport vehicle's door to prevent being placed inside it. This incident was video-recorded. There is no evidence that the members used more force than necessary to conduct the arrest.

[303] Protester A was also arrested on November 14, 2013. In that instance, at least two people witnessed Protester A interfering with SWN's equipment. At least one witness report is on file to that effect. A call to police about her conduct was audible on a video recording reviewed by the Commission. Protester A could be seen on that video recording as well. It is also noted that, when speaking with the Commission's investigators, Protester A admitted to disconnecting a wire in a geophone because that would "stop the whole operation."[74] There were reasonable grounds to believe that she had committed the offence of mischief, and therefore, it was reasonable for members to arrest her for that offence.

[304] In addition to their statements to the Commission, both arresting officers noted in their respective reports that Protester A resisted arrest. One arresting member reported that she resisted by crossing her arms and placing them close to her body. Another arresting member wrote: "The female immediately crossed her arms in front of her chest and was holding her hand as tight as possible close to her body." Both officers stated that they had to bring her to the ground in a controlled manner to conduct the arrest.

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[74] Protester A pleaded guilty to one count of mischief and two counts of resisting/obstructing a police officer in relation to the November 14, 2013, incident.

Moreover, the first arresting member stated that Protester A bit him in the process of attempting to control her arms.

[305] Although she did not admit to resisting arrest, Protester A acknowledged having put her hands underneath herself and biting a member's finger. She provided explanations as to why she engaged in that conduct, but in the moment, members had to respond to the behaviour that they were encountering. Objectively, Protester A's conduct was resistive and assaultive, and this necessitated the use of force by the members.

[306] The second arresting member acknowledged having placed a knee on Protester A's side, but that appeared consistent with the necessary amount of force required to control her given the circumstances.

[307] After having reviewed the extensive record, the Commission found no evidence substantiating the claim that unnecessary or excessive force was used in the arrest.

Statement of James Emberger

[308] Mr. Emberger, a non-Indigenous protester, commented that he observed several protesters who had "made their statement" and put their hands out knowing they would be arrested, being taken down hard to the ground, face first, hitting their face on the pavement, glasses gone astray. He said: "It all seemed very unnecessary as the people were offering no resistance and in fact were trying to help the officers out with the arrest." Mr. Emberger did not identify any of the members and there was no video evidence reviewed by the Commission to support this claim.

Statement of Jason "OK" Augustine

[309] Mr. Augustine, one of the Warriors, claimed that, on National Aboriginal Day, a woman stood up and started to block a car, so about four RCMP officers ran over and "dropped" her and two of them punched her. She was on the ground and full of blood. The members were not identified and therefore could not be interviewed.

[310] There does not appear to be any video of such an event, although there is video where protesters can be heard shouting that a woman just got punched by police officers. This YouTube video is dated July 7, 2013. However, Mr. Augustine references the incident he observed as taking place on Aboriginal Day, which is June 21. It is possible this is the same incident referred to by a complainant who stated an elder had been punched in the face on June 21, 2013.

[311] If that is so, as described above, there is no evidence of excessive force in the video of that arrest. Rather, there is a video recording of a woman running into the police line and colliding with a member; the woman's head appeared to make contact with the member's shoulder as she ran into him. Members' statements confirm that the

protester charged the police line. The protester was arrested and shortly thereafter, she was observed to have blood near her mouth.

[312] There is insufficient information to conclusively determine how the female protester sustained an injury to her lip or mouth. The available information suggests, however, that the injury was sustained when the female protester forcefully tried to push through the police line and her face came into contact with a member's shoulder. There is no information available to the Commission indicating that the female protester was punched in the face by a member. The female protester did not file a complaint and it is possible that this allegation arose based on an off-camera comment made by an unknown person in a video recording of the protest.

[313] The difficulty in assessing the credibility of this allegation is that several protesters claim that forms of excessive force were used by the RCMP, but acknowledge that they did not see it. Their knowledge comes from hearing others describe the incident.

Statement of Peter Bernard

[314] Mr. Bernard, one of the Warriors, said that the reason he joined the protest was because he had seen a video of several elders getting pushed around. An elder was "pushed to the ground and stuck in the mud" by the RCMP.

[315] Again, no members were identified and a review of the video recordings does not assist in identifying the incident. No timeframe is given except that it presumably occurred before the Warriors arrived on the scene. According to RCMP teleconference minutes, that was June 25, 2013. There is video from June 21, 2013, showing protesters running onto the middle of the road and lying down in front of a moving SWN truck. RCMP members responded instantly and pulled them off to the side of the road and forcibly arrested them. Given the actions of the protesters, the arrests did not constitute excessive force. It may well be that the members prevented serious injury to the arrested protesters.

Statement of Miles Howe

[316] Mr. Howe, another non-Indigenous protester, noted that on June 21, 2013, when people stood in front of the trucks, the RCMP "peacefully" arrested those who were standing there and refused to move. There was a line of police and a line of protesters. It was a standoff for an hour before the RCMP acted against the protesters. He said that the trucks started to move away and three or four people broke through the police line. One threw himself under a truck and an elder woman was pushing up against the police because she could not see what had happened to the man who had just thrown himself under a truck. Mr. Howe claimed that the police bloodied her face in the process of arresting her. He did not see them punch the woman in the face but what he did see was a chaotic scene for a moment.

[317] Video 211 appears to capture this event. It shows one male breaking through the police line and diving under a SWN truck that has just started to move. Police rush to arrest him as two more protesters follow him and are also arrested. After this, at 3:02 in the video, a woman wearing a black top and yellow pants can be seen on the side of the road where the police line is talking to an officer. At 3:21, the same woman is on the opposite side of the road being arrested. There is no indication of any injury and the arrest is done peacefully. The reason for the arrest is not clear from the video.

Statement of Pamela Ross

[318] Ms. Ross, a local resident and non-Indigenous protester, said that in the very beginning it was actually fairly civil between the RCMP and the protesting people. There were some familiar RCMP members from small communities in Kent County. Eventually they seemed to remove the local RCMP and in place brought in members from Quebec. The mood changed. They became much more abusive and aggressive. Ms. Ross found the scenes of officers marching in force with the SWN vehicles and carrying rifles with soft rounds disturbing. She commented: "At the end of it, they were militarized . . . they weren't RCMP anymore, they weren't serve and protect."

[319] This complaint essentially calls into question the tactical troop operations. This issue will be addressed later in this report.

Arrest on June 9, 2013

[320] On June 9, 2013, during a protest on Route 126 near Birch Ridge, New Brunswick, a female protester was blocking the road and preventing the SWN trucks from continuing their work. The protester had a package of tobacco and made attempts to provide members with a small amount of this tobacco. Once finished offering this, the woman took the tobacco and made a line on the roadway in front of the SWN trucks, then she made a circle in front of the line, got on her knees, and began to pray. A short time later, the protester sat down in the middle of the northbound lane and began to sing. Other protesters approached but they stayed on the shoulder of the road and did not cross the white centre line. There were two or three other women singing and making music with drums. When the SWN trucks approached the location, they had to stop work. The protester was arrested and charged with mischief. This course of action was reasonable in the circumstances.

Arrests on October 17, 2013

[321] Many arrests were also conducted during the operation on October 17, 2013. The following are examples of arrests that day, in summarized form:

Arrest of Protester B

[322] Protester B was arrested for mischief and was later charged with mischief, uttering threats, and assault. In video 10223, the protesters are confronting the police

line and are attempting to physically push through it. Members respond by deploying pepper spray and sock rounds[75] (the sound of which can be heard in the video recording). At 5:08, Protester B is clearly visible and can be heard yelling "Get the rocks!" twice. At 5:39, he forcefully throws a rock toward the police line.

[323] At a different time that day, several protesters were yelling and taunting the members. Protester B was one of them. He paced from one side of the crowd to the other, exciting the crowd. He postured in front of a member, making hand gestures as if he was loading a firearm and said that it would be like "Full Metal Jacket," referring to a movie about war and violence.

[324] There were reasonable grounds to believe that Protester B had committed, and was committing, various criminal offences, and therefore it was reasonable for members to arrest him.

[325] Force was applied to conduct Protester B's arrest. The arresting member grabbed Protester B's hand and used a technique known as an arm bar to bring him to the ground. The arresting member stated that Protester B initially resisted arrest by trying to pull away when his arm was seized, but he "didn't resist at all" once brought to the ground. The arresting member held Protester B's head by placing an arm around his neck while several members secured him in handcuffs.

[326] In the circumstances, with Protester B having acted in an assaultive, inciting, and threatening manner toward members before his arrest, it was reasonable to conclude that he may present a danger while being arrested. Thus, it was reasonable to apply force to control him during his arrest, and the amount and type of force was not unreasonable in the circumstances. It is also noted that force was employed for a short duration and Protester B did not report any injuries as a result of the arrest.

Arrest of Protester C

[327] The events that unfolded at the encampment as a consequence of enforcing the injunction were violent. Molotov cocktails were thrown. A protester displayed a firearm during the course of the police intervention. It is evident that this portion of the protest qualified as a "riot" under the *Criminal Code*. The RCMP was, therefore, justified in establishing restricted access zones to prevent members of the public from approaching the area where a riot was in progress.

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[75] The term "sock round" is used to describe a specific kind of ammunition called "drag stabilized bean bags." Chapter 17.5. ("Less Lethal Use of Force") of the RCMP's national *Operational Manual* states that the sock round is authorized for RCMP operational use to distract individuals who pose a threat to themselves, police officers or the general public. It is deployed when other less lethal methods of intervention are unsuccessful or inappropriate. The policy also specifies that before using the sock round, a member must consider other possible intervention options and that the sock round should not be considered as an option when lethal force is required.

[328] Upon being alerted by various communications methods, including social media, that the protesters' encampment was being "raided," a number of community members tried to access the protest site for various reasons. In Protester C's case, she reported having done so to provide help in defusing the situation.

[329] However, RCMP members had formed a line and it would have been clear to all observers that they were forbidding members of the public from accessing the area. In addition, the report authored by the arresting member describes that members were telling the crowd to "stay back" and that public access to the area was blocked. According to the member, the scene was "chaotic" and there were people "yelling, screaming and trying to break through the line."

[330] It is apparent from Protester C's interview that she understood that her crossing the police line was forbidden, even though the police line had reportedly momentarily parted. The fact that she started running clearly indicates that she knew the RCMP members did not intend to let her through.

[331] In any event, the RCMP members did not need to ascertain Protester C's true intentions in crossing the line and starting running.

[332] It is reasonable to conclude that the actions of Protester C in crossing the police line and starting to run toward the area that the members plainly intended on blocking access to constituted, at a minimum, the offence of obstruction. This conduct was witnessed by the arresting officer. Accordingly, the Commission finds that there were reasonable grounds to believe that Protester C was committing obstruction, and arresting her without a warrant was necessary to stop her from continuing to commit that offence.

[333] The Commission does not possess sufficient information to determine if Protester C was forced to the ground by a member or if she fell without police intervention. It is clear, however, that she was actively engaged in obstruction by running past the police line during what could accurately be described as a riot, and the arresting member was authorized to use a reasonable amount of force in arresting her.

[334] In addition, it was reasonable for the arresting member to strike Protester C's forearm once to cause her to cease actively resisting by holding on to a lighting apparatus, and to be able to complete the arrest. He does not specifically state that he instructed her to stop resisting before he struck her, although it may be implied that he did so given that he indicated that Protester C "would not let go." In other circumstances, it may have been reasonable to first provide a warning, but the situation was chaotic with many protesters running toward a dangerous area. Moreover, the crowd was becoming more agitated.

[335] It was necessary to use force to complete the arrest of Protester C, and the amount of force used was proportional in the circumstances.

[336] The Commission reviewed extensive video footage of arrests on October 17, 2013. The Commission did not see evidence of the use of excessive force in making arrests. In several cases, the arrested persons were either actively resisting arrest or being uncooperative to the point of having to be picked up and carried to the police vehicles.

[337] Although the Commission could not conduct an in-depth assessment of every arrest made on October 17, 2013, it is satisfied from the available information, particularly the video evidence, that members did not use excessive force in conducting arrests on October 17, 2013.[76]

Arrest of Protester D on December 2, 2013

[338] On December 2, 2013, Protester D was standing in the middle of the road. She refused to move off it despite being asked to do so several times by the police. She stood her ground in front of the members who were advancing to force the protesters to retreat to the shoulder of the road. Considering all the circumstances, there were reasonable grounds to believe that Protester D was committing mischief and obstruction, and that therefore, it was reasonable to arrest her.

[339] The force used to arrest Protester D escalated, for the most part, because of other protesters seizing Protester D's arm and pulling her in an attempt to prevent her arrest. It likely also escalated in part because Protester D shifted her weight backward and screamed "Let go!" when the officers seized her. She asserted that this was because she was scared and did not understand why she was being pulled. This might have been prevented, in the spirit of the IM/IM, by warning her of her impending arrest, but as explained further below, the circumstances did not allow for such a warning.

[340] From the available information, including the video recording, the Commission concludes that, whether because she was taken by surprise or deliberately resisting arrest, Protester D shifted her weight back and screamed "Let go!" At that point, another protester pulled on her arm, and these actions were interpreted as resisting by the arresting member. Protester D was therefore rapidly brought to the ground, at which point an unidentified member tripped on her feet and fell over her.

[341] The Commission finds that, in this situation, a general instruction had been given to all protesters, and possibly to Protester D personally, to move off the roadway. Protester D did not heed this instruction, and when placed under arrest, she shouted, "Let go!" and appeared to shift her weight back, possibly in an effort to resist being held by the member. At this time, a young male protester who had rapidly approached the scene appeared to grab and pull Protester D's arm. Other members intervened and eventually there were at least six persons involved in the interaction. Although Protester D contended that her actions in shifting her weight away from the member

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[76] This is a general finding based on the Commission's extensive review of the evidence. Several protesters made individual complaints regarding arrests; the Commission will issue its specific findings in separate reports related to those complaints.

were as a result of her being caught by surprise, and not a deliberate attempt to resist arrest, a member must react to the behaviour with which he or she is presented at the time. This action, combined with the young male protester rapidly approaching the scene and grabbing Protester D in an effort to disrupt the arrest, necessitated the use of force in Protester D's arrest. Furthermore, the available information does not suggest that more force than necessary was used.

Statements of RCMP members

[342] Chief Superintendent Gallant, Criminal Operations Officer for "J" Division, pointed out that Forensic Identification Services[77] photographers were assigned to video-record the activities in most situations where arrests occurred. He said:

> [W]hat I saw in terms of the arrests seemed to be commensurate with the situation. There was certainly a hard arrest when that rifle was pulled [on October 17, 2013] and that guy's lucky to be alive, I would say, from the restraint that was shown from our Emergency Response Team that day in terms of him and the people that were around him.
>
> And there was a whole bunch of chaos that ensued from that and the arrests and our officers were trying to gain control of the situation and there's no doubt there were people that were probably handled roughly that day, but that was, I would say, commensurate with the situation.

[343] Inspector Payne, Commander of the "H" Division and "L" Division combined tactical troop, claimed that the situation was no different than any other policing situation. Members are trained from day one that when you make a lawful arrest, you use only as much force as is required to take the person safely into custody. He commented: "If certain folks felt that their arrests were hard it was because they weren't obeying or complying with demands to cooperate." Inspector Warr correctly observed that being peaceful can also involve breaking the law. You can peacefully block the highway, but that can constitute the offence of mischief and when protesters refuse to move, they are subject to arrest; if they resist, the officers are justified, under subsection 25(1) of the *Criminal Code* in using as much force as necessary to conduct the arrests.

[344] Sergeant Brown, "J" Division Tactical Troop Commander, said that the method used to deal with protesters who were passively resistant and blocking the highway or who were obstructing the police was to move the police line around these people, and when they were behind the line they would be arrested. He noted that there were threats made toward members and him in particular and they did not act on them. He also mentioned there were some indecent remarks made about finding members' wives

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77 Specialized support units can be deployed in support of or as an integral part of a tactical troop (see above definition). An Identification Team may be used to document the police operation using still and video photography (RCMP *Tactical Operations Manual*, chap 7. "Specialized Support", s D.1.; H.1.).

and kids, suggesting they would rape them. He felt that crossed the line: "We let a lot of stuff go. On a normal night they would've been arrested and gone in front of the judge. We did not want to escalate the situation and put everyone in danger."

Analysis

[345] The Commission was not able to review every arrest that took place over the course of the months-long anti-shale gas protests. However, it did review an extensive amount of RCMP records, video recordings, and witness statements documenting numerous arrests. Individual complainants who were arrested and submitted complaints will receive reports with comprehensive analyses of their allegations.

[346] In certain circumstances, arrested persons were not subsequently charged, or they were charged but the charges were not pursued for various reasons. These outcomes do not necessarily negate the lawfulness or reasonableness of the arrests. As explained above, when evaluating a member's decision to make an arrest, it is important to keep in mind that his or her role is not to determine a suspect's guilt or innocence—members do not act as judge and jury. The standard for making an arrest is different than for pursuing a prosecution or determining guilt in a criminal trial.

[347] The available information suggests that RCMP members generally attempted to implement a measured approach to policing the protests, and often showed considerable forbearance in permitting the protests to continue for a lengthy amount of time, despite the fact that protesters were sometimes acting in violation of the law. The events of October 17, 2013, were far more dynamic and confrontational in nature and thus involved more "hard" arrests, but this was generally justified given the assaultive, resistive, and inciting conduct of some protesters.

[348] In general terms, and with certain exceptions (arrests conducted pursuant to the November 22, 2013 injunction), the Commission finds that RCMP members had reasonable grounds to believe that persons had committed or were committing various offences including mischief and/or obstruction; that is was, therefore, reasonable to arrest those persons; and that the force used in conducting the arrests was necessary and proportional in the circumstances.

FINDING

21) In general terms, and with certain exceptions (arrests conducted pursuant to the November 22, 2013, injunction), the Commission finds that, during the anti-shale gas protests, RCMP members had reasonable grounds to arrest persons for various offences, including mischief and/or obstruction, and that, in general terms, the force used in conducting arrests was necessary and proportional in the circumstances.

(b) Tightness of plastic tie wrap handcuffs

[349] The Commission did, however, identify concerns about the tightness of the plastic tie wrap handcuffs used on protesters, including specifically Protester C and Protester D. This was a common assertion among people who were arrested in the context of the anti-shale gas protests and submitted a formal complaint.

[350] In the case of Protester C, the photographs she submitted show bruises on both wrists. It is difficult for the Commission to determine when or how these bruises were suffered. In her interactions with police on that day, Protester C engaged in a great deal of mostly passive resistance, necessitating a significant amount of physical intervention on the part of RCMP members. Handcuffs are, of course, meant to restrain a person and maintain them in custody, and must be tight enough to do so; when an arrested person resists, particularly to the point of requiring physical intervention by members, the movement of the handcuffs may cause redness and/or bruising.

[351] With regard to Protester C specifically, however, the Commission notes that a member at the scene described that, when a senior member ordered another member to remove her handcuffs, the member had difficulty cutting the tie wrap because it was "too close to [Protester C's] wrist." After one attempt, to avoid injuring her, the member obtained scissors from paramedics and successfully removed the handcuffs from Protester C.

[352] It is reasonable to conclude that handcuffs that were difficult to remove safely were likely overly tight when initially placed on Protester C.

[353] Likewise, with Protester D, the video documenting his arrest shows that a member said "Tight it, tight it! Tight it a little bit more! [*sic*] It's not tight enough" during the arrest. Contrary to the assertion of Protester D, there is no evidence, however, that this followed a request by Protester D for the restraints to be loosened. Indeed, Protester D was completely silent while being controlled.

[354] Video 5623 also depicts Protester D being rapidly escorted toward the police transport vehicle area. As this is happening, he is seen from the back. It does not seem that one of the members escorting him is tightening the restraints. The Commission did not find any indication that an RCMP member intentionally and maliciously tightened the handcuffs after Protester D asked for them to be loosened.

[355] The Commission notes that in his videotaped statement to the police, dated October 18, 2013, Protester D frequently gestures with his hands to illustrate his views. His left hand does not appear injured or bruised.

[356] The photograph of Protester D with his hands restrained, combined with his statements about the tightness of the cuffs, suggests that the handcuffs placed on Protester D were likely tighter than was necessary to restrain him.

[357] Plastic tie wrap handcuffs were used on Protester C, Protester D, and other arrested persons during the anti-shale gas protests. These are fastened differently than

the handcuffs usually used by RCMP members on general duty. The Commission reminds members that, in situations such as public order policing when they are required to arrest persons using plastic tie wrap handcuffs, the restraints must only be applied with as much force as is necessary to safely restrain the arrested person.

FINDING

22) The handcuffs that were initially placed on Protester C and Protester D were likely tighter than was necessary to restrain them.

RECOMMENDATION

12) That, in situations such as public order policing when RCMP members may be required to arrest persons using plastic tie wrap handcuffs, the restraints only be applied with as much force as is necessary to safely restrain the arrested person.

(c) Campsite arrests

[358] Several complainants questioned the arrests conducted during the operation at the Hannay Road campsite, given that, in their view, the protesters at the campsite were ostensibly not committing any criminal offences. The campsite was set up on private property, apparently with the permission of the owner. With the notable exceptions of individuals throwing Molotov cocktails, and the person pointing a rifle at RCMP members (these incidents will be described in greater detail below), no one else appeared to be armed with a weapon, although later in the standoff, one of the younger members of the group was seen brandishing what appears to be a baseball bat. There were many provocative comments and gestures on the part of the Warriors, but none that can be heard in the videos that would necessarily amount to criminal conduct.

[359] To justify an arrest without warrant under section 495 of the *Criminal Code*, police officers must have reasonable grounds to believe the person arrested has committed an indictable offence. In defining the offence of mischief, section 430 of the *Criminal Code* prohibits persons from interfering with the lawful use or operation of the property.

[360] As for persons not directly committing an offence, it is well established that mere presence at the scene of a crime is not sufficient to ground liability,[78] but under paragraph 21(1)(*b*) of the *Criminal Code*, providing encouragement or assistance to the principal perpetrators is an offence. Significantly, the Ontario Court of Appeal has held that "[t]he strength of numbers may at times be an important source of encouragement."[79]

[361] It is reiterated that, on September 27, 2013, the SWN and ISL staging area was moved to a fenced compound in Rexton. SWN shared its logistical and security plans with the RCMP, and the RCMP voiced concerns about site security to SWN. On

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78 *Dunlop and Sylvester v The Queen*, [1979] 2 SCR 881.

79 *R v Mammolita*, 1983 CanLII 3563 (ON CA).

September 29, 2013, a group of protesters overran the entrance to the SWN/ISL compound, thus preventing SWN from beginning their work as scheduled. This was the beginning of the blockade of the compound. Warriors members moved to the site and a camp was set up. In a subsequent trial, the court described the protesters as having "blocked access to the compound in which machinery used in exploration was stored, refusing both ingress and egress to the compound," and described that the campsite was "at the intersection of Hannay Road and Route 134 and had either blocked or impeded traffic on that portion of Route 134 between the village of Rexton and Route 11."[80]

[362] As previously described, during the blockade, ISL employees were stationed inside the compound to protect the SWN vehicles. At first, these employees were allowed to carry out shift changes, but on the night of October 15–16, 2013, an incident occurred involving an ISL employee and protesters, leading to a physical confrontation with one of the Warriors youths and resulting in the ISL employees being confined inside the compound. ISL employees claimed that there were threats directed by the protesters toward the employees, consisting of death threats and threats to rape family members. Video recordings show the employees being taunted by young men in camouflage clothing. Negotiations between the RCMP and protesters resulted in the release of the ISL employees, who were replaced in the compound by RCMP members.

[363] Over the 18 days of the blockade, the RCMP had made the following observations:

- Members of the Warriors group were leading the blockade.
- The campsite was set up as a base of operations for those directly involved in maintaining the blockade.
- Others at the campsite were present for the purpose of supporting the blockade.

[364] Given these facts, it is reasonable to conclude that the persons maintaining the blockade were committing mischief under section 430 of the *Criminal Code*, in that they were interfering with SWN's ability to use its equipment, and others at the campsite, if not necessarily active participants in the blockade, were parties to the offence of mischief. Importantly, as detailed above, the injunction order specifically prohibited persons from, among other things, impeding, hindering, or attempting to impede SWN's work at the compound, or obstructing access to equipment; and authorized police to arrest persons that they believed on reasonable grounds were violating the terms of the injunction. Thus, arrests of persons at the campsite were reasonable in the circumstances.

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[80] *R v Breau & Francis*, 2014 NBPC 41 (CanLII) at para 1.

FINDING

23) It is reasonable to conclude that the persons maintaining the blockade were committing mischief, in that they were interfering with SWN's ability to use its equipment, and others at the campsite, if not necessarily active participants in the blockade, were parties to the offence of mischief. In addition, the injunction order specifically prohibited persons from impeding SWN's work at the compound, and authorized police to arrest persons violating the terms of the injunction. Thus, arrests of persons at the campsite were reasonable in the circumstances.

(d) Arrests of Chief and council members

[365] Shortly after the campsite was cleared and protesters moved to the west, Chief Aaron Sock and members of his council arrived on the scene and requested to be let through the police line to visit the campsite to ensure that no injured persons had been left there. Following discussions with Inspector Fraser and Staff Sergeant Jeff Johnston, Superintendent Maillet, the Incident Commander, approved bringing them through the line to the campsite to show them that everything was under control there and that none of his people had been hurt.

[366] According to Staff Sergeant Johnston, the agreement with Chief Sock was that once they were able to see the campsite and confirm that none of their people were hurt or being held against their will, they would leave and return to the western barricade. However, the Chief and council then took up a position sitting in chairs in front of the SWN compound and stated that they were not going to leave. They stated that they wanted to be arrested. They were reminded that they had made an agreement with the Incident Commander to leave, but they refused to do so.

[367] Before the decision was made to arrest the Chief and council members, several of them used their phones to send photos to the members of the community at the barricade, which caused the crowd to grow and the level of tension to heighten between protesters and the RCMP members. Since the SWN equipment was still in the compound, and given the level of tension at the barricade and their stated wish to be arrested, the decision was made to arrest the Chief and council members for the offence of mischief and to move them away from the compound to a location on Hannay Road until the equipment could be moved out.

[368] While they were being arrested, the group were fully cooperative; however, several of them took photos of themselves being placed in handcuffs and posted them on Facebook or texted them to people. This resulted in a significant further escalation in the level of confrontation and violence between the RCMP members and protesters at the west barricade. Staff Sergeant Johnston described that the situation enraged the crowd, which precipitated the arrests and the extreme violence that followed, including the burning of the police vehicles.

[369] The Chief and council members were not placed in cells after their arrest; they were held in police vehicles on Hannay Road until later in the afternoon, and they were then released. When they were released, Staff Sergeant Johnston was asked to escort them up to the front line at the west end where the police cars had been burned and where the tumultuous clashes had occurred, and then release them. He asked the Chief and council members to speak to some of their people in an effort to calm things down. They agreed to do so.

[370] In a gesture that was consistent with the measured approach, RCMP members accommodated Chief Sock and council members by allowing them to enter the campsite after it had been cleared. It was reasonable for RCMP members to arrest Chief Sock and the council members for the offence of mischief when they subsequently sat down in front of the SWN compound and refused to leave.

FINDING

24) It was reasonable for RCMP members to arrest Chief Sock and the council members for the offence of mischief when they sat down in front of the SWN compound and refused to leave.

2. Use of force

[371] The Commission received numerous complaints of a general nature regarding the RCMP's use of force during the anti-shale gas protests (distinct from complaints regarding the use of force during specific arrests). Complainants, many of whom did not have a direct connection to the events but, rather, witnessed coverage of incidents through the media, asserted among other things that RCMP members used unnecessary and excessive force against protesters during peaceful protests; improperly used firearms to deal with protesters; unnecessarily fired sock rounds at protesters; and improperly deployed Police Service Dogs (PSDs) against protesters.

(a) Allegation that unidentified RCMP members used excessive force when dealing with peaceful protesters

Facts

[372] During the course of their intervention on October 17, 2013, RCMP members used a bullhorn to inform the protesters that the injunction was being enforced, ordering protesters to disperse and advising them that they would be arrested should they fail to comply.

[373] When facing protesters who were attempting to gain access to the encampment, the RCMP members formed a line perpendicular to the road and proceeded to advance in a sweeping motion, repeatedly ordering protesters to "move, move, move" while advancing.

[374] Some protesters offered only passive resistance. They kneeled, prayed, or played the drum in front of the police line.

[375] Sergeant Brown, "J" Division Tactical Troop Commander, explained that the method used to deal with protesters who were passively resisting was to move the police line around these people and arrest them once behind the line. The police officers were trained to avoid physical confrontation with protesters in this situation. This resulted in the non-violent arrest of the protesters who engaged in civil disobedience.

[376] As explained above, other protesters reacted violently to the RCMP operation. For example, in his interview, Sergeant Brown explained that, in the early morning hours of October 17, 2013, the incoming RCMP officers were immediately met by Molotov cocktails thrown by the protesters and had to deploy sock rounds to disperse those individuals responsible. Sergeant Audoux, who was in charge of the "J" Division ERT and who ordered the deployment of the sock rounds, confirmed this:

> So because it was dark, it was very clear that the Molotov cocktail [*sic*] were being fired and it also came over the (inaudible). So when I saw that happen, I knew I had a guy with a less lethal [use of force option] there, and knowing that my guys didn't have fire retardant uniforms on because they were wearing camouflage, I gave the direction to Eric Jean, who was armed with the sock round, to take care of the thrower of the Molotov cocktails.

[377] A few minutes later, the "C" Division tactical troop was confronted by a protester with a rifle that was used to threaten the members. At trial, in finding the protester guilty of pointing a firearm, the court found that he took an "aggressive stance" while holding a hunting rifle equipped with a scope at a 45-degree angle with the barrel facing in the direction of four RCMP members.[81] A two-hour standoff between the protesters holding a defensive position in the encampment and the RCMP ensued. One RCMP member testified at trial that, on a couple of occasions, he thought that he was going to have to shoot the person holding the gun, but as the rifle was being held at a 45-degree angle, he did not do so.[82]

[378] Eventually, the rifle was placed inside a van, and RCMP members moved in to arrest the protester. The arresting member described in his report that the protester was lying down on a mattress in the rear of the van, with his right hand on a rifle equipped with a scope. ERT members broke the windows of the van, yelling at the protester to "stand down." The arresting member opened a door and grabbed the protester by the scruff of the neck, pointing his firearm at the protester and removing him from the vehicle. He told the protester that he was under arrest for obstruction and pointing a firearm; the protester resisted and three other members assisted in physically restraining him.

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[81] Ibid. at para 12.

[82] Ibid.

[379] Most of the other participants located in the encampment were also arrested. The protesters resisted and the video recordings of the arrests show what could be described as hard arrests, although in the circumstances where the members were met with considerable resistance, the manner of the arrests, including the use of force, appeared to be justified. RCMP members' notes and interviews, as well as the video evidence, indicate that sock rounds were fired in the context of those arrests.

[380] Following the arrests, three rifles were seized—two were in the trunk of a car and the other was in the back seat of a van parked on Hannay Road and appears to be the one pointed towards the troops earlier. Several items that appeared to be improvised explosive devices were also recovered.

[381] "J" Division tactical troops then proceeded to clear the woods on both sides of Route 134, moving west toward the western checkpoint on Route 134.

[382] While this was going on, the "H" Division (Nova Scotia) tactical team was securing the western checkpoint. Word of the tactical operation had spread and a large number of protesters had gathered on Route 134. Witnesses estimated that about 80 protesters were on the scene. Tactical troops began clearing them by forming a line with ERT members covering from the flanks. As they tried moving forward to the west, they were met with angry protesters. Some protesters attempted to stop the police line's advance by kneeling and praying in front of the members. Eventually, some of the protesters resorted to throwing rocks, water bottles, and other objects at the police. The police responded with pepper spray and sock rounds.

[383] Constable Mathieu Gallienne, who was holding the police line on Route 134, notes:

> . . . [F]or approximately an hour a group of females made a line in front of the RCMP members and had their elbows locked with each other. At one point Cst Gallienne heard the male protesters tell the females to get back, that they were taking over. At that point, a group of males charged at the RCMP members. Cst Gallienne observed one male in front of him with a green jacket having his fists closed like he was going to punch Cst Gallienne or any other RCMP officers on the line. Cst Gallienne gave a push to the crowd and took his OC Spray and deployed it on the crowd. This intervention was effective as the protesters moved back. Cst Gallienne was also contaminated from other officers deploying their OC Spray. Cst Gallienne heard the less lethal [use of force option] being deployed as well. RCMP officers then pushed back the protesters further away. Cst Gallienne also had to put his arms and hands in front of his face several times because the protesters were throwing rocks and bottles at the officers on the front line. Cst Gallienne caught a rock that was thrown and was coming right at his face.

[384] At that point, several protesters were seen running towards the police vehicles that were left farther down the road earlier in the morning. Constable Gallienne could see smoke coming from two police vehicles. One of the vehicles exploded.

[385] In video 10223, the protesters are confronting the police line and attempting to push through it. Some protesters are throwing rocks and other projectiles at the police line. The members respond by deploying pepper spray and sock rounds (the sound of which can be heard on the video recording).

Analysis

[386] With regard to the use of physical force such as pushing, striking, or using pepper spray to control the protesters, the Commission conducted an extensive review of the video and documentary evidence pertaining to the events that unfolded on October 17, 2013. The Commission finds that these methods of control were used after the protesters physically tried to break through the police line and were effectively participating in a riot. The Commission concludes that, given the risks posed by the protesters, and reasonable concerns for the safety of RCMP members and the public, the use of physical force including pushing, striking, or deploying pepper spray was necessary in the circumstances and was proportional to the conduct encountered by the members.

FINDING

25) Physical force such as pushing, striking, or using pepper spray to control the protesters was used after the protesters physically tried to break through the police line and were effectively participating in a riot. Given the risks posed by the protesters and the concerns regarding the safety of RCMP members and the public, the use of force including pushing, striking, or deploying pepper spray was necessary in the circumstances and was proportional to the conduct encountered by the members.

(b) Allegation that, on October 17, 2013, unidentified RCMP members improperly used firearms when dealing with peaceful protesters

Facts

[387] On October 17, 2013, the RCMP deployed 24 sock rounds.

[388] No live ammunition, other than sock rounds, was deployed on October 17, 2013.

[389] Chapter 17.5. of the national *Operational Manual* provides that the use of "drag stabilized bean bags (sock rounds)" is authorized to distract individuals who pose a threat to themselves, police officers or the general public. The policy also provides that sock rounds are deployed when other less lethal methods of intervention are unsuccessful or inappropriate.

[390] From its extensive review of the evidence pertaining to the RCMP operation carried out on October 17, 2013, the Commission understands that members pointed firearms (loaded with live ammunition), and pointed and fired firearms loaded with sock round ammunitions at the protesters in the following contexts:

1. During the standoff at Hannay Road;
2. In the process of clearing the woods on both sides of Route 134 (moving west towards the western checkpoint on Route 134); and
3. In the process of clearing Route 134, when members were met by rioting protesters.

[391] The Commission will address each of these instances separately.

The standoff at Hannay Road

[392] The circumstances of this standoff were summarized above.

[393] Photographs taken by the RCMP Forensic Identification Services depict the situation where the troops approached and went to ground. They are depicted lying or crouching in the long grass beside Hannay Road while, as shown in videos, protesters casually walk around on the road making threats and generally being verbally abusive towards the tactical troops and ERT members.





Intersection of Route 134 and Hannay Road, showing the campsite (left) and the SWN compound (centre right)

[394] Several of the camp's occupants described the early morning scene from their perspective. Mr. Augustine explained to the Commission's investigators:

> [I stayed overnight and the next morning all] hell broke loose. I walked down . . . I was standing right on the 134 where the pylons are, standing with my flashlight. I then got a text [about] four buses coming down loaded with RCMPs. I turned around and told them, be careful boys, I don't know what's going on . . . I'm getting weird texts.
>
> They were already like that on me. I looked around like that. What gun? I don't got no gun, I got a flashlight. They told me again drop that gun. I didn't know they were pointing the gun at me the first time. . . . I don't got a gun. It's a flashlight. And I went like – I went like that. And when I went like that, my flashlight opened and I seen three RCMPs like that on me already. And that was a nine-millimetre Beretta. I ain't stupid. I know my guns. And when that nine-millimetre Beretta is – it's loaded with a nine-millimetre bullet. And I had no gun. I had a flashlight. And that's when the sun was just starting to rise. And I was – where it was rising, I seen buses. I didn't even – I didn't see the bus because the first time was dark. And when the sun came up, like holy, I just seen RCMPs and – and I looked this way, I see nothing but RCMPs again. Like holy. And then Seven walked up. Seven didn't even see them. What's going on? I think we're being – something's

going on, man, look at all those RCMPs. Look over there. Holy! And then – and then he – and then that's when hell broke loose.

. . . He told me to go to the ground . . . They wanted me to go to the ground, but I wasn't going to go to the ground. They had guns on me. I moved back. . . . I moved back to the dirt road. But back – when I moved back to the dirt road, I already seen, I would say, about hundreds of – hundred RCMPs moving into the grass. OK, so I walked back to the dirt road. And I kept on – I started talking to the boys. OK – OK, boys, you guys got to remain peaceful.

[395] During his interview, Mr. Pictou made these comments:

I see all these cops. They're all around us, one in the back. Good morning guys. What are you all doing here this morning? Another one would talk, nobody would say nothing. We'd go in the front. I go to the tents, everybody's gone. There's only 12 of us left, 12 members for 500 cops. Isn't that a little overdoing it?

I go to the cop and tell him, do you see anything going on here? Why don't you come and get the vehicles? I'll go tell Seven. You take the vehicles and we can all go home. He said no, it's too late. When I turned around, I seen somebody grab Jason, rip his shirt off and it all started right then. That's how it all started. . .

They just came in. I got shot in the back. My shoulder was out to here. Even when I came out I had to go to physio to get my shoulder set back into place. I got jumped by six cops. I see Seven get shot in the leg. I see Aaron get shot in the shoulder. He goes down on the ground. We're all on the ground. They were all on top of Seven, on top of Jason, on top of my son. [*sic* throughout]

[396] Mr. Howe was a protester who stayed at the camp the night before. This was his account:

I wake up. There's cops screaming, coming through the bush. I'm here, here's the compound. I'm in the woods right beside it. Cops are coming through here. There's about four tents. . . . There's about 20 officers on the north side of Highway 134 with their pistols out.

There's about 35 officers coming through the field heading west with assault rifles, a dog or two. It's very frightening. They're sweeping through this field towards that Warrior encampment. . . .

. . . This sweep comes through the field, drives them out of their tents, drives them onto the dirt road and that's not even enough. They have to come at them from all angles and take them down, shoot them in the legs, tackle me. There's no sense in it unless you want to prove a point, which is to smash them. Everything that happens that morning is begun from that point. [*sic* throughout]

[397] Staff Sergeant Johnston was called in to assist as a negotiator on the morning of October 17, 2013; however, he did not arrive until after the standoff had commenced. He received the call from Corporal Girouard, another member of the CNT, advising that the police and protesters were engaged in a standoff after the police were confronted with Molotov cocktails and a rifle. When he arrived on site, he was introduced to several members of the Warriors group (including Mr. Pictou, Mr. Augustine, and Stephen Breau) by Corporal Rick Tessier, who had been speaking with them prior to his arrival. He stated that Mr. Augustine was agitated and was yelling at the RCMP members who were crouched down in the ditch for protection. Mr. Augustine was making insults and threats, swearing and yelling. At one point, as can be seen in video 5613, he deliberately put himself in the line of fire, between the protester holding the rifle and the members aiming at the armed protester, yelling at the RCMP members: "Shoot me!"

[398] In video 6763, a female protester is standing on Hannay Road next to three Warriors engaged in a verbal altercation with the members who are lying in the grass aiming at the armed protester. The female begins walking in the field toward the tents, yelling: "This is a camera. This is a camera, it's a camera. Get your gun off me." As she continues walking in the field, she yells: "Well, there's children here too. Hey. This is a phone. Get your guns off me, this is a phone. I don't have a gun, it's a phone." She repeats: "Put your gun down, this is a phone," as she walks through the field and reaches the cluster of tents.

[399] Eventually, the ERT and tactical troops move in on the protesters and arrest most of the main participants. Several sock rounds are fired. The protesters resist and the videos of the arrests show what could be described as hard arrests, although in the circumstances where the members were met with considerable resistance, the manner of the arrests appear to justify the use of force.

Analysis

[400] The process for assessing an incident under the IM/IM includes taking into consideration:

- The situational factors;
- The subject's behaviour;
- The peace officer's perception; and
- Tactical considerations.[83]

[401] As previously explained, chapter 17.5. ("Less Lethal Use of Force") of the RCMP's national *Operational Manual* states that the sock round is authorized for RCMP operational use to distract individuals who pose a threat to themselves, police officers or the general public. It is deployed when other less lethal methods of intervention are

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[83] RCMP *Operational Manual*, chap 17.1., "Incident Management Intervention Model", s 3.1.

unsuccessful or inappropriate. The policy also specifies that before using the sock round, a member must consider other possible intervention options.

[402] As described above, firearms loaded with sock rounds were pointed (and, in some cases, fired) at protesters during the standoff and in the process of effecting what can be described as "hard arrests" in the context of the standoff. It was clear during the standoff that any less of a dynamic approach by the RCMP would likely have resulted in even more resistance and violence.

[403] Given the considerable amount of resistance encountered by the RCMP members on the morning of October 17, 2013, including the throwing of Molotov cocktails and an encounter with a protester who was armed with a rifle, the Commission finds that the drawing and/or pointing of firearms, as well as the firing of sock rounds, did not amount to excessive force in the circumstances. The use of force was necessary and proportional to the conduct that the members encountered.

FINDING

26) In the context of the standoff, it was necessary for members to use force (including sock rounds and the drawing and/or pointing of firearms), and the type and amount of force used was proportional to the conduct that the members encountered.

Clearing of the woods on both sides of Route 134

[404] The "J" Division tactical troop then proceeded to clear the woods on both sides of Route 134, moving west towards the western checkpoint on Route 134.

[405] The Tactical Operational Plan for October 17, 2013, does not contain much detail regarding this sequence of events. It only describes the surveillance measures that were put in place to ensure that no protesters remained in the woods before and during the operation:

> 5) H.A.S.P. to be on scene performing surveillance at 05:00 hrs on day of operation and relaying current video and thermal imaging, to detect any persons in the woods before and during operation, to Incident Command.

[406] The plan also provided:

> From this point forward [following the morning briefing at Bouctouche Post] all Tactical Troop/QRT/PDS/ORT deployments will be at direction of Site Command for Tactical Troop and ERT. All QRTs are able to be re-deployed at the discretion of the Tactical Troop Commander.

The ERT's role

[407] At the time of his interview with the Commission, Corporal François Ducros was a dog handler in "C" Division (Quebec). He explained the ERT's role as a support role "in case it becomes a gun call" or, in other words, providing "lethal over-watch":

> Basically the official word now for Tac troop is public order. This was a public order deployment but the ERT team is always deployed as well in a support role in case it becomes a gun call because depending on the level – the public order team, what level of dress they wear, right now they're level two so since they had their side arms but had they had their helmets and shield and all their padding they would not have any side arms. So ERT members are deployed with lethal force in case the public order team is met with lethal force.
>
> . . . With the ERT we're always kind of the same. It's basically securing whether it's a field, a building. Obviously if we're met with lethal threat we will respond with lethal threat but we're always prepared. When the ERT is deployed they have their assault rifles. When you're deployed and especially in a capacity in the woods, you're deployed with your M16 assault rifle which is no different than any other callout. It's not because this was First Nations protests. It's not because – any ERT deployment that's the gear we carry. [Emphasis added]

[408] Sergeant Audoux stated in his interview that on October 17, 2013, the ERT was deployed in support of the tactical troop members to provide lethal over-watch in the event the tactical troops were confronted by armed persons while enforcing the injunction order. ERT members were dressed in their camouflage gear. Tactical troops were dressed in blue uniforms.

[409] The RCMP's national *Tactical Operations Manual* in force in 2013 describes the role of the ERT as follows:

> 1. Policy
>
> 1.1. The RCMP is committed to resolving potentially violent incidents using an integrated, measured approach response in accordance with the RCMP Incident Management and Intervention Model and the Criminal Code while ensuring the rights of Canadians are respected.
>
> 2. Definitions
>
> . . .
>
> 2.2 "Assaulter" means an ERT member who had successfully completed the Emergency Response Team course (BM3526).
>
> 2.3 "Critical incident" means an event or series of events which by scope and nature, require a specialized and coordinated response.
>
> . . .

> 2.6. "Emergency Response Team" (ERT) means a group of members comprising assaulters and snipers/observers, specially trained in the use of various tactical procedures and weapons.
>
> . . .
>
> 3. General
>
> 3.1 the Cr. Ops. Officer/delegate may activate an ERT to provide tactical armed support, under the direction of an Incident Commander, including but not limited to:
>
> . . .
>
> 3.1.6 assisting tactical troops. When assisting tactical troops, ERT resources will be deployed by the tactical troop commander, and if possible, an ERT commander should also be deployed.[84] [Emphasis added]

[410] The ERT became responsible for clearing the woods, as the RCMP suspected that a trail system through the woods was being used by the Warriors to facilitate entry into the encampment and smuggle people and weapons. The RCMP members were worried that armed protesters or protesters equipped with explosive devices may be hiding in the woods.

[411] In sum, ERT members were in the woods to provide lethal over-watch to the tactical troops.

[412] The evidence disclosed, including the video evidence, leads to the reasonable conclusion that ERT members engaged in the "clearing" of the woods did encounter protesters. Corporal Ducros stated that ERT members and dog handlers confronted the protesters who entered the woods on October 17, 2013:

> Yes, so we were somewhere around here and the protesters were trying to flank us on both sides. Obviously we didn't have enough people. The tac troop members were busy blocking the road so every time First Nations people, the protesters were trying to flank us we would go in the woods with the ERT team and a dog handler. The dog is used as a deterrent to hopefully prevent people from overpowering us from the sides coming in from the flanks or the rear and if need be you could use the dog to protect yourself and use him in a criminal apprehension manner. [Emphasis added]

[413] At 1 hour 56 minutes 12 seconds of video 5623, a protester is standing in the woods (but still visible from the road) facing approximately 10 tactical troop members. The video recording shows that a protester told a member in the woods: "I want that gun off my [expletive] chest." At various points during this encounter, both his hands are visibly empty, although not held in the air. A few minutes later, an RCMP member is heard saying: "Keep your hands up boys, keep your hands empty."

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[84] RCMP *Tactical Operations Manual*, chap 2. "General".

[414] It is possible that a firearm was pointed toward the protester at that point. The Commission does not know the identity of the member who may have pointed the firearm and could not locate his notes. From this recorded exchange, and taking the overall context into consideration (the fact that the ERT was providing lethal over-watch and suspected that the protesters in the woods might be carrying firearms or explosive devices), the Commission concludes that it is more likely than not that a firearm was pointed toward the group of protesters who had entered the woods and that this is the reason why an unidentified member located in the woods stated, "Keep your hands up boys, keep your hands empty." The Commission also concludes that it is more likely than not that when a protester said, "I want that gun off my fucking chest," to an unidentified member located in the woods, this member was pointing a firearm at the protesters.

[415] Considering the above, it is reasonable to conclude that an ERT member pointed a firearm toward protesters who had entered the woods.

[416] As indicated above, the IM/IM provides that the main objective of any intervention is the safety of law enforcement officers and the public.[85] Members are required to assess the risk posed by a subject, followed by a determination of the appropriate level of response, which may include the use of force. The IM/IM conveys concepts of the proportionality between a person's behaviour and the police response when considering all the circumstances. The process for assessing an incident under the IM/IM includes the various factors previously listed above.

[417] In the present situation, the alleged pointing of a firearm occurred when some protesters, ERT members, and a dog handler met in the woods. As described above, there had been a standoff between an armed protester and members earlier that morning. Molotov cocktails had also been thrown at members approaching the encampment by unknown protesters hidden in the woods. In the circumstances, members had reasonable grounds to suspect that other protesters might be armed or might be moving firearms or explosive devices through the woods.

FINDINGS

27) Emergency Response Team members had reasonable grounds to suspect that protesters in the woods might be carrying firearms or explosive devices because of the standoff with an armed protester that had occurred earlier that day, and because Molotov cocktails had been thrown from the woods by unidentified protesters earlier that day.

28) Given that Emergency Response Team members had reasonable grounds to suspect that protesters in the woods might be carrying firearms or explosive devices, from the evidence available to it, the Commission finds that the pointing of a firearm did not constitute an unreasonable use of force in the circumstances.

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[85] RCMP *Operational Manual*, chap 17. "Incident Management Intervention Model", at s 1.1.

Process of clearing Route 134

[418] As described above, while this was going on, the "H" Division tactical troop was securing the western checkpoint. Word of the tactical operation had spread and a large number of protesters had gathered on Route 134. Witnesses estimated that about 80 protesters were on the scene. Tactical troops began clearing them by forming a line with ERT members covering from the flanks. As they tried moving forward to the west, they were met by protesters. Members formed a line perpendicular to the road and proceeded to advance in a sweeping motion, repeatedly ordering protesters to "Move, move, move," while advancing.

[419] Some protesters offered only passive resistance. They kneeled, prayed or played the drum in front of the police line, while other protesters reacted violently to the RCMP operation. Video 6772 presents a good example of this. In this video recording, the protesters are engaged in a scuffle with the RCMP members holding the line until they are dispersed using oleoresin capsicum (pepper) spray.

[420] Throughout the intervention on Route 134, RCMP members had their firearms drawn at various times, but most often pointed at the ground.



[421] In video 6337, an ERT member (dressed in camouflage clothing) is seen kneeling in front of the police line and pointing a rifle directly at the crowd before returning to his position flanking the police line. The quality of the video recording is poor. A woman is heard yelling: "We don't have weapons, this is all we fucking have, we don't fucking have weapons. Put your gun down." A few seconds later, a woman holding an eagle feather kneels in front of the police line. The woman shooting the video repeats: "Put your gun down!" a few times. The crowd is repeatedly yelling: "Drop the gun," but it is not possible to see if a member is in fact pointing a firearm: the camera is moving laterally along the police line, and no member appears to be pointing a firearm. At this point, all parties become quiet and the woman kneeling on the ground and holding an eagle feather remains immobile.

[422] There is a second video (5624) depicting what appears to be the same incident from a different angle. This video was shot by the RCMP's Forensic Identification Services and the quality of the image is considerably better than in video 6337. At 02:01:55, the police line is advancing. The crowd is agitated and yelling. A protester throws a cup of coffee at the members. The members are seen ducking their heads repeatedly, but it is not possible to discern what is being thrown at them. A sock round is fired and more projectiles are thrown at the police line. At 02:02:17, the police line resumes its advance. The protesters move back. Projectiles, however, continue being thrown at the police line. This goes on for some time. The police line is advancing rapidly. Another sock round is fired. At 02:04:38, the female voice in video 6337 is heard, stating the exact same words. The ERT member observed in video 6337 is then seen reverting to his position flanking the tactical troop. He is wearing camouflage clothing with a soft hat and a scarf is covering part of his face. He is holding a long rifle clearly labelled with an orange fluorescent sticker, indicating that the firearm he is holding is loaded with sock rounds. He puts the rifle down and when turning his body to face the crowd, it becomes apparent that the ERT member is also equipped with another firearm, this one without an orange label. This second firearm is hanging along the member's side while he is holding the firearm bearing the orange label. The crowd is yelling "drop the gun" and appears to be directing this comment at another member who cannot be seen on the camera.

[423] As indicated above, chapter 17.5. of the national *Operational Manual*, entitled "Less Lethal Use of Force," authorizes the use of sock rounds in certain circumstances. The video evidence confirms that the crowd was physically trying to push through the police line. Some protesters were kicking and punching the members forming the line. Others were throwing projectiles. The police responded to the rioting crowd by deploying pepper spray and sock rounds. The Commission finds that this constituted a reasonable amount of force in the circumstances.

[424] Given the evidence available to it, the Commission concludes that pointing/firing firearms loaded with sock round ammunitions amounted to a measured response to the behaviour of individuals whose actions posed a threat to themselves, police officers, or the general public, in a context where other methods of intervention would have been inappropriate.

FINDING

29) Pointing/firing firearms loaded with sock round ammunitions amounted to a measured response to the behaviour of individuals whose actions posed a threat to themselves, police officers, or the general public, in a context where other methods of intervention would have been inappropriate.

(c) Allegation that, on October 17, 2013, the RCMP improperly deployed police service dogs when dealing with peaceful protesters

[425] From its extensive review of the evidence pertaining to the RCMP operation carried out on October 17, 2013, the Commission understands that police service dog ("PSD") teams, each comprised of a dog handler and a PSD, were deployed in the following contexts:

1. During the standoff at Hannay Road;
2. In the process of clearing the woods on both sides of Route 134 (moving west towards the western checkpoint on Route 134); and
3. In the process of clearing Route 134, when members were met by rioting protesters.

[426] At the time of his interview with the Commission, Corporal Ducros was a dog handler in "C" Division (Quebec). Corporal Ducros explained that dogs were used as a deterrent:

> Yes, so we were somewhere around here and the protesters were trying to flank us on both sides. Obviously we didn't have enough people. The Tac troop members were busy blocking the road so every time First Nations people, the protesters were trying to flank us we would go in the woods with the ERT team and a dog handler. The dog is used as a deterrent to hopefully prevent people from overpowering us from the sides coming in from the flanks or the rear and if need be you could use the dog to protect yourself and use him in a criminal apprehension manner. . . . [Emphasis added]

[427] Chapter 33.1. of the national *Operational Manual* is entitled "Police Service Dogs and Specialty Service Dogs." The policy states that PSDs provide specialized support service, among other things, "in assisting tactical troops and emergency response teams." The policy also provides that 1) PSDs must always be under the control of their handlers; 2) all RCMP PSD handlers are accountable for the actions of their dog; and 3) before deploying a PSD as a method of intervention, the dog handler must ensure that all other reasonable intervention options have been considered, in accordance with the IM/IM.

[428] Chapter 7.E. of the *Tactical Operations Manual* is entitled "Police Dog Services." It provides that the Senior PSD Team Leader and the Tactical Troop Commander decide on the use of the PSD teams. Each team consists of a dog and its handler, and "may act as a psychological deterrent and be valuable to":

1. Disperse and control unruly demonstrators;

2. Prevent injuries and property damage;

3. Assist behind barricades to support police;

. . .

7. Assist when members are making arrests . . . .

[429] The policy also provides that, when a PSD team is deployed with a tactical troop, it will only be used in a defensive role and that "only under exceptional circumstances are the dogs to be in direct contact with the demonstrators during rallies, demonstrations and riots."

[430] The handler must also complete form C-227B after each deployment, detailing where and how the team was deployed. The Commission found three such reports ("Case Reports") in the materials that were disclosed by the RCMP, but these documents did not relate to the events that unfolded on October 17, 2013.

[431] The Commission also viewed various video recordings pertaining to October 17, 2013, where police dogs are observed.

During the standoff at Hannay Road

[432] The PSDs and dog handlers accompanied the ERT during the standoff. One particular PSD team is seen standing in the field close to the road where some Warriors are located. The PSD is barking and pulling on its leash in an aggressive manner. A PSD team was also present when the members moved in to arrest the protesters holding a defensive position in the encampment. The Commission did not find any evidence indicating that the dogs were used to come into direct contact with a protester.

In the process of clearing the woods on both sides of Route 134 (moving west towards the western checkpoint on Route 134)

[433] As described above, PSD teams were deployed in the woods along with ERT members. Corporal Ducros explained that the dogs were used as a deterrent. The Commission did not find any evidence indicating that the dogs were used to come into direct contact with a protester.

In the process of clearing Route 134, when members were met by rioting protesters

[434] The extensive video evidence reviewed by the Commission indicates that PSD teams were deployed in the context of the clearing of Route 134 but, from what the Commission can glean from the video evidence, at all times remained behind the police line or on its flank, as a deterrent.

[435] The following screenshot taken from video 4770 illustrates the position taken by the PSD teams during the clearing of Route 134: all PSDs and dog handlers remain well behind the police line or at its flank while the tactical troop members confront the protesters:



[436] Another example of this is found in video 6772, where a scuffle breaks out between the crowd and members holding the police line. Pepper spray is deployed and a dog handler approaches the crowd, standing in the grass between the woods and the road. The PSD is barking loudly but never directly interacting with the belligerent protesters. Indeed, at one point there is an illustration of the role described by Corporal Ducros: a male protester, joined shortly thereafter by a female protester, suddenly rushes into the ditch on the "flank" of the police line and begins shouting at a dog handler and an ERT member who is holding a rifle. The dog handler and PSD take a few steps back. A moment later, the members are reinforced by three tactical troop members. The protesters do not breach the police line.

[437] The Commission did not find any evidence of PSDs coming in direct physical contact with the protesters.

[438] Pursuant to chapter 7.E. of the *Tactical Operations Manual*, entitled "Police Dog Services,"[86] PSD teams may be used as a psychological deterrent to help disperse unruly protesters. PSD teams are to be used in a defensive role. Only under exceptional circumstances are the dogs to be in direct contact with the demonstrators.

[439] In its review of the evidence, the Commission did not find any indication that PSDs were used directly on protesters, as opposed to as a psychological deterrent only. Consequently, the use of PSDs complied with RCMP policy and the IM/IM. The Commission notes, however, that it was unable to locate the relevant C-227B Case Report documents, which must be completed according to RCMP policy.

FINDING

30) The Commission did not find any evidence of direct physical contact between police service dogs and protesters. The evidence shows that police service dogs were used as a psychological deterrent only. Consequently, the use of police service dogs complied with RCMP policy and the IM/IM. The Commission notes, however, that it was unable to locate the relevant C-227B Case Report documents, which must be completed according to RCMP policy.

K. EQUIPMENT, CONTINGENCY PLANNING, AND THE BURNING OF POLICE VEHICLES

[440] Some complainants alleged that the RCMP failed to provide adequate protective equipment to the members involved in the front-line enforcement of the injunction order, in the hope that some of the RCMP members would be injured so that protesters would be vilified; intentionally or through negligence, allowed cars to be set ablaze and destroyed; and used armed, non-RCMP members in the enforcement of the injunction order, and/or used RCMP members as agents provocateurs to infiltrate the crowd of protesters and to openly provoke violence.

[441] After conducting an extensive review of the materials disclosed to it, as well as having considered the interviews of the senior members responsible for the operation on October 17, 2013, the Commission did not find any indication that RCMP members were "ill-equipped so that some might suffer physical harm which would result in the vilification of protesters."

FINDING

31) The evidence before the Commission does not support the allegation that, on October 17, 2013, RCMP members were "ill-equipped so that some might suffer physical harm which would result in the vilification of protesters."

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86 The relevant *Operational Manual* title is "Police Service Dogs," whereas the relevant *Tactical Operations Manual* title is "Police Dog Services."

[442] The Commission notes that, with regard to the possibility of weapons at the protest site, in a section entitled "Officer Safety Hazards," the Tactical Operational Plan stated as follows:

> There is . . . information that firearms are readily accessible to certain individuals at the protests site [*sic*]. Up to this time, there is no confirmed sighting of firearms at the protest site. . . . [W]ill be made aware when and if firearms are seen at the protest site.

[443] The plan also noted:

> NOTE: At the discretion of Tactical Troop Commanders, Incident Command and S.O.P's, decisions will be made on how to best deal with any threat or resistance encountered (see Tactical Decision Making Matrix).

[444] Allowing for discretion and flexibility in decision-making is essential in any dynamic operation. That said, although there had been no confirmed evidence of firearms at the campsite, there was reportedly a significant amount of information to that effect. This information was repeatedly mentioned by members when discussing the rationale for the operation. It would, therefore, have been reasonable for the Tactical Operational Plan to have provided for a contingency plan with regard to the possibility of there being firearms and explosives at the campsite.

FINDING

32) Although there had been no reliable information about firearms at the campsite, there had been several rumours to that effect. It would, therefore, have been reasonable for the Tactical Operational Plan to have provided for the possibility of there being firearms and explosives at the campsite.

[445] With regard to the gear to be worn by tactical troop members that day, senior RCMP officers had numerous factors to consider. As described above, tension had been escalating; numerous threats had been made; a blockade had been imposed; and rumours of guns and explosives had been circulating. When embarking on an operation in such circumstances, safety had to be top of mind.

[446] As events unfolded and the situation deteriorated, it became clear that some members would have to be deployed in full riot gear (Level 4). The question arises as to whether the situation would have been better controlled, and fewer delays encountered, had members been wearing Level 4 gear from the beginning of the operation.

[447] Nevertheless, there were compelling reasons for the tactical troops to use Level 2 gear. There was no confirmed intelligence regarding the presence of guns or explosives. Furthermore, having a large contingent of members approach the blockade and encampment in full riot gear—doubtless an intimidating presence—may very well have unnecessarily inflamed an already volatile situation. Indeed, this concern was expressed to the Commission's investigators by Sergeant Brown. In addition, some of the tactical troops were to be approaching the scene by way of the woods; as

Staff Sergeant Bernard explained, wearing the bulky Level 4 gear would have made this approach more difficult, and being in Level 2 gear would arguably allow members to be more nimble in their response to threats, being able to use both of their hands, quickly access intervention options, or go to ground and lie flat in the face of a threat.

[448] The Commission finds that, in the circumstances, and in keeping with the measured approach, it was not unreasonable for the tactical troops to initially be directed to wear Level 2 gear on October 17, 2013.

FINDING

33) In the circumstances, and in keeping with the measured approach, it was not unreasonable for the tactical troops to initially be directed to wear Level 2 gear.

[449] The deteriorating situation at the western checkpoint has been described above.

[450] As this was transpiring, someone began setting fire to RCMP cars that had been parked to the west of the western checkpoint. Multiple videos of the area show that it was effectively a riot scene at this point.

[451] As further described below, there was no contingency plan for dealing with such a situation and members had to improvise.

[452] The Tactical Operational Plan for October 17, 2013, provided that three unmarked police vehicles were to be staged at the west checkpoint prior to the operation. The plan provided for 24 members to "resource each checkpoint equally." Additionally, the plan included the following measures:

> H Division Tactical Troop/J Div QRT1/1 PDS/ORT/J Div EMRT proceed to northbound exit ramp of Exit 53, disembark buses and proceed Westbound on Route 134 through East Checkpoint with task of clearing the Hannay Road site and moving protestors West on Route 134 to a point to be determined by Tactical Troop
> a) H Division Tactical troop will be accompanied by 2 marked police vehicles to be tasked with forming a physical barricade for troop if necessary and at discretion of Tactical Troop Commander.
> b) J Division QRT1/1 PDS remain at East Checkpoint to assist members already at this post.
> c) The ORT/J Div EMRT stages at East Checkpoint to be available to assist C or H/L Tactical troops.

[453] Two unmarked police vehicles were to be positioned to physically block Route 134 at the west checkpoint:

> a) West Checkpoint is moved (along with all members) from current location to intersection of Route 134 and Beatties Street. West/Route 505 (this will provide a route of egress to protesters).

b) J Division QRT 4 and QRT5/PDS proceed to West Checkpoint to assist members already at this post. Marked police vehicles will be positioned to physically block Route 134.

[454] The plan did not provide that the police vehicles would be left unguarded. However, the sequence of events did not go according to plan.

[455] The Commission reviewed multiple videos depicting the burning police vehicles. No members are seen in the vicinity of the burning vehicles. In video 6327, the police line is comprised of numerous members, standing still, equipped with shields. Six protesters are scattered further down the road in front of the line. When the person recording the scene turns around, more protesters can be seen down the road and farther behind them, with black smoke rising. In sum, it appears that the burning police cars and RCMP members are separated by the protesters.

[456] When questioned about the police vehicles that were burned on October 17, 2013, Constable Jonathan Greer explained that two of the vehicles burned on Route 134 were strategically placed there to restrict civilian vehicle access to the area where the tactical troops were staged. He stated that when the protest turned violent, those police vehicles were set on fire and later pushed off the road by trucks driven by protesters to threaten the police officers to a greater extent:

> **Investigator**: Those police, when they – when you said they used like snow plough or whatever, bulldozed the cars to the side, prior to that, were those – were those police vehicles placed there as ...
>
> **Constable Jonathan Greer**: As a blockade.
>
> **Investigator**: As a blockade?
>
> **Constable Jonathan Greer**: On the road so that vehicles were – I guess to slow down people on foot or to prevent vehicles from . . .

[457] He explained that, given the turn of events, those police vehicles had to be abandoned at some point:

> **Constable Jonathan Greer**: During our operation. . . . Those cars were abandoned at one point because they – the members that were there became overwhelmed I think [because] of the number of people that were coming through from the west.
>
> **Investigator**: Okay, so but those cars were put there as – they were there as a blockade to protect the RCMP who were...
>
> **Constable Jonathan Greer**: It's my understanding, it's my understanding.
>
> **Investigator**: . . . at the – at the road block. I mean so. . . .
>
> **Constable Jonathan Greer**: To prevent traffic from getting through.

[458] Constable Greer also theorized (but did not know for a fact) that the RCMP did not attempt to protect the remaining vehicles once the first ones were set ablaze, because it would have been too dangerous:

> **Investigator**: Okay, was there any action taken by your Tactical troop commander to, once that first vehicle was realized as burning, to protect the other vehicles at all or . . . .
>
> **Constable Jonathan Greer**: I wasn't involved with the planning. So I can't say what they were – you know, what our managers or commanders were thinking or saying. I think our own perspective was that it would have been too dangerous to go and try to protect the other cars. I mean, a car is a car. I mean it's – there was ammunition inside, and the gas tank. The danger I think to go and protect those vehicles would have been too great and plus, however many protesters were there were surrounding those police cars, so that would have – I think we were safer where we were, just staying back. [Emphasis added]

[459] Incident Commander Superintendent Maillet described how members were called to reinforce the police line in light of the escalating level of violence displayed by the protesters and how, in the process of providing reinforcement, members ended up parking police vehicles in various areas and leaving them unattended:

> **Superintendent Gilles Maillet**: I can't speak to that but after people started showing up here, Harry Brown told me, Gilles grab eight guys and go help out the members on the west gate. We took our vehicles and we brought them over right here because I said Harry, you want us to walk over. He said no, take your vehicles.
>
> We parked our vehicles. At that point it was very intense and people were stating to push the members and trying to gain access behind the west gate to go help out the people that were [there]. I probably got there around 9:30 in the morning. I think it's 9:45 on [the] west gate. After that we made a line, we reinforced the line, west gate, to help the members that were already there, just to make sure not more people are gaining access. [Emphasis added]

[460] Corporal André Royer described a similar scene:

> **Corporal André Royer**: At that point, the team concept is not really there anymore because prisoner handling and then the compound and a situation on one side. And as I'm turning over my prisoner to Ayotte – not my prisoner, but the prisoners we escorted to Ayotte, we heard on the radio that the west gate was being taken over and a lot of people were coming from the village and they needed backup over there to reinforce the line, to sort of control the crowd. . . . So I was with Staff Sergeant Gilles Maillet at that time. . . . So there's a – there's a couple of members, and I'm not sure how many we were, I want to say six or eight, at least, a group that broke off from the ATV trail/compound to go and provide support to the west gate. We got into a PC and drove from the ATV trail on Highway 11 and drove through Rexton and parked the cars – actually, the cars that were burned were the ones that we had used to drive over there.

. . .

André Royer: . . . So I'm – at 9:45, that's when I'm making my way to the west gate. And then here I have 9:52 that we were – we were arriving, parking our cars and then going to support the troops over there because at that point, all we – all we hear on the radio is like we need more people here, we need backup, it's crazy. . . .

Investigator: Right. So 9:52, you're at the west gate. At that time, when you got there, you would have walked past the two police vehicles that were parked on the road?

André Royer: Yeah, but they weren't burned at that point. They were parked there, sort of like blocking – yeah, yeah. It wasn't an ideal situation for us because we had to go through the crowd and then at the back of the police line, so that's not how things are done usually, but – [Emphasis added]

[461] The Commission's investigator asked Staff Sergeant Brian Byrne to lay out the details of the plan to protect the police vehicles inside what he called the "hot zone." Staff Sergeant Byrne explained that things did not go according to plan, and that members had to improvise:

Staff Sergeant Brian Byrne: But I didn't even know that there were – that there was some kind of a blockage there or police vehicles. I didn't know. I don't know what that wa—was in – improvised or not, so I've – when I – my – my duty was supposed to end here when, you know, I was moving people on 134. **So the plan was not that I – I would rush on 134 and, you know, as I told you, it never goes as planned.** So then I was called to support the troops who were already here, and then to control it, you know, to try to limit the access to the people inside and control it. And we were to move – we move up a bit to block the trails, as I told you. There were people in – in the – in the bush, as I re–there were trails. And the don – the – the situation changed when we were pointing firearms and afterwards when they found explosives in the – underneath some of the tents and all that. So I was kind of – we're, you know, getting up a little bit more information and all that, so – but it took a while. And it wasn't in the fi–first five minutes and all that. But you know, when we saw the Molotov cocktails thrown at our members from – it was J Division, I think, that were coming that way from the compound where the trucks were, and so we were kind of – lots of improvisions at the time, you know. It didn't go – didn't go as planned. So – and – and then I saw the police cars there, I said what are they doing there. And then all of a sudden I saw a member . . . he rushed back in the line, through the line, to join us. So I said what have you got there. Ah, he says, we got five, six cars, trucks, a Suburban – a Suburban, and different type of vehicles, police vehicles . . . you know, burning and all that.

But I think the threat at the time, I said these people are totally unconscious. They burn – those vehicles were blowing up. And the kids and, you know, the schools, they were near the school and all – that's a – [Emphasis added, *sic* throughout]

[462] Incident Commander Superintendent Maillet explained that the cars had been used as a physical barricade:

> **Superintendent Gilles Maillet**: Yes. Yes, yes, yes. (Inaudible) . . . I kind of got criticized for that, right? For the – I guess the story of the cars, I mean, because I remember I was in Fredericton when it came out, or somebody called Fredericton (inaudible – noise) station and said who the heck was running that command post, blah-blah-blah, how could they let police off—six police cars get burned, la-ta-ta-ta-ta. And I was saying man, right? So – so that's the true facts about the police cars, right. Was that planned? No, it wasn't planned, that – that – right, that we moved six police cars. However, I'm OK moving six police cars, right?
>
> So what happened is that we – we had to have barricades. We had to be able to block, right, with barricades. So option was hard barricades, soft barricade. With hard barricade, then if – if something happens, you're stuck with hard barricade. If you have to leave for your officers' safety, how do we – how do you take – like, your – if they're hard barricades, now you can't leave. So soft is the best way, right? So yeah. So we're lucky those two – two first cars that were burned were two old cars, right? And they just happened to get burned. [Emphasis added, *sic* throughout]

[463] He further explained that, at some point in the day, the RCMP realized the police vehicles were at risk, but that the cars were "stuck" there because the car keys could not be located. Moreover, he implies that trying to move the vehicles would have been too dangerous given the number of protesters and the volatility of the situation:

> **Superintendent Gilles Maillet**: . . . But I remember when the – this was happening, right? People were saying – came to the command post, and I forget what hour in the day that was, but anyway, they said Gilles, we got cars that are stuck there, and the risk to the cars. And so we'll have to get the keys. They said we don't know who has the keys. Well, I said – and so I used the F word. I said just get the friggin' – the – get the keys. There must be somebody that [has] access to those keys. Anyway, when you have several hundred people more – more protesters were coming, you know, like that, we lost six cars. So it's a bummer, but we lost six cars. But it still hurts to see that when you see that burning.
>
> **Investigator**: Right.
>
> **Superintendent Gilles Maillet**: National TV, you see police car burns [*sic*], and not – it's not (inaudible) but what are you – what do you want to do? So – yeah. But no, it wasn't – we didn't plan on losing police cars. No. No. [Emphasis added, *sic* throughout]

[464] The statements above reveal that, although the RCMP had anticipated that members of the community may converge toward the protest site during the operation, it had not prepared a contingency plan for that eventuality. Members that were involved in the operation on that day did their best in responding to the ever-evolving situation and provided reinforcement wherever it was needed. As a result, some police vehicles were left unattended, and someone set fire to them.

[465] It was reasonable for the RCMP to have decided to use police vehicles as a "movable" barricade. It was intended for the checkpoint in question to be staffed with what was thought to be an adequate number of members given the available resources. The plans, however, were significantly challenged by the circumstances on the ground.

[466] The operations at the blockade and encampment took much longer than planned and kept a large number of members occupied. As time progressed, the western "flank" was subject to a growing number of angry, belligerent protesters who gathered, largely in response to messages about the operation being disseminated on social media. Resources were redirected in an improvised fashion. Some miscues ensued.

[467] Ultimately, the melee was brought under control without the loss of, or serious injury to, any persons. Once the situation had deteriorated, in the circumstances, it was reasonable for the members to prioritize the safety of all parties and the maintenance of order over attempting to preserve the police vehicles. In the end, the burning of the vehicles was the responsibility of the person(s) who illegally set them ablaze.

[468] That said, the Commission finds that, in the totality of the circumstances, it would have been reasonable for the RCMP to have had a contingency plan providing for the possibility of a large number of belligerent protesters on Route 134.

FINDINGS

34) It was reasonable for the RCMP to have decided to use police vehicles as a "movable" barricade. Once the situation had deteriorated, it was reasonable for RCMP members to prioritize the safety of all parties and the maintenance of order over attempting to preserve the police vehicles. In the end, the burning of the vehicles was the responsibility of the person(s) who illegally set them ablaze.

35) In the totality of the circumstances, it would have been reasonable for the RCMP to have had a contingency plan providing for the possibility of a large number of belligerent protesters on Route 134.

School closure

Facts

[469] The Tactical Operational Plan called for the notification of the two schools in the immediate vicinity of the blockade, with the expectation that they would close prior to the operation commencing. At the last minute, Superintendent Maillet decided to

change that plan. The rationale for this change was explained by Superintendent Maillet in his interview with the Commission's investigators:

> [If] we informed the school ahead of time that not to open – not to open this morning, what does that mean? Are we – are we putting more people at risk by showing what we're doing? Number one. Number two is that the kids, if they're not at school, where are they going to be? Are they going to be protesting with the parents? Are they going to be on the site? Right? That was another thing that we had to figure out, right? Because then they could all come freely to the site, to the protests, in the woods, and so on, and be more at risk. Right? So that's why a decision was made that they're probably safer in school. When this plan goes into place, we'll make sure that they stay in school . . . But we debated that as a – as a group to see what makes more sense, what's safer for everyone. Right? And at the end I made the – the decision that no, we're not – not going to give him a heads-up. [*sic* throughout]

[470] However, the Traffic Plan appended to the Tactical Operational Plan closed exit ramps from Route 11 to Route 134 westbound, which resulted in school buses being blocked from getting to the schools, and being stuck on the side of the road for several hours.

Analysis

[471] Superintendent Maillet's decision not to inform the schools was reasonable. It was logical to conclude that providing advance notice to the schools may have the effect of telegraphing the RCMP's plans and effectively "tipping off" protesters that an operation was imminent. The concern for children being exposed to the tactical operation was also valid.

[472] The concurrent decision to shut down certain parts of the surrounding roadways did lead to the unfortunate situation of some children being stuck on buses for relatively long periods of time. It would, therefore, have been prudent for the decision regarding notification to have been made earlier and for the Tactical Operational Plan to have been modified to ensure that children were able to get to school prior to the operation commencing.

FINDING

36) The decision not to inform the schools about the imminent operation was reasonable, although it would have been prudent for the Tactical Operational Plan to have been modified to ensure that children were able to get to school prior to the operation commencing.

L. ALLEGED USE OF NON-MEMBERS AND/OR AGENTS PROVOCATEURS

Facts

[473] Several protesters interviewed by the Commission's investigators suggested that the burning of the RCMP vehicles was done by persons masquerading as protesters,

but in fact acting as RCMP agents provocateurs. This theory developed as a result of several factors mentioned by witnesses.

[474] Two protesters interviewed by investigators said that the cars that were set ablaze appeared to have been gutted and were not roadworthy, and were therefore just props. Other protesters observed that the RCMP members who had been guarding the cars all suddenly left and the perpetrators showed up. They were masked and did not appear to be part of any of the regular protest groups. The theory was also promoted through Internet circulation of posters purporting to identify the perpetrator as an RCMP and CIA informant.

[475] However, one protestor told the Commission's investigators that she encountered a female elder from Elsipogtog who was pepper-sprayed, and the elder told her son to "burn the RCMP cars." The protester would not provide the name of the female elder.

[476] Chief Superintendent Gallant, Criminal Operations Officer for "J" Division, was emphatic in his denial of this theory. He said: "For people to even insinuate that we would burn our own cars is beyond my realm of comprehension that there are citizens in this country that would believe the police would do that. . . . No, we certainly didn't burn any of our cars and, no, in terms of actively provoking things, we did not engage in that at all nor would I expect any aspect of our organization would."

Analysis

[477] The question of the use of agents provocateurs was put to the senior members responsible for the October 17, 2013, operation by the Commission's investigators. All denied that agents provocateurs were used on that day or that the RCMP had an active role in fostering this event. Moreover, the Commission conducted an extensive review of the documents pertaining to the October 17, 2013, operation and did not find any evidence substantiating the claim that the RCMP may have contributed to or otherwise permitted the police vehicles being set ablaze.

FINDING

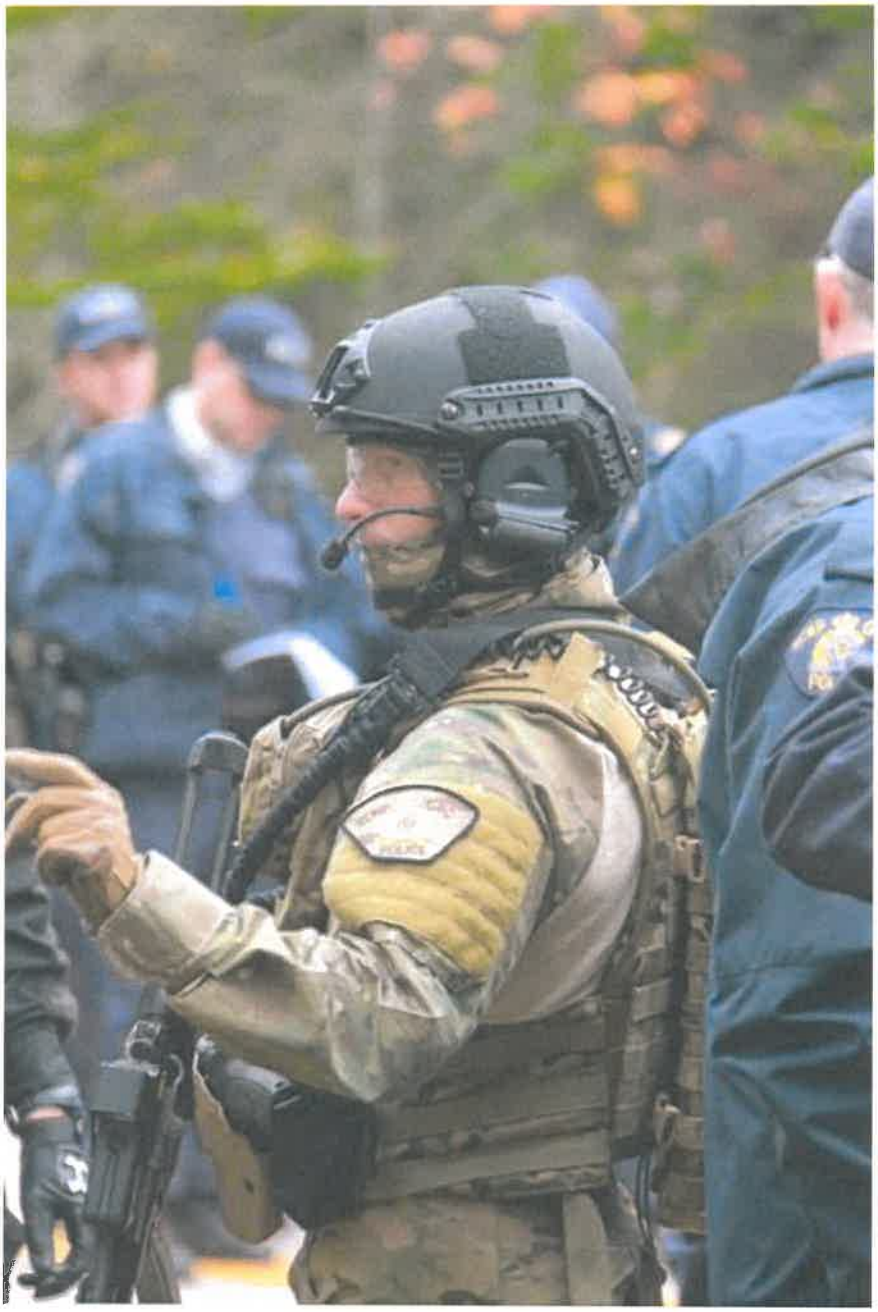
37) There is no evidence to support the claim that agents provocateurs were used by the RCMP on October 17, 2013.

[478] As mentioned earlier, some complainants alleged that the RCMP used armed, non-RCMP members in the enforcement of the injunction order.

Facts

[479] This belief may have arisen from the fact that some RCMP members wore uniforms that the general public does not often see, as evidenced by the following photographs taken on October 17, 2013:


POLICE





[480] In some of these photographs, the RCMP logo is clearly visible. In others, it is not. Part 2 of the *Tactical Operations Manual* is entitled "Emergency Response Team" and chapter 2., entitled "Equipment, Firearms and Training," provides some information regarding ERT equipment. It addresses dress requirements summarily in section 1.5.: "An ERT member must wear the ERT uniform when conducting ERT duties or ERT training." There are no further details regarding the various dress codes in effect.

Analysis

[481] In its review of the materials disclosed by the RCMP, the Commission found no evidence that the RCMP used non-RCMP members in carrying out the October 17, 2013, operation. Among other things, the Commission reviewed:

- **The Tactical Operational Plan for October 17, 2013**. No non-RCMP individual was involved in the enforcement of the injunction pursuant to the Tactical Operational Plan.

- **RCMP policies**. Part 2 of the *Tactical Operations Manual*, entitled "Emergency Response Team," requires that all ERT members successfully complete the applicable RCMP training course (see section 2.2.10.). There are also stringent selection criteria described in section 2.1., notably: "A successful ERT candidate must . . . "[b]e an RCMP RM Volunteer, with a minimum of two years of operational policing experience unless there are exceptional circumstances on a divisional level." [Emphasis added]

- **The SWN Confidential Security and Emergency Plan**. The plan sets out the role and responsibilities of the private security organization hired by SWN. The private security personnel's role with regard to the RCMP does not extend further than liaising and communicating with RCMP members. The plan contains a detailed organizational chart showing that the RCMP is a distinct entity from the private security firm.

[482] Specifically in relation to the members wearing camouflage gear, those individuals were members of the ERT. As explained by Sergeant Audoux, Tactical Troop Coordinator for the "J" Division ERT, as well as by various other RCMP members, ERT members deployed on October 17, 2013, were wearing camouflage clothing.

[483] The Commission found no evidence that non-RCMP members were used during the operation on October 17, 2013.

FINDING

38) The Commission found no evidence that non-RCMP members were used during the operation on October 17, 2013.

M. THE AFTERMATH OF OCTOBER 17, 2013

[484] Prior to the protests, the Elsipogtog RCMP Detachment had established a close relationship with the community. This continued during the protests up to October 17, 2013, primarily because the Detachment members maintained their regular duties and were not involved in the front lines at the protest sites or any of the arrests that were made during the protests. The decision for Detachment members to be kept from the front-line protest policing was approved by District management and the Criminal Operations Officer. After October 17, 2013, things changed.

[485] Corporal Tomlinson, an Indigenous member, had been at the Elsipogtog RCMP Detachment for ten and a half years before being transferred to Montréal. He was brought back during the anti-shale gas protests because of his connections with the Elsipogtog community. Corporal Tomlinson commented that "[a]fter October 17th, we're hearing lots of stories of distrust of the RCMP . . . there was a quick decline of the relationship between the RCMP and the community of Elsi at that point." The night after the raid, the Detachment was fire-bombed. The Detachment was forced to relocate away from the reserve.

[486] Sergeant Ward, the Elsipogtog Detachment Commander, said that after October 17, 2013, it was a "difficult phase obviously with the post-Rexton incident and integrating back in the community and trying to rebuild and repair some of those relationships that – they were damaged." Chief Superintendent Gallant said that the operation "destroy[ed] everything we've built here for years, like products of multiple COs' work and CROPS Officers' work and individual officers' work. You know, you just, one event, you've destroyed all of that now. It's going to take us years to recover from that."

[487] Corporal Yanick Soucy, a member of the "J" Division ERT who was stationed at the Richibucto Detachment, claimed that a relatively small segment of the Elsipogtog community supported the anti-shale gas protests. He asserted that the rest supported the RCMP during the protests. Corporal Soucy described how members of the community brought food—coffee, doughnuts—to the Detachment members. They were not happy, however, about road closures. It is not clear from Corporal Soucy's interview whether the community at large blamed the RCMP or the protesters for the closures. When asked about the mood in the community about shale gas at the time of his interview (November 5, 2015), he responded: "We don't hear about it much anymore."

[488] After the protests, some reconciliation occurred. Negotiations took place between the Detachment Commander, Sergeant Ward, and the Elsipogtog Chief for a gradual return to normal policing. This was approved. Sergeant Ward began holding daily liaison sessions with key members of the community and elders. Corporal Tomlinson described a healing ceremony that took place at the Detachment, conducted by one of the female elders. It was attended by several other elders and most of the Detachment members. After the ceremony, they discussed a number of issues and later they brought in a psychologist and held a round table discussion about the tensions between the

Indigenous people and the police. Sergeant Ward described having done Aboriginal Perceptions training. It was a community-wide five-day course, locally hosted with community elders and RCMP members along with Justice Department partners. Finally, a protocol was established to provide for communication and dialogue in future conflict situations with regard to Indigenous matters. The Commission supports and encourages these efforts toward reconciliation.

DISPOSITION

[489] Having considered the complaint, the Commission hereby submits its Interim Report Following a Public Interest Investigation in accordance with subsection 45.76(1) of the RCMP Act.

Michelaine Lahaie
Chairperson

RCMP Commissioner's Response

CRCC Report Into the RCMP's Response to Anti-shale Gas Protests in Kent County, New Brunswick

Royal Canadian Mounted Police
Commissioner

Gendarmerie royale du Canada
Commissaire

Guided by Integrity, Honesty, Professionalism, Compassion, Respect and Accountability

Les valeurs de la GRC reposent sur l'intégrité, l'honnêteté,
le professionalisme, la compassion, le respect et la responsabilisation

JUN 17 2020

PROTECTED "A"

Ms. Michelaine Lahaie
Chairperson
Civilian Review and Complaints
Commission for the RCMP
P.O. Box 1722, Station "B"
Ottawa, Ontario
K1P 0B3

Dear Ms. Lahaie:

I acknowledge receipt of the Commission's report regarding the Chairperson-initiated complaint and public interest investigation into the RCMP's response to anti-shale gas protests in Kent County, New Brunswick, file number PC-2013-2339.

I have completed a review of this matter, including the findings and recommendations set out in the Commission's interim report.

I agree with Finding No. 1 that, overall, RCMP members handled post-arrest and detention procedures in a reasonable manner and in compliance with policy.

I agree with Finding No. 2 that, in general terms, RCMP members understood and applied a measured approach in their dealings with protesters.

I agree with Finding No. 3 that, throughout the protests up to October 17, 2013, the RCMP command team and the Crisis Negotiation Team made every effort to bring stakeholders together to achieve a resolution to the conflict. These efforts were frustrated, in part, by the intractable nature of the dispute and by the absence of clear leadership on the part of the protesters.

I agree with Finding No. 4 that the information available to the Commission does not establish, on the balance of probabilities, that persons had an objectively reasonable expectation of privacy with regard to their communications through Facebook groups, or that the RCMP undercover operator "intercepted" those communications as outlined in the relevant jurisprudence.

I agree with Finding No. 5 that any gathering of potentially private electronic communications by the RCMP must be done only within the strictures of the *Criminal Code*, Charter, and related jurisprudence.

I agree with Finding No. 6 that, on the balance of probabilities, the open-source information gathering in the cases of Protester B, Protester D, and Protester E was not unreasonable in the circumstances.

I generally agree with Finding No. 7 that RCMP policy on the use of open sources did not provide clear guidance as to the collection, use, and retention of personal information obtained from social media or other open sources, particularly in situations where no criminal nexus was determined, considering that at the time of the Kent County anti-shale gas protests, the RCMP did not have a policy on the handling of personal information obtained from open sources.

However, on March 13, 2015, the Force adopted its first policy on this issue, namely *Operational Manual* (OM) 26.5. "Using the Internet for Criminal Investigations and Intelligence". I take this opportunity to inform the Commission that on July 15, 2019, the original version of OM 26.5. was amended and is now titled "Using the Internet for Open Source Intelligence and Criminal Investigations". While this policy update changed the roles and responsibilities of the Tactical Internet Operational Support (TIOS) Unit and unit commanders, in addition to expanding the definition section to align policy with the most recent technology developments in the area of open-source intelligence (OSI) collection, it did not modify the core provisions found in the original version.

Following a review of OM 26.5., the *Privacy Act*, and RCMP policies on information management, I am satisfied that members are now provided with sufficient guidance on the collection, use, and retention of personal information obtained from social media. I find that OM 26.5. is not meant to be read as a standalone document, nor to be used as a substitute for specialized training. Rather, I consider that policy is a complement to the existing legislative framework (e.g. *Privacy Act*) and related jurisprudence and provides context about the practical application of the investigative techniques within the confines of the law.

The RCMP collects OSI to develop actionable criminal intelligence and uses said information to carry out its mandate under the *RCMP Act*. OSI is always collected in support of an established file or program activity and the type of information gathered from social media is based on the needs of the investigation or activity. Pursuant to OM 26.5., RCMP employees performing intelligence-gathering activities must ensure that the collection, use, and retention of personal information obtained from open sources, such as social media, respect privacy requirements. I am satisfied that the RCMP's collection, use, and retention of OSI are done in accordance with the present state of the law as it relates to informational privacy.

It is also important to note that, since the collection of personal information from social media must be directly related to a specific operational file or program, the results are retained in the related operational file, like any other piece of information collected during an investigation. Consequently, the retention period of personal information collected from social media will be determined based on the retention period of the associated occurrence file, in accordance with RCMP policies on information management.

In my view, the provisions of OM 26.5. are not intended to be so prescriptive as to hamper an employee's ability to analyze and evaluate the investigational value of any potentially collected information. Understandably, every potential scenario cannot be described and provided for in policy, particularly so as police techniques and case law in this area rapidly evolve and adapt to new and emerging technology. However, should legislation and/or case law evolve in that regard and require modifications to current practices, procedures, or policy, the RCMP will do so through appropriate consultation with implicated stakeholders.

In light of my conclusion above, I do not support Recommendation No. 1 that the RCMP provide clear policy guidance describing what personal information from social media sites can be collected, the uses that can be made of it, and what steps should be taken to ensure its reliability. While I do not find that further policy guidance as worded in the Commission's recommendation is required, I am satisfied that there are presently mechanisms in place, as briefly described in the following paragraphs, to ensure that employees performing intelligence-gathering activities are provided with the required guidance on the use of social media for OSI collection.

When it is unclear if OSI activities might be contrary to policy or could potentially violate the law, policy directs designated practitioners to consult the unit commander, the TIOS Unit, the National Covert Operations Unit, and/or RCMP Legal Services for guidance. Furthermore, all members performing intelligence-gathering activities within the RCMP are required by policy to have training. The "Introduction to Open Source Internet Research" Workshop provided to Tier 2 OSI practitioners expands on the rules governing the collection of personal information from social media sites and the use that can be made of such information and emphasizes on the need to confirm, corroborate, or discredit OSI before it can be used in intelligence reports. In addition to that workshop, Tier 3 OSI practitioners must also complete the "Tactical Use of the Internet" training. This five-day classroom course provides advanced, in-depth instructions on how to conduct investigative internet research and includes a 12-hour module on the use of social media for intelligence and investigative purposes. In addition, this training provides members with an in-depth explanation of OM 26.5., the relevant case law and the authorities applicable to the collection and use of OSI found in various legislation.

I take this opportunity to inform the Commission that the policy centre responsible for OSI activities within the RCMP is in the process of creating a Sharepoint collaborative environment site dedicated to Tier 2 and Tier 3 practitioners to ensure that they are kept current with the latest changes in legislation, techniques, methodologies, and case law related to the collection, use, and retention of OSI. I will direct that this collaborative environment be launched as soon as possible after the release of the Commission's final report. Moreover, the RCMP is in the process of developing a course covering the acceptable use of open-source intelligence, which will be available online to all employees via the Infoweb Agora platform. The focus of this course is to provide employees with an understanding of existing legislation, policy, privacy impacts, and case law related to the use of open-source intelligence. I will direct that once it is completed, the newly developed Agora course will be made available and communicated as such to all RCMP employees.

Finally, I want to inform the Commission that, in the 2018–2023 Risk-based Audit, Evaluation, and Data Analytics Plan, I approved an Audit on Open Source Information. The RCMP Internal Audit, Evaluation, and Review Branch is presently completing the draft report for this audit, which will be tabled at the Departmental Audit Committee in the near future. The objectives of the RCMP Audit on Open Source were to determine whether internet-related open-source activities conducted across the organization consistently complied with policy. Specifically, the audit sought to determine whether the Force's policy related to open source activities and information was established, adequate, maintained, clearly communicated and followed by members and whether employees were provided with the necessary training and tools to support the discharge of their responsibilities for open source activities. The Commission may be informed that any recommendations made by the Internal Audit, Evaluation, and Review Branch following the completion of the audit will be followed by a management action plan to ensure their implementation as expeditiously as possible.

I do not support Recommendation No. 2 that RCMP policy require the destruction of records obtained from social media sources containing personal information (such as screen captures of social media sites) once it is determined that there is no criminal nexus regarding the information.

While I agree with the Commission that it is reasonable for the RCMP to compile information to gain a current intelligence profile of an individual and to analyze said information to determine whether a criminal threat exists, I disagree that once it is determined that there are no criminal threats related to the said individual, the personal information collected no longer serves a law enforcement or criminal intelligence purpose and should not be retained on file. The police have a duty to prevent crime and keep the peace, but they also have a general duty to protect life and property that extends beyond crime prevention and peacekeeping functions. During public protests, such as the ones that occurred in Kent County, the command team and/or lead investigator will use tactical intelligence as an investigative tool to obtain information on groups

involved in protests to determine the amount of disruption a given protest may cause and whether there will be any risk to participants, bystanders, police, and the public in general. In order to make that determination and in support of its overarching goal to keep Canadians safe, the RCMP needs to have the ability to access information on the participants even in situations where there is no reason to believe that the participants were previously involved in criminal activities. It is necessary for the police to learn more about the individuals with whom they may potentially interact in order to adopt the appropriate measured approach.

While intelligence analysts might browse through a vast array of information while conducting searches, including information on individuals associated with various groups, only OSI relevant to the original request will be collected and used to produce intelligence reports. The type of information sought from open sources or social media is not limited in terms of categories or topics, but it must support the operational file. The information is continuously subjected to real-time and historical analyses in order to determine and evaluate potential threats. However, the nature of the information collected does not always have an apparent criminal aspect. For example, in order to create a baseline for the activities of a group of protesters and determine if it is of any interest to the police, intelligence practitioners need to include in their reports information on the criminal background of the individuals comprising the group, but also information on those who do not have such a background. Indeed, commanders will rely on the results of the intelligence process to make informed decisions on the overall risk posed by a specific group in order to develop an appropriate strategic plan and response to the protests. It is therefore justified that information related to protesters be found in the operational file, even if some of those individuals are not associated to criminal activities. This situation is not in any way different than that of personal information being obtained during an investigation, by other means than open source, and being retained in the investigational file, despite it having no criminal nexus. The information is part of the fruits of the investigation and supports the actions taken and the decisions made in a specific incident.

It is also important to note that once an intelligence report containing OSI and/or personal information has been created it becomes Operational Information Resources of Business Value (OIRBV)[1] and must be incorporated

[1] Section 5.1.1.1.1. of the Information Management Manual (IMM), chapter 1.1. "*Information Management Stewardship*" provides that **Information Resources of Business Value** are materials, regardless of format, that are created or acquired because they enable and document decision-making in support of programs, services, and ongoing operations, and support departmental reporting, performance and accountability requirements. Additionally, IMM chapter 2.3. "*Operational Information Resources*" section 2.1. defines **Operational Information Resources of Business Value** as information supporting the mandate of the RCMP in the enforcement of the law in the detection, prevention, or suppression of crime, as well as the administration of individuals who have been involved in investigations under the *Criminal Code*,

into or linked to the operational file from which the initial OSI search request originated. Indeed, section 12.1.1. of the *Information Management Manual* 1.2. creates an obligation for RCMP employees to ensure that all information resources of business value he or she creates or collects is incorporated in the RCMP Records Management Program. Therefore, all OSI materials collected from social media used to develop an intelligence report are filed with said report as supporting documents and are kept with any other information collected during the investigation. The intelligence report and its supporting documentation become an integral part of the investigative material and have the same retention period as the occurrence file. The retention periods for OIRBV will vary depending on the type of occurrences; therefore, the timeframe for the purging of all information associated to a file will depend on the offence type and the corresponding prescribed retention period in accordance with the *Privacy Act* and its regulations and RCMP policies.

For these reasons, I find that proceeding to the destruction of records obtained from social media sources and containing personal information would not be reasonable and might not be lawful considering that once the information is used to produce OSI, it becomes OIRBV and needs to be retained in the associated operational file in accordance with the *Privacy Act* and RCMP policies.

For the same reasons, I therefore do not support Recommendation No. 3 that the RCMP develop a policy providing that, where the RCMP obtains personal information that is determined to have no nexus to criminal activity, the information should not be retained.

I disagree with Finding No. 8 that it appears that RCMP members did not have judicial authorization or other legal authority to conduct stop checks for the purposes of information gathering in a way that constituted a "general inquisition" into the occupants of the vehicles and that the practice was inconsistent with the Charter rights of the vehicle occupants. As stated in *R.* v. *Harris*[2] and related jurisprudence, whether requesting identification from an individual engages the Charter depends on the facts and, more importantly, on whether or not the individual was detained at the time when the information was solicited. Following a careful review of the relevant material as it relates to this finding, particularly of the videos and check sheets[3], I am unable to conclude, on a balance of probabilities, that the passengers of the vehicles were detained, or that the sole purpose of the stops was intelligence gathering, or that members acted improperly or in a manner which was inconsistent with the

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federal and provincial statutes, municipal bylaws, and territorial ordinances. Operational information resources of business value also include management of RCMP intelligence.

[2] *R.* v. *Harris*, 2007 ONCA 574. See also *R.* v. *Frank*, 2012 ONSC 6274, *R.* v. *Grafe*, 1987 CanLII 170 (ON CA) and *R.* v. *Hall*, 1995 CanLII 647 (ON CA).

[3] Only 6 check sheets dated July 27, 2013, and 2 others dated July 26, 2013, were located in the relevant material. Additionally, while many videos were reviewed, it is uncertain whether they are indeed the same videos referenced by the Commission at paragraph 103 of its report, as there was no electronic reference provided in its analysis of this finding.

Charter. Specifically, the video referred to by the Commission at paragraph 106 of its report does not capture the totality of the interaction or any actions taken by the member prior or subsequent to the request for identification. Some of the other videos reviewed have very poor sound quality and did not capture the totality of the interaction. For these reasons, I find that there are simply not enough facts or context upon which to derive any conclusions.

I disagree with Finding No. 9 that randomly stopping vehicles for a purpose other than those set out in provincial highway traffic legislation without judicial authorization and in the absence of the emergency investigation of a serious crime was, on the balance of probabilities, inconsistent with the Charter rights of vehicle occupants. I find that there was insufficient information provided by the Commission in support of this finding detailing specific instances where a roadblock would have been unlawfully erected. I note that the jurisprudence referred to by the Commission at paragraph 110 of its report, such as *R.* v. *Clayton*[4], refers to emergency situations in which not only were exclusion zones or roadblocks erected but the detained vehicles and vehicle occupants were searched. However, a review of the relevant material in this case does not reveal that roadblocks or exclusion zones were arbitrarily established or that individuals were being detained. Nor does it indicate that individual and vehicle searches occurred during this specified timeframe in the protest (i.e., June and July 2013). That being said, several instances were found in the available information suggesting that, at various times during the protests, roadways and highways were rendered inoperable or unsafe by felled trees, serious property damage and arson occurred and that certain circumstances, at times, created a hazard to public safety. The authority to create a perimeter in such circumstances, of course, would be derived from common law, as contemplated by the examples summarized in *Figueiras* v. *Toronto (Police Services Board)*[5], at paragraph 59:

> [...] Examples of the common law police power to control access to an area include establishing a perimeter around a police officer who is executing an arrest (*R.* v. *Wutzke*, 2005 ABPC 89, at paras. 60-66), establishing a perimeter around a police officer who is questioning a suspect or a witness (*R.* v. *Dubien*, [2000] Q.J. No. 250, at paras. 14-26 (C.M.)), establishing a perimeter around a crime scene to preserve evidence (*R.* v. *Edwards*, 2004, ABPC 14, 25 Alta. L.R. (4th) 165, at paras. 4–6, 24–48, 66), and establishing a perimeter around a hazardous area to preserve public safety (*R.* c. *Rousseau*, [1982] C.S. 461, at pp. 461–62, 463–64 (Qc.)). It has also been recognized that the police can establish a security perimeter around a potential target of violent crime in order to ensure the target's protection (*Knowlton*, at pp. 447–48).

[4] [2007], 2 SCR 725.
[5] 2015 ONCA 208.

I disagree with Finding No. 10 that, on the balance of probabilities, it appears that the practice of searching persons entering the campsite was, in the circumstances, inconsistent with the individuals' right to be secure against unreasonable search and seizure.

I note that the Commission's finding refers to the time of the blockade of the SWN Resources Canada (SWN) compound on Route 134, which began on or about September 29, 2013, and ended on October 16, 2013, the day before the operation to end the blockade took place. Additionally, I find the wording of the present finding and the associated analysis to be somewhat vague as to whether the Commission is referring only to searches of persons entering the campsite on foot or also to searches of vehicles that were allowed to enter the campsite. Thus, I proceeded on the assumption that the Commission is referring to both scenarios during the above-mentioned timeframe.

Regarding the search of vehicles entering the campsite, I note that during the blockade of the SWN compound, Route 134 was closed to all traffic including police vehicles out of necessity since some of the protesters unlawfully blocked the entrance to the compound with a van and subsequently blocked Route 134 with felled trees. However, a review of the relevant material reveals that some vehicles were allowed into the campsite, such as a trailer for the comfort of the elders, which was searched prior to entering the campsite following an agreement with the protesters, as well as a van that brought in food from time to time and a vehicle bringing in and taking out "Porta Pottys", which were both searched prior to being allowed into the campsite.

In determining whether the search of the vehicles entering the campsite was reasonable, I must consider all the circumstances, specifically in this case, the environment in which the searches were conducted. Obviously, the anti-shale gas protests at times created an extremely hostile environment. Some protesters issued threats of death and sexual assault against Industrial Security Limited (ISL) personnel and their families and police. Some protesters destroyed hundreds of thousands of dollars' worth of SWN equipment. In addition, there were persistent, albeit unconfirmed, rumours and reports from confidential human sources of the presence of firearms in the campsite. Warriors, who were observed to be under the influence of drugs, were present at the campsite. This environment, coupled with the lower expectation of privacy in motor vehicles, leads me to the conclusion that the searches of the vehicles allowed into the campsite were reasonable. In fact, I find that the RCMP could have been viewed as negligent in their duties if the decision not to search the very few vehicles allowed into the campsite would have resulted in the importation of weapons or explosives ultimately used to injure police or protesters.

With respect to the searching of persons entering the campsite on foot, I do not agree with the Commission that Staff Sergeant Vautour's and Chief Superintendent Gallant's statements support the conclusion that the RCMP engaged in a practice of searching persons entering the campsite. My review of

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those statements demonstrates that Staff Sergeant Vautour was definitive that people were not personally searched during the course of the timeframe in question. She does concede that at the beginning of the protests it was possible that some people may have been checked if they were carrying bags into the protest site; however, she is not certain on that account. Additionally, it could not be determined from the relevant material that even if those searches occurred, they were carried out during the blockade. As for Chief Superintendent Gallant, he stated that he did not recall any persons being physically searched given that there was no legislative authority to do so and that it would not have been something that he would have endorsed.

In addition, both Superintendents Gilles Maillet and John Warr stated that they had no knowledge of any personal searches being carried out as a matter of practice, nor was there any standing order given to routinely search anyone coming into the campsite. Finally, I note that there is some independent evidence supporting the view that members were not routinely searching those entering the campsite on foot. Mr. Chris Cainsford-Betty, Staff Operations Geophysicist for SWN's parent company, stated in an affidavit dated October 9, 2013, that "[...] [f]rom my review of the video, it appears that the RCMP are allowing pedestrian traffic freely."

Accordingly, it is my view that the available evidence does not support the conclusion that there was a practice of routinely searching or "patting down" persons entering the campsite on foot.

Although I do not support Recommendation No. 4 in regards to the above three findings, I believe it will serve as a best practice going forward that, members involved in public order policing operations be provided with a review of law and policy related to search and seizure, including the warrant requirement and the legal grounds establishing exceptions for warrantless searches. For this reason, I will direct that said recommendation be shared through the public order command structure.

I disagree with Finding No. 11 that, on the balance of probabilities, RCMP members made several arrests of protesters pursuant to the November 22, 2013, injunction without having reasonable grounds, from an objective point of view, to believe they had committed an offence. This was apparently based on a misinterpretation of the conditions of the injunction. It appears from my review of the relevant material that there is no evidence to support the conclusion that the RCMP made several arrests based on a misinterpretation of the November 22, 2013, injunction.

I find that the videos referred in the Commission's analysis do not depict anyone being illegally arrested, nor do they clearly demonstrate a lack of understanding of the provisions of the injunction. Additionally, I note that Constable Marco Johnson indicates in his notes that Protester Y was arrested because he was found within 250 metres of the SWN trucks.

Constable Frederic Langlois, another member involved in the arrests, describes Protesters Y and Z as being arrested for the same reason. In my view, these notebook entries seem to indicate that both protesters were standing within 250 metres of the SWN vehicles when they were arrested, which would be in accordance with the provisions of the injunction. I note that the Commission did not refer to the notes of Constables Johnson and Langlois in its analysis.

The Commission also refers to the fact that the Crown Prosecutor refused to approve the charges for both protesters to support the view that members made arrests that were contrary to the provisions of the injunction. While I acknowledge that there was a disconnect between the reasons for the arrests as indicated in the members' notes, the content of the Prosecutor's Information Sheets, and the charges that were proffered for approval, I find that the fact that the Crown refused to approve the charges is not material to the reasons for the arrests.

Therefore, I am satisfied that RCMP members had reasonable grounds, from an objective point of view, when they arrested several protesters pursuant to the November 22, 2013, injunction. Notwithstanding this conclusion, I nonetheless support Recommendation No. 5 that the RCMP provide members who are engaged in the policing of public protests or public order policing with detailed, accurate interpretations of the conditions of any injunction or unique legal provisions that they are expected to enforce, obtaining legal advice as necessary.

Indeed, I find that the Incident Commander or Critical Incident Commander should be responsible to disseminate to members engaged in policing public protests the accurate information concerning the enforcement of any injunctions. Consequently, I will direct that OM 55.2. "Aboriginal Demonstrations or Protests", as well as any other RCMP policy requiring that members enforce injunctions, such as OM 37.7. "Labour Disputes", be amended to provide that the Incident Commander and/or Critical Incident Commander should ensure that members under their command are briefed on the conditions and interpretations of any injunction that they are expected to enforce and are provided with all the nuances and unique background information regarding the specific protest or public order event. Additionally, I wish to inform the Commission that the RCMP is currently seeking to provide national oversight with respect to RCMP employees engaged in public protest/public order activities in general by developing a policy on public assemblies, which will provide for all protests, not only protests involving Indigenous matters specifically. Consequently, I will further direct that a section similar to the one mentioned above be included in the new policy on public assemblies.

I partially agree with Finding No. 12 that, given the lack of particularized information in the allegations, there was insufficient information available to conclude in general terms that road closures and the re-routing of traffic during the anti-shale gas protests was unreasonable. Likewise, there was insufficient

information to support the allegation that media were unreasonably denied access to protest sites.

The only specific allegation provided in the Commission's analysis in support of this finding relates to the arrest of Mr. Dallas McQuarrie and of other protesters for mischief and obstruction in circumstances where the roadway was being blocked by protesters, thus preventing SWN from using it. In those given circumstances, I find the arrests for mischief and obstruction to be lawful and reasonable. Additionally, I note from the information provided by witnesses to these particular arrests that the members had the situation under control in minutes and that the road closure was of brief duration. Since there were no other specific allegations in support of this finding, a perusal of the relevant material was undertaken in order to fully respond to this finding. This review of the relevant material, particularly the instances of road closures alluded to in the briefing notes to the Commissioner during the relevant time, allows me to determine that, in fact, the instances of road closures, buffer zones, or traffic rerouting were generally minimal, necessary, and reasonable.[6] Therefore, in my opinion, there is enough information found in the relevant material to support a finding, on the balance of probabilities, that the instances of traffic rerouting or road closures during the anti-shale gas protest were brief, necessary, and responsive to the circumstances and therefore reasonable. Likewise, with respect to the media having access to the protests sites, a review of the relevant material, including the numerous media articles referenced by the affiants in support of the injunction, as well as the televised press conference held at the protesters camp on Route 134, leads me to conclude that the media had unfettered access to the protest sites.

I agree with Finding No. 13 that, in its report regarding Protester F's complaint, the Commission found, on the balance of probabilities, that the decision to restrict the complainant's access to the protest site to prevent crime and ensure public safety was not unreasonable in those circumstances.

I support Recommendation No. 6 that, decisions to restrict access to public roadways or other public sites be made only with specific, objectively reasonable rationales for doing so, and, if legally permissible, be done in a way that interferes with the rights of persons in as minimal a fashion as possible, for example, a buffer zone as limited in size as possible and an exclusion that is as short in duration as possible. However, I will not direct that any action be taken in relation to said recommendation as I am satisfied that RCMP operations in that regard are already in line with the terms of the recommendation.

While I support Recommendation No. 7 that, particularly when policing a public protest, members be cognizant of the limits of their powers, specifically in relation to curtailing protesters' ability to assemble and express themselves in a

[6] See briefing notes dated June 5, 2013; June 19, 2013; and July 29, 2013, located in the electronic document "Briefings", Document ID 128, Investigation # 2013-83622.

lawful manner, I will not direct that any action be taken in that regard since I am satisfied that RCMP operations are already in line with the terms of the recommendation.

I agree with Finding No. 14 that, at the time the anti-shale gas protests policing operation began, with some notable exceptions, the members assigned to the operation did not have sufficient training in Indigenous cultural matters.

I support Recommendation No. 8 that the RCMP require all members to review the RCMP's *Native Spirituality Guide*, and that all members involved in Indigenous policing, including members of tactical troops and public order units involved in policing protests by Indigenous persons, be required to attend a training program that is specifically aimed at understanding Indigenous cultural issues.

In support of the above, I wish to inform the Commission that, since the Kent County anti-shale gas protests, the RCMP has deployed ongoing efforts on training current and new members to keep pace with the diversity, understanding, and compassion required to execute policing duties in a bias-free manner and to provide members with a solid knowledge of cultural elements and history of our Indigenous communities. In total, the RCMP offers no less than 29 learning programs at the divisional and national levels that include Indigenous culture as part of its curriculum; 24 of these programs or courses were created for and are presented directly to members of the RCMP with the intent of increasing Indigenous cultural knowledge and 26 of those courses contain material on Indigenous culture with a focus on regional traditions or geographic differences.

I also wish to inform the Commission that the RCMP is presently developing a new *Indigenous Awareness Guide* that will highlight the distinct and unique cultures, languages, political and spiritual traditions of Canada's First Nations, Métis, and Inuit peoples. This guide is intended to educate and increase the RCMP's employees' cultural awareness and understanding of matters related to the delivery of Indigenous policing services and interactions with Indigenous peoples. I am satisfied that the new *Indigenous Awareness Guide* will expand on the information provided to members with regard to Indigenous cultural issues. Therefore, in order to implement the first part of the Commission's recommendation, I will direct that, once the new *Indigenous Awareness Guide* is completed, a national communique be sent to all employees requesting that they review both the current *Native Spirituality Guide* and the newly developed *Indigenous Awareness Guide*.

As for the recommendation that all members involved in Indigenous policing, including members of the tactical troops/public order units involved in policing protest by Indigenous persons, be required to attend a training program specifically aimed at understanding Indigenous cultural issues, I will direct that the Commanding Officer of each division identify training specifically aimed at

understanding the cultural issues of the Indigenous communities found in their division and ensure that its members take said training. The results will be recorded on the members training record through HRMIS.

I agree with Finding No. 15 that the available information suggests that RCMP members did not, either deliberately or unwittingly, unnecessarily interfere with Indigenous ceremonies or sacred items. Based on my review of the relevant material, I am able to confidently determine that RCMP members generally demonstrated great care in ensuring that their intervention was necessary and mindful of cultural traditions. When in doubt, continuous consultation with community elders were made in order to obtain clarifications in regard to religious and spiritual ceremonies and sacred objects prior to the intervention. When ceremonies were happening on busy public highways, this, at times, presented significant public safety concerns. In using the measured approach, members resisted intervention and generally managed the risks to the extent where they could ensure the safety of all the individuals involved. When intervention was required, every effort was made to respect cultural beliefs and traditions by seeking further consultation or by means of dialogue with the involved protesters. However, I understand and acknowledge the concern that, at times, due to what appears to have been a lack of appropriate communication or guidance, the handling of sacred objects during certain arrests, specifically, could reasonably have led one to perceive an interference with said sacred objects.

I support Recommendation No. 9 that the RCMP initiate collaboration with various Indigenous stakeholders with a view to developing a context-specific, practical procedure providing guidance to members with regard to the handling of sacred items in various contexts. Considering the country's demographics and the varied traditions, beliefs, and practices of its Indigenous communities, I find that the implementation of the present recommendation should be done at the divisional level, and I will therefore direct the Commanding Officers of each division to ensure collaboration is initiated with their relevant local Indigenous stakeholders in order to develop appropriate and culturally sensitive procedures, as referenced in the Commission's recommendation.

I agree with Finding No. 16 that, on the available evidence, the Commission is satisfied that RCMP members did not differentiate between Indigenous and non-Indigenous protesters when making arrests, nor did they demonstrate bias against Indigenous protesters generally.

I agree with Finding No. 17 that the RCMP did not act as private security for SWN. Its role was to keep the peace and ensure public safety while respecting the protesters' right to protest. Based on the available information, the RCMP's interactions with SWN Resources Canada were reasonable in the circumstances.

I agree with Finding No. 18 that, the decision to isolate members of the Crisis Negotiation Team (CNT) from information about operational planning,

however well-intentioned, indirectly led to the unfortunate and regrettable situation of the tactical operation occurring shortly after RCMP negotiators offered tobacco to campsite protest leaders.

I support Recommendation No. 10 that, although there are reasonable rationales for maintaining separation between negotiators and operational planners, the RCMP should give consideration to more fully informing CNT members of the overall strategy being pursued to avoid regrettable misunderstandings that can damage relationships between the RCMP and members of the public. I acknowledge the consequences that the decision to isolate members of the CNT from information about the operational plan had in this case. I wish to inform the Commission that consideration has been given to the present recommendation and it was found that the *Tactical Operations Manual* (TOM) Part 3 "Crisis Negotiations Team" should be modified to provide that the CNT Team Leader be made privy to the overall operational strategy being pursued by the command team. This modification should also specify that it would be the responsibility of the CNT Team Leader to share with the other members of the team only the information necessary to fulfil the CNT's role. I will direct that this be done.

I support Recommendation No. 11 that the RCMP should consider drafting a policy that is specifically tailored to the CNT's role in the context of public order policing. I wish to inform the Commission that this recommendation has been considered and, it was determined that TOM 3.1. "Crisis Negotiation Responsibilities" could better reflect the different roles played by the CNT. I will direct that this be done.

I agree with Finding No. 19 that, given the terms of the injunction, the RCMP had the legal authority to conduct the operation and, on the balance of probabilities, it was a reasonable exercise of their discretion to do so in all the circumstances.

I disagree with Finding No. 20 that it would have been prudent to allow more time for negotiations and a review of the injunction in court before proceeding with the operation. I also disagree that allowing more time for negotiations, particularly after the CNT's negotiations had already borne fruit, would have been reasonable and desirable in the circumstances.

My review of the relevant material reveals that Superintendent Maillet cited several reasons for refusing to delay the operation in favour of further negotiation as requested by Inspector Fraser and Constable Denny. Notwithstanding the fact that the ISL employees had been allowed to leave the compound, he articulated a number of concerns that led him to the conclusion that the operation needed to proceed on October 17, 2013. These concerns included the presence of Warriors at the campsite, who were seen to be under

the influence of drugs, and unconfirmed intelligence reports of the likely presence of firearms at or near the campsite.

I note that the Commission recognized in its analysis that, notwithstanding the release of the ISL employees the day before the commencement of the operation, the RCMP still faced a difficult decision in determining whether to proceed with the operation as planned as the situation just before the operation was volatile and not proceeding with the operation could have led to a more explosive and dangerous confrontation at a later date. In addition, I find that there is no indication in the relevant material with respect to how much time Inspector Fraser and Constable Denny required for further negotiation. As timing is of the essence in these types of operations, this element would have been a consideration in the Incident Commander's risk analysis. I note that the Commission's investigators did not broach this issue with Superintendent Maillet, Constable Denny, or Inspector Fraser.

Therefore, I am satisfied that, on a balance of probabilities, the decision taken by Superintendent Maillet to deny the request for further time for negotiations and to proceed with the operation as planned on October 17, 2013, was prudent and a reasonable consequence of his risk analysis based on the information known to him at the relevant time.

I partially agree with Finding No. 21 that, in general terms, and with certain exceptions (arrests conducted pursuant to the November 22, 2013 injunction), during the anti-shale gas protests, RCMP members had reasonable grounds to arrest persons for various offences including mischief and/or obstruction, and that, in general terms, the force used in conducting arrests was necessary and proportional in the circumstances. While I agree with the Commission that RCMP members had reasonable grounds to arrest persons for various offences including mischief and/or obstruction, and that, in general terms, the force used in conducting arrests was necessary and proportional in the circumstances, as mentioned previously, I am satisfied that members also had reasonable grounds when they arrested several protesters pursuant to the November 22, 2013, injunction.

I agree with Finding No. 22 that the handcuffs that were initially placed on Protester C and Protester D were likely tighter than was necessary to restrain them.

I support Recommendation No. 12 that in situations such as public order policing when RCMP members may be required to arrest persons using plastic tie wrap handcuffs, the restraints only be applied with as much force as is necessary to safely restrain the arrested person. I find that this recommendation is in line with the use of force principles of proportionality, necessity, and reasonableness identified in case law, and I am satisfied that RCMP's operational practices in that regard are in accordance with said recommendation. Consequently, I will not direct any further action.

I agree with Finding No. 23 that it is reasonable to conclude that the persons maintaining the blockade were committing mischief, in that they were interfering with SWN's ability to use its equipment, and others at the campsite, if not necessarily active participants in the blockade, were parties to the offence of mischief. In addition, the injunction order specifically prohibited persons from impeding SWN's work at the compound and authorized police to arrest persons violating the terms of the injunction. Thus, arrests of persons at the campsite were reasonable in the circumstances.

I agree with Finding No. 24 that it was reasonable for RCMP members to arrest Chief Sock and the council members for the offence of mischief when they sat down in front of the SWN compound and refused to leave.

I agree with Finding No. 25 that physical force such as pushing, striking, or using pepper spray to control the protesters was used after the protesters physically tried to break through the police line and were effectively participating in a riot. Given the risks posed by the protesters and the concerns regarding the safety of RCMP members and the public, the use of force including pushing, striking, or deploying pepper spray was necessary in the circumstances and was proportional to the conduct encountered by the members.

I agree with Finding No. 26 that, in the context of the standoff, it was necessary for members to use force (including sock rounds and the drawing and/or pointing of firearms), and the type and amount of force used was proportional to the conduct that the members encountered.

I agree with Finding No. 27 that Emergency Response Team members had reasonable grounds to suspect that protesters in the woods might be carrying firearms or explosive devices because of the standoff with an armed protester that had occurred earlier that day, and because Molotov cocktails had been thrown from the woods by unidentified protesters earlier that day.

I agree with Finding No. 28 that, given that Emergency Response Team members had reasonable grounds to suspect that protesters in the woods might be carrying firearms or explosive devices, from the evidence available to it, the Commission finds that the pointing of a firearm did not constitute an unreasonable use of force in the circumstances.

I agree with the Finding No. 29 that pointing or firing firearms loaded with sock round ammunition amounted to a measured response to the behaviour of individuals whose actions posed a threat to themselves, police officers, or the general public, in a context where other methods of intervention would have been inappropriate.

With respect to Finding No. 30 that the Commission did not find any evidence of direct physical contact between police service dogs and protesters, I agree that

.../17

the evidence shows that police service dogs were used as a psychological deterrent only. Consequently, the use of police service dogs complied with RCMP policy and the Incident Management/Intervention Model. I concur with the Commission that the relevant C-227B Case Report documents, which must be completed according to RCMP policy, could not be located in the relevant material.

I agree with Finding No. 31 that the evidence before the Commission does not support the allegation that, on October 17, 2013, RCMP members were "ill-equipped so that some might suffer physical harm, which would result in the vilification of protesters".

I disagree with Finding No. 32 that, although there had been no reliable information about firearms at the campsite, there had been several rumours to that effect. It would, therefore, have been reasonable for the Tactical Operational Plan to have provided for the possibility of there being firearms and explosives at the campsite.

While there may not have been a formalized process contained within the operational plan to deal with the possibility of the presence of firearms and/or explosives at the campsite, I find that it is clear in the relevant material that the possibility of firearms being at the campsite was addressed in the operational plan. In addition, the file is replete with references to the possibility of firearms in or near the campsite. The operational plan notes that there was a significant amount of unconfirmed information that certain individuals may have been in possession of firearms. The plan also allowed for the handlers of confidential human sources to be notified if firearms were seen at the protest site. Furthermore, the operational plan stated that the Tactical Troop Commanders, Incident Commander, and standard operating procedures would dictate how best to deal with "any threat or resistance encountered." In my view, it was preferable to allow members to address the discovery of firearms or explosive by using their training and experience rather than to require them to follow a process that may or may not be workable given the highly volatile and stressful nature of the protests.

I agree with Finding No. 33 that, in the circumstances, and in keeping with the measured approach, it was not unreasonable for the tactical troops to initially be directed to wear Level 2 gear.

I agree with Finding No. 34 that it was reasonable for the RCMP to have decided to use police vehicles as a "movable" barricade. Once the situation had deteriorated, it was reasonable for RCMP members to prioritize the safety of all parties and the maintenance of order over attempting to preserve the police vehicles. In the end, the burning of the vehicles was the responsibility of the person(s) who illegally set them ablaze.

I partly agree with Finding No. 35 that, in the totality of the circumstances, it would have been reasonable for the RCMP to have had a contingency plan providing for the possibility of a large number of belligerent protesters on Route 134.

I acknowledge that the operational plan operation does not address the possibility of a significant increase in the number of belligerent protesters on Route 134, once word of the operation to take down the campsite was underway. That being said, a review of the relevant material indicates that Superintendent Maillet was very much alive to the possibility of a large number of belligerent protesters on Route 134, and, given the resources at his disposal, I find it is reasonable to conclude that he did not feel the need to make specific provisions for that eventuality in the operational plan. Indeed, Superintendent Maillet had a number of Quick Response Teams that could be deployed to support tactical team members when the need arose and tactical troops from "J", "H", and "C" Divisions were being brought in to deal with the increase in protesters expected when the operation began. Therefore, Superintendent Maillet had 200 members at his disposal for the operation and he did not need more resources. In my view, Superintendent Maillet, and presumably most other members, were very much aware of the possibility of an increase of the number of belligerent protesters on Route 134 once the operation began.

Therefore, while it would have been reasonable for the Operational Plan to address the possibility of a large number of belligerent protesters on Route 134, I find that the absence of such a provision was not unreasonable and in all likelihood would not have changed how the RCMP handled the protesters' response to the dismantling of the campsite on Route 134.

I partly agree with the Finding No. 36 that the decision not to inform the schools about the imminent operation was reasonable, although it would have been prudent for the Tactical Operational Plan to have been modified to ensure that children were able to get to school prior to the operation commencing. While I agree with the Commission's conclusion that Superintendent Maillet's decision not to inform the school authorities of the impending operation was reasonable, I find that there is insufficient evidence to conclude that the operational plan could have been modified in such a way as to allow the children to attend school and at the same time to prevent word of the impending operation from reaching the protesters.

It is clear that Superintendent Maillet had to balance the inconvenience to the children and school staff with the need to carry out the operation in a manner that minimized risk to the public, the protesters, and the members. In my view, public and police safety, which required secrecy with respect to the timing of the operation, took precedence over any inconvenience to the school children, teachers, and staff. I also note that the Commission investigators did not specifically broach the issue of modifying the operational plan with

Superintendent Maillet. As a result, I do not have any evidence with respect to how the operational plan could have been modified, if at all, to accommodate the school children's need to get to school, while maintaining secrecy of the impending operation.

I agree with Finding No. 37 that there is no evidence to support the claim that agents provocateurs were used by the RCMP on October 17, 2013.

I agree with the Finding No. 38 that there is no evidence that non-RCMP members were used during the operation on October 17, 2013.

I look forward to receiving your final report on this matter.

Kindest regards,



Brenda Lucki
Commissioner

Final Report

CRCC Report Into the RCMP's Response to Anti-shale Gas Protests in Kent County, New Brunswick

CIVILIAN REVIEW AND COMPLAINTS COMMISSION FOR THE ROYAL CANADIAN MOUNTED POLICE

COMMISSION'S FINAL REPORT AFTER COMMISSIONER'S RESPONSE TO COMMISSION'S INTERIM REPORT FOLLOWING A CHAIRPERSON-INITIATED COMPLAINT AND PUBLIC INTEREST INVESTIGATION INTO THE RCMP'S RESPONSE TO ANTI-SHALE GAS PROTESTS IN KENT COUNTY, NEW BRUNSWICK

Royal Canadian Mounted Police Act
Section 45.76(3)

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COMMISSION'S FINAL REPORT AFTER COMMISSIONER'S RESPONSE

PREFACE

[1] The Commission has completed its public interest investigation into the RCMP's response to anti-shale gas protests in Kent County, New Brunswick, and has received the RCMP Commissioner's response to its Interim Public Interest Investigation Report. This independent review of the RCMP's actions is intended to hold the RCMP accountable to the public it serves, and to recommend concrete measures to improve policing.

[2] In the course of its investigation, the Commission reviewed an exceptionally large amount of video and documentary evidence, witness statements, police records, and other relevant information. The Commission assessed various RCMP actions that took place over a six-month span from June to December 2013. In addition to its 116-page Interim Public Interest Investigation Report, and this 54-page Final Report, the Commission also completed detailed reports into 21 individual complaints related to the anti-shale gas protests.

[3] Given the breadth of complex issues and evidence examined, it is important that the essence of the case not be lost in its details. For this reason, the Commission offers the present overview of the importance and ongoing significance in today's context of the Commission's substantive findings and recommendations. The Commission also comments on the RCMP Commissioner's response to these findings and recommendations, and what it tells us about the operation of the independent oversight regime in this case.

THE COMMISSION'S FINDINGS AND RECOMMENDATIONS

[4] The issues considered by the Commission with regard to the Kent County protests remain relevant in today's context, not only to the interested parties and broader Canadian society, but also to the continued improvement of the RCMP's public order policing operations and its responses to protests. These include issues surrounding:

- arrests;
- use of force;
- tactical operation planning;
- the enforcement of injunctions by police;
- the establishment of stop checks, roadblocks, and exclusion zones by police;
- negotiation and the measured approach;
- the collection of open-source intelligence about individuals involved in protests; and
- police interactions with spiritual practices of Indigenous persons involved in protests.

[5] The Kent County anti-shale gas protests arose from significant concerns about environmental protection and Indigenous rights. The protests and the underlying issues were of great importance to many people, including Indigenous persons in the region and beyond. The RCMP's response to the protests was also significant in terms of its scope and impact.

[6] Lawful protest is a hallmark of democratic societies and a Charter-protected right in Canada. At the same time, police have a crucial role to play in keeping the peace, protecting society, and preventing crime. Tension and conflict often arise between protesters and police. It is here—by determining the facts and making meaningful findings and recommendations—that independent civilian oversight of the police can play an important role. In this case, the Commission has fulfilled this role by assessing the evidence in a neutral fashion, identifying instances where RCMP members acted reasonably and within the limits set by the applicable law, and addressing other instances where there were concerns about police actions. Consequently, areas for improvement were identified.

[7] In its report, the Commission recognized the challenges faced by the RCMP members whose job it was to police these protests, sometimes at risk for their own safety. Hence, despite a perception by many of the protesters and some members of the public that the force used in policing the Kent County protests was excessive, the Commission has made findings that most of the arrests, and use of force incidents, were in fact reasonable and justified under the circumstances. There was also significant concern expressed by community members about the overall role played by the RCMP in the context of the protests, but the Commission found that the RCMP members involved exercised their law enforcement role appropriately.

[8] In other areas, for example in relation to police roadblocks and stop checks and the collection of open-source intelligence, the Commission has expressed concerns about the reasonableness and, at times, the legality of the practices engaged in by the RCMP.

[9] As a result, the Commission made findings and recommendations toward the improvement of the RCMP's handling of protest policing, particularly with regard to Indigenous-led protests. Key findings and recommendations were also made in relation to RCMP members' knowledge of and sensitivity to Indigenous cultural practices, and the handling of sacred Indigenous items.

THE RCMP'S RESPONSE TO THE COMMISSION'S REPORT

[10] The RCMP's response to the Commission's report contains indications that many of the concerns raised by the Commission in its report will in fact be addressed.

[11] For instance, the RCMP has demonstrated an unequivocal commitment to supporting and implementing the Commission's recommendations related to sensitivity to Indigenous cultural practices and the handling of sacred items, and has provided

detailed information about the steps it has taken and intends to take in this regard. Similarly, the RCMP has provided concrete information about the actions it intends to take to ensure that the role of the Crisis Negotiation Team involved in policing these types of protests is better defined and that the Crisis Negotiation Team is better informed of the overall operational plans.

[12] In another instance, the RCMP has committed to implementing one of the recommendations that it did not support. The RCMP Commissioner indicated that she considered it would be a best practice that RCMP members involved in the policing of protests be provided with a review of law and policy related to search and seizure, as recommended by the Commission, although she did not officially support the recommendation due to her disagreement with the Commission's findings about the stop checks and searches conducted during the Kent County protests.

[13] Despite these encouraging developments, other responses to the Commission's recommendations raised concerns.

[14] The RCMP strongly rejected the Commission's recommendations meant to limit the collection and retention of intelligence about protesters from open sources such as social media accounts. The Commission has serious concerns about the RCMP's approach in such matters. The RCMP's response not only failed to alleviate the concerns that the Commission had expressed in its Interim Report, but further heightened many of the concerns. The Commission has therefore reiterated and further clarified its recommendations in an effort to address those concerns.

[15] In addition, of the eight recommendations the RCMP officially supported in its response, there are three for which the RCMP Commissioner has stated that no further action will be taken, as the RCMP believes its existing practices are already in line with the recommendations. While the Commission is aware that the legislation allows the RCMP to refuse to implement some of its recommendations, the Commission is concerned with the rationale provided in the case of these recommendations that the RCMP has supported, but refused to implement. These included recommendations on important issues such as roadblocks and exclusion zones, and the need for RCMP members to be cognizant of the limits of their powers, especially in light of the fundamental constitutional rights being exercised by protesters.

[16] The Commission made these recommendations for improvement because the facts in the Kent County case raised concerns about the RCMP's actions in these areas. However, in indicating that she believed the RCMP's practices are already in line with the recommendations, the RCMP Commissioner provided no information indicating that practices have been adjusted since the Kent County events, or that the Commission's concerns have been recognized and efforts have been made to address them. As such, it is difficult to view these responses as true support for the Commission's recommendations. They also do not provide a satisfactory explanation of the reasons for the RCMP's decision not to take further action.

[17] With respect to the RCMP's response to the Commission's findings about the events in Kent County, the RCMP Commissioner agreed with the findings concluding that the RCMP members' actions were not unreasonable, and also agreed with a number of the findings that were critical of the RCMP's actions.[1]

[18] Therefore, in a number of instances, the RCMP has acknowledged the issues identified by the Commission. For example where it agreed with the Commission's findings about:

- the RCMP members' insufficient training in Indigenous cultural matters;
- the unfortunate consequences that resulted from not providing information to the Crisis Negotiation Team about operational planning; and
- the fact that the handcuffs that were initially placed on certain protesters were too tight.

[19] In other instances, the RCMP disagreed with the Commission's findings and appropriately brought to its attention certain evidence and documents that provided a rationale for not accepting some findings. This was to be expected given the exceptionally large volume of evidence in this case. For example, with respect to a finding regarding the arrests made pursuant to the terms of a November 22, 2013, injunction, the RCMP Commissioner provided specific references to police officers' notes, and specific references to some videos that further explained the arrests. While this raised some concerns regarding RCMP members' record-keeping and the information provided to the Crown prosecutor, it did cause the Commission to reconsider its initial views regarding the grounds for these arrests. The response to this finding is an example of the oversight regime allowing the RCMP to provide an explanation for its actions functioning as intended.

[20] However, many of the other responses rejecting the Commission's findings were of a different nature. In those cases, the RCMP did not provide any additional evidence or facts, but instead provided its own assessment of the evidence in support of its conclusion that the conduct of its members was not problematic. In one case, the RCMP even rejected a finding by the Commission that the evidence was insufficient to conclude that the RCMP members' conduct was unreasonable, instead expressing the view that the evidence demonstrated that the RCMP members' conduct was reasonable and appropriate.

[21] Those responses, which often included a lengthy, point-by-point rebuttal of the Commission's findings, without additional factual information being provided, raise concerns about the operation of the independent oversight regime.

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[1] The RCMP agreed with five out of thirteen such findings: Findings 5, 7, 14, 18, and 22. In other cases, the RCMP fully disagreed with the findings, or disagreed in part and challenged the aspects of the findings that were critical of the RCMP's actions.

[22] The regime enacted by Parliament to provide oversight for the RCMP provides that the RCMP will have an opportunity to investigate specific incidents in the first instance and make conclusions about its members' actions. Where the complainant is not satisfied with these conclusions, or where, as in this case, the matter is of public interest, the legislation entrusts this Commission, which is independent from the RCMP, with the mandate to assess the evidence and come to conclusions about the actions of the RCMP members involved.

[23] While the legislation does provide that the RCMP may choose not to act on some of the Commission's findings and recommendations, the *Royal Canadian Mounted Police Act* provides a mechanism of accountability through transparency, by imposing an obligation on the RCMP to provide a response to the Commission's reports indicating what action will be taken about the complaint, and, if no action is to be taken about any of the findings or recommendations, to explain the reasons for not acting.[2]

[24] This requirement for the RCMP to explain itself where it chooses not to implement the Commission's findings or recommendations constitutes an opportunity for the RCMP to raise important issues that may not have been considered when the Commission prepared its Interim Report. For example, there could be issues that the Commission is not aware of that affect the feasibility of implementing certain recommendations. There could be resource implications, or an impact on other operations of the RCMP. These are all important factors to consider. They may lead the Commission to reconsider or rephrase some recommendations, and they will be relevant in helping the public better assess the RCMP's response to the events. The Commission welcomes dialogue of this nature with the RCMP, in the spirit of working toward the common goal of improving policing.

[25] It is unfortunate that, in its responses to many of the Commission's findings on important topics such as the random stopping of vehicles and the "general inquisition"[3] into vehicle occupants, the RCMP did not take this opportunity to provide additional facts or information justifying or explaining its rejection of the Commission's conclusions. Instead, the RCMP sought to substitute its own views of the evidence for those of the Commission, and to provide its own conclusions about the reasonableness of its members' actions.

[26] In the Commission's view, the RCMP's right to refuse to implement findings or recommendations, and its statutory obligation to explain itself when it does so, is not meant to provide an opportunity for the RCMP to act as an appeal body with regard to the Commission's findings. The RCMP's own views about the appropriateness of its members' actions should not be allowed to govern in a case where the independent

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[2] *Royal Canadian Mounted Police Act*, RSC, 1985 c. R-10, s. 45.76(2).

[3] The Commission used the expression employed by the Supreme Court of Canada in *Mellenthin v The Queen* (1992), 76 CCC (3d) 481, 1992 CanLII 50 (SCC) [*Mellenthin*], where the Court stated that "[r]andom stop programs must not be turned into a means of conducting either an unfounded general inquisition or an unreasonable search."

oversight body, having examined all the evidence as it is mandated to do, has reached a different conclusion, and no further factual information or explanation is being offered by the RCMP. Such a process would amount to giving the RCMP *carte blanche* to come to its own conclusions about its members' actions.

[27] For these reasons, the Commission found that these types of responses were not helpful to achieve the kind of accountability and transparency contemplated by the oversight regime. The Commission has therefore reiterated many of its original findings on those topics.

[28] Despite these concerns, the Commission is confident that the detailed analysis and lessons learned in these reports can assist the RCMP in improving its response in the policing of protests, particularly Indigenous-led protests, and help the national police service both enforce the law and respect the rights of all citizens.

INTRODUCTION

[29] The Civilian Review and Complaints Commission for the Royal Canadian Mounted Police ("the Commission") is an agency of the federal government, distinct and independent from the RCMP.[4] The Commission received several public complaints about the RCMP's response to protests against shale gas testing/hydraulic fracturing ("fracking") in Kent County, New Brunswick, in 2013. Given the significant number of complaints and the issues raised therein, on July 30, 2013, the Commission decided that it was in the public interest for it to conduct its own investigation of those complaints. The Commission received a total of 21 complaints.

[30] During the course of the Commission's investigation into the individual complaints, additional questions surfaced about the RCMP's response to the protests. In December 2014, the Commission's then Chairperson initiated his own complaint and investigation into the following issues:

a. the use of arrest;
b. the use of detention and search powers;
c. the use of force;
d. the adequacy of communication with members of the public;
e. the planning, management and execution of the arrests at the protest camp on October 17, 2013;
f. the handling of spiritual items, and/or interference with the spiritual practices of Indigenous peoples involved in the protests;

[4] The Commission receives public complaints about RCMP members, which are usually investigated by the RCMP in the first instance, with a possibility for the complainant to then ask the Commission to conduct a review if the complainant is not satisfied with the RCMP's report. The Commission's Chairperson may also initiate her own complaint, and/or commence a public interest investigation, in which the Commission conducts an independent investigation if the Chairperson believes that doing so would be in the public interest.

g. the role of the RCMP in the policing of protests by Indigenous peoples pertaining to Indigenous land rights; and
h. whether there was differential treatment of Indigenous peoples compared to other protesters.

[31] The materials disclosed by the RCMP, and generated by the Commission's investigators, were voluminous and took a great deal of time to organize and review. More than 130 civilian witnesses and RCMP members were interviewed by Commission investigators. The investigation unearthed more than two terabytes of documentation (including extensive written documentation—approximately 50,000 files, including duplicates—and thousands of video files from the RCMP and civilian witnesses). The Commission encountered delays in obtaining relevant materials from the RCMP, and much of the materials were provided to it in a disorganized fashion. The Commission's reports in this matter are based on as thorough a review as possible of the available information. The Commission thanks complainants and the RCMP members who were the subjects of the complaints for their patience.

[32] After reviewing the voluminous evidence collected during its investigation, the Commission made findings about the issues raised. With so many different perspectives, it was not always possible to achieve certainty about the unfolding of the events. When faced with conflicting versions or evidence, the Commission sought to determine what was more likely than not to have happened. This well-known legal standard is referred to as the "balance of probabilities" standard. This was the test applied by the Commission to reach all of its conclusions in this case.

[33] The Commission completed a 116-page Interim Report Following a Public Interest Investigation ("Interim PII Report"), dated March 13, 2019, making 38 findings and 12 recommendations. The Commission also completed reports in relation to each of the 21 individual public complaints.

[34] In accordance with the *Royal Canadian Mounted Police Act* ("RCMP Act"), the Commission sent the Interim PII Report to the RCMP Commissioner. On June 17, 2020, the Commission received a response from Commissioner Brenda Lucki, in accordance with section 45.76(2) of the RCMP Act.

[35] After considering the RCMP Commissioner's response, the Commission has prepared this Final Report, according to section 45.76(3) of the RCMP Act. In this report, the Commission provides an overview of the analysis completed in its Interim PII Report about the issues raised, and sets out the interim findings and recommendations that it made. The Commission then provides an overview of the response provided by the RCMP Commissioner to each of its interim findings and recommendations, as well as its own analysis of the RCMP Commissioner's response.

[36] In cases where the Commission has reconsidered or rephrased any of its findings or recommendations in light of the RCMP Commissioner's response, this is indicated in the text. In all other cases, the Commission is reiterating the findings and

recommendations made in its Interim PII Report. For ease of reference, a table of the Commission's final findings and recommendations is included at the end of this report.

[37] The Commission notes that, given the breadth of issues to be addressed in the present report, only a general overview is provided of the analysis and conclusions set out in the 116-page Interim PII Report. For a complete understanding of the interim findings and recommendations, and the evidence they were based on, the entire Interim PII Report (**Schedule 1**) should be reviewed. Similarly, while the Commission sought to provide an overview of the RCMP Commissioner's response to its report, it was not feasible to reproduce all the information provided. For a complete review of the RCMP Commissioner's response and the details of the actions she has stated will be taken, the response itself should be reviewed in its entirety (**Schedule 2**).

BACKGROUND

[38] In 2012, the Government of New Brunswick granted a licence to SWN Resources Canada ("SWN") to explore the accessibility of shale gas in the vicinity of the town of Rexton and the Elsipogtog First Nation Reserve in Kent County and various other parts of the province. Exploration began in June 2013, as did protests. As the provincial contracting police agency in New Brunswick, the RCMP's "J" Division was engaged in policing the protests.

[39] Protesters were vehemently opposed to the shale gas project and expressed their views in various ways over the course of six months. Many of the protesters were Indigenous persons from the Elsipogtog First Nation and elsewhere. Much of the protest activity took a form of civil disobedience—for example, people positioning themselves in the middle of the road to prevent trucks from passing and refusing to move when requested by the RCMP. Indigenous persons would occasionally conduct sacred ceremonies in the roadway, which the participants insisted on completing before moving. Numerous arrests occurred. Over time, the dynamics of the protests changed with the arrival of more confrontational protesters, the Warriors.

[40] Protesters eventually set up an encampment, which blocked the exploration company's compound. Private security guards (Industrial Security Limited or "ISL") hired by the company were prevented from leaving the building by the protesters' blockade. A court issued an injunction restricting the activities of the protesters. Negotiations were conducted between RCMP members and protesters to resolve numerous issues. Some progress was made but the RCMP conducted a tactical operation on October 17, 2013, in which the encampment was cleared. What ensued was effectively a riot and numerous people were arrested. Relations between the RCMP and local people, especially Indigenous persons, were damaged. Protests continued, as did arrests, until the company left the area in December 2013.

[41] For Indigenous protesters, a primary motivation for opposing the actions of SWN was similar to that which has driven many Indigenous peoples' protests throughout Canada in the past and present—their dedication to protecting the land and water. Their

justification was based on the view that the land belonged to the First Nations, as it had never been ceded to the Crown by any treaties or agreements. They were joined by non-Indigenous protesters, including environmentalists, whose interest in protecting the land blended with the interests of the Indigenous protesters.

ANALYSIS, FINDINGS, AND RECOMMENDATIONS

Role of the RCMP

[42] The RCMP's primary role in any demonstration or protest is to preserve the peace, protect life and property, and enforce the law in a manner that is consistent with the rights enshrined in the *Canadian Charter of Rights and Freedoms* ("Charter"), and the rights of the Aboriginal Peoples of Canada, as set out in section 35 of the *Constitution Act, 1982*. The RCMP's role does not include determining the legal validity of a licence or an injunction.

[43] Despite the RCMP's attempts to balance the rights of all groups and individuals involved, many of the protesters accused the RCMP of acting as SWN's private security. The Commission found that the RCMP's interactions with SWN were reasonable in the circumstances. It was necessary for the RCMP to engage with SWN to know what plans the company had—for example, where and when they planned to operate—to plan their own operations. The perception of the RCMP working to facilitate SWN's work may have arisen because actions taken to enforce the law, including court-ordered injunctions, had the effect of allowing SWN to carry out its work.

Commission's Interim Finding #17	The RCMP did not act as private security for SWN. Its role was to keep the peace and ensure public safety while respecting the protesters' right to protest. Based on the available information, the RCMP's interactions with SWN Resources Canada were reasonable in the circumstances.

RCMP COMMISSIONER'S RESPONSE

[44] The RCMP Commissioner agreed with Interim Finding 17.

Measured Approach

[45] The RCMP's Operational Plan for Shale Gas Exploration, developed in April 2012 and revised in April 2013, addressed the probable operational conditions and included references to the "measured approach," as did other relevant policies. Some complainants alleged that, in various ways, the RCMP failed to follow this approach. The Commission closely examined the RCMP's compliance with policy in this area.

[46] The "measured approach" is a crisis management philosophy that relies on communication, relationship building, problem solving, and the development of creative and unique measures as the crisis unfolds. Under this approach, the role of the police is to bring the involved parties together to work on achieving a resolution to the conflict.

[47] Throughout the protests, there were numerous examples of the RCMP employing the measured approach. Overall, the Commission found that RCMP members understood and applied a measured approach in their dealings with protesters.

Commission's Interim Finding #2	In general terms, RCMP members understood and applied a measured approach in their dealings with protesters.

RCMP COMMISSIONER'S RESPONSE

[48] The RCMP Commissioner agreed with Interim Finding 2.

Surveillance and Searches

[49] The RCMP engaged in surveillance practices and physical searches, some of which may have been inconsistent with protesters' Charter rights to be free from unreasonable search and seizure. For example, in conducting "stop checks," RCMP members randomly stopped vehicles for a purpose other than those set out in provincial highway traffic legislation. They did not have judicial authorization and were not conducting an emergency investigation of a serious crime. The Commission found that these actions were inconsistent with the Charter rights of vehicle occupants.

[50] Likewise, although there was a legitimate concern for public safety given unconfirmed information that had been circulating about weapons, the Commission found that, in the circumstances, the practice of searching persons entering the protesters' campsite appeared to be inconsistent with the individuals' right to be secure against unreasonable search and seizure.

Commission's Interim Finding #8	It appears that RCMP members did not have judicial authorization, or other legal authority, for conducting stop checks for the purposes of information gathering in a way that constituted a "general inquisition" into the occupants of the vehicles. This practice was inconsistent with the Charter rights of the vehicle occupants.
Commission's Interim Finding #9	Randomly stopping vehicles for a purpose other than those set out in provincial highway traffic legislation, without judicial authorization and in the absence of the emergency investigation of a serious crime, was on the balance of probabilities inconsistent with the Charter rights of vehicle occupants.
Commission's Interim Finding #10	On the balance of probabilities, it appears that the practice of searching persons entering the campsite was, in the circumstances, inconsistent with the individuals' right to be secure against unreasonable search and seizure.
Commission's Interim Recommendation #4	That members involved in public order policing operations be provided with a review of law and policy related to search and seizure, including the warrant requirement and the legal grounds establishing exceptions for warrantless searches.

RCMP COMMISSIONER'S RESPONSE

[51] The RCMP Commissioner disagreed with Interim Finding 8. She stated that whether requesting identification from an individual engages the Charter depends on the facts and especially whether or not the individual was detained at the time. She concluded that, from her review of the evidence, she could not conclude that the sole purpose of the stops was intelligence gathering, or that RCMP members acted improperly or in a manner that was inconsistent with the Charter. She stated that the video evidence was incomplete, and that there were not enough facts or context upon which to derive conclusions.

[52] The RCMP Commissioner also stated that she could not conclude that the passengers were detained at the time the information was solicited from them. The RCMP Commissioner put forward the case of *R v Harris*, in which the Ontario Court of Appeal found that a vehicle passenger who was asked for identification had been lawfully detained for a purpose under the *Highway Traffic Act* (the driver's failure to signal a turn); thus, the detention was not arbitrary.

[53] The RCMP Commissioner also disagreed with Interim Finding 9. She expressed the view that there was insufficient evidence in the Commission's Interim PII Report detailing specific instances where a roadblock was unlawfully erected, and she

challenged the applicability of some of the jurisprudence relied on by the Commission. Specifically, the RCMP Commissioner stated that the relevant materials did not reveal that roadblocks or exclusion zones were arbitrarily established, or that individuals were detained at them. She also pointed to specific circumstances where closing roads was legally justified.

[54] The RCMP Commissioner similarly disagreed with Interim Finding 10. She stated that she found the Commission's finding and associated analysis to be somewhat vague as to whether the Commission was referring to searches only of persons or of persons and vehicles.

[55] The RCMP Commissioner also explained that an agreement had been reached with the protesters to allow the search of a trailer that was being brought into the campsite for the comfort of the elders. In addition, the Commissioner stated that a small number of other vehicles, including a van that brought in food from time to time, and a vehicle that brought "Porta Potties" in and out, were searched. She stated that this was justified given the at times "extremely hostile environment." The Commissioner detailed numerous reasons for concern about safety and the possible importation of weapons into the campsite. She expressed that, in the circumstances, the RCMP could have been viewed as negligent if they did not search these few vehicles, and weapons were indeed brought in that were then used to harm police or protesters.

[56] The RCMP Commissioner also concluded that the available evidence did not support the conclusion that there was a practice of routinely searching or "patting down" persons entering the campsite on foot.

[57] The RCMP Commissioner indicated that she did not support Interim Recommendation 4 concerning the above three findings. She nevertheless agreed that it would serve "as a best practice going forward" to provide RCMP members involved in public order policing operations with a review of law and policy related to search and seizure, including the warrant requirement and the legal grounds establishing exceptions for warrantless searches. The RCMP Commissioner indicated that she would therefore direct that this recommendation be shared through the public order command structure.

Commission's Analysis of the RCMP's Response

[58] With respect to Interim Finding 8, the Commission notes that this is an example of an instance where the RCMP Commissioner is proposing a different interpretation and assessment of the evidence, without pointing to new or different facts or evidence. On the whole, the Commission reiterates its original assessment of the matter. Having reviewed the evidence and case law specifically discussed in the RCMP Commissioner's response, the Commission found no new facts or law that would cause it to change its original finding.

[59] The Commission acknowledges that the specific video discussed in the relevant section of its Interim PII Report did not show the beginning of the interaction. While seeing the entirety of an interaction can provide more context and may alter the impressions of what occurred, the fact remains that what is seen in the available portion of the video is a minor who was a passenger in the vehicle being asked for his name and date of birth, which were then recorded in writing by an RCMP member.

[60] Although the quality of several videos was poor, the Commission did observe instances of vehicle stops where the first question asked by RCMP members was a request for identification, as opposed to a demand for a driver's licence, vehicle registration, and insurance. Although the RCMP Commissioner provided her view that the evidence did not show that the sole purpose of the stops was information gathering, she did not offer any information as to what other purposes were being pursued by the RCMP members.

[61] The content of check sheets reviewed by the Commission supports the conclusion that these stops more likely than not consisted of a "general inquisition" of vehicle occupants. The documents included information such as a driver's name, date of birth, address, driver's licence number, height, weight, glasses, facial hair, race, hair colour, other distinguishing features, and vehicle information. There was a section to describe where the person had been "observed." There was also a section to list whether or not a criminal record check, and/or a police database check, had been conducted on the driver. Additionally, there was a section for information about passengers in the vehicle.

[62] With respect to the RCMP Commissioner's argument that the passengers were not detained when they were questioned by the RCMP members, the Commission notes that in the case relied on by the RCMP Commissioner in support of this position, *R v Harris*,[5] the majority of the Court also found that the police officer's request for identification from the passenger infringed his rights under section 8 of the Charter. The judges concluded that the accused's identifying himself in response to the officer's questions constituted a seizure and attracted section 8 protection. That seizure was unreasonable. The officer had no reason to suspect the accused of anything when he questioned him and requested his identification. The purpose of the stop did not justify an at-large inquiry into the accused's background or his status in the criminal justice system.[6] [Emphasis added]

[63] The Court in *Harris* reiterated the well-established principles that physical and psychological restraint by police constitutes detention, and that "[a] person who complies with a police direction or command reasonably believing that he or she has no choice is detained for the purposes of sections 9 and 10 of the Charter."[7] The Court in

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[5] *R v Harris*, 87 OR (3d) 214, 2007 ONCA 574 (CanLII) [*Harris*].

[6] Ibid. at p 215.

[7] Ibid. at para 17.

Harris also discussed two of the other cases (*R v Grafe*[8] and *R v Hall*[9]) put forward by the RCMP Commissioner to support the principle that police may in the course of their duties properly request identification from individuals in circumstances where the police have no reason to suspect that individual of any misconduct. The Court stated that those cases "turn largely on the finding that the person who was asked for identification was not under police detention or any other form of compulsion to answer the request for identification."[10]

[64] Another case referred to by the RCMP Commissioner, *R v Frank*, found that not all traffic stops involving asking a question of a passenger amount to a detention of the passenger, and that a fact-specific inquiry must be carried out in each case.[11] In that case, the accused was "not concerned" about giving his name to police when asked.[12]

[65] In the Kent County matter, passengers were in stopped vehicles, being asked questions by RCMP members. The Supreme Court in *Mellenthin* said of stop checks, "[the lawfulness of the stop] does not make a check stop any less a manifestation of police authority. For even the most experienced and sophisticated driver it will create an atmosphere of some oppression."[13] As stated in the Commission's report, it is far from clear that vehicle occupants were fully aware of their rights to not answer the questions posed by the police in the circumstances; this is especially true when information was being elicited from minors. It is likely that vehicle occupants felt that they had no option but to answer questions from the RCMP members if they wished to continue their journey. The RCMP Commissioner has not provided any additional facts or pointed to any evidence that would cause the Commission to reconsider its finding in this respect.

[66] For these reasons, the Commission reiterates Finding 8.

[67] With respect to Interim Finding 9, it is established that, during the Kent County matter, stop checks occurred and check sheets were completed. The RCMP Commissioner points to certain specific instances that justified closing roads, including when roadways and highways were rendered inoperable or unsafe by felled trees, when serious property damage and arson occurred, and when "certain circumstances" at times created a hazard to public safety. The Commission agrees that such instances did occur and that in some of these cases, closing roadways may have been necessary, reasonable, and legally justifiable. However, this does not explain or justify many of the roadblocks and stops conducted. Hence, while the Commission will adjust its finding to reflect the existence of certain circumstances that justified some roadblocks, the essence of the finding remains unchanged.

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[8] *R v Grafe*, 36 CCC (3d) 267, 1987 CanLII 170 (ONCA).

[9] *R v Hall*, 22 OR (3d) 289, 1995 CanLII 647 (ONCA).

[10] *Harris*, *supra* note 5 at para 42.

[11] *R v Frank*, 2012 ONSC 6274 (CanLII).

[12] Ibid. at para 13.

[13] *Mellenthin*, *supra* note 3 at para 10.

[68] The rationales invoked in the RCMP Commissioner's response do not explain or justify the kind of "general inquisitions" that appeared to have taken place, as described above. If a roadway was closed due to fallen trees or for the investigation of a serious crime such as arson, then presumably the RCMP member would simply tell the driver of the vehicle to turn around, not ask them and their passengers for identification or other personal information.

[69] The RCMP Commissioner stated that jurisprudence referred to by the Commission involved cases where roadblocks were erected *and* vehicles and their occupants were searched. As stated in *Harris*, however, the obtaining of information from a detained person can amount to a seizure under section 8 of the Charter.[14]

[70] While challenging the Commission's assessment of the evidence, the RCMP Commissioner has not put forward any rationale for the information gathering that was carried out during some stop checks. The content of the check sheets suggests an intent by the RCMP to gather information. The Commission again highlights that there did not appear to be any particularized concern regarding the occupants of the vehicles being stopped, nor has any other justification been put forward.

[71] For these reasons, the Commission reiterates Finding 9, with the caveat that some of the roadblocks were likely justified in the specific circumstances.

Commission's Final Finding #9	Although some of the roadblocks were likely justified in the specific circumstances, randomly stopping vehicles for a purpose other than those set out in provincial highway traffic legislation, without judicial authorization and in the absence of the emergency investigation of a serious crime, was on the balance of probabilities inconsistent with the Charter rights of vehicle occupants.

[72] With respect to Interim Finding 10, the Commission recognizes that the text of its Interim PII Report referred to searches of both *vehicles and individuals* entering the protesters' campsite, while its finding referred only to "persons" being searched. The Commission acknowledges that its language could have been clearer in this regard. The Commission also acknowledges that some searches based on consent, such as the search of the trailer brought in for the elders, would have been lawful and reasonable in the circumstances.

[73] For the other searches, however, the Commission can only reiterate its conclusion that the circumstances were insufficient to justify a routine search of vehicles and individuals entering the campsite, particularly given that the threshold for exigent circumstances or an apprehended breach of the peace did not appear to exist. One example of this was provided by Allan Marsh, who explained to the Commission's

[14] *Harris*, *supra* note 5 at paras 42–44.

investigator that he had been given permission in advance by the RCMP to bring water into the campsite, but that he took issue with what he described as multiple searches of his vehicle. Items such as a hammer and knife were temporarily confiscated, and he had to leave his canoe on the side of the road.

[74] The Commission detailed many of the same circumstances in its report that the RCMP's response relies on as the concerns that would have justified the searches. The Commission had considered these circumstances in reaching its original conclusion. As noted in the Commission's report, chapter 21.4. of the RCMP's national *Operational Manual*, which addresses warrantless searches, correctly explains the concept of exigent circumstances as existing where the delay in obtaining a search warrant would result in danger to human life or safety, or loss or destruction of the item to be seized.

[75] The Commission acknowledged the legitimate concerns about weapons potentially being brought into the campsite, but if sufficient grounds existed, the RCMP could have sought and obtained a general warrant to search vehicles and individuals entering the site. This was not done and no rationale has been provided for why it was not done.

[76] However, the Commission recognizes that the information brought forward to it regarding searches related primarily to searches of vehicles and their contents. For this reason, the Commission has decided to amend its Finding 10 to focus on vehicle searches.

Commission's Final Finding #10	On the balance of probabilities, the practice of searching vehicles entering the campsite may, in the circumstances, have been inconsistent with the individuals' right to be secure against unreasonable search and seizure. It would have been preferable for the RCMP to seek a general search warrant, if sufficient grounds existed.

[77] With respect to Interim Recommendation 4, the Commission notes that the RCMP has effectively agreed to implement it, despite not supporting it due to its disagreement with the associated findings.

Open-Source Intelligence Gathering

[78] With regard to open-source dossiers and certain undercover operations, the Commission found that RCMP conduct was generally reasonable. The Commission nevertheless conducted a detailed analysis and made several findings and recommendations about the parameters of such practices. For example, the Commission found that any gathering of potentially private electronic communications by the RCMP must be done only within the strictures of the law. The Commission also recommended that RCMP policy should describe what personal information from social media sites can be collected; the uses that can be made of it; and what steps should be

taken to ensure its reliability. Also, the Commission recommended that RCMP policy should require the destruction of personal information, including records obtained from social media sources, once it is determined that there is no criminal nexus regarding the information.

Commission's Interim Finding #4	The information available to the Commission does not establish, on the balance of probabilities, that persons had an objectively reasonable expectation of privacy with regard to their communications through Facebook groups, or that the RCMP Undercover Operator "intercepted" those communications as outlined in the relevant jurisprudence.
Commission's Interim Finding #5	Any gathering of potentially "private" electronic communications by the RCMP must be done only within the strictures of the *Criminal Code*, Charter, and related jurisprudence.
Commission's Interim Finding #6	On the balance of probabilities, the Commission finds that the open-source information gathering in the cases of Protester B, Protester D, and Protester E was not unreasonable in the circumstances.
Commission's Interim Finding #7	RCMP policy on the use of open sources did not provide clear guidance as to the collection, use, and retention of personal information obtained from social media or other open sources, particularly in situations where no criminal nexus was determined.
Commission's Interim Recommendation #1	That the RCMP provide clear policy guidance describing what personal information from social media sites can be collected; the uses that can be made of it; and what steps should be taken to ensure its reliability.
Commission's Interim Recommendation #2	That RCMP policy require the destruction of records obtained from social media sources containing personal information (such as screen captures of social media sites) once it is determined that there is no criminal nexus regarding the information.
Commission's Interim Recommendation #3	That the RCMP develop a policy providing that, where the RCMP obtains personal information that is determined to have no nexus to criminal activity, the information should not be retained.

RCMP Commissioner's Response

[79] The RCMP Commissioner agreed with Interim Findings 4, 5, and 6.

[80] The RCMP Commissioner stated that she agreed generally with Interim Finding 7, acknowledging that, at the time of the protests, the RCMP did not have a policy that provided clear guidance on the collection, use, and retention of personal information obtained from social media or other open sources. She stated that, since that time, the RCMP has adopted chapter 26.5. of its national *Operational Manual*, called (as of 2019) "Using the Internet for Open Source Intelligence and Criminal Investigations." The policy emphasizes that the public's reasonable expectation of privacy is paramount. Additionally, all open-source intelligence-gathering activities must be directly related to the operating program's mandate and official law enforcement activities.

[81] The RCMP Commissioner wrote that she is satisfied that the combined operation of the *Privacy Act*, *Operational Manual* chapter 26.5., and the RCMP's policies on information management provide sufficient guidance on the collection, use and retention of personal information obtained from social media. The RCMP Commissioner also wrote that she is satisfied that the RCMP's collection, use and retention of open-source intelligence are in accordance with the current state of the law concerning informational privacy.

[82] In light of this, the RCMP Commissioner did not support Interim Recommendation 1. She indicated that, when it is unclear if open-source intelligence activities would violate law or policy, the policy directs practitioners to consult the unit commander or certain other authorities, and/or RCMP Legal Services for guidance. All members conducting intelligence-gathering activities must also have completed training that varies by specialization tier. Additionally, the Commissioner wrote that the RCMP is creating a SharePoint environment[15] in which Tier 2 and Tier 3 practitioners will be kept up to date on the latest changes in law and techniques concerning the collection, use and retention of open-source intelligence. Furthermore, the RCMP is developing an internal course covering the acceptable use of open-source intelligence that will be available to all employees through the RCMP's intranet. The course will provide employees with an understanding of the law, policy, and privacy impacts of the use of open-source intelligence.

[83] The RCMP Commissioner also did not support Interim Recommendations 2 and 3. The RCMP Commissioner stated that while the police have a duty to prevent crime and keep the peace, they also have a duty to protect life and property. During public protests, the RCMP will use tactical intelligence to obtain information about the groups involved and to determine whether there will be any risk to participants, bystanders, and police. According to the RCMP Commissioner, the police need to be able to access information about the participants even where there is no reason to

[15] SharePoint is a collaborative electronic working environment from Microsoft.

believe that they were involved in criminal activities. Although the information that is collected may not always appear to have a criminal nexus, it may be necessary to "create a baseline" for the activities of a group of protesters.

[84] The RCMP Commissioner stated that commanders rely on the results of intelligence processes to make informed decisions about the overall risk posed by a specific group in order to develop an appropriate plan and response to protests. It is, the RCMP Commissioner wrote, "therefore justified that information related to protesters be found in the operational file, even if some of those individuals are not associated with criminal activities." The Commissioner stated that such information is no different from information being obtained during an investigation and retained in the operational file despite having no criminal nexus. The information is "part of the fruits of the investigation" and supports the actions taken and the decisions made.

[85] The RCMP Commissioner also stated that once an intelligence report has been prepared that contains personal information and/or open-source intelligence, the RCMP considers it Operational Information Resources of Business Value and its policies require that such information be incorporated or linked into the operational file. The Commissioner stated that RCMP employees are obligated to ensure that all information of business value is incorporated into the RCMP Records Management Program. All open-source intelligence materials are included as supporting documents. They have the same retention period as the occurrence file itself.

[86] In addition, the RCMP Commissioner wrote that the *Privacy Act* requires that the collection of any personal information must be related to a specific operating file or program. As such, all personal information collected from social media posts are incorporated into the police operational file, "like any other piece of information collected during an investigation." The retention period of such personal information is based on the retention period for that occurrence file, in keeping with RCMP policies on information management.

COMMISSION'S ANALYSIS OF THE RCMP'S RESPONSE

[87] The Commission's analysis and recommendations on this topic were first made in the context of the *Report Following a Public Interest Investigation Regarding Allegations that the RCMP Improperly Monitored and Disclosed Information of Persons and Groups Seeking to Participate in National Energy Board Hearings*.[16] That report discussed the RCMP's monitoring of individuals generally engaged in lawful advocacy, protest, and dissent about issues that concerned critical infrastructure (touching on the RCMP's national security mandate) where there was ultimately no criminal or national security nexus. Of note, the RCMP's national security mandate expressly excludes lawful advocacy, protest or dissent except where such advocacy, protest or dissent is in

[16] Subsequently referred to as the "National Energy Board PII Report" (Commission file number PC-2014-0380). The Commission forwarded its interim report in this matter to the RCMP Commissioner in June 2017. It is awaiting the Commissioner's response, after which the Commission will prepare its final report in the matter.

conjunction with an act defined as a threat to the security of Canada under the *Canadian Security Intelligence Service Act*. The personal information of Canadians who are engaged in such lawful activities is therefore excluded from the national security operations of the RCMP.

[88] As stated in the National Energy Board PII Report, the Commission has ongoing concerns about the collection, use and retention of that information under the *Privacy Act*. Some of these concerns were reiterated in the Kent County Interim PII Report, in light of the information gathering practices observed there. The RCMP Commissioner's response fails to alleviate the Commission's concerns.

[89] The Commission's analysis and recommendations from the National Energy Board PII Report were adopted in the present complaint, which concerned a more confrontational and tense situation involving injunctions, civil disobedience, and some acts of violence. The objective of Interim Recommendation 1 in the present case was to address the Commission's concerns about the RCMP's collection of personal information regarding individuals who sought to participate in protests and demonstrations related to environmental causes or had done so in the past. Many of these people had no criminal involvement or intention. The Commission was concerned about the long-term retention of that information, and it believed that clear guidance was needed about the collection, use and retention of personal information obtained from open sources.

[90] The Commission acknowledges that the RCMP has since adopted *Operational Manual* chapter 26.5. The Commission also acknowledges that the *Privacy Act*[17] and the RCMP's information management policies do provide some basic guidance. Furthermore, the Commission acknowledges the training materials and resources that the RCMP is developing. Finally, the Commission acknowledges the RCMP's Audit on Open Source Information, which the Commissioner stated will be tabled at the Departmental Audit Committee "in the near future." The Commission looks forward to reviewing the results of that audit.

[91] The measures described by the RCMP Commissioner meet many of the Commission's objectives in making Interim Recommendation 1. However, the Commission remains concerned that the RCMP's policy is vague. An effective policy should provide clear guidance to personnel and emphasize the important elements of the topics discussed. Of course, no policy can address all situations, and policies do not operate in isolation, but other RCMP policies do refer to relevant law and to the expected standards or procedures. The Commission sees no reason why this policy would not include similar references. Privacy and freedom of expression are essential to

[17] The *Privacy Act*, RSC 1985, c P-21, prohibits the collection of personal information by a government institution unless it relates directly to an operating program or activity of that institution. The *Privacy Act* generally prohibits the disclosure of personal information without the consent of the individual to whom the information relates, subject to certain exceptions. The *Privacy Act* also has some rules for the retention and disposal of personal information.

Canadians, and vague policies set poor guidance.

[92] As an example of where policy guidance would be appropriate, the current high-profile protest movements, ranging from anti-petroleum development to anti-racism and police reform, are worth considering. These movements, linked to numerous protests and demonstrations, engage the RCMP's common-law and statutory duties to keep the peace, prevent crime, protect life and property, and enforce the law. As such, the *Privacy Act* would arguably permit the RCMP to monitor the social media posts of all individuals who are concerned with these causes and who indicate on social media that they support and/or plan to attend a given protest, no matter how large the event. Arguably, the RCMP would also be allowed to build dossiers about all such individuals even if an event included hundreds or thousands of supporters and participants. Although this information touches on the "biographical core" of information of an individual, under the current RCMP policies, the only clear limits to the collection of "open-source" information in this context would be the RCMP's own decisions and resources. RCMP policy should provide clearly defined and reasonably constrained intelligence and law enforcement parameters with respect to the collection of such information.

[93] In light of the information provided about the current RCMP policy, the Commission reiterates its Recommendation 1 and has decided to modify it to further clarify its intent.

Commission's Final Recommendation #1	That, in addition to the *Privacy Act* and the RCMP's existing policy and training, the RCMP provide clear policy guidance setting out defined and reasonably constrained intelligence and law enforcement parameters with respect to the collection of personal information from open sources such as social media sites, the uses that can be made of it, and what steps should be taken to ensure its reliability.

[94] With respect to Interim Recommendations 2 and 3, the Commission acknowledges that the police have a legitimate need to develop meaningful intelligence about public order events like protests and demonstrations. The Commission has already found that it is reasonable to make use of "open-source" materials like social media to generate intelligence and plan appropriate responses. Nevertheless, the RCMP's position on the indiscriminate, long-term retention of personal information about lawful dissent collected from sources like social media is concerning. This raises at least the potential for a chilling effect regarding the public's participation in lawful dissent and in online discussions, particularly through social media.

[95] In the National Energy Board PII Report, the Commission noted its concerns on the retention of information obtained concerning individuals who were not suspected of any criminal activity but who had been identified as organizers or participants in an upcoming protest or demonstration or other public order event. Although in the National

Energy Board PII Report the Commission was not prepared to find that the checks conducted were unreasonable per se, these checks appear to have been of limited value, and the use and retention of personal information obtained about these individuals is problematic and potentially unreasonable where there is no criminal nexus.

[96] Based on the response provided, the RCMP Commissioner appears to have understood the Commission's recommendation as requiring it to destroy all personal information the moment that it is determined not to have a criminal nexus. As made clear in the analysis within the National Energy Board PII Report, this is not what the Commission is recommending. The Commission acknowledged in the National Energy Board PII Report that it could be helpful and appropriate to obtain and refer to personal information during public order events. The Commission also stated, in the recommendation it made in its National Energy Board PII Report, that RCMP policy should direct that personal information "be destroyed as soon as is practicable and in accordance with applicable law once it is determined that there is no criminal nexus or that the information is otherwise no longer necessary for the purposes for which it was collected." For clarity, the Commission will add this to Recommendation 3 in the present case.

[97] The Commission does not accept the RCMP Commissioner's argument that it "might not be lawful" to require the deletion of personal information obtained from social media sources. The Commissioner referred to the *Privacy Act* in support of this argument. Section 6(1) of the *Privacy Act* states that personal information must be retained for a minimum period of at least two years[18] where it has been used for an "administrative purpose." The *Privacy Act* states that an administrative purpose, "in relation to the use of personal information about an individual, means the use of that information in a decision making process that directly affects that individual." This is to allow the affected individual reasonable time to obtain access to that information.

[98] The Commission doubts that the use of personal information for generating intelligence products would qualify as an administrative purpose within the meaning of section 6(1) of the *Privacy Act*. In reality, the individual targeted by the intelligence assessment will almost certainly never know that any assessments were made involving their personal information, let alone be in a position to make a *Privacy Act* request about it. Furthermore, the overall purpose of the *Privacy Act* must be kept in mind in this discussion. This legislation was enacted to protect the privacy rights of individuals and to permit them to access and challenge the accuracy of the personal information that

[18] At least two years, per section 4(1)(*a*) of the *Privacy Regulations*. If an individual makes a request for their personal information, section 4(1)(*b*) also requires the institution to retain that information "until such time as the individual has had the opportunity to exercise all his rights under the Act." There is a further retention period of at least two years where personal information has been disclosed to an investigative body following a request for personal information under section 8(2)(e) of the *Privacy Act*. This section concerns disclosure of personal information to an investigative body for the purpose of enforcing any law of Canada or carrying out a lawful investigation. See Schedule II of the *Privacy Regulations* for the designated investigative bodies.

government agencies collect about them. Of course, the *Privacy Act* does not necessarily require the knowledge or consent of the individual whose personal information is collected,[19] nor does an individual always have a right of access in the case of law enforcement investigations.[20] Nevertheless, it appears contrary to the *Privacy Act*'s purpose to invoke this same legislation to justify the secret retention of information collected when the very individuals the legislation was meant to protect are left unaware.

[99] The intelligence practice of gathering personal information from social media posts is not analogous to obtaining information through investigations. It is true that, for example, in a situation where a person is a witness to an incident, their personal information such as their name, birthdate, and address may be included in an operational file. In many such cases, however, the person is voluntarily co-operating with the police and presumably understands that their information is being recorded for a particular purpose. Even where the police obtain personal information before a witness decides to co-operate, or where the witness declines to co-operate, the information has a direct connection to the occurrence file and it is reasonable that it would be retained for the relevant period, including to fulfil eventual disclosure obligations in the judicial process. Personal information about an individual may also be provided to police by a third party during an investigation and, if pertinent, documented in an operational file. In all these cases, while the individuals in question may not be suspected of wrongdoing, there is a clear and direct connection with an identifiable purpose for collecting and retaining the information.

[100] In the case of open-source intelligence gathering, however, the police may profile individuals for intelligence purposes without so much as a suspicion that the persons targeted intend to engage in criminal activity, or even that they have relevant information about a potential offence. They may only come to the police's attention because they have voluntarily posted about their intention to engage in lawful dissent; that is, by exercising their rights to freedom of expression and freedom of association, individuals may be caught in a wide net. The collection of this type of information involves the obvious risk that individuals will be targeted based on their political convictions or beliefs in certain causes, while not having a clear connection with an identifiable, immediate purpose (unlike an investigation).

[101] Although Canadians have a significantly reduced expectation of privacy in social media, they have not abandoned their privacy interests altogether. As such, where the RCMP obtains personal information in relation to public order events such as protests and demonstrations that has no nexus to criminal activity or threats to national security, this information should not be retained longer than is strictly necessary for the intelligence purpose for which it was collected. The Commission acknowledges that such a purpose can include an indication of whether a given event could be disruptive or pose a risk of property damage or personal harm.

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[19] See, for example, sections 5(1), 5(2), and 5(3) of the *Privacy Act*.

[20] See section 22 of the *Privacy Act*.

[102] The response provided to the Commission's recommendation makes it clear that the RCMP has made a policy choice to indiscriminately include and archive personal information about individuals engaged in lawful dissent, including by retaining copies of the social media posts in question as supporting documents. The RCMP is deciding on its own that all such information forms "business value" records. The Commission finds that the RCMP has cast an unreasonably wide net, and that clearer limits must be placed on the information being retained.

[103] For these reasons, the Commission has decided to reiterate Recommendation 2 and supplement it by adding a recommendation that the RCMP treat personal information obtained from open-source intelligence as a separate category of information. Such a category would include "supporting documents" like screen shots of social media sites. Where the personal information in question has no criminal nexus or national security dimension, it should be kept for no longer than necessary to provide intelligence for the event or purpose for which it was collected. The Commission suggests a general six-month retention period for such personal information. This period could be extended if the original intelligence purpose continued, but the RCMP should not treat such information like another "business value" record. Of course, where the personal information has a criminal or national security nexus, it might be appropriate to treat this information as a "business value" record to be included in the operational file.

[104] The Commission further adds the recommendation that, wherever possible, the RCMP should anonymize any information in an intelligence assessment or other product generated from personal information from open sources that the RCMP reasonably believes is necessary to understand a group or movement but which has no connection to criminal activity (or otherwise to the RCMP's national security mandate). Anonymized information could be included in an operational file where necessary to provide context or to support an assessment.

[105] In addition, the Commission will send a copy of its Interim PII Report, the Commissioner's Response, and this Final Report to the Privacy Commissioner so that he may take whatever actions he deems appropriate.

Commission's Final Recommendation #2	That RCMP policy treat personal information and supporting documents obtained from social media sources containing personal information (such as screen captures of social media sites) as a separate category of records. This category of records should be kept for no longer than strictly necessary to provide intelligence for the event or purpose for which it was collected where it is established that there is no criminal nexus or national security dimension. Additionally, where an intelligence assessment or other product generated from open sources is to be retained,

	RCMP policy should require the anonymization or destruction of any personal information within that assessment where there is no connection to criminal activity or to the RCMP's national security mandate (such as where the personal information relates to lawful dissent).
Commission's Final Recommendation #3	That the RCMP develop policies providing that personal information obtained with respect to public order events like protests and demonstrations should be destroyed as soon as practicable and in accordance with applicable law once it is determined that there is no criminal nexus or that the information is otherwise no longer necessary for the purposes for which it was collected.

Freedom of Expression, Association and Peaceful Assembly

[106] Several incidents or practices interfered to varying degrees with the protesters' rights to freedom of expression, association, and peaceful assembly. An apparent misinterpretation of an injunction, dated November 22, 2013, led to several arrests of protesters without RCMP members having reasonable grounds, from an objective point of view, to believe they had committed an offence. The Commission recommended that the RCMP provide RCMP members engaged in the policing of protests with detailed, accurate interpretations of the conditions of any injunction they are expected to enforce, obtaining legal advice as necessary.

[107] The Commission emphasized that police may only establish "buffer zones" in accordance with the parameters detailed by the courts. Anything outside of these bounds is impermissible. The Commission further emphasized that, particularly when policing a public protest, RCMP members must be cognizant of the limits of their powers, specifically in relation to curtailing protesters' ability to assemble and express themselves in a lawful manner.

[108] As such, decisions to restrict access to public roadways or other public sites must be made only with specific, objectively reasonable rationales for doing so, and should be done in a way that interferes with the rights of persons in as minimal a fashion as possible, for example, a buffer zone that is as limited in size as possible and an exclusion that is as short in duration as possible.

Commission's Interim Finding #11	On the balance of probabilities, the Commission finds that RCMP members made several arrests of protesters pursuant to the November 22, 2013, injunction without having reasonable grounds, from an objective point of view, to believe they had committed an offence. This was apparently based on a misinterpretation of the conditions of the injunction.
Commission's Interim Finding #12	Given the lack of particularized information in the allegations, there was insufficient information available to the Commission to conclude in general terms that road closures and the rerouting of traffic during the anti-shale gas protests was unreasonable. Likewise, there was insufficient information to support the allegation that media were unreasonably denied access to protest sites.
Commission's Interim Finding #13	In its report regarding Protester F's complaint, the Commission found, on the balance of probabilities, that the decision to restrict the complainant's access to the protest site to prevent crime and ensure public safety was not unreasonable in those circumstances.
Commission's Interim Recommendation #5	That the RCMP provide members who are engaged in the policing of public protests/public order policing with detailed, accurate interpretations of the conditions of any injunction or unique legal provisions that they are expected to enforce, obtaining legal advice as necessary.
Commission's Interim Recommendation #6	That decisions to restrict access to public roadways or other public sites be made only with specific, objectively reasonable rationales for doing so, and if legally permissible, be done in a way that interferes with the rights of persons in as minimal a fashion as possible, for example, a buffer zone that is as limited in size as possible and an exclusion that is as short in duration as possible.
Commission's Interim Recommendation #7	That, particularly when policing a public protest, members be cognizant of the limits of their powers, specifically in relation to curtailing protesters' ability to assemble and express themselves in a lawful manner.

RCMP COMMISSIONER'S RESPONSE

[109] The RCMP Commissioner disagreed with Interim Finding 11. She stated that there was no evidence to support that arrests had been made based on a misinterpretation of the November 22, 2013, injunction. In particular, she indicated that

the videos referred to in the Commission's Interim PII Report did not depict illegal arrests or clearly demonstrate a lack of understanding of the injunction. The RCMP Commissioner added that notes from RCMP members explained the grounds for the two arrests described by the Commission in its Interim PII Report, although she noted that there was a "disconnect" between those notes and what was submitted to the Crown prosecutor. The RCMP Commissioner further stated that the Crown prosecutor's decision not to approve charges was immaterial to the reasons for arrest.

[110] Although she did not support Interim Finding 11, the RCMP Commissioner nonetheless supported the related recommendation, Interim Recommendation 5. The Commissioner indicated that the Incident Commander or Critical Incident Commander should be responsible for disseminating to RCMP members engaged in policing public protests the accurate information concerning the enforcement of any injunctions. To that end, she stated that she will direct that national *Operational Manual* 55.2., "Aboriginal Demonstrations or Protests," as well as any other RCMP policy requiring that members enforce injunctions, such as 37.7., "Labour Disputes," be amended to provide that the Incident Commander and/or Critical Incident Commander ensure that members under their command are briefed on the conditions and interpretations of any injunction that they are expected to enforce and are provided with all the nuances and unique background information regarding the specific protest or public order event.

[111] The RCMP Commissioner additionally informed the Commission that the RCMP is currently seeking to provide national oversight regarding RCMP employees engaged in public protest/public order activities in general by developing a policy on public assemblies, which will provide for all protests, not only protests involving Indigenous matters specifically. Consequently, she will further direct that a section similar to the one mentioned above be included in the new policy on public assemblies.

[112] The RCMP Commissioner agreed partially with Interim Finding 12. She stated that, in her view, there was enough information in the relevant materials to support a finding on the balance of probabilities that the instances of traffic rerouting or road closures were brief, necessary, and responsive to the circumstances, and therefore, were reasonable. She also stated that the evidence suggested that the media had "unfettered access to the protest sites."

[113] The RCMP Commissioner agreed with Interim Finding 13.

[114] With respect to Interim Recommendations 6 and 7, the RCMP Commissioner stated that she supports them, but that she would not direct that any action be taken to implement them, as she is satisfied that RCMP operations are already in line with the terms of the recommendations.

COMMISSION'S ANALYSIS OF THE RCMP'S RESPONSE

[115] As a result of the statements made in the RCMP Commissioner's response, the Commission undertook another review of the videos it referred to in this section of the report (regarding the arrests pursuant to the November 22, 2013, injunction).

[116] Video 6315 shows a line of RCMP members getting protesters who were standing on the side of the roadway to move back. This was apparently shortly after other protesters had been arrested; these arrests were not shown on the recording. The protesters repeatedly ask the RCMP member in charge why they have to move, given that they are farther than 20 metres from the vehicles. No vehicles or equipment can be seen on the video. The RCMP member does not directly answer these questions but repeatedly tells them that their protests must be lawful and peaceful. At one point the member says that he is not a lawyer and he is not going to debate the issue. He also tells the protesters that, as the vehicles get closer, they will have to move farther down the road. The RCMP member is calm and attempts to de-escalate the situation; the protesters comply as the police line moves forward.

[117] In video 7451, a protester asks an RCMP member, "How do I get to 20 metres on the side of them [the Vibroseis trucks] if you don't let us go by? We have got to fly in or what?" The conversation continues and the RCMP member states that, had the protesters stayed where they were, they would have been within 20 metres of the vehicles when they started moving, so the police stopped the protesters from violating the injunction.

[118] While these videos (6315 and 7451) do tend to indicate that protesters were moved when they were not within the prohibited distance of the vehicles, they may also suggest that police were moving protesters away in anticipation that they would violate the injunction as vehicles moved forward.

[119] In video 7364, one RCMP member tells another that a protester wants to be arrested. The RCMP member calmly tells the protester that he must move because he is within 250 metres of the vehicles and that he is in violation of the injunction. The protester says that he is not going to move, and he is arrested. In its Interim PII Report, the Commission had stated that this protester was arrested for standing within 20 metres of the vehicles. Upon review of the video, it is clear that this was not accurate and that the protester was arrested for being within 250 metres of the vehicles.

[120] In video 6397, protesters are questioning an RCMP member about the terms of the injunction. The member states, [Translation] "As far as I know, it is 20 metres on the side of the vehicles, 250 [metres] in front." He further says that he is not going to weigh in on the underlying issues behind the protest and that he knows the protesters he is speaking with are good guys; the RCMP member reiterates that all he can impart are the details of the injunction.

[121] In its Interim PII Report, the Commission described two arrests conducted pursuant to the November 22, 2013, injunction, which were considered to be representative of the other arrests made. In these cases, the Crown prosecutor had indicated that the arrests were not legal. He described the arrest of Protester Z as "unlawful" and said that this arrest had the "same problems" as the arrest of Protester Y. Protester Z was arrested for being less than 20 metres from equipment, but that act was not contrary to the terms of the injunction. The Prosecutor's Information Sheet, prepared by an RCMP member and presented to the Crown, misstated that people could not be within 250 metres of the front or back of the equipment (the injunction actually referred to the vehicles).

[122] Likewise with regard to the arrest of Protester Y, the Prosecutor's Information Sheet stated that Protester Y had been within 20 metres of "employees or equipment," neither of which is necessarily in violation of the injunction. The document stated that the protester was "observed by ????????? [*sic*]." Crown counsel analyzed the situation and concluded that none of the injunction's conditions had been breached. He also noted that, to secure a conviction, he would have to prove that the protesters had knowledge of the order, which means knowledge of its specific contents. There was also insufficient evidence that the protesters were committing a nuisance, as they were only "at the tree line on the side of the highway gesturing towards the police." Crown counsel stated that the reason for the arrest of Protester Y could not stand. File information indicates that a total of five individuals were arrested at that time.

[123] In its Interim PII Report, the Commission noted that the standards for pursuing a prosecution and obtaining a conviction are different than for a lawful arrest. Nonetheless, the Crown's opinions about the arrests and the Prosecutor's Information Sheets were compelling information suggesting that several "unlawful" arrests had been made, apparently based on a misinterpretation of the injunction.

[124] However, in its response, the RCMP Commissioner drew to the Commission's attention the notes of Constable Marco Johnson and Constable Frédéric Langlois. Constable Langlois' notes do indeed state that the four or five individuals had been observed [Translation] "within 250 metres of the gas trucks." Constable Johnson's notes appear to state with regard to Protester Y, "Advised of breach, [Protester Y] didn't think he was less than 20 metres or 250. Advised less than 250 [illegible word(s)]."

[125] It appears that the RCMP member who completed the Prosecutor's Information Sheets (who did not conduct the arrests himself) may have erred in describing the terms of the injunction and the grounds for arrest. It is unclear whether Crown counsel was in possession of the arresting members' notes, or whether the notes factored into his analysis, but the fact that he concluded that the arrests were unlawful based on the Prosecutor's Information Sheets raises doubts as to whether the notes were provided to him. It is also unclear whether the RCMP attempted to clarify this issue with Crown counsel after his decision.

[126] Due to the voluminous documentary record in this case, the Commission had not initially identified the notes of the arresting RCMP members. Under the circumstances, the Commission had assumed that proper procedures were followed and that all relevant documents and information had been provided to the Crown prosecutor, such that his opinion that the arrests were unlawful took into account all the pertinent information. In light of the information now provided to the Commission about the notes, the Commission concludes that it is possible that the arrests themselves were reasonable, but errors by the RCMP member in submissions to the Crown contributed to charges not being approved and the arrests being deemed unlawful.

[127] What remains clear from reviewing the videos and documentary evidence is that there was confusion among some protesters and some RCMP members as to the terms of the November 22, 2013, injunction; specifically, how close people were allowed to stand in relation to the vehicles and equipment. Although protesters, like all citizens, must inform themselves about the laws as they relate to their actions, the police enforcing the laws must also be fully informed about them and communicate them to the public as clearly as possible. This is especially pertinent when it comes to injunctions and the offence of disobeying a court order, which requires proof of intent to violate the order.

[128] Therefore, the Commission has decided to modify its Finding 11 to reflect the possibility that the arrests may not have been illegal, but that its concerns remain as to the confusion about, and possible misunderstanding of, the terms of the injunction.

Commission's Final Finding #11	There was confusion among some protesters and some RCMP members as to the terms of the November 22, 2013, injunction. There is insufficient information to conclude on the balance of probabilities that the arrests made pursuant to this injunction were unlawful or unreasonable. Although protesters, like all citizens, must inform themselves about the laws as they relate to their actions, the police enforcing the laws must also be fully informed about them and communicate them to the public as clearly as possible.

[129] With respect to Interim Finding 12, the Commission maintains that it cannot conclude that the road closures and rerouting of traffic were unreasonable. The allegations were too general for the Commission to make specific findings to that end, with the exception of the finding and extensive legal analysis made regarding Protester F's specific circumstances (Interim Finding 13).

[130] Therefore, the Commission reiterates Interim Finding 12. The Commission notes that, although the RCMP Commissioner presented her own interpretation of the evidence supporting her conclusion that the road closures and traffic rerouting were reasonable, she did not present any additional facts or evidence in support of this conclusion. The Commission—whose mandate as the RCMP's independent oversight

body was to analyze the evidence and come to conclusions —did not consider that the evidence warranted a conclusion that the road closures and traffic rerouting were reasonable. On the contrary, the Commission had concerns about the potentially overbroad use of roadblocks and traffic rerouting, and their potential impact on the rights of the protesters. For these reasons, while it was not in a position to conclude on the evidence presented that the RCMP's actions were unreasonable in this case, the Commission made interim recommendations 6 and 7 to ensure that the risks of infringing upon protesters' rights was minimized in the future.

[131] In this regard, the Commission has concerns about the RCMP's response to interim recommendations 6 and 7. While the response officially supports the recommendations, the RCMP Commissioner also indicates that no action will be taken to implement them, as she believes the RCMP's current practices are already in line with the recommendations. However, the RCMP Commissioner did not present any information indicating that RCMP practices or procedures have changed since the events in Kent County. As such, the concerns the Commission had about these events remain, and the Commission can only reiterate the recommendations.

Sensitivity to Indigenous Culture, Ceremonies, and Sacred Items

[132] The Commission found that, with some notable exceptions, the RCMP members assigned to the protest policing operation did not have sufficient training in Indigenous cultural matters. The Commission recommended that the RCMP require all members to review the RCMP's *Native Spirituality Guide*, and that all members involved in Indigenous policing, including members of public order units involved in policing protests by Indigenous persons, be required to attend a training program that is specifically aimed at understanding Indigenous cultural issues.

[133] Video evidence showed that RCMP members working at the protest sites generally appeared to be aware of the need to respect sacred ceremonies and items. In spite of this, conflicts occurred. Indigenous protesters sometimes held ceremonies in the middle of the roads, effectively blocking the SWN trucks, and insisted they not be interrupted until the ceremonies were finished. Sometimes they went on for hours and eventually the participants were forcibly removed. The available information suggests that RCMP members did not, either deliberately or unwittingly, unnecessarily interfere with Indigenous ceremonies or sacred items.

[134] However, there did not seem to be a formal procedure in place detailing how and when sacred objects should be seized and how they should be handled. Without question, the handling of sacred items is a complex issue given the competing rights and interests at stake. The Commission stated that reflection on the part of the RCMP was required with a view to adopting a policy providing practical guidance to RCMP members dealing with the seizure and handling of sacred items. The Commission noted that this policy should enable RCMP members to make prompt decisions regarding the seizure and handling of sacred items, while refraining from unnecessarily curtailing the arrested person's Charter rights. The Commission concluded that the RCMP should develop a

procedure for the handling of sacred items following an arrest, especially in a protest environment. It may be that in some cases, security concerns will be such that the item will be forcibly removed from the protester. In other cases, more flexible approaches may be acceptable.

Commission's Interim Finding #14	At the time the anti-shale gas protests policing operation began, with some notable exceptions, the members assigned to the operation did not have sufficient training in Indigenous cultural matters.
Commission's Interim Finding #15	The available information suggests that RCMP members did not, either deliberately or unwittingly, unnecessarily interfere with Indigenous ceremonies or sacred items.
Commission's Interim Recommendation #8	That the RCMP require all members to review the RCMP's *Native Spirituality Guide*, and that all members involved in Indigenous policing, including members of tactical troop/public order units involved in policing protests by Indigenous persons, be required to attend a training program that is specifically aimed at understanding Indigenous cultural issues.
Commission's Interim Recommendation #9	That the RCMP initiate collaboration with various Indigenous stakeholders with a view to developing a context-specific, practical procedure providing guidance to members with regard to the handling of sacred items in various contexts.

RCMP COMMISSIONER'S RESPONSE

[135] The RCMP Commissioner agreed with Interim Findings 14 and 15, and supported Interim Recommendations 8 and 9.

[136] With regard to Recommendation 8, the RCMP Commissioner informed the Commission that the RCMP has deployed ongoing efforts on training current and new RCMP members to keep pace with the diversity, understanding, and compassion required to execute policing duties in a bias-free manner and to provide members with a solid knowledge of cultural elements and history of Indigenous communities. The RCMP Commissioner explained that the RCMP offers 29 learning programs that include Indigenous culture as part of its curriculum; 24 of those programs or courses were created for and are presented directly to RCMP members with the intent of increasing Indigenous cultural knowledge and 26 of those courses contain material on Indigenous culture with a focus on regional traditions or geographic differences.

[137] The RCMP Commissioner also informed the Commission that the RCMP is presently developing a new *Indigenous Awareness Guide* that will highlight the distinct and unique cultures, languages, and political and spiritual traditions of Canada's First Nations, Métis, and Inuit peoples. This guide is intended to educate and increase the RCMP employees' cultural awareness and understanding of matters related to the delivery of Indigenous policing services and interactions with Indigenous peoples.

[138] The RCMP Commissioner indicated that she was satisfied that the new guide will expand on the information provided to members with regard to Indigenous cultural issues. Therefore, to implement the first part of the Commission's recommendation, she will direct that, once the new *Indigenous Awareness Guide* is completed, a national communique will be sent to all employees requesting that they review both the current *Native Spirituality Guide* and the newly developed *Indigenous Awareness Guide*.

[139] With regard to the recommendation that all RCMP members involved in Indigenous policing, including members of tactical troops/public order units involved in policing protests by Indigenous persons, be required to attend a training program specifically aimed at understanding Indigenous cultural issues, the RCMP Commissioner stated that she will direct that the Commanding Officer of each division identify training specifically aimed at understanding the cultural issues of the Indigenous communities found in their division, and ensure that members take that training. The results will be recorded on the members' training record.

[140] In relation to Recommendation 9, the RCMP Commissioner stated that she understands and acknowledges the concern that, at times, due to what appeared to have been a lack of appropriate communication or guidance, the handling of sacred objects during certain specific arrests could reasonably have led one to perceive an interference with those sacred objects. She also agreed that there was no formal RCMP procedure in place at the time detailing how and when, in practice, sacred objects should be seized and how they should be handled.

[141] The RCMP Commissioner stated that, considering the country's demographics and the varied traditions, beliefs, and practices of its Indigenous communities, she determined that the implementation of the Commission's recommendation should be done at the divisional level. She agreed to direct the commanding officers of each division to ensure that collaboration is initiated with their local Indigenous stakeholders to develop appropriate and culturally sensitive procedures, as referenced in the Commission's recommendation.

Alleged Bias Against Indigenous Protesters

[142] A number of protesters claimed that the RCMP treated the Indigenous protesters more harshly than non-Indigenous protesters. In particular, they perceived that more Indigenous protesters were arrested and charged than were non-Indigenous protesters.

[143] Several factors may have contributed to the allegations of bias. On the available evidence, the Commission concluded that it was satisfied that the RCMP members did not differentiate between Indigenous and non-Indigenous protesters when making arrests, nor did they demonstrate bias against Indigenous protesters generally.

Commission's Interim Finding #16	On the available evidence, the Commission is satisfied that RCMP members did not differentiate between Indigenous and non-Indigenous protesters when making arrests, nor did they demonstrate bias against Indigenous protesters generally.

RCMP COMMISSIONER'S RESPONSE

[144] The RCMP Commissioner agreed with Interim Finding 16.

Tactical Operation of October 17, 2013

[145] The Commission determined that the RCMP had the legal authority to conduct the tactical operation of October 17, 2013, and that it was a reasonable exercise of their discretion to do so in all the circumstances. However, the Commission found that it would have been prudent to allow more time for negotiations and a review of the injunction in court before proceeding with the operation.

[146] With regard to the lead-up to the operation, an "H" Division Tactical Troop Commander said that he and the other tactical troop leaders were working on the final plans commencing on October 15, 2013. He explained that the factors supporting the need to take action were as follows:

- Intimidation, threats, and violence against security company personnel inside the compound;
- The threat of firearms being present;
- The fact that SWN equipment had been damaged at a previous worksite by Molotov cocktails;
- The fact that SWN equipment had been blockaded in the compound for almost three weeks; there were no signs of it ending and indicators suggested that it was not going to get resolved.

[147] The intelligence available to the Incident Commander and the Criminal Operations Officer clearly presented concerns that prompted serious consideration of the implementation of the Tactical Operational Plan. The following factors were significant:

- The apparent takeover of the protest site by the Warriors group;
- The presence of outlaw biker gang members;
- Threats to ISL employees and the use of a knife;

- The menacing behaviour of the "young Warriors";
- Information that the Warriors would not leave until SWN left the province;
- Numerous unconfirmed reports that protesters had access to firearms.

[148] There was sufficient reliable information available to justify the decision to implement the Tactical Operational Plan at some point in the near future.

[149] Senior RCMP officers were faced with a difficult decision. Tension had been escalating. Numerous threats had been made, both to ISL employees and RCMP members. A blockade had been imposed. Rumours regarding the presence of guns and explosives had been circulating. Ensuring the safety of all parties had to be the RCMP's primary objective. Although there had been no confirmed evidence of firearms at the campsite, there was reportedly a significant amount of information to that effect.

[150] Intelligence had indicated that tensions were rising within the camp. The confrontational Warriors had evidently taken over leadership of the campsite. The presence of outlaw biker gang members understandably exacerbated the RCMP's concerns, as did word that protesters were seeking assistance from all possible sources. The situation took a significant turn for the worse when ISL personnel were prevented from leaving their facility. This doubtless represented an escalation in the protesters' tactics. Allowing the situation to potentially deteriorate further was not a desirable outcome.

[151] It is true that the immediate crisis was alleviated, to an extent, through negotiation between the RCMP and protesters, leading to the release of ISL employees, who were replaced in the compound by RCMP members. The situation was, however, still unstable and the issues giving rise to significant, legitimate concerns remained. Given the increasing tensions, not proceeding with the operation could potentially have led to a more explosive and dangerous confrontation at a later date. Given the terms of the injunction, the RCMP had the legal authority to conduct the operation, and it was a reasonable exercise of their discretion to do so in all the circumstances.

[152] However, the Commission found that it was also true that it would have been prudent to allow more time for negotiations and a review of the injunction in court before proceeding with the operation. The decision to go ahead with the Tactical Operational Plan had significant consequences, including numerous arrests, use of force incidents, and a loss of trust in the RCMP on the part of local communities. It was apparent that the mobilization of troops from "C" Division (Quebec) and "H" Division (Nova Scotia) (who required, and had already been given, 48 hours' notice to mobilize) was a key consideration in the timing of the operation, but this should not have been a deciding factor. The Commission concluded that allowing more time for negotiation, particularly after the Crisis Negotiation Team ("CNT")'s negotiations had already borne fruit, would have been reasonable and desirable in the circumstances.

Commission's Interim Finding #19	Given the terms of the injunction, the RCMP had the legal authority to conduct the operation and, on the balance of probabilities, it was a reasonable exercise of their discretion to do so in all the circumstances.
Commission's Interim Finding #20	It would have been prudent to allow more time for negotiations and a review of the injunction in court before proceeding with the operation. Allowing more time for negotiation, particularly after the Crisis Negotiation Team's negotiations had already borne fruit, would have been reasonable and desirable in the circumstances.
Commission's Interim Finding #31	The evidence before the Commission does not support the allegation that, on October 17, 2013, RCMP members were "ill-equipped so that some might suffer physical harm which would result in the vilification of protesters."
Commission's Interim Finding #33	In the circumstances, and in keeping with the measured approach, it was not unreasonable for the tactical troops to initially be directed to wear Level 2 gear.
Commission's Interim Finding #36	The decision not to inform the schools about the imminent operation was reasonable, although it would have been prudent for the Tactical Operational Plan to have been modified to ensure that children were able to get to school prior to the operation commencing.
Commission's Interim Finding #37	There is no evidence to support the claim that agents provocateurs were used by the RCMP on October 17, 2013.
Commission's Interim Finding #38	The Commission found no evidence that non-RCMP members were used during the operation on October 17, 2013.

RCMP COMMISSIONER'S RESPONSE

[153] The RCMP Commissioner agreed with Interim Finding 19.

[154] The RCMP Commissioner disagreed with Interim Finding 20. She stated that several reasons were provided by the Incident Commander for refusing to delay the tactical operation in favour of further negotiation, as requested by RCMP negotiators. She further explained that there was nothing in the relevant materials about how much additional time the RCMP negotiators required, which she believed would have been a key consideration in the decision. The RCMP Commissioner noted that the Commission's investigators did not pose this question during their interviews with RCMP members.

[155] Overall, the RCMP Commissioner found that the decision to proceed with the tactical operation as planned on October 17, 2013, was prudent and was a reasonable consequence of the Incident Commander's risk analysis based on the information known to him at the relevant time.

[156] The RCMP Commissioner agreed with Interim Findings 31 and 33.

[157] The RCMP Commissioner agreed only in part with Interim Finding 36. She stated that there was insufficient evidence to conclude that the Operational Plan could have been modified in such a way that students could be allowed to attend school without preventing word of the operation from reaching the protesters, and she noted that the Commission's investigators did not ask the relevant RCMP member about modifying the plan. The RCMP Commissioner stated that public and police safety (which required secrecy about the timing of the operation) took precedence over any inconvenience to the school children, teachers, and staff.

[158] The RCMP Commissioner agreed with Interim Findings 37 and 38.

Commission's Analysis of the RCMP's Response

[159] With respect to Interim Finding 20, the Commission notes that, in its Interim PII Report, it had acknowledged, in detail, the factors supporting the imminent implementation of the tactical operation. The Commission found clearly that the operation was legally justifiable and that it was reasonable in the circumstances for the RCMP to conduct the operation.

[160] Nevertheless, the Commission remains of the view that it would have been prudent to allow more time for negotiations and the upcoming review of the injunction in court before proceeding with the operation.

[161] The considerations raised by the RCMP Commissioner about the lack of knowledge of how much more time the RCMP negotiators requested are inconsequential to the Commission's finding. The Commission found that allowing for more time would have been advisable. How much time was required was something the Incident Commander would have had to discuss with the negotiators, had he decided to allow for this possibility. As it was, the RCMP negotiators asked for more time to negotiate, and none was given.

[162] The Commission continues to acknowledge that senior RCMP officers were faced with a difficult decision. Tensions had been escalating and, even after the negotiation breakthrough, significant issues remained outstanding. Some important progress had been made, however, and further efforts could have been undertaken to that end, as requested by the RCMP negotiators. The decision to go ahead with the tactical operation had significant consequences. Allowing more time for negotiation,

particularly after the CNT's negotiations had already borne fruit, would have been a reasonable and desirable course of action in the circumstances.

[163] Accordingly, the Commission reiterates Interim Finding 20.

[164] With respect to Interim Finding 36 about the impact on children who were not able to get to school before the operation started, the Commission notes that RCMP plans had initially called for the Superintendent of Schools to be notified before 6 a.m. on the day of the tactical operation; this would include the high school and possibly the middle school and elementary school "if applicable." A contact person had been identified. An official school closure announcement would be made shortly thereafter, and then a telephone advisory would go out to residents in the immediate area.

[165] This plan was not implemented and the schools received no prior notice of the operation. In its Interim PII Report, the Commission found that the decision not to inform the schools was reasonable. It was logical to conclude that providing advance notice to the schools may have the effect of telegraphing the RCMP's plans and effectively "tipping off" protesters that an operation was imminent. The concern for children being exposed to the tactical operation was also valid.

[166] However, the Commission remains of the view that it would have been prudent for the Tactical Operational Plan to have been modified to ensure that children were able to get to school prior to the operation commencing.

[167] The decision to shut down certain parts of the surrounding roadways did lead to the unfortunate situation of some children being stuck on buses for relatively long periods of time. The RCMP Commissioner referred to "the inconvenience to children and school staff" in this situation, but the Superintendent of Schools stated the following to the Commission's investigator, "We were told that kids were traumatized, that it was a very frightening situation." She recounted, "I called a bus driver just to see how they were doing. At that point he was talking to me [and] a young child was throwing up because he was scared." There were kindergarten students on the buses, "They're five years old and they're seeing people running around and helicopters buzzing around and police cars with sirens flashing and ambulances going by." The Superintendent explained that the high school went into full lockdown and the other schools went into a modified lockdown (the doors were locked but the children were not in hiding).

[168] For these reasons, the Commission continues to be of the view that more should have been done to avoid the consequences suffered by the school children. The RCMP initially had an elaborate plan for notifying and closing the schools, which appropriately recognized the importance of doing so. When that plan was abandoned, the lack of a modified plan seeking to ensure the well-being of students was apparent.

[169] Therefore, the Commission reiterates Finding 36.

Crisis Negotiation Team

[170] Throughout the blockade, the RCMP's CNT negotiated with the protesters. They made reasonable and even outstanding efforts to implement a measured approach in communicating and negotiating with the protesters in an attempt to ensure peaceful and lawful protests, and to resolve any conflicts up to the events of October 17, 2013.

[171] The CNT had successfully resolved a key issue and, the night before the tactical operation occurred, negotiators presented tobacco to one of the main Indigenous spokespeople, which was variously seen as a show of respect or a peace offering. When the Indigenous protesters at the campsite woke the next morning to find tactical troops about to "invade" their camp, it was seen by them as a serious act of betrayal.

[172] For various reasons, the CNT had been "walled off" from information about operational planning. Although the Commission found that there were reasonable rationales for maintaining separation between negotiators and operational planners, the Commission recommended that the RCMP give consideration to more fully informing CNT members of the overall strategy being pursued, to avoid regrettable misunderstandings that can damage relationships between the RCMP and members of the public. The Commission also recommended that the RCMP consider drafting a policy that is specifically tailored to the CNT's role in public order policing operations.

Commission's Interim Finding #3	Throughout the protests up to October 17, 2013, the RCMP command team and the Crisis Negotiation Team made every effort to bring stakeholders together to achieve a resolution to the conflict. These efforts were frustrated, in part, by the intractable nature of the dispute and by the absence of clear leadership on the part of the protesters.
Commission's Interim Finding #18	The decision to isolate members of the Crisis Negotiation Team from information about operational planning, however well-intentioned, indirectly led to the unfortunate and regrettable situation of the tactical operation occurring shortly after RCMP negotiators offered tobacco to campsite protest leaders.
Commission's Interim Recommendation #10	Although there are reasonable rationales for maintaining separation between negotiators and operational planners, the RCMP should give consideration to more fully informing Crisis Negotiation Team members of the overall strategy being pursued, to avoid regrettable misunderstandings, which can damage relationships between the RCMP and members of the public.

Commission's Interim Recommendation #11	The RCMP should consider drafting a policy that is specifically tailored to the Crisis Negotiation Team's role in the circumstances of public order policing.

RCMP COMMISSIONER'S RESPONSE

[173] The RCMP Commissioner agreed with Interim Findings 3 and 18. The RCMP Commissioner also supported Interim Recommendations 10 and 11.

[174] Specifically, in supporting Recommendation 10, the RCMP Commissioner acknowledged the consequences that the decision to isolate members of the CNT from information about the Operational Plan had in this case. She informed the Commission that consideration has been given to the present recommendation, and it was found that the *Tactical Operations Manual*, Part 3, "Crisis Negotiations Team," should be modified to provide that the CNT Team Leader be made privy to the overall operational strategy being pursued by the command team. This modification should also specify that it would be the responsibility of the CNT Team Leader to share with the other members of the team only the information necessary to fulfil the CNT's role. She indicated that she will direct that this be done.

[175] With regard to Recommendation 11, the RCMP Commissioner stated that this recommendation has been considered and it was determined that *Tactical Operations Manual* chapter 3.1., "Crisis Negotiation Responsibilities," could better reflect the different roles played by the CNT. She indicated that she will direct that this be done.

Arrests

[176] With regard to the arrests that occurred during the spring and summer of 2013, the available information suggested that RCMP members generally attempted to implement a measured approach to policing the protests, and often showed considerable forbearance in permitting the protests to continue for a lengthy amount of time, despite the fact that protesters were sometimes acting in violation of the law. The events of October 17, 2013, were far more dynamic and confrontational in nature and thus involved more "hard" arrests. Having examined the evidence, the Commission concluded that this was generally justified given the assaultive, resistive, and inciting conduct of some protesters.

[177] The Commission reviewed an extensive amount of RCMP records, video recordings, and witness statements documenting numerous arrests that took place over the course of the months-long protests. In general terms, and with certain exceptions, the Commission found that RCMP members had reasonable grounds to believe that persons had committed or were committing various offences including mischief and/or obstruction; that it was, therefore, reasonable to arrest those persons; and that the force used in conducting the arrests was necessary and proportional in the circumstances.

The Commission also found that detention practices were generally planned and implemented in a reasonable manner.

[178] With regard to the arrests of persons at the campsite, the Commission found that it was reasonable to conclude that the persons maintaining the blockade were committing mischief, in that they were interfering with SWN's ability to use its equipment. Others at the campsite, if not necessarily active participants in the blockade, were parties to the offence of mischief. Importantly, the injunction order specifically prohibited persons from, among other things, impeding, hindering, or attempting to impede SWN's work at the compound, or obstructing access to equipment; and authorized police to arrest persons that they believed on reasonable grounds were violating the terms of the injunction. Thus, the Commission concluded that the arrests of persons at the campsite were reasonable in the circumstances.

[179] The Commission reviewed the arrest of the Chief of the Elsipogtog First Nation and council members; they were placed in police vehicles and then released. The Commission determined that RCMP members accommodated the Chief and council members by allowing them to enter the campsite after it had been cleared. It was reasonable for RCMP members to arrest the Chief and council members for the offence of mischief when they subsequently sat down in front of the SWN compound and refused to leave.

[180] The Commission also found that the plastic tie wrap handcuffs that were placed on some protesters were likely tighter than was necessary to restrain them. The Commission recommended that, in situations such as public order policing when RCMP members may be required to arrest persons using plastic tie wrap handcuffs, the restraints only be applied with as much force as is necessary to safely restrain the arrested person.

Commission's Interim Finding #1	Overall, RCMP members handled post-arrest and detention procedures in a reasonable manner and in compliance with policy.
Commission's Interim Finding #21	In general terms, and with certain exceptions (arrests conducted pursuant to the November 22, 2013, injunction), the Commission finds that, during the anti-shale gas protests, RCMP members had reasonable grounds to arrest persons for various offences including mischief and/or obstruction, and that, in general terms, the force used in conducting arrests was necessary and proportional in the circumstances.
Commission's Interim Finding #22	The handcuffs that were initially placed on Protester C and Protester D were likely tighter than was necessary to restrain them.

Commission's Interim Finding #23	It is reasonable to conclude that the persons maintaining the blockade were committing mischief, in that they were interfering with SWN's ability to use its equipment, and others at the campsite, if not necessarily active participants in the blockade, were parties to the offence of mischief. In addition, the injunction order specifically prohibited persons from impeding SWN's work at the compound, and authorized police to arrest persons violating the terms of the injunction. Thus, arrests of persons at the campsite were reasonable in the circumstances.
Commission's Interim Finding #24	It was reasonable for RCMP members to arrest Chief Sock and the council members for the offence of mischief when they sat down in front of the SWN compound and refused to leave.
Commission's Interim Recommendation #12	That, in situations such as public order policing when RCMP members may be required to arrest persons using plastic tie wrap handcuffs, the restraints only be applied with as much force as is necessary to safely restrain the arrested person.

RCMP Commissioner's Response

[181] The RCMP Commissioner agreed with Interim Finding 1.

[182] The RCMP Commissioner agreed in part with Interim Finding 21. She reiterated her view that she is satisfied that RCMP members had reasonable grounds when they arrested several protesters pursuant to the November 22, 2013, injunction.

[183] The RCMP Commissioner agreed with Interim Findings 22, 23, and 24.

[184] The RCMP Commissioner stated that she supported Interim Recommendation 12, but that she would not direct that any action be taken to implement it, as she is satisfied that RCMP operational practices are already in line with the recommendation.

Commission's Analysis of the RCMP's Response

[185] Given its modification of Interim Finding 11, as described above, the Commission has also decided to modify Interim Finding 21 along the same lines.

Commission's Final Finding #21	In general terms, the Commission finds that, during the anti-shale gas protests, RCMP members had reasonable grounds to arrest persons for various offences, including mischief and/or obstruction, and that, in general terms, the force used in conducting arrests was necessary and proportional in the circumstances.

[186] With respect to Interim Recommendation 12, the Commission reiterates its concerns about a response that supports the recommendation, but states that no action will be taken to implement it. In particular, in this case, the RCMP Commissioner has not explained how it was, if RCMP practices are already in line with the recommendation, that the handcuffs placed on certain protesters were likely tighter than necessary, as found in Interim Finding 22. The RCMP Commissioner has also not provided any information indicating that practices have been modified since these events. As such, the Commission can only reiterate its recommendation.

Use of Force

[187] Several protesters submitted public complaints contesting their arrests and the force used against them. The Commission completed individual reports and described select examples of arrests and the use of force in its Interim PII Report in this case. The Commission also received numerous complaints of a general nature regarding the RCMP's use of force during the anti-shale gas protests, particularly during the tactical operation. Complainants asserted among other things that RCMP members used unnecessary and excessive force against protesters during peaceful protests; improperly used firearms to deal with protesters; and unnecessarily fired sock (bean bag) rounds at protesters.

[188] When carrying out their duties, police officers may be required to use a reasonable amount of force, as prescribed by the *Criminal Code* and RCMP policy. Given the considerable amount of resistance encountered by the RCMP members on the morning of October 17, 2013, including the throwing of Molotov cocktails and an encounter with a protester who was armed with a rifle, the Commission found that the drawing and/or pointing of firearms, as well as the firing of sock rounds, did not amount to excessive force in the circumstances. The use of force was necessary and proportional to the conduct that the RCMP members encountered.

[189] Likewise, video evidence confirmed that the crowd was physically trying to push through the police line. Some protesters were kicking and punching the members forming the line. Others were throwing projectiles. The police responded to the rioting crowd by pushing and striking, as well as deploying pepper spray and sock rounds. The Commission concluded that, given the risks posed by the protesters' conduct, and reasonable concerns for the safety of RCMP members and the public, in general terms this use of force was necessary in the circumstances and was proportional to the conduct encountered by the members.

Commission's Interim Finding #25	Physical force such as pushing, striking, or using pepper spray to control the protesters was used after the protesters physically tried to break through the police line and were effectively participating in a riot. Given the risks posed by the protesters and the concerns regarding the safety of RCMP members and the public, the use of force including pushing, striking, or deploying pepper spray was necessary in the circumstances and was proportional to the conduct encountered by the members.
Commission's Interim Finding #26	In the context of the standoff, it was necessary for members to use force (including sock rounds and the drawing and/or pointing of firearms), and the type and amount of force used was proportional to the conduct that the members encountered.
Commission's Interim Finding #27	Emergency Response Team members had reasonable grounds to suspect that protesters in the woods might be carrying firearms or explosive devices because of the standoff with an armed protester that had occurred earlier that day, and because Molotov cocktails had been thrown from the woods by unidentified protesters earlier that day.
Commission's Interim Finding #28	Given that Emergency Response Team members had reasonable grounds to suspect that protesters in the woods might be carrying firearms or explosive devices, from the evidence available to it, the Commission finds that the pointing of a firearm did not constitute an unreasonable use of force in the circumstances.
Commission's Interim Finding #29	Pointing/firing firearms loaded with sock round ammunitions amounted to a measured response to the behaviour of individuals whose actions posed a threat to themselves, police officers, or the general public, in a context where other methods of intervention would have been inappropriate.
Commission's Interim Finding #30	The Commission did not find any evidence of direct physical contact between police service dogs and protesters. The evidence shows that police service dogs were used as a psychological deterrent only. Consequently, the use of police service dogs complied with RCMP policy and the IM/IM. The Commission notes, however, that it was unable to locate the relevant C-227B Case Report documents, which must be completed according to RCMP policy.

RCMP COMMISSIONER'S RESPONSE

[190] The RCMP Commissioner agreed with Interim Findings 25, 26, 27, 28, 29, and 30.

Contingency Planning

[191] The Commission noted that no plan can anticipate every eventuality, and allowing for discretion and flexibility in decision-making is essential in any dynamic operation. That said, although there had been no reliable information about firearms at the campsite, there had been several rumours to that effect. Therefore, the Commission found that it would have been reasonable for the Tactical Operational Plan to have provided for the possibility of there being firearms and explosives at the campsite. In addition, for several reasons, the situation during the tactical operation deteriorated to the point where six police vehicles were left unguarded and were set on fire by protesters. The Commission found that, in the totality of the circumstances, it would have been reasonable for the RCMP to have had a contingency plan providing for the possibility of a large number of belligerent protesters gathering on Route 134.

Commission's Interim Finding #32	Although there had been no reliable information about firearms at the campsite, there had been several rumours to that effect. It would, therefore, have been reasonable for the Tactical Operational Plan to have provided for the possibility of there being firearms and explosives at the campsite.
Commission's Interim Finding #34	It was reasonable for the RCMP to have decided to use police vehicles as a "movable" barricade. Once the situation had deteriorated, it was reasonable for RCMP members to prioritize the safety of all parties and the maintenance of order over attempting to preserve the police vehicles. In the end, the burning of the vehicles was the responsibility of the person(s) who illegally set them ablaze.
Commission's Interim Finding #35	In the totality of the circumstances, it would have been reasonable for the RCMP to have had a contingency plan providing for the possibility of a large number of belligerent protesters on Route 134.

RCMP COMMISSIONER'S RESPONSE

[192] The RCMP Commissioner disagreed with Interim Finding 32. She stated that, while there was not a formalized process contained within the Operational Plan to deal with the possibility of firearms and/or explosives being present in the camp, it was clear in the relevant materials that this concept was addressed in the plan. She added that

the relevant materials were replete with references by RCMP members to the possibility of weapons being present there. The RCMP Commissioner stated that "it was preferable to allow members to address the discovery of firearms or explosives by using their training and experience rather than to require them to follow a process that may or may not be workable given the highly volatile and stressful nature of the protests."

[193] The RCMP Commissioner agreed with Interim Finding 34.

[194] The RCMP Commissioner agreed in part with Interim Finding 35, stating that the Incident Commander was very much alive to the possibility of a large number of belligerent protesters on Route 134, and that, with the resources at his disposal, he did not feel the need to make specific provisions for that eventuality in the Operational Plan. The RCMP Commissioner stated that the Incident Commander "did not need more resources" given that he had 200 RCMP members at his disposal for the operation, including a number of Quick Response Teams.

[195] The RCMP Commissioner added that the Incident Commander and "presumably most other members" were well aware of the possibility of an increase in the number of belligerent protesters in that area once the operation began, but that the absence of this scenario in the Operational Plan was not unreasonable and likely would not have changed how the RCMP members handled the situation.

Commission's Analysis of the RCMP's Response

[196] With respect to Interim Finding 32 about providing for the possibility of firearms, the Commission notes that its Interim PII Report had already addressed many of the points raised in the RCMP Commissioner's response. For example, the Interim PII Report specifically recognized that the possibility of the presence of firearms was mentioned in the Operational Plan. A section of the plan had been quoted to that effect. The Interim PII Report also found that "[a]llowing for discretion and flexibility in decision-making is essential in any dynamic operation."

[197] Hence, as its Interim PII Report indicates, the Commission agrees that this risk was better addressed through training and experience than through a pre-determined process. Indeed, this is exactly what was done when a person pointed a rifle at police, and RCMP members defused a tense and dangerous situation with no injuries or loss of life.

[198] Nevertheless, the Commission continues to be of the view that the Operational Plan could have made more explicit reference to the possibility of firearms being present and had stronger emphasis on this point, without necessarily providing for a specific contingency plan. This is especially pertinent given the considerable danger posed by this threat, as well as the significant consequential effects on the entire operation when a firearm was in fact brandished (lengthy delays in the operation, the redirection of resources, and so on).

[199] For these reasons, the Commission reiterates Finding 32.

[200] With respect to Interim Finding 35, the Commission reiterates that the checkpoint on the western "flank" was initially staffed with what was believed to be an adequate number of RCMP members given the available resources, but that events took over and the situation changed for the worse. Resources were redirected and operations at the blockade and the encampment took longer than expected. As time progressed, the western flank was subject to a growing number of belligerent protesters. RCMP members did their best in responding to an ever-evolving situation, but the western checkpoint area essentially devolved into a riot scene and numerous police vehicles were set ablaze.

[201] The Commission further notes that, if the possibility of an increase in the number of belligerent protesters in the area in question was widely anticipated, as stated in the RCMP Commissioner's response, then it is all the more reason for more thorough provisions to have been made in the Operational Plan in order to respond to it. Although RCMP members sought to do the best they could in a volatile situation, the riotous melee and resultant criminal damage that ensued was a low point in the RCMP operation in Kent County.

[202] With respect to the comment in the RCMP Commissioner's response indicating that the Incident Commander did not need more resources, the Commission notes that it did not make any finding in its Interim PII Report regarding the sufficiency of the RCMP resources deployed to respond to the protests. Therefore, the Commission will not comment on the RCMP Commissioner's statement in this report.

[203] The Commission reiterates Finding 35.

COMMISSION'S FINAL FINDINGS AND RECOMMENDATIONS

FINAL FINDINGS

1) **Overall, RCMP members handled post-arrest and detention procedures in a reasonable manner and in compliance with policy.**

2) **In general terms, RCMP members understood and applied a measured approach in their dealings with protesters.**

3) **Throughout the protests up to October 17, 2013, the RCMP command team and the Crisis Negotiation Team made every effort to bring stakeholders together to achieve a resolution to the conflict. These efforts were frustrated, in part, by the intractable nature of the dispute and by the absence of clear leadership on the part of the protesters.**

4) **The information available to the Commission does not establish, on the balance of probabilities, that persons had an objectively reasonable expectation of privacy with regard to their communications through Facebook groups, or that the RCMP Undercover Operator "intercepted" those communications as outlined in the relevant jurisprudence.**

5) **Any gathering of potentially "private" electronic communications by the RCMP must be done only within the strictures of the *Criminal Code*, Charter, and related jurisprudence.**

6) **On the balance of probabilities, the Commission finds that the open-source information gathering in the cases of Protester B, Protester D, and Protester E was not unreasonable in the circumstances.**

7) **RCMP policy on the use of open sources did not provide clear guidance as to the collection, use, and retention of personal information obtained from social media or other open sources, particularly in situations where no criminal nexus was determined.**

8) **It appears that RCMP members did not have judicial authorization, or other legal authority, for conducting stop checks for the purposes of information gathering in a way that constituted a "general inquisition" into the occupants of the vehicles. This practice was inconsistent with the Charter rights of the vehicle occupants.**

9) **Although some of the roadblocks were likely justified in the specific circumstances, randomly stopping vehicles for a purpose other than those set out in provincial highway traffic legislation, without judicial authorization and in the absence of the emergency investigation of a serious crime, was on the balance of probabilities inconsistent with the Charter rights of vehicle occupants.**

10) **On the balance of probabilities, the practice of searching vehicles entering the campsite may, in the circumstances, have been inconsistent with the individuals' right to be secure against unreasonable search and seizure. It would have been preferable for the RCMP to seek a general search warrant, if sufficient grounds existed.**

11) **There was confusion among some protesters and some RCMP members as to the terms of the November 22, 2013, injunction. There is insufficient information to conclude on the balance of probabilities that the arrests made pursuant to this injunction, were unlawful or unreasonable. Although protesters, like all citizens, must inform themselves about the laws as they relate to their actions, the police enforcing the laws must also be fully informed about them and communicate them to the public as clearly as possible.**

12) Given the lack of particularized information in the allegations, there was insufficient information available to the Commission to conclude in general terms that road closures and the rerouting of traffic during the anti-shale gas protests was unreasonable. Likewise, there was insufficient information to support the allegation that media were unreasonably denied access to protest sites.

13) In its report regarding Protester F's complaint, the Commission found, on the balance of probabilities, that the decision to restrict the complainant's access to the protest site to prevent crime and ensure public safety was not unreasonable in those circumstances.

14) At the time the anti-shale gas protests policing operation began, with some notable exceptions, the members assigned to the operation did not have sufficient training in Indigenous cultural matters.

15) The available information suggests that RCMP members did not, either deliberately or unwittingly, unnecessarily interfere with Indigenous ceremonies or sacred items.

16) On the available evidence, the Commission is satisfied that RCMP members did not differentiate between Indigenous and non-Indigenous protesters when making arrests, nor did they demonstrate bias against Indigenous protesters generally.

17) The RCMP did not act as private security for SWN. Its role was to keep the peace and ensure public safety while respecting the protesters' right to protest. Based on the available information, the RCMP's interactions with SWN Resources Canada were reasonable in the circumstances.

18) The decision to isolate members of the Crisis Negotiation Team from information about operational planning, however well-intentioned, indirectly led to the unfortunate and regrettable situation of the tactical operation occurring shortly after RCMP negotiators offered tobacco to campsite protest leaders.

19) Given the terms of the injunction, the RCMP had the legal authority to conduct the operation and, on the balance of probabilities, it was a reasonable exercise of their discretion to do so in all the circumstances.

20) It would have been prudent to allow more time for negotiations and a review of the injunction in court before proceeding with the operation. Allowing more time for negotiation, particularly after the Crisis Negotiation Team's negotiations had already borne fruit, would have been reasonable and desirable in the circumstances.

21) **In general terms, the Commission finds that, during the anti-shale gas protests, RCMP members had reasonable grounds to arrest persons for various offences, including mischief and/or obstruction, and that, in general terms, the force used in conducting arrests was necessary and proportional in the circumstances.**

22) **The handcuffs that were initially placed on Protester C and Protester D were likely tighter than was necessary to restrain them.**

23) **It is reasonable to conclude that the persons maintaining the blockade were committing mischief, in that they were interfering with SWN's ability to use its equipment, and others at the campsite, if not necessarily active participants in the blockade, were parties to the offence of mischief. In addition, the injunction order specifically prohibited persons from impeding SWN's work at the compound, and authorized police to arrest persons violating the terms of the injunction. Thus, arrests of persons at the campsite were reasonable in the circumstances.**

24) **It was reasonable for RCMP members to arrest Chief Sock and the council members for the offence of mischief when they sat down in front of the SWN compound and refused to leave.**

25) **Physical force such as pushing, striking, or using pepper spray to control the protesters was used after the protesters physically tried to break through the police line and were effectively participating in a riot. Given the risks posed by the protesters and the concerns regarding the safety of RCMP members and the public, the use of force including pushing, striking, or deploying pepper spray was necessary in the circumstances and was proportional to the conduct encountered by the members.**

26) **In the context of the standoff, it was necessary for members to use force (including sock rounds and the drawing and/or pointing of firearms), and the type and amount of force used was proportional to the conduct that the members encountered.**

27) **Emergency Response Team members had reasonable grounds to suspect that protesters in the woods might be carrying firearms or explosive devices because of the standoff with an armed protester that had occurred earlier that day, and because Molotov cocktails had been thrown from the woods by unidentified protesters earlier that day.**

28) Given that Emergency Response Team members had reasonable grounds to suspect that protesters in the woods might be carrying firearms or explosive devices, from the evidence available to it, the Commission finds that the pointing of a firearm did not constitute an unreasonable use of force in the circumstances.

29) Pointing/firing firearms loaded with sock round ammunitions amounted to a measured response to the behaviour of individuals whose actions posed a threat to themselves, police officers, or the general public, in a context where other methods of intervention would have been inappropriate.

30) The Commission did not find any evidence of direct physical contact between police service dogs and protesters. The evidence shows that police service dogs were used as a psychological deterrent only. Consequently, the use of police service dogs complied with RCMP policy and the IM/IM. The Commission notes, however, that it was unable to locate the relevant C-227B Case Report documents, which must be completed according to RCMP policy.

31) The evidence before the Commission does not support the allegation that, on October 17, 2013, RCMP members were "ill-equipped so that some might suffer physical harm which would result in the vilification of protesters."

32) Although there had been no reliable information about firearms at the campsite, there had been several rumours to that effect. It would, therefore, have been reasonable for the Tactical Operational Plan to have provided for the possibility of there being firearms and explosives at the campsite.

33) In the circumstances, and in keeping with the measured approach, it was not unreasonable for the tactical troops to initially be directed to wear Level 2 gear.

34) It was reasonable for the RCMP to have decided to use police vehicles as a "movable" barricade. Once the situation had deteriorated, it was reasonable for RCMP members to prioritize the safety of all parties and the maintenance of order over attempting to preserve the police vehicles. In the end, the burning of the vehicles was the responsibility of the person(s) who illegally set them ablaze.

35) In the totality of the circumstances, it would have been reasonable for the RCMP to have had a contingency plan providing for the possibility of a large number of belligerent protesters on Route 134.

36) The decision not to inform the schools about the imminent operation was reasonable, although it would have been prudent for the Tactical

Operational Plan to have been modified to ensure that children were able to get to school prior to the operation commencing.

37) There is no evidence to support the claim that agents provocateurs were used by the RCMP on October 17, 2013.

38) The Commission found no evidence that non-RCMP members were used during the operation on October 17, 2013.

FINAL RECOMMENDATIONS

1) That, in addition to the *Privacy Act* and the RCMP's existing policy and training, the RCMP provide clear policy guidance setting out defined and reasonably constrained intelligence and law enforcement parameters with respect to the collection of personal information from open sources such as social media sites, the uses that can be made of it, and what steps should be taken to ensure its reliability.

2) That RCMP policy treat personal information and supporting documents obtained from social media sources containing personal information (such as screen captures of social media sites) as a separate category of records. This category of records should be kept for no longer than strictly necessary to provide intelligence for the event or purpose for which it was collected where it is established that there is no criminal nexus or national security dimension. Additionally, where an intelligence assessment or other product generated from open sources is to be retained, RCMP policy should require the anonymization or destruction of any personal information within that assessment where there is no connection to criminal activity or to the RCMP's national security mandate (such as where the personal information relates to lawful dissent).

3) That the RCMP develop policies providing that personal information obtained with respect to public order events like protests and demonstrations should be destroyed as soon as practicable and in accordance with applicable law once it is determined that there is no criminal nexus or that the information is otherwise no longer necessary for the purposes for which it was collected.

4) That members involved in public order policing operations be provided with a review of law and policy related to search and seizure, including the warrant requirement and the legal grounds establishing exceptions for warrantless searches.

5) **That the RCMP provide members who are engaged in the policing of public protests/public order policing with detailed, accurate interpretations of the conditions of any injunction or unique legal provisions that they are expected to enforce, obtaining legal advice as necessary.**

6) **That decisions to restrict access to public roadways or other public sites be made only with specific, objectively reasonable rationales for doing so, and if legally permissible, be done in a way that interferes with the rights of persons in as minimal a fashion as possible, for example, a buffer zone that is as limited in size as possible and an exclusion that is as short in duration as possible.**

7) **That, particularly when policing a public protest, members be cognizant of the limits of their powers, specifically in relation to curtailing protesters' ability to assemble and express themselves in a lawful manner.**

8) **That the RCMP require all members to review the RCMP's *Native Spirituality Guide*, and that all members involved in Indigenous policing, including members of tactical troop/public order units involved in policing protests by Indigenous persons, be required to attend a training program that is specifically aimed at understanding Indigenous cultural issues.**

9) **That the RCMP initiate collaboration with various Indigenous stakeholders with a view to developing a context-specific, practical procedure providing guidance to members with regard to the handling of sacred items in various contexts.**

10) **Although there are reasonable rationales for maintaining separation between negotiators and operational planners, the RCMP should give consideration to more fully informing Crisis Negotiation Team members of the overall strategy being pursued, to avoid regrettable misunderstandings, which can damage relationships between the RCMP and members of the public.**

11) **The RCMP should consider drafting a policy that is specifically tailored to the Crisis Negotiation Team's role in the circumstances of public order policing.**

12) **That, in situations such as public order policing when RCMP members may be required to arrest persons using plastic tie wrap handcuffs, the restraints only be applied with as much force as is necessary to safely restrain the arrested person.**

CONCLUSION

[204] Pursuant to subsection 45.76(3) of the RCMP Act, the Commission respectfully submits its Final Report, and accordingly the Commission's mandate in this matter is ended.

Michelaine Lahaie
Chairperson

Exhibit "M"

This is Exhibit " M " referred to in the
affidavit of ...Harsha Walia.....
sworn before me at ...Vancouver, BC
this ...19th... day of ...November.....2020

.....
A Commissioner for taking Affidavits
For British Columbia

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This man died in RCMP custody while a report that might have saved his life sat on a desk

Michael Mullock was having a stroke, with no alcohol or drugs in his system, when he died in a cell

Rosa Marchitelli · CBC News · Posted: Nov 02, 2020 2:00 AM MT | Last Updated: November 2



Dawn Gallant, left, and her sister Carla Asselin say their younger brother Michael Mullock, pictured centre, was a 'teddy bear' and an integral part of their close-knit family. He died of a stroke after being thrown in an RCMP drunk tank. (Rosa Marchitelli/CBC)

comments

The sisters of a man who died in RCMP custody say they want to remember their younger brother as a gentle guy who loved to joke around; not lying on the cold floor of an RCMP drunk tank, even though he had no drugs or alcohol in his system.

They say his life might have been saved if Mounties had acted on recommendations made in the aftermath of a similar case — at the same detachment in Airdrie, Alta. — years before.

Instead, those recommendations have languished on the desk of RCMP Commissioner Brenda Lucki for two years, kept from public view, while loved ones struggle to get answers about Michael Mullock's death.

Officers picked up Mullock outside a mall for public intoxication on May 24, 2019.

Hours later, when he started vomiting in the cell, paramedics were called in to assess him. But instead of taking the 50-year-old man to hospital, they decided he was "fit for incarceration" and left him there.

Mullock died a few hours later.

- **Have you been wronged and can't get accountability? Contact the Go Public team.**

"He died alone on the cement floor like that. That's pretty hard to swallow," Mullock's sister, Carla Asselin, told Go Public.

The RCMP says guards checked on Mullock every 15 minutes while he was in custody, per policy, until he was found "unresponsive."

He had been arrested near a car, but the RCMP says a breathalyzer test wasn't done because the car was parked and Mullock was standing outside. Officers say they saw empty medication and alcohol bottles inside.

But the coroner's report found no alcohol or drugs in Mullock's system. Instead, it found he died of a stroke.

"Something just does not sit right with this whole situation," Asselin said.

Mullock's other sister, Dawn Gallant, says the paramedics should also "have to take some responsibility for this."



Mullock, seen here at a family wedding about a year before his death, was arrested for public intoxication but had no drugs or alcohol in his system. (Submitted by the Mullock family)

"I think the protocol should be changed, if someone is vomiting while they're in that situation, just take them to the hospital," she said.

The RCMP says, across the country, a total of 11,325 complaints have been filed against it over the last five years. But it says it doesn't track how many of those involved in-custody deaths or serious injury.

Instead, it gave Go Public numbers on complaints that range from "neglect of duty" to "improper arrest."

Federal policing expert Darryl Davies says there is no incentive for the national police force to take responsibility or change the way it operates when things go wrong — because the system set up to hold police accountable is "pathetic."

"The RCMP like the system the way it is. It works for them, not for the victims," said Davies.

Sister 'floored' by video

This has happened before, four years earlier.

In February, Go Public reported on how another man, Alan Ruel, was arrested for public intoxication in July 2015, even though he wasn't drunk.

RCMP surveillance cameras recorded the entire 18 hours Ruel was in custody, and how he went from being able to stand and walk around, to lying on the floor twitching and half paralyzed.

Gallant had no idea history had repeated itself until almost a year after her brother died, when she saw the Go Public story and the video of Ruel.

"When I saw Alan Ruel in that cell, I just pictured my brother there alone," she said. Gallant said she was "floored" by how similar the cases are.

She tried to get the RCMP to hand over the surveillance video of her brother, but was told it couldn't due to the Privacy Act.

The sisters say investigators have kept the family in the dark — despite their repeated attempts to get answers.

WATCH | Disturbing video of Alan Ruel in the RCMP lockup:





WATCH | Video of Alan Ruel's confinement

9 months ago | 2:00

DISTURBING VIDEO: Key moments from Ruel's time in a jail cell that show, according to the lawsuit, the Alberta man was virtually ignored by police while having a stroke. 2:00

Go Public asked the Alberta RCMP for a copy of its internal investigation into Mullock's death, which found no one was at fault, but spokesperson Fraser Logan said, generally, findings are only made public when "criminal charges are being laid."

The RCMP says paramedics were interviewed as part of its investigation, but only to confirm dates, timings and duration of their calls to the detachment the day Mullock died.

Alberta Health Services wouldn't answer Go Public's questions about why the paramedics left Mullock in the cell instead of taking him to hospital, also citing privacy rules.

Nagging question

A nagging question for the family is — could all this have been avoided? After Ruel's stroke but before Mullock's, the RCMP's civilian watchdog made recommendations to the force that could have changed how such situations are handled.

But after more than two years, the RCMP commissioner has yet to respond. Until she does, the report remains confidential.

An RCMP spokesperson in Ottawa told Go Public the "response has been prioritized," and that the commissioner will provide "a thorough and well-founded response ... as soon as feasible."

Five years after suffering a stroke while in RCMP custody, Alan Ruel still has limited use of the left side of his body. (Rosa Marchitelli/CBC)

The RCMP is also locked in a civil suit with Ruel. His mind is still unclear after his ordeal, and he has limited mobility on the left side of his body.

"They [the RCMP] should have learned from my case," Ruel said.

The RCMP says his lawsuit has nothing to do with its delay responding to the report from the Civilian Review and Complaints Commission (CRCC) and that the two are "separate and distinct processes."

Complaints 'drag' on forever

According to the CRCC there are 149 reports about complaints against the RCMP that are waiting for a response from the force. One report has remained unanswered for three and a

half years.

The commission and the RCMP agreed in December that the force would respond to the reports within six months.

But since then, the RCMP has missed the deadline 19 times.

Carleton University professor Darryl Davies says the system set up by the government to deal with complaints against the police force is 'pathetic.' (Mathieu Theriault/CBC)

The problem, says Davies, a professor with the sociology department at Carleton University in Ottawa, is that there is no legal requirement to respond to complaints by a certain deadline.

Instead, the Royal Canadian Mounted Police Act says it needs to respond as "soon as feasible."

They also don't have to accept the CRCC's findings, nor its recommendations.

"They have absolutely no impact on the RCMP. They change nothing unless the RCMP agrees with them. Those recommendations should be mandatory by law."

However, according to the RCMP, over the past year, the commissioner has accepted about 76 per cent of the CRCC's recommendations and 85 per cent of its findings against the force.

The federal government is talking about taking action, but hasn't offered a timeline or commitment.

"I am prepared, if it's necessary, to make legislative and regulatory changes to ensure that that happens," Public Safety Minister Bill Blair told Go Public.

Public Safety Minister Bill Blair tells Go Public he is committed to setting deadlines for the RCMP to respond to complaints. (Toni Choueiri/CBC)

"Families should not have to wait for very long periods of time, even as long as years to the resolution of the complaints process. So we'll make sure that the rules are in place."

As for the two families who share a very similar story, both continue to wait for answers.

Ruel's lawsuit is now into its third year. In court documents, the RCMP deny there were "obvious signs" he was in medical distress.

Asselin and Gallant say they'll continue to press the RCMP for answers.

"That's just not fair to the people that are waiting for these answers. It's almost like torture, we just want to understand what happened to our loved one," Asselin said.

"I understand that their [RCMP's] job is not easy, but people are reaching out and giving them ideas and suggestions that could help... listen to them. That's the frustrating part."

WATCH | Sisters of Michael Mullock raise questions about his death in RCMP drunk tank:



Could Alberta man's death in RCMP drunk tank have been prevented?

12 days ago | 2:07

The sisters of an Airdrie, Alta., man who died of a stroke after being placed in a drunk tank at the local RCMP detachment say his life might have been saved had the RCMP heeded the recommendations from an investigation into a similar case at the same detachment two years earlier. 2:07

Submit your story ideas

Go Public is an investigative news segment on CBC-TV, radio and the web.

We tell your stories, shed light on wrongdoing, and hold the powers that be accountable.

If you have a story in the public interest, or if you're an insider with information, contact gopublic@cbc.ca with your name, contact information and a brief summary.

All emails are confidential until you decide to Go Public. Follow @CBCGoPublic on Twitter.

With files by Jenn Blair

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Visitez Radio-Canada.ca

Exhibit "N"

This is Exhibit " N " referred to in the affidavit of ...Harsha Walia... sworn before me at ...Vancouver, BC... this ...19th... day of ...November...20...20...

Jess Chagonet

A Commissioner for taking Affidavits
For British Columbia

RCMP to Apologize and Conduct a Restorative Justice Meeting with Woman Left Topless and Injured Following Her Refusal to Comply with a Strip Search

A woman refused to comply with an RCMP member's order that she remove her bra while being lodged into custody at the cell block following her arrest. The RCMP member told the woman that bras were not permitted in cells. A physical altercation ensued and the RCMP member forcibly removed the woman's bra. Two other RCMP members assisted in restraining the woman. The woman's arm was broken during the struggle. After the woman was restrained, the RCMP members escorted her to a cell while she was uncovered and exposed from the waist up.

The woman repeatedly told the RCMP members that her arm was broken. However, medical assistance was only summoned two hours later, in part because the evidence revealed that one of the RCMP members stated that he believed the woman was "faking."

The woman complained that:

- unreasonable force was used during her arrest;
- her arm was broken by the RCMP members; and
- she was humiliated when the RCMP members escorted her to a cell while she was naked from the waist up.

After investigating the complaint, the RCMP did not support any of the allegations. The woman asked the Commission to review the matter.

After review, the Commission made 13 findings and 19 recommendations in its interim report. The Commission's findings included that the woman had been subjected to an unreasonable search and seizure when the RCMP member forcibly removed her bra and seized it.

The Commission also found that the woman's arm was broken during the struggle at the cell block involving the three RCMP members. The Commission determined that there was insufficient information to conclude that unreasonable force had been used by the two RCMP members involved in restraining the woman.

However, the use of force by the RCMP member who conducted the strip search was unreasonable, given that she was acting outside her legal authority when she searched the woman.

The Commission concluded that the three RCMP members, one of whom was a supervisor, had acted unreasonably by escorting the woman to a cell while she was naked from the waist up, and that the woman had been denied immediate medical attention for her broken arm, contrary to RCMP policy.

The Commission also determined that two of the RCMP members had been derelict in their note-taking of the incident and that none of the RCMP members had completed the relevant mandatory forms.

In addition, the Commission found that RCMP policy on personal searches, including strip searches, was inconsistent with the jurisprudence.

Finally, the Commission found that the cell block supervisor and the RCMP member who had conducted the search unreasonably denied the woman immediate medical attention for her broken arm. This omission was particularly troubling in the case of the RCMP member who had conducted the search, as she stated that she had heard the woman's bone snap.

The Commission's recommendations included that:

- the RCMP apologize to the woman for the unreasonable strip search and being escorted to a cell in an unreasonable and degrading manner;
- the RCMP conduct a restorative justice meeting with the woman at the RCMP's expense; and
- the RCMP reimburse the woman for expenses associated with the rehabilitation of her arm.

The Commission also recommended remedial measures for the RCMP members, including that they be provided with operational guidance and retraining on:

- the conduct of strip searches;
- the use of force;
- the duty of care owed to individuals in the custody of the RCMP;
- the policies of medical assistance; and
- note-taking.

The Commission also recommended that the notes of the RCMP member who had conducted the search be audited by a senior RCMP officer for a period of time to be determined by the RCMP.

In addition, the Commission recommended that the RCMP perform Code of Conduct investigations into the supervisor's decision to escort the woman topless and the decision by the RCMP member to leave the cell block without ensuring that medical assistance was provided to the woman after hearing her bone snap.

Finally, the Commission recommended that the RCMP's national and divisional strip search policies be amended to align with the jurisprudence.

In her response to the Commission's interim report, the RCMP Commissioner agreed with the Commission's findings and recommendations, with the exception of one finding and two recommendations.

The Commissioner reported that the RCMP would apologize to the woman for the unreasonable strip search and unreasonable and degrading manner in which she was escorted to the cell. The Commissioner also reported that the RCMP would reimburse the woman for expenses incurred for the rehabilitation of her broken arm, and that a restorative justice meeting would be conducted with the woman. Finally, the

Commissioner stated that RCMP policy has been amended to address the concerns raised by the Commission in its report.

The Commissioner disagreed with the recommendation to audit the notes of the RCMP member who searched the woman. The Commissioner stated that there was no information to suggest that this RCMP member's note-taking in other files was substandard. The Commissioner indicated that providing operational guidance to her on note-taking and strip searches would remedy any deficiencies in her notes.

In light of the information submitted by the RCMP Commissioner, the Commission concluded in its final report that the other recommended measures regarding note-taking and the policy amendments would be sufficient to address the RCMP member's note-taking deficiencies without requiring an audit period.

The Commissioner disagreed with the finding that the RCMP member who searched the woman acted unreasonably by leaving the cell block without ensuring that she received immediate medical attention, contrary to RCMP policy. The Commissioner stated that this RCMP member had attended the detachment for the sole purpose of performing the search and that the woman was in the custody of the cell block supervisor and another RCMP member, whose responsibility it was to attend to her medical needs. The Commissioner expressed her opinion that the RCMP member who searched the woman could not have foreseen that the two other members would not seek medical assistance, particularly since one of them was the cell block supervisor.

Finally, given that she disagreed with the finding, the Commissioner indicated that she did not accept the recommendation that the RCMP commence a Code of Conduct investigation into the omission by the RCMP member who searched the woman to ensure that medical assistance was provided to her.

In its final report, the Commission did not accept the RCMP Commissioner's reasoning, and concluded that the RCMP member who departed without taking action after hearing the woman's bone snap was equally responsible as her colleagues for ensuring that the woman received immediate medial attention, even if the member only attended for the purpose of conducting the strip search.

Therefore, the Commission reiterated all of its findings and recommendations in its final report, except the one recommendation related to the note-taking audit.

The Commission also expressed its grave concern with the delay of nearly four years in receiving the Commissioner's response to its interim report. This is an unreasonable delay that has resulted in the elimination of the value of the recommendations in regard to the cell block supervisor, who has since retired from the RCMP.

The delay has been made even more egregious by the seriousness of the subject matter of the complaint and the significance of the Commission's recommendations. These recommendations should have been promptly implemented to remedy the policy deficiencies identified by the Commission, and offer timely reparation to the complainant for her broken arm and the degrading and humiliating manner in which she was treated.

Exhibit "O"

This is Exhibit " O " referred to in the
affidavit of ...Harshe Walia.....
sworn before me at ...Vancouver, BC
this ...19th... day of ...November....20.20

.....
A Commissioner for taking Affidavits
For British Columbia

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RCMP Northern BC Policing Investigation: First Nations and Human Rights Groups React

Posted on February 17, 2017

xʷməθkʷəy̓əm (Musqueam) (February 15, 2017) – The Union of B.C. Indian Chiefs, the B.C. Civil Liberties Association, the Canadian Feminist Alliance for International Action and Justice for Girls responded this morning to the report of the Public Interest Investigation regarding RCMP policing in northern British Columbia.

The investigation was launched in 2013 by the Civilian Review and Complaints Commission for the RCMP, and responded to allegations in the 2013 report of Human Rights Watch "Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia", and the BCCLA's 2011 report "Small Town Justice: A Report on the the RCMP in northern and rural British Columbia".

Grand Chief Stewart Phillip stated: "This investigation has revealed serious failures on the part of RCMP members and supervisors, across northern BC, including huge problems in the way that the RCMP deal with investigations of missing persons including women and girls. We are deeply disappointed that this report completely avoids any examination of allegations of systemic racism against Indigenous people by the police in northern British Columbia. This is a tragic fact of life that First Nations people have to live with every day, many of whom have their rights violated by police repeatedly. The Human Rights Watch report that prompted this investigation made scathing allegations of racism, neglect and mistreatment by police towards Indigenous women and girls in particular, and this investigation has failed to deal with these issues that are gripping our communities and that create a lack of trust between our communities and the police. If the complaints commission, and the RCMP itself, genuinely want to improve relationships with First Nations people, there is a great deal more work to do. The recommendations in this report, while they may help to improve some police practices, will not fix the massive problem of systemic racism that our people experience daily and have had to endure ever since the RCMP started policing our lands and peoples."

Farida Deif, Canada Director of Human Rights Watch stated: "While the Commission's investigation confirms many of the policing problems Human Rights Watch documented, the report falls short in addressing policing failures in Indigenous communities. Indigenous women and girls told us that the RCMP frequently blamed them for the abuse they suffered, shamed them over alcohol or substance use, or threatened to arrest them for trying to protect themselves from domestic violence. But the Commission's report only 'found room for improvement' in the RCMP's response to domestic violence, ignoring widespread evidence of systemic racism and sexism. While Human Rights Watch documented serious allegations of abusive policing, including excessive use of force against girls, strip searches by male officers, and physical and sexual abuse, the Commission claims that it could not find evidence of 'systemic misconduct by RCMP members in northern British Columbia.' Given the serious policing shortcomings the Commission highlighted, including failures to properly document missing persons investigations or appropriately conduct body and strip searches, this raises serious questions about the Commission's threshold for systemic misconduct. The report is an important first step, but the Commission's new office in British Columbia should not shy away from tackling systemic problems with the RCMP's policing of Indigenous communities head on."

Annabel Webb of Justice for Girls stated: "The report is a clear and detailed indictment of RCMP policing in Northern B.C., echoing what many of us have been pointing to for years. It is unfortunate, however that the Commission didn't address the underlying reasons for these policing failures and abuses—systemic racism and sexism within the RCMP that defines colonial relationship with Indigenous women and girls. Let's not forget that a key impetus for this report was the coura testimony of Indigenous girls and women exposing serious abuses and failures of the RCMP in Northern B.C.. When the

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report talks about unjustified and undocumented strip searches and use of force, or failures to properly respond to domestic violence and missing persons reports, I think of the many Indigenous teenage girls I spoke to in the North who suffered those indignities and abuses by police, but had no way to hold the RCMP accountable."

Josh Paterson, executive director of the BC Civil Liberties Association, stated: "The RCMP's routine failure to meet even the most basic administrative and procedural requirements is highly discrediting and calls for urgent attention. This report confirms that the RCMP in northern BC has failed to adequately record reasons for using force, failed to properly document missing persons investigations, failed to deal appropriately with personal searches and strip searches and failed to ensure that domestic violence response is done appropriately. The RCMP needs to work hard to respond to the disturbing findings in this report, and we hope the investigation's findings and recommendations will help them to do that. At the same time, this report says almost nothing about the issue of systemic racism. While the report mentions that it heard some allegations about discrimination, it is troubling that the Commission did not investigate those allegations or make any conclusions. Now that the Commission has established full-time investigators here in British Columbia, partly in response to these findings, we expect it to devote serious attention to systemic racism and discriminatory treatment by the RCMP and to follow up to ensure that the RCMP fixes the serious problems that this investigation has confirmed."

Shelagh Day, Chair, Human Rights Committee, Canadian Feminist Alliance for International Action, stated: "The report is damning; it confirms the failures in policing identified by Human Rights Watch and the Inter-American Commission on Human Rights. However, the report does not name the discrimination, racism and sexism that lies at the root of these failures. It is the hope of the Canadian Feminist Alliance for International Action (FAFIA) that the National Inquiry on Missing and Murdered Indigenous Women and Girls will pick up where this report leaves off. Superintendent Paulson's assurances that policing failures will be put right is not enough."

The BC Civil Liberties Association is funded by the Law Foundation of British Columbia and individuals who believe in what we do. To support the BCCLA, visit www.bccla.org

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Exhibit "P"

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sworn before me at ...Vancouver, BC
this ...19th... day of ...November.....2020

.....
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BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

Police Complaint Commission Finds Canada Day Searches Unlawful

Posted on March 30, 2009

The Commission for Public Complaints against the RCMP has condemned the practice of mandatory and indiscriminate searches during large events. The ruling comes from a complaint made by the BCCLA about searches that took place during 2008 Canada Day celebrations in Victoria, BC. The BCCLA initiated a police complaint to address concerns that searches and seizures were not conducted and reported lawfully.

"The Commission's report and accompanying legal opinion is thorough, thoughtful and balanced," says BCCLA Caseworker Jesse Lobdell. "It notes the difficulties faced by police during large public events, but makes clear that sweeping, mandatory searches, even with consent, are unlawful."

The Commission's report was unequivocal in denouncing mandatory searches, concluding that "the RCMP's participation in preventative and early interdiction liquor strategies in B.C. be limited to police presence and that searches only be conducted when the RCMP members have the requisite grounds under the applicable legal authority."

The report came to this conclusion after noting that such practices violate fundamental rights contained within the common law and the Canadian Charter of Rights and Freedoms. The comprehensive report addressed problems not only with searches, but also the seizure of lawful property and the reporting of such seizures.

"This report can only serve to assist policy-makers who seek to develop lawful and effective law enforcement strategies," says Jesse Lobdell. "When British Columbia greets Olympic crowds, law enforcement agencies will hopefully have developed operational plans that do not rely on the violation of visitors' and citizens' rights."

The Victoria Police Board has signalled its intention to incorporate the findings of the report into their 2009 operational plan in a letter to the BCCLA.

Commission for Public Complaints Against the RCMP report >> (https://bccla.org/wp-content/uploads/2009/03/2009-BCCLA-Complaint-RCMP-light.pdf)

Letter from the Victoria Police Board >> (https://bccla.org/wp-content/uploads/2009/03/2009-Vic-Letter-Police-Board.pdf)

Original letter of complaint >> (https://bccla.org/wp-content/uploads/2009/03/2009-BCCLA-Complaint-Vic.pdf)

Media Contact:
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BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

Kennedy's Income Trust Report Fails to Connect the Dots

Posted on March 31, 2008

The British Columbia Civil Liberties Association is disappointed with the report of Paul Kennedy, Chair of the Commission for Public Complaints Against the RCMP into the public disclosure of the RCMP's income trust criminal investigation during the last federal election. The report fails to connect the dots between his findings of fact and his finding of fault.

Kennedy's factual report shows that:

- Commissioner Zaccardelli correctly predicted in advance that his disclosure could have a significant effect on the federal election.
- Commissioner Zaccardelli was directly responsible for the wording of the letter to Ms. Wasylycia-Leis and for the wording of the press release, including a specific decision to include Mr. Goodale's name in the press release
- Ms. Wasylycia-Leis was "elevated to the status of a complainant" in order to provide her with confirmation of the existence of an investigation
- There was a policy in effect that prevented disclosure of the fact of an investigation if the disclosure could harm an investigation

Mr. Kennedy's report does not refer to any evidence that would justify the decision to disclose the investigation and it is bereft of any hint that he has grappled with the RCMP's rationale for releasing the information. It can only be concluded that Mr. Kennedy has failed to undertake any serious analysis of RCMP general policy or practice or the specific exercise of discretion in this case.

BCCLA President Jason Gratl: "The dots paint a picture of an RCMP commissioner who cynically manipulated the results of the last federal election. Mr. Kennedy turned a blind eye to his own findings of fact and failed to connect those dots."

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