

Civilian Review and
Complaints Commission
for the RCMP



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

CHAIRPERSON-INITIATED COMPLAINT AND PUBLIC INTEREST INVESTIGATION INTO THE RCMP'S INVESTIGATION OF THE DEATH OF COLTEN BOUSHIE AND THE EVENTS THAT FOLLOWED

Final Report
January 7, 2021

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**CIVILIAN REVIEW AND COMPLAINTS COMMISSION
FOR THE ROYAL CANADIAN MOUNTED POLICE**

COMMISSION'S FINAL REPORT

**CHAIRPERSON-INITIATED COMPLAINT AND PUBLIC INTEREST INVESTIGATION
INTO THE RCMP'S INVESTIGATION OF THE DEATH OF COLTEN BOUSHIE AND
THE EVENTS THAT FOLLOWED**

Royal Canadian Mounted Police Act
Section 45.76(3)

January 7, 2021

Complainant

Chairperson of the Civilian Review and
Complaints Commission for the Royal
Canadian Mounted Police

TRAUMA-INFORMED CAUTION

This report deals with complex and emotional subject matter. It may elicit a difficult emotional response for some readers.

It is recommended that readers consider seeking support.

COMMISSION'S FINAL REPORT AFTER COMMISSIONER'S RESPONSE

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INTRODUCTION

[1] On August 9, 2016, Colten Boushie (“Mr. Boushie”), a 22-year-old resident of the Red Pheasant First Nation Reserve, was shot and killed on a rural farm property near Biggar, Saskatchewan, by Gerald Stanley (“Mr. Stanley”), the property owner. Following a criminal investigation by the RCMP, Mr. Stanley was charged with murdering Mr. Boushie. From the outset, significant concerns were raised about the case and the actions of the RCMP. Mr. Stanley was eventually acquitted of the murder charge after a trial by jury.

[2] The Civilian Review and Complaints Commission for the RCMP (“the Commission”) conducted a Public Interest Investigation (PII) to inquire into the conduct of the RCMP investigation and into the RCMP’s interactions with Mr. Boushie’s family. Following its investigation, the Commission made 47 findings and 17 recommendations in an Interim PII Report (**Schedule 1**) it provided to the RCMP.

[3] The Commission found that the investigation conducted by the RCMP was generally professional and reasonable. This included findings that the RCMP’s initial response to the incident was reasonable and timely; that appropriate action was taken to ensure that all available resources were deployed; that the arrests made were lawful and reasonable; that the interview with Mr. Stanley was conducted in a reasonable manner; and that the investigative team was adequately staffed.

[4] However, the Commission also identified a number of issues with the investigation, such as deficiencies in the RCMP’s interactions with some of the witnesses. Some issues were of significant concern, like the failure to protect the vehicle Mr. Boushie was sitting in when he was shot. This, in conjunction with an unreasonable delay in obtaining a search warrant for the property, led to the loss of blood spatter evidence as a result of inclement weather. It is not known, and will never be known, what difference this evidence, as well as any other evidence lost as a result of the failure to protect the vehicle, could have had on the outcome of the case.

[5] The Commission found that the RCMP members who notified Mr. Boushie’s mother, Debbie Baptiste, of his death treated her with such insensitivity that her treatment amounted to a *prima facie*¹ case of discrimination. The RCMP members’ actions included questioning Ms. Baptiste about her sobriety, smelling her breath, and looking inside her microwave to verify her statement that she had put her now-deceased son’s dinner there.

[6] The Commission found that the attendance of RCMP members at the funeral hall where Mr. Boushie’s wake was being held contributed to a further deterioration of the RCMP’s relationship with the family. Although the RCMP members’ intention was only to provide an update about the investigation, the Commission found that their attendance at the wake for this purpose was unreasonable.

¹ This legal term is used to describe a fact presumed to be true at first view unless disproved.

[7] The Commission made a number of recommendations to address the deficiencies identified in the investigation and interactions with the family.

[8] A little over 10 months after the Commission issued its Interim PII Report, the RCMP Commissioner provided her response (**Schedule 2**). The response accepted without debate almost all of the Commission's findings, and every one of its recommendations. The only exceptions related to more technical and less central findings.

[9] Of note, the RCMP Commissioner accepted the finding relating to the discriminatory treatment of Ms. Baptiste, noting that her treatment was insensitive.

[10] In response to the Commission's recommendation for increased mandatory cultural awareness training, the RCMP Commissioner provided a long list of programs that the RCMP has implemented, and is still implementing, in addition to other initiatives already mentioned in the RCMP's response to another of the Commission's reports.

[11] Surprisingly, despite generally accepting almost all findings and recommendations, the RCMP's response said very little about the issues at the heart of this case, while devoting much attention to more minor and technical points about the few findings the RCMP disagreed with. These points often related to resources and logistical issues that were discussed at length, while the more important issues were often addressed with few words. In that sense, the response could be viewed as a missed opportunity for the RCMP to take responsibility for the manner in which Mr. Boushie's family and friends were treated.

[12] Nevertheless, the RCMP's response to the Commission's Interim PII Report shows a willingness to implement the Commission's recommendations and to accept its findings. The RCMP's commitment to providing enhanced cultural awareness and Indigenous-related training is expressed in clear terms.

[13] Achieving the deeper change to the RCMP's organizational culture that will prevent the type of discrimination found in this case from reoccurring will require more than cultural awareness training. However, the Commission notes the positive steps the RCMP is taking, and hopes that this case and the present report can be part of the catalyst for the RCMP to further engage in a necessary process of change.

OVERVIEW OF THE COMMISSION'S INVESTIGATION

[14] The Commission is an agency of the federal government, distinct and independent from the RCMP.

[15] The Commission received a complaint on December 16, 2016, from Mr. Boushie's uncle, Alvin Baptiste, brother of Ms. Baptiste. The complaint mostly focused on the conduct of RCMP members who attended Ms. Baptiste's home on the evening of her son's death. This complaint will be referred to as the "family's complaint."

[16] The RCMP initially investigated the family's complaint pursuant to the *Royal Canadian Mounted Police Act* ("the RCMP Act"). On October 19, 2017, the RCMP issued a report to the family responding to their complaint. The family was not satisfied with the RCMP's report and requested that the Commission conduct a review. The Commission eventually decided to conduct a further investigation into the family's complaint.

[17] In the meantime, the Acting Commissioner of the RCMP wrote to the Commission's then-Interim Chairperson on February 16, 2018, to request that the Interim Chairperson consider initiating a complaint and investigation into this matter, in light of the concerns raised by the family and others about their interactions with RCMP members and about various aspects of the RCMP's criminal investigation.

[18] In response to this and to the Commission's own concerns, the Interim Chairperson initiated a broad separate complaint and PII on March 6, 2018. This complaint will be referred to as the "Commission Chairperson's complaint." The focus of this complaint was to examine:

1. Whether the RCMP members involved in this matter conducted a reasonable investigation into the death of Mr. Boushie;
2. Whether the 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;
3. Whether the relevant RCMP national, divisional and detachment-level training, policies, procedures and guidelines are reasonable; and
4. Whether the conduct of RCMP members involved in this matter amounted to discrimination on the basis of race or perceived race.

[19] In the course of its investigation, the Commission reviewed thousands of pages of police records, documentary evidence, and other relevant information. Commission investigators conducted ten civilian interviews, primarily with members of Mr. Boushie's family and their legal counsel. Commission investigators also conducted interviews with over 30 RCMP members.

[20] The Commission was initially provided with the original materials from the RCMP's investigation of the family's complaint. However, several other requests for additional relevant materials were necessary. Relevant materials were provided in several instalments and some of the Commission's requests remained pending for a

number of months. The Commission continued to receive additional materials from the RCMP until November 2019. While the RCMP provided materials in response to many of these requests, some materials were no longer available.

[21] When the Commission requested various recordings and transcripts of telephone calls and radio communications, the RCMP indicated that these records had been deemed to have no evidentiary value to the criminal investigation, and had been destroyed upon the two-year anniversary of their creation pursuant to RCMP document retention policies. In correspondence sent to the RCMP on February 13, 2019, the Commission noted its disappointment with the RCMP's failure to retain these records. The Commission pointed out that both the family's complaint and the Commission Chairperson's complaint had been initiated before the end of the two-year retention period, and that the materials were relevant to these complaints.

[22] On November 4, 2019, the Commission issued an Interim Report related to the family's complaint. This report reviewed the RCMP's decision about the complaint, and made findings and recommendations to address the specific issues raised by the family.

[23] On January 21, 2020, the Commission completed a 107-page Interim PII Report regarding the Commission Chairperson's complaint. In this Interim PII Report, the Commission made 47 findings and 17 recommendations.

[24] The Commission's review of the RCMP's criminal investigation of the death of Mr. Boushie involved an examination of the evidence in order to make findings about the actions of the RCMP members involved. 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.

[25] The Commission's role was not to relitigate the criminal matter against Mr. Stanley. Rather, its role was to reach conclusions regarding the conduct of RCMP members after a review of the evidence and, where appropriate, to make recommendations focused on measures that can help remedy the deficiencies identified.

[26] In accordance with the RCMP Act, the Commission sent the Interim PII Report to the RCMP Commissioner. On December 4, 2020, the Commission received a response from RCMP Commissioner Brenda Lucki, in accordance with section 45.76(2) of the RCMP Act. As of January 7, 2021, the Commission is still awaiting a response to its Interim Report on the family's complaint.

[27] In her response to the Interim PII Report, the RCMP Commissioner agreed with all but three of the Commission's findings. She supported all of the Commission's recommendations.

[28] After considering the RCMP Commissioner's response, the Commission has prepared this Final Report, pursuant to section 45.76(3) of the RCMP Act.

BACKGROUND FACTS

[29] At approximately 1 p.m. on August 9, 2016, Mr. Boushie stopped at his home on the Red Pheasant First Nation Reserve accompanied by K. W.² He told his mother, Ms. Baptiste, that he was going swimming with some companions and he planned to be home between 5 p.m. and 6 p.m. for dinner. That was the last time Ms. Baptiste saw her son alive.

[30] Mr. Boushie and four companions spent the afternoon swimming and drinking. His companions were two young men, E. M. and C. C., and two young women, K. W. and B. J. As they were returning to the Red Pheasant First Nation Reserve, the Ford Escape that they were driving developed a flat tire. Sometime after 5 p.m. they turned into a driveway leading to the farm where Mr. Stanley lived with his wife, L. S. The Stanleys' adult son, S. S., was also present at the time.

[31] It is not clear whether the five occupants of the Ford Escape shared a common intention when they turned into the Stanley driveway. All had consumed alcohol and some of them were asleep. It does not appear that Mr. Boushie left the vehicle at any point or interacted with any of the Stanleys' property.

[32] The Ford Escape stopped in the Stanleys' yard. E. M. and C. C. got out of the vehicle and appeared to interact with a truck parked on the property. One of the pair then jumped onto an all-terrain vehicle that was also in the yard. After seeing this happen, Mr. Stanley and S. S. ran into the yard and yelled for the strangers to stop what they were doing, as they believed that the group was attempting to steal their property.

[33] E. M. and C. C. returned to the vehicle and attempted to drive away. In the process, the Ford Escape collided with another vehicle that was parked in the yard and subsequently became stuck as the exposed rim of the wheel with the flat tire dug into the gravel. At the same time, S. S. chased after the Ford Escape and hit the front windshield with a hammer. Mr. Stanley went to a shed, returning armed with a handgun. After the vehicle became stuck, E. M. and C. C. (who was the driver) left the vehicle and fled down the laneway on foot.

[34] Mr. Boushie then moved from the back seat to the driver's seat in an apparent attempt to drive away. Mr. Stanley approached the vehicle's driver-side door with the gun in hand. Although there are disputed facts regarding what happened next and why, it is undisputed that the gun in Mr. Stanley's hand fired, discharging a bullet that struck Mr. Boushie in the back of the head, killing him. K. W. got out of the Ford Escape,

² The Commission has identified most third parties as well as young persons by initials to protect individual privacy.

opened the driver-side door, and moved Mr. Boushie onto the ground next to the vehicle, where emergency responders later found him.

[35] K. W. and B. J. were both very distraught. K. W. knelt to hold Mr. Boushie in her arms. L. S. approached both B. J. and K. W. and attempted to calm them down. She later reported that K. W. and B. J. punched her (the two were charged with assaulting L. S. but the charges were ultimately withdrawn). K. W. and B. J. then departed on foot, proceeding down the lane to the roadway outside the Stanley farm.

[36] E. M.'s rifle was in the Ford Escape. He had brought it with him, as he intended to go hunting. The rifle's wooden stock was later found next to a vehicle at another property (belonging to M. F. and G. F.), approximately 15 kilometres from the Stanley farm. The barrel section of the same firearm was found next to Mr. Boushie's body. There remains no clear explanation as to how it came to be there.

[37] At 5:27 p.m., S. S. called 911. After hearing a brief description of the nature of the emergency, the 911 call taker transferred the call to the RCMP's Operational Communications Centre (OCC).

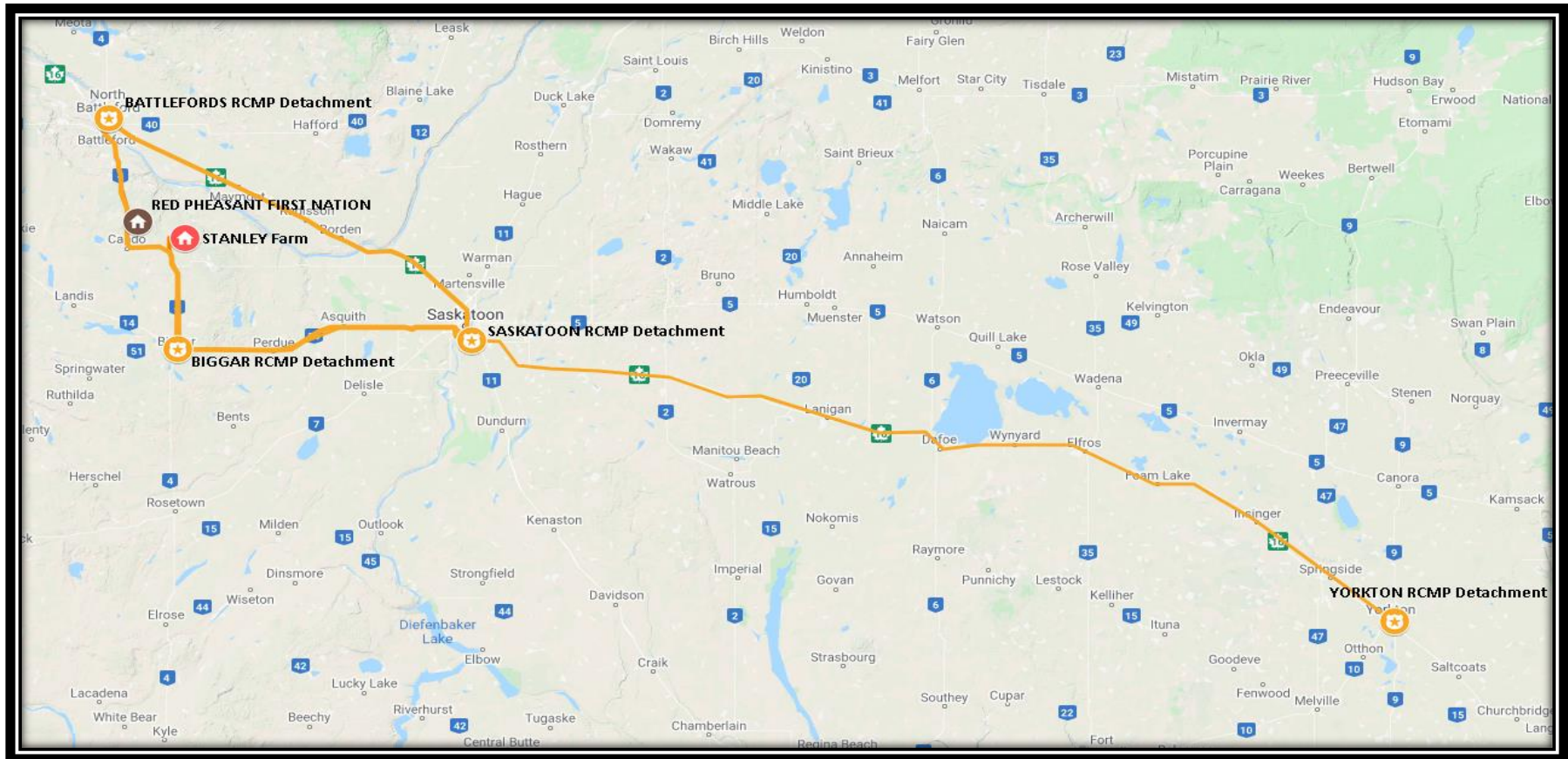
[38] S. S. provided the following information to the OCC call taker:

- a. Three men and two women had come onto their property and tried to steal vehicles from the yard, had almost run someone over, and one of the three men had been shot;
- b. The remaining two men had fled the scene on foot to the west and were armed with a gun;
- c. The two women remained at the scene and his mother, L. S., was speaking to them;
- d. His father was the shooter; and
- e. The man who had been shot may be dead.

[39] The call taker obtained descriptions of the involved persons and asked for specific directions to the Stanley farm.

[40] The Stanley farm is located in the rural municipality of Glenside, between two RCMP detachments: Battlefords (located in North Battleford), which is a driving distance of approximately 68 kilometres to the north, and Biggar, which is 44 kilometres to the south. During S. S.'s call, the call taker determined that the incident fell within the Biggar Detachment's jurisdiction. Due to the nature of the incident, police officers were initially dispatched from both the Biggar and Battlefords detachments.

Figure 1: Driving Distances



Approximate Driving Distances

STANLEY FARM	→	BIGGAR RCMP	44 KM	BIGGAR RCMP	→	BATTLEFORDS RCMP	94 km
STANLEY FARM	→	BATTLEFORDS RCMP	68 KM	BIGGAR RCMP	→	SASKATOON RCMP	98 km
STANLEY FARM	→	SASKATOON RCMP	142 KM	BIGGAR RCMP	→	YORKTON RCMP	465 km
BATTLEFORDS RCMP	→	SASKATOON RCMP	144 KM				

[41] At approximately 5:25 p.m.³ on August 9, 2016, Constable Arvind Parmar⁴ of the Biggar Detachment received a call from the OCC informing him of the incident at the Stanley Farm.

[42] Constable Parmar immediately contacted Constable Andrew Park, who was on-call, for assistance. At approximately 5:30 p.m., emergency medical services (EMS) personnel were dispatched to attend the scene and the Emergency Air Ambulance Service was also called in to assist. At 5:45 p.m., Sergeant Colin Sawrenko, the Biggar RCMP Detachment Commander, received a call from Constable Parmar regarding the shooting. Sergeant Sawrenko, who was off-duty at the time, directed Constable Parmar to contact all Biggar Detachment resources and those from surrounding jurisdictions, including the Battlefords Detachment.

[43] Sergeant Sawrenko initially assigned Corporal Jason Olney of the Battlefords Detachment as the supervising RCMP member. He explicitly directed Corporal Olney to remain off the property until sufficient resources were in place.

[44] Meanwhile, en route to the scene, Corporal Melvin Sansome and other RCMP members of the Battlefords Detachment came across E. M., B. J., and K. W. All three were arrested for mischief and were subsequently transported to the Battlefords Detachment where they were lodged in cells overnight.

[45] Attempts were made to re-establish communication with S. S. to obtain additional information. It was soon found out that S. S. was on the line with the OCC call taker, who transferred him to Constable Park's cell phone at approximately 5:52 p.m. S. S. told Constable Park, who was heading to the scene, that there had been no exchange of gun fire, and that only Mr. Stanley had fired a gun.

[46] RCMP members arrived at the scene between 6:10 p.m. and 6:35 p.m. In preparation for clearing and securing the scene, they lined their police vehicles along the road in front of the Stanley property. Following a briefing held by Corporal Olney with the RCMP members on scene, Mr. Stanley, his wife, L. S., and their son, S. S., were directed to exit their residence one by one with their hands up. All three were arrested without incident.

[47] By approximately 6:52 p.m., RCMP members successfully cleared the residence and outbuildings on the property. EMS personnel entered the scene. They examined Mr. Boushie and declared him deceased.

³ This is the approximate time as recorded by Constable Parmar despite the OCC record of the 911 call being received at 5:27 p.m.

⁴ RCMP members' ranks indicated in this report are those held at the time of the RCMP's investigation.

[48] In the meantime, a neighbour of the Stanleys, A. D., approached the RCMP roadblock outside the Stanley farm and informed police that he had just given someone a ride to the Red Pheasant First Nation Reserve. RCMP members determined that the neighbour's description of the person matched that of C. C.

[49] RCMP members from the Battlefords Detachment were sent from the scene of the Stanley farm to the Red Pheasant First Nation Reserve to search for C. C. There, they attended Ms. Baptiste's home to search for C. C. while also informing her of the death of her son. The actions of RCMP members while at Ms. Baptiste's home were part of the family's complaint.

[50] The RCMP was unable to locate C. C. on the Red Pheasant First Nation Reserve on the evening of August 9, 2016. The next day, his whereabouts were still unknown to police until he voluntarily attended the Battlefords Detachment just after 5 p.m.

OVERVIEW OF THE COMMISSION'S FINDINGS AND RECOMMENDATIONS

[51] Mr. Boushie's death is profoundly tragic. The pain and loss felt by his family, friends, and community was evident in their interviews and throughout the Commission's investigation. It was also clear that this incident affected RCMP members, some of whom expressed deep sadness in their interviews. Several of the RCMP members involved self-identify as members of Indigenous communities.

[52] With this in mind, the Commission carefully reviewed the conduct of the RCMP members that were involved in the investigation of Mr. Boushie's death, in keeping with its mandate to review RCMP members' conduct and to make recommendations aimed at improving policing and correcting any deficiencies identified.

[53] The issues examined by the Commission included the following:

- first response;
- arrests;
- interviews;
- detention in custody;
- separation of witnesses;
- investigative time management;
- crime scene management;
- collection and processing of physical evidence;
- major case management;
- communications;
- discrimination; and
- cultural awareness.

[54] In the following pages, the Commission provides an overview of its main findings and recommendations relating to the investigation conducted by the RCMP, communications with Mr. Boushie's family, and discrimination. It should be noted that this is not meant as an exhaustive review or summary of all of the Commission's findings and recommendations. For a complete review of all the issues examined by the Commission, the Interim PII Report needs to be reviewed in its entirety.

[55] The RCMP's response to the Commission's findings and recommendations is also briefly discussed in the following pages, particularly where commentary or information was provided in addition to agreeing with the findings and recommendations. The few cases where the RCMP disagreed with the Commission's findings are discussed separately. A table of the Commission's final findings and recommendations is included at the end of this report.

The RCMP's Investigation

[56] The Commission found that, when considered as a whole, the RCMP's investigation of Mr. Boushie's death was conducted in a professional manner by adequately trained and experienced criminal investigators employing the Major Case Management methodology as outlined in the RCMP's national policy on major case management.

[57] Findings were made about the reasonableness of specific aspects of the investigation. This included a finding that the RCMP's initial response to the incident was reasonable and timely, and that appropriate action was taken to ensure that all available resources were deployed to respond to the incident. The Commission also found that the investigative team was adequately staffed to conduct the investigation.

[58] In addition, the Commission found that the arrests made during the investigation were reasonable, and complied with the requirements of the *Canadian Charter of Rights and Freedoms* ("the Charter"). The Commission found that the RCMP's interview with Mr. Stanley was conducted in a reasonable manner, and that the approach taken and the tactics employed were in line with RCMP policy and training. The Commission also found that the RCMP members assigned to conduct the initial collection and processing of the physical evidence were adequately trained and qualified to perform these forensic identification tasks.

[59] Notwithstanding these positive findings, the Commission also identified a number of deficiencies in the investigation, which caused some concern and which resulted in interim findings and recommendations. The Commission noted that many of these deficiencies, as well as some of the deficiencies identified in the next-of-kin notification of Mr. Boushie's mother, were the result of internal communication failures involving instances where RCMP members did not adequately convey important information to other RCMP members.

INVESTIGATIVE TIME MANAGEMENT – INFORMATION TO OBTAIN A SEARCH WARRANT

[60] Obtaining and securing all available evidence during the early stages of a major case is critical, and key to this is efficient time management. In this case, several circumstances were present that increased the need to move the case forward in the most timely manner possible.

[61] Investigators knew at the outset that Mr. Stanley had been arrested for murder and was in custody. They had 24 hours to lay a charge and bring him before a justice. They also knew that the crime scene was perishable, as it was for the most part outdoors and inclement weather was expected. The crime scene was on the private property of Mr. Stanley and a *Criminal Code* search warrant would be required to process the scene and collect evidence. Geographical challenges existed, given that the Major Crime Unit (MCU) home office was situated in Saskatoon, the detachment with jurisdiction was located in Biggar (where the Stanleys were awaiting interview), three other key witnesses were in custody at the Battlefords Detachment, and the crime scene was situated somewhat central to these three locations. Generally speaking, there was a drive of an hour or more from any one location to another.

[62] The Commission identified a number of issues in the early stages of the investigation that appear to have resulted in some inefficiency, one of which was a delay in the writing of the Information to Obtain a Search Warrant (ITO).

[63] Sergeant Olberg began calling in MCU members to form the investigative team as soon as he was notified of the homicide around 6 p.m. on August 9. He called Corporal Doug Nordick, who stated that he was not immediately available. The two agreed that Corporal Nordick would start drafting the ITO the next morning. Corporal Nordick attended the MCU office at approximately 6 a.m. on the morning of August 10. The warrant was signed and completed at approximately 8 p.m. that evening, and the search commenced the following morning (August 11).

[64] Sergeant Olberg noted in his interview with Commission investigators that Corporal Nordick was one of his team leaders and was an experienced affiant.⁵ Sergeant Olberg also indicated that any of his team members could have drafted the ITO given their training and experience. However, there was no indication in the information before the Commission that Sergeant Olberg considered other options in an effort to expedite the process. Corporal Fee and Constable Teniuk were called out to the Battlefords Detachment to interview E. M., B. J., and K. W., who were then deemed not to be in suitable condition to be interviewed. Their notes did not reflect that they were tasked with any other investigative actions until they retired for the night and attended the team meeting the next morning. Nothing appeared to prevent either one of them from starting to write the ITO.

⁵ The affiant police officer's role is to provide a factual foundation to justify the issuing of a search warrant.

[65] The overriding concern requiring the prompt attendance of an affiant was the perishable crime scene and deteriorating weather conditions in the forecast. The Commission found that these circumstances required that an affiant begin writing the ITO in a more timely fashion, while recognizing that not all MCU members can be available on a 24/7 basis.

[66] If an affiant had been working contemporaneously with the investigative team from the outset, a warrant could have been sought, and likely obtained, in the morning of August 10.

[67] The delay in writing the ITO ultimately deferred the attendance of Forensic Identification Services (FIS) until the morning of August 11. FIS member Constable Heroux stated that he was up all night on August 9 and waited all day on August 10 for the search warrant. He cited fatigue to explain why he could not have commenced the search late on August 10. This precluded the option of seeking authorization within the warrant to commence a night-time execution on August 10.

Commission's Interim Finding #21	Sergeant Olberg failed to ensure that the Information to Obtain a Search Warrant was drafted in a timely manner.
Commission's Interim Recommendation #6	That the RCMP provide Sergeant Olberg with guidance, mentoring and/or training regarding the timely drafting of an Information to Obtain a Search Warrant.

RCMP Commissioner's Response

[68] The RCMP Commissioner agreed with Interim Finding 21 and generally supported Recommendation 6. The RCMP Commissioner stated that it is clear from Sergeant Olberg's curriculum vitae that he is a subject matter expert with respect to the preparation of judicial authorizations. For this reason, the RCMP Commissioner stated that she saw little use in providing mentoring or training to him on the need to ensure timely drafting of ITOs. Instead, the RCMP Commissioner indicated that she will direct that Sergeant Olberg be provided operational guidance about the circumstances that led to the delay in this case, since she expressed the view that the delay was due to extenuating circumstances and not because of a deficiency in Sergeant Olberg's training.

[69] While the Commission would not necessarily describe the circumstances that caused the delay in this case as "extenuating," the Commission does agree that the delay was caused by Sergeant Olberg's response to the particular circumstances of the case, rather than any deficiency in his training. As such, the Commission is satisfied that the action the RCMP Commissioner intends to take is consistent with the purpose and intent of its recommendation.

CRIME SCENE MANAGEMENT – PROTECTION OF EVIDENCE (FORD ESCAPE)

[70] The correct handling and collection of physical evidence within a crime scene is a critical aspect of any investigation. Police officers must know their duties relating to evidence, including the means to protect short-lived evidence at the earliest opportunity, to prevent its loss or destruction.

[71] There was no doubt in this case about the relevance of the Ford Escape. This vehicle was a key piece of physical evidence.

[72] During the initial examination of the crime scene in the early hours of the morning on August 10, 2016, Constable Heroux of the Saskatoon FIS took some general photographs of the Ford Escape. He did not make detailed notes or take forensic photographs of the bloodstain evidence at that time because a search warrant was required to process the scene and collect evidence. As mentioned above, the delay incurred in the writing of the ITO ultimately deferred the attendance of FIS until the morning of August 11. In the meantime, the vehicle was exposed to inclement weather and as a result, evidence was altered and bloodstain patterns in the vehicle were lost. Nothing was done to protect the vehicle.

[73] The Commission considers that the failure to protect the Ford Escape at the crime scene was a significant error in the investigation into Mr. Boushie's death. A review of the materials before the Commission revealed an apparent lack of appreciation or concern for the integrity of this evidence.

[74] Many of the police officers involved in this case (first responders as well as FIS and MCU members) knew that weather conditions were forecasted to deteriorate in the short term and that RCMP policy requires that steps be taken to ensure that evidence is both protected and preserved. During their interviews with Commission investigators, RCMP members acknowledged this; however, there is no clear explanation as to how the failure to protect the Ford Escape occurred. The Commission found that this appeared to have been the result of a lack of communication.

[75] During their interviews with Commission investigators, FIS members Constable Heroux and Corporal Ryttersgaard indicated that they did not consider covering the vehicle. The weather was clear at the time of their departure and they expected to be returning to the scene shortly under the authority of a search warrant. Constable Heroux noted that tarps were available at the scene, but not tents or shelters.

[76] The Primary Investigator, Constable Boogaard, had direct communication with Sergeant Sawrenko about the incoming weather and possible loss of evidence. However, he did not recall passing on this information to Constable Heroux of the FIS. He explained that he assumed Constable Heroux was en route to the scene and would assess the weather upon arrival.

[77] Constable Heroux's notes indicate that he was aware of the incoming weather and planned to "try to capture the scene in case poor weather sets in." He told Commission investigators that it had not rained during his initial attendance at the scene, but it had rained prior to his arrival. During his examination at Mr. Stanley's trial, he stated that "[b]etween the 8th of August and the 11th of August when we had arrived, approximately 44 millimeters of rain had fallen, and it was very obvious it had washed away a lot of the red substance consistent with blood from the door panel and on the ground."

[78] It was apparent during the interviews conducted by Commission investigators that the RCMP members were aware that the failure to protect the vehicle was a mistake and that it should not have happened. While the MCU took responsibility for this error, the Commission emphasized in its Interim PII Report that the preservation of evidence in such circumstances is a duty every RCMP member should recognize and act upon regardless of whether they have been specifically told to do so.

[79] The Commission also found an issue with the processing of the Ford Escape, as the FIS member involved did not contact a bloodstain pattern analyst until approximately three days after the shooting. The Commission concluded that this delay was unreasonable.

[80] It is impossible to determine what other evidence may have been compromised, diminished or lost, in addition to the blood spatter. The reason why all evidence must be preserved and processed in the timeliest way possible is because the potential relevance of any piece of physical evidence may be unknown at the outset of an investigation. In this case, Mr. Boushie was sitting in the Ford Escape when he was shot, so the importance of preserving the vehicle was clear. The impact of the loss of the evidence contained in the Ford Escape on the outcome of the investigation can never be known, since there was never an opportunity to collect and use the evidence.

[81] In its Interim PII Report, the Commission acknowledged that the MCU team had already recognized and discussed this shortcoming, and had instituted new procedures to prevent a similar reoccurrence. Specifically, "F" Division created a Crime Scene Manager position as part of its Coordinated Investigative Team. The RCMP member fulfilling this role is primarily responsible for overseeing and managing evidence collection. In her response, the RCMP Commissioner accepted all of the Commission's findings and recommendations on this issue.

Commission's Interim Finding #25	RCMP policies and procedures relating to the preservation and protection of evidence were not reasonably followed and a key piece of evidence, the Ford Escape, was left vulnerable to contamination.
Commission's Interim Finding #26	The RCMP's failure to protect the Ford Escape resulted in the alteration and loss of trace and bloodstain evidence.

Commission's Interim Finding #37	Constable Heroux's decision to contact a bloodstain pattern analyst three days after the incident was unreasonable.
Commission's Interim Recommendation #9	That the involved members of the Major Crime Unit and Forensic Identification Services be directed to review the findings in the Commission's Interim PII Report with a senior member of the RCMP.
Commission's Interim Recommendation #10	That the involved members of the Major Crime Unit and Forensic Identification Services receive operational guidance with respect to RCMP policies and procedures related to the preservation and protection of evidence.
Commission's Interim Recommendation #14	That Constable Heroux be directed to review this report with a senior Forensic Identification Services member and discuss the significance of the involvement of a bloodstain analyst at a blood-letting crime scene.

CRIME SCENE MANAGEMENT – NON-ATTENDANCE OF MAJOR CRIME UNIT

[82] Another issue of significant concern addressed in the Commission's Interim PII Report related to the lack of attendance of the MCU at the crime scene.

[83] The MCU assembled in Saskatoon for its initial briefing on the evening of August 9. Following the briefing, five RCMP members, including the members of the Command Triangle,⁶ went to the Biggar Detachment to deal with Mr. Stanley, his wife, L. S., and their son, S. S. Two field investigators went to the Battlefords Detachment to deal with E. M., B. J., and K. W. The witness statements of L. S. and S. S. were completed in the early hours of the morning of August 10. The members then left Biggar and drove to North Battleford to lodge for the night.

[84] At that time, no member of the MCU had yet attended the crime scene. The first response police officers had taken several investigative steps, including the arrest and transport of Mr. Stanley and the arrest and transport of E. M., B. J., and K. W. Mr. Boushie's body had been removed and the scene was being held while awaiting judicial authorization to conduct a search. The two investigators assigned to conduct the interviews with E. M., B. J., and K. W. were unable to deal with them at the time due to their state of intoxication. Mr. Stanley's interview was pending for later on August 10.

⁶ The Command Triangle was composed of the Team Commander, Sergeant Olberg, the Primary Investigator, Constable Boogaard, and the File Coordinator, Constable Wudrick.

[85] In its Interim PII Report, the Commission recognized the geographical issues facing the investigative team. However, when the team decided to lodge for the night in North Battleford, the RCMP members had to travel north, in the direction of the crime scene. As no other tasks were planned, it would have been an opportune time to visit the crime scene. A visit would have provided the team with a visual perspective of the scene, including its location and an understanding of how it had been secured. A visit to the crime scene would have facilitated direct discussion with on-scene RCMP members, thereby ensuring that adequate resources were in place and tasks were properly managed and conducted. Discussions could have been held with FIS members already on scene regarding their observations, scene preservation and timeline expectations for the search warrant. It would also have been useful for the RCMP member who was tasked with interviewing Mr. Stanley to at least get a sense of the scene before the interview.

[86] The Commission acknowledged that there may be exigent circumstances in some cases where attendance at the scene is not immediately possible. However, in the case at hand, the interviews of L. S. and S. S. were completed and the MCU team was travelling in the direction of the crime scene. There was an opportunity present for one or more MCU members to attend the scene.

[87] The Commission recognized that unnecessary attendance at crime scenes should be avoided, especially given the risk of cross-contamination. However, MCU members in this case could have attended the perimeter to collaborate with other members, observe the scene, and gain an appreciation of ongoing activities.

[88] The Commission found that the MCU's delayed attendance at the crime scene was a contributing factor in many of the issues raised in its report. The more serious oversights or omissions could have been mitigated or avoided had there been an on-site MCU presence—most significantly the issues pertaining to protection of evidence (Ford Escape) and some of the issues arising out of the next-of-kin notification.

Commission's Interim Finding #30	It was unreasonable for one or more members of the Major Crime Unit not to attend the crime scene in a more timely fashion.
Commission's Interim Recommendation #12	That, in future cases, the Major Crime Unit Commander ensure that a member of the Unit attend the crime scene in a timely fashion.

RCMP Commissioner's Response

[89] The RCMP Commissioner agreed with Interim Finding 30 and supported Interim Recommendation 12. The RCMP Commissioner stated that she is satisfied that the creation of a Crime Scene Manager position within the MCU structure in "F" Division is a positive step forward in ensuring that MCU members attend a crime scene within a

reasonable time. Consequently, she stated that she will not direct any further actions with respect to this recommendation.

[90] The Commission had acknowledged in its Interim PII Report that the creation of a Crime Scene Manager position with responsibility, amongst other things, to liaise with support services, should facilitate communications and timely information sharing between the various policing units and should help prevent situations such as those that occurred in the present case. As such, the Commission is satisfied that its recommendation has been sufficiently addressed.

INTERVIEWS AND CONTINUED DETENTION OF E. M., B. J. AND K. W.

[91] The Commission had concerns around the manner in which RCMP members treated E. M., B. J., and K. W. while in custody. The Commission found that the manner in which their interviews regarding the homicide of Mr. Boushie were conducted was unreasonable. RCMP investigators were frustrated with what they felt was a lack of cooperation from the three witnesses. However, the interviewers made little effort to establish trust. Given the historic distrust of police by Indigenous communities, the trauma, shock, and chaos of the previous day's events, the lack of sleep, the lodging in cells, and the potentially severe hangovers the witnesses suffered, the Commission found that the RCMP interviewers did not reasonably foster a state of mind that was conducive to witness cooperation. The Commission further concluded that the lengthy explanations provided to the three witnesses regarding the jeopardy that they faced and the type of information police wanted from them were both confusing and contradictory.

[92] The Commission also found that the continued detention in custody of E. M., B. J., and K. W. following the provision of their statements was unreasonable and not justified under the *Criminal Code*.

Commission's Interim Finding #8	The manner in which Corporal Fee and Constable Teniuk conducted the interviews of K. W., B. J., and E. M. was unreasonable in the circumstances.
Commission's Interim Finding #10	The continued detention in custody of E. M., B. J., and K. W. following the statements they provided to the RCMP on August 10, 2016, was unreasonable and not justified under subsection 497(1.1) of the <i>Criminal Code</i> .

Commission's Interim Recommendation #1	That Corporal Fee and Constable Teniuk be provided with operational guidance with respect to RCMP policy regarding the interviewing of witnesses.
Commission's Interim Recommendation #2	That Sergeant Olberg be directed to review the reasons for detention listed in subsection 497(1.1) of the <i>Criminal Code</i> .
Commission's Interim Recommendation #3	That the RCMP review its policy OM 24.1. ("Interviews/Statements: Suspect/Accused/Witness") to address the treatment of in-custody witnesses interviewed in criminal investigations in which they are not suspects.

RCMP Commissioner's Response

[93] The RCMP Commissioner agreed with Interim Findings 8 and 10, and supported Interim Recommendations 1, 2 and 3.

[94] With respect to Recommendation 3, the RCMP Commissioner stated specifically in her response that she believed the RCMP policy at issue did not provide sufficient guidance about the relevant topics. She indicated that she would direct that the policy be amended to provide RCMP members with available options when obtaining a statement from a person who is held in custody and who is both a witness and an accused to offences having a temporal connection. She added that the guidance would further direct that RCMP members consult with Crown counsel, where possible, prior to obtaining statements in these circumstances, and would address the need for RCMP members to ascertain the prisoner's state of mind and care received in police custody.

FAILURE TO SEPARATE L. S. AND S. S. AND REMOVAL OF VEHICLE FROM CRIME SCENE

[95] In reviewing the documentation, the Commission noted that L. S. and S. S. were released from custody following their arrest on August 9, 2016, and were permitted to travel on their own to the Biggar Detachment to provide voluntary witness statements. They drove together, using their personal vehicle, which was parked within the crime scene. Upon arrival at the detachment, they waited together in the lobby until the arrival of MCU investigators.

[96] The Commission found that it was unreasonable for the RCMP members in charge of the investigation to fail to request that L. S. and S. S. not discuss the incident with each other prior to providing their witness statements. The Commission further found that the decision to allow L. S. and S. S. to remove a vehicle from the crime scene to travel to the RCMP Biggar Detachment was unreasonable.

Commission's Interim Finding #13	It was unreasonable for the members of the Command Triangle (Sergeant Olberg and Constables Boogaard and Wudrick) to fail to consider providing direction that L. S. and S. S. not discuss the incident with each other prior to providing their witness statements to the police.
Commission's Interim Finding #14	It was unreasonable for Sergeant Sawrenko to fail to request that L. S. and S. S. not discuss the incident with each other prior to providing their witness statements.
Commission's Interim Finding #27	Sergeant Sawrenko's decision to allow L. S. and S. S. to remove a vehicle from the crime scene to travel to the RCMP Biggar Detachment was unreasonable.
Commission's Interim Recommendation #4	That the RCMP provide guidance, mentoring and/or training to the members of the Command Triangle (Sergeant Olberg and Constables Boogaard and Wudrick) and Sergeant Sawrenko with respect to witness handling.
Commission's Interim Recommendation #11	That a senior member of the RCMP provide operational guidance to Sergeant Sawrenko regarding the importance of protecting and preserving evidence at a crime scene.

RCMP Commissioner's Response

[97] The RCMP Commissioner agreed with Interim Findings 13, 14 and 27, and supported Interim Recommendations 4 and 11. She stated in her response that, in addition to implementing the Commission's recommendation to provide mentoring or training to the RCMP members involved with respect to witness handling, the RCMP will amend the applicable policy to provide guidance about advising witnesses not to discuss the incident with other witnesses. The guidance will also instruct RCMP members to escort the witnesses to the detachment separately for the taking of statements, when possible.

Communications with the Family

[98] The importance of effective communication with families in the context of major case investigations cannot be overstated.

[99] The first contact between the police and the family can set the tone for an important relationship that will exist up until the completion of court proceedings and possibly beyond.

[100] In this case, the first contact between police and Mr. Boushie's family was on the night of August 9, 2016, when police informed Ms. Baptiste of her son's death. Several issues arose from this first contact, which are discussed below. Unfortunately, the manner in which the next-of-kin notification unfolded set a negative tone for many of the subsequent communications between the RCMP and the family.

[101] Early communications were further challenged by the fact that RCMP members went to the funeral hall where Mr. Boushie's wake was being held to update Ms. Baptiste on their investigation.

[102] The funeral arrangements were already difficult for the family due to the circumstances surrounding the criminal investigation, which prevented the family from having access to the body. This disrupted their ability to enact their cultural protocol in relation to the death, where four days are needed and each day has its own meaning and significance.

[103] The presence of the RCMP members at the funeral hall was not welcome by the family; it further upset Ms. Baptiste at a moment of acute emotional vulnerability. During interviews, family members indicated that the police presence at the funeral intruded upon their grief and added to the negative experience they had already had with police during the next-of-kin notification.

[104] The RCMP members' motivation—to update the family—did not temper the effect of their presence at the funeral, nor did their presence soften the tone of the communications that was set during the next-of-kin notification. In its Interim PII Report, the Commission noted that, at funerals, the emotional well-being of bereaved relatives is particularly vulnerable. Allowing Mr. Boushie's family members to have a few final hours of peace before their loved one was laid to rest would not have undermined the need to ensure that they be updated about the investigation.

Commission's Interim Finding #41	It was unreasonable for Constables Boogaard and Teniuk to attend the wake to update the family on the progress of the criminal investigation.
Commission's Interim Recommendation #15	That Constables Boogaard and Teniuk be directed to review this finding with a senior member of the RCMP.

RCMP Commissioner's Response

[105] The RCMP Commissioner agreed with Interim Finding 41 and supported Interim Recommendation 15. She also stated in her response that "F" Division has revised its Major Crime Unit Business Rules to clarify the Team Commander's role and responsibility in ensuring that the death notification is properly resourced and completed, and that all plans, communication strategies and tasks are documented in the investigational decision logs.

[106] The RCMP Commissioner also stated that “F” Division has developed the “Saskatchewan RCMP Family Guide” to provide to families of homicide victims or to families of missing persons where foul play is suspected. The RCMP Commissioner explained that this reference document can be used by family members to gain a better understanding of the investigation process and to assist in identifying resources available to them to obtain further support or information.

Discrimination and Cultural Awareness

[107] The Commission found a *prima facie* case of discrimination in relation to the treatment of Ms. Baptiste during the notification of her son’s death by the RCMP.

[108] In its Interim Report related to the family’s complaint, the Commission made findings about the conduct of the RCMP members who attended Ms. Baptiste’s home on the evening of Mr. Boushie’s death. The Interim PII Report related to the Commission Chairperson’s complaint focused on the issue of discrimination.

[109] In making its finding of *prima facie* discrimination, the Commission took into account the full social, historical, and legal context of the allegations of discrimination. With respect to Indigenous peoples, this social context includes long-standing colonial assertions, stereotypes, and a troubled history of police and Indigenous peoples’ relations.

[110] The Commission highlighted historic events in the Treaty Six and Battleford areas as emblematic of the impact of colonialism and its collective traumas that continue to reverberate across Indigenous communities, and continue to impact the relationship between Indigenous peoples and the RCMP today.

[111] In its Interim PII Report, the Commission found that there was a link between the insensitive manner in which the next-of-kin-notification was provided to Ms. Baptiste and the social context, specifically in relation to the police’s conduct towards Ms. Baptiste with respect to her sobriety and her credibility.

[112] In particular, after the RCMP members had just announced to Ms. Baptiste that her son was deceased, one member questioned her about whether she had been drinking. As the RCMP members were searching Ms. Baptiste’s home for reasons unknown to her, and Ms. Baptiste displayed distress at the news they had just given her, one member told her to “get it together.” One or more RCMP members smelled her breath.

[113] The RCMP members provided Ms. Baptiste with little information about what had happened to her son, but proceeded to question her and look in places in her home where no person could be hiding. Not only did the RCMP members’ actions show little regard or compassion for Ms. Baptiste’s distress and pain, they compounded her suffering by treating her as if she was lying.

[114] In a particularly hurtful instance, an RCMP member looked into Ms. Baptiste's microwave where Mr. Boushie's uneaten dinner was waiting for him, after Ms. Baptiste told the RCMP that she had placed it there when her son had not returned in time for supper as he had promised earlier. After spending the evening fearing that something had happened to her son and just seeing her worst fears realized, Ms. Baptiste saw her home encircled by a large number of armed police officers and had to endure this treatment from the RCMP members who remained in her home for about 20 minutes. She was then left with a lasting and painful memory of her interactions with the RCMP, and few answers about what had happened to her son.

[115] Because the RCMP members who attended Ms. Baptiste's home to notify her of her son's death were also searching for C. C.—and some believed he had a weapon—the Commission found that there were explanations for the tactical approach to Ms. Baptiste's home and the number of RCMP members involved. As such, the Commission concluded that there was no *prima facie* case of discrimination in this respect.

[116] However, the comments about Ms. Baptiste's sobriety and credibility could not be similarly explained.

[117] The Commission also examined other areas of concern with respect to potential discrimination, including the treatment of the witnesses who were with Mr. Boushie on the day of his death, as well as the overall gaps identified in the criminal investigation.

[118] While deficiencies were identified in each of these areas, and the Commission made adverse findings as discussed above, the Commission found that there were non-discriminatory explanations for those deficiencies. They were explained, for instance, by logistical or resourcing issues, the distances between various locations, and communication problems between RCMP members.

[119] Therefore, the Commission concluded that a *prima facie* case of discrimination was not established with respect to these other areas of concern.

[120] The Commission did note that the approach taken with some of the witnesses was unusual and could reasonably appear to be coercive and intimidating. Put together, the gaps identified in the RCMP's investigation could have reasonably caused a person to question whether discrimination played a role in the overall investigation. However, because of the facts and explanations uncovered during the PII, the Commission concluded that the evidence fell short of establishing that these specific deficiencies were based on discriminatory considerations.

[121] To address the instance where a *prima facie* case of discrimination was made out, the Commission inquired into the training available to RCMP members. During the investigation, one RCMP member informed the Commission that Indigenous-related training is not mandatory for everyone, particularly if there are “no” Indigenous populations within the jurisdiction of a detachment. The Commission found this particularly noteworthy for the RCMP, as it is the national police force responsible for policing approximately 40% of the Indigenous population.

[122] Significantly, one of the two main RCMP detachments involved in this case, Biggar, was mentioned as one of the detachments where Indigenous-related training was not mandatory. This suggested that a discrepancy existed between the current reality in the field and the institutional objective to provide the necessary training to all.

[123] Accordingly, the Commission recommended that the RCMP provide cultural awareness training to all its employees.

[124] Because this is not a new recommendation in the context of policing, the Commission emphasized that this awareness training needs to be offered and planned in a manner that bears in mind the factors outlined in related recommendations made in recent major inquiries over the past 30 years.

[125] This includes ensuring that the training meets the following standards:

- ongoing throughout a police officer’s career;
- trauma-informed;
- skills-based in intercultural competency, conflict resolution, human rights, and anti-racism;
- “experiential training” that includes Elders and community members who can share their perspective and answer questions based on their own lived experiences in the community;
- informed by content determined at the local level, and informed by all best practices;
- Indigenous, Inuit, and Métis peace officers as course leaders;
- interactive and allows for respectful dialogue involving all participants;
- distinctions-based and reflective of the diversity within Indigenous, Inuit, and Métis communities, rather than focusing on one culture to the exclusion of others; and
- knowledgeable about traditional restorative justice principles.

Commission's Interim Finding #44	A <i>prima facie</i> case of discrimination is not established with respect to the police's tactical approach and search of the Baptiste family home.
Commission's Interim Finding #45	A <i>prima facie</i> case of discrimination is established concerning the police's conduct towards Ms. Baptiste with respect to her sobriety and her credibility.
Commission's Interim Finding #46	There is no <i>prima facie</i> case of discrimination with respect to the treatment of E. M., B. J., K. W., and C. C. during their police interviews.
Commission's Interim Finding #47	There is no <i>prima facie</i> case of discrimination with respect to the gaps in the criminal investigation into Mr. Boushie's death, including issues relating to the securing of evidence.
Commission's Interim Recommendation #17	That cultural awareness training be provided for all RCMP employees bearing in mind the factors identified in recent inquiries.

RCMP Commissioner's Response

[126] The RCMP Commissioner agreed with Interim Findings 44, 46 and 47, concluding that no *prima facie* case of discrimination had been made out.

[127] The RCMP Commissioner also agreed with Finding 45, concluding that a *prima facie* case of discrimination was established concerning the police's conduct toward Ms. Baptiste. In her response, the RCMP Commissioner indicated that she "generally agree[d]" with this finding. She then stated that "it is undisputed that the manner in which the next of kin notification was communicated to the family was insensitive and demonstrated poor judgment." She also acknowledged the existence of a link between the manner by which the service was provided in this case and the Indigenous historical context, as found by the Commission in its Interim PII Report. For these reasons, the RCMP Commissioner stated that she is "prepared to agree with the Commission's finding with respect to this specific allegation in this particular matter."

[128] Given the lack of non-discriminatory explanation for the police conduct by the RCMP, and the RCMP Commissioner's agreement with the Commission's interim finding of *prima facie* discrimination, the Commission concludes that Ms. Baptiste, an Indigenous person, was discriminated against on the basis of her race, or national or ethnic origin (or the perception thereof), which are prohibited grounds of discrimination. The Commission's Final Finding will therefore be reworded as follows:

Commission's Final Finding #45	The police's conduct towards Ms. Baptiste with respect to her sobriety and her credibility was discriminatory on the basis of her race, or national or ethnic origin.
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[129] The RCMP Commissioner also supported Interim Recommendation 17.

[130] In her response, the RCMP Commissioner informed the Commission that the RCMP implemented a continuum of Indigenous cultural awareness learning opportunities for all categories of RCMP employees, and that cultural awareness training is mandatory for all employees.

[131] The RCMP Commissioner outlined recently added learning opportunities to strengthen cultural awareness for all RCMP employees, including:

- the Aboriginal and First Nations Awareness course, which provides information about the history, geography, and contemporary issues pertaining to Aboriginal lands, cultures, and communities;
- the Blanket Exercise, an interactive learning activity developed with Indigenous Elders, knowledge keepers, and educators;
- Indigenous Perceptions/Awareness workshops, which are delivered in the RCMP divisions and are distinction-based and mandatory for members policing Indigenous communities;
- a Trauma-Informed Approach online course aimed at assisting employees in recognizing the widespread impact of trauma;
- the Cultural Awareness and Humility course—mandatory for all RCMP members—developed to enhance awareness of self and others, ensuring understanding of Canadian laws and RCMP policies, and to recognize and apply a culturally informed approach; and
- updating the Canadian Police College’s Human Trafficking course to include Indigenous awareness and human trafficking prevention elements.

[132] The RCMP Commissioner also informed the Commission that some relevant learning opportunities had already been implemented as a result of the guidance provided by the Commission in previous reports, in particular the report issued following the Commission’s PII into the RCMP’s response to anti-shale gas protests in Kent County, New Brunswick and other matters (“Kent County PII Report”)

[133] In her response to the Kent County PII Report, provided to the Commission in June 2020, the RCMP Commissioner had indicated that the RCMP offered 29 learning programs that included Indigenous culture as part of their curriculum. Of those programs or courses, 24 had been created for and were presented directly to RCMP members with the intent of increasing Indigenous cultural knowledge, and 26 contained

material on Indigenous culture with a focus on regional traditions or geographical differences.

[134] The RCMP Commissioner had also informed the Commission in the response to the Kent County PII Report that the RCMP was developing a new *Indigenous Awareness Guide* that would highlight the distinct and unique cultures, languages, and political and spiritual traditions of Canada's First Nations, Métis, and Inuit peoples. The RCMP Commissioner stated that this guide was 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. She indicated that the guide would expand on the information provided to RCMP members with regard to Indigenous cultural issues, and that, once it was completed, she would direct that a national communiqué be sent to all employees requesting that they review both the current *Native Spirituality Guide* and the newly developed *Indigenous Awareness Guide*.

[135] In addition, the RCMP Commissioner stated in her response to the Interim PII Report in this case that the RCMP is collaborating with the Department of Justice's Indigenous Justice Programs on the creation of online training for RCMP employees to increase RCMP referrals to Restorative Justice. This training will encourage pre-charge police referrals to community-based Restorative Justice Programs, particularly those under Indigenous Justice Programs.

[136] The RCMP Commissioner also indicated that, in 2019, the "F" Division in Saskatchewan implemented a division-wide community familiarization program in each detachment. She explained that, through this program, each new member of a detachment is shown the local culture by a resident of the community they serve thus allowing members to become familiar with the people, customs, and structure of that community.

COMMISSION FINDINGS NOT ACCEPTED BY THE RCMP

Sufficiency of Compensated On-Call Resources

[137] In its Interim PII Report, the Commission noted that there appeared to be an underlying issue regarding RCMP members' compensation that directly affected Sergeant Olberg's ability to acquire certain resources in the early stages of the investigation. This was particularly apparent within FIS, as well as with the affiant, Corporal Nordick.

[138] The Commission acknowledged that the difficulties incurred by Sergeant Olberg in obtaining FIS resources at the outset of the investigation were beyond his control. The Coordinated Investigative Team⁷ had to wait until the FIS members could attend. At

⁷ According to section 2.3. of the RCMP policy on Major Case Management, OM chap 25.3., the Coordinated Investigative Team is formed with the exclusive purpose of investigating a major case. It

the time, there was only one FIS member on call for the north of the province and one for the south. As a result, the FIS member on call was approximately five hours away. The Commission found that the practice at the time of not having a designated on-call RCMP member in each FIS Unit during off-duty hours created availability issues and a delayed response time. The Commission also found that the local work-around practice of the on-call FIS member—attempting to contact an FIS member in the area of the crime scene for assistance—was unreasonable. The members being contacted were not on call, and therefore the FIS response time depended entirely on the willingness of FIS members to pick up these calls while off-duty.

[139] The Commission noted Sergeant Olberg’s comment to Commission investigators regarding the availability and compensation of FIS members in this case:

There were significant challenges posed by the FIS deployment beyond my control. There were, at the time, -- organizationally, there was a determination, and I mentioned before, about compensation for members to be available outside of working hours. (...) But at that time, and I think my notes will demonstrate, that efforts by the Cpl. Wittersguard (phonetic) from Yorkton to try to reach somebody closer, calls were unanswered. Now, if you ask me why I think that happened, I think it was probably a work to rule demonstration.

[140] As for Corporal Nordick’s availability to respond to the call for assistance on August 9, 2016, Corporal Nordick explained:

However, the big issue is that we're not -- we weren't compensated for being on call which may have resulted, obviously in my situation, if I would have been compensated on call, I would have been able to respond immediately to it. And that, I know it's gotten better and we have made a lot of changes with regards to certain thing, but yeah, it was obviously availability of Members within the unit to respond to that.

Commission’s Interim Finding #22	In this case, insufficient RCMP members were available on a compensated on-call basis to respond in a timely manner to major crime investigations.
Commission’s Interim Finding #32	The practice at the time of not having a designated on-call RCMP member in each Forensic Identification Services Unit was unreasonable.
Commission’s Interim Finding #33	A local work-around practice of the on-call Forensic Identification Services member attempting to contact a Forensic Identification Services member located in the area of the crime scene was unreasonable.
Commission’s Interim Recommendation #7	That the RCMP ensure that adequate resources are available in a timely manner for the investigation of major crimes.

includes the members of the Command Triangle, investigators, some of whom may be seconded from their primary duties, support staff, and other employees.

RCMP Commissioner's Response

[141] The RCMP Commissioner disagreed with Interim Finding 22. She stated that Corporal Nordick's comment to Commission investigators that RCMP members are not compensated for being on call was incorrect. She noted that RCMP members who are designated as being on call either for Immediate Operational Readiness or Operational Availability pursuant to OM chapter 16.12. "Operational Response" are, and were at the time of this incident, eligible for compensation in amounts set out in the *National Compensation Manual*, chapter 2.7. "Extra Duty Pay." The RCMP Commissioner noted that Corporal Nordick's superiors did not designate him as being on call on August 9, 2016. As he was on time off, he was not eligible for the applicable compensation provided for being on call.

[142] The RCMP Commissioner further stated that Sergeant Olberg's decision to await Corporal Nordick's availability appeared to be a matter of preference, not one that was imposed by restrictions relating to compensated on-call policies.

[143] The RCMP Commissioner reviewed numerous statements from RCMP members regarding the adequacy of resources available to respond to this incident, and noted that many indicated that there were sufficient resources on hand to deal with the workload. Based on her review of the information, the RCMP Commissioner stated that she found that there were sufficient RCMP members available on a compensated on-call basis to respond in a timely manner to major crime investigations.

[144] The RCMP Commissioner nonetheless supported Interim Recommendation 7, that the RCMP ensure that adequate resources are available in a timely manner for the investigation of major crimes. She noted that since 2016, "F" Division has increased the number of MCU and FIS members on call during off-duty hours and receiving operational availability compensation. The RCMP Commissioner further noted that five provincial General Investigative Sections, located in Yorkton, Regina, Saskatoon, North Battleford and Prince Albert, each have one on-call member during the week and two on weekends, who can supplement the MCU members if needed.

[145] With respect to FIS, the RCMP Commissioner stated that, due to an increase in caseload, there is now one FIS member on call during off-duty hours in each of the five FIS service areas in Saskatchewan. The RCMP Commissioner accepted Interim Findings 32 and 33 regarding FIS availability at the time of the events. In its Interim PII Report, the Commission had noted that this situation had already been addressed and that no recommendation was therefore necessary.

Commission's Analysis of the RCMP's Response

[146] As its Interim PII Report indicates, the Commission has found that the investigative team was adequately staffed to conduct the investigation in this case.

[147] However, the Commission also learned in its investigation that Sergeant Olberg had to rely on off-duty RCMP members to respond to calls for assistance and this affected his ability to acquire certain resources in the early stages of the investigation.

[148] Sergeant Olberg stated the following to Commission investigators regarding the availability of FIS members, "I can't make someone answer their phone. I mean, that's an organizational challenge that we face; right? . . . And they were under no obligation to answer their phone outside of working hours either; right?"

[149] Sergeant Olberg further stated that, at the time, the available or on-call FIS member could be quite a distance from a particular crime scene that they were required to attend. Therefore, it was not unusual to have to sometimes wait a considerable amount of time for their arrival. Indeed, this was the case here where Corporal Ryttersgaard, the only on-call FIS member in the south district of the province at the time of the incident, was located in Yorkton, Saskatchewan. His response time was reportedly approximately five hours. The information indicated that Corporal Ryttersgaard made attempts to contact several off-duty RCMP members from other FIS units to assist him but he could not get a hold of anyone. Eventually, Constable Heroux of the Saskatoon FIS returned Corporal Ryttersgaard's call and confirmed that he would attend, despite being off-duty.

[150] As mentioned above, Corporal Nordick was not immediately available and it was decided that he would start drafting the ITO the next morning, which ultimately delayed the attendance of FIS until the morning of August 11. Corporal Nordick's comments to Commission investigators indicate that he would have responded immediately to the call for assistance had he been compensated on an on-call basis.

[151] The Primary Investigator, Constable Boogaard, also touched on the issue of compensation in his interview with Commission investigators when he described receiving a call to assist with the investigation. He stated that on August 9, he had worked his regular shift from 7 a.m. to 4 p.m. Although he was not on call, he still answered his phone. He stated, "You know, the unit kind of survives to rely on people to still answer their phone, regardless, and you kind of -- when you get in Major Crimes, you understand what you're getting into."

[152] While the Commission does not dispute the fact that there were sufficient resources to conduct the investigation in this case, the evidence revealed that this was because off-duty RCMP members willingly answered their phone and made themselves available to respond to the call for assistance. These RCMP members could have chosen not to answer their phone, which could potentially have significantly affected service delivery.

[153] By stating that there were sufficient resources on hand to deal with the workload, the RCMP Commissioner essentially acknowledged the fact that Sergeant Olberg had to rely on off-duty RCMP members who were not compensated to be on call. As the Commission noted in its Interim PII Report, off-duty members cannot be expected or relied upon to be available or to respond to calls for service outside of working hours. In the Commission's view, this practice does not guarantee that sufficient resources will be available to respond in a timely manner to major crime investigations.⁸

[154] For these reasons, the Commission reiterates Interim Finding 22.

Mobile Command Centre

[155] One of the first issues that the Commission noted in its Interim PII Report was the geographical and environmental challenges confronting the MCU. The Commission found that the use of a Mobile Command Centre could have proven useful in this case and could have potentially helped to avoid some of the shortcomings or omissions in the investigation.

[156] A Mobile Command Centre is essentially a self-contained field office and staging unit. It is equipped with all the necessary communication, computer linkages, and TV monitors. It is also climate-controlled and contains eating and washroom facilities.

[157] Interviews conducted by Commission investigators with the MCU members revealed that MCU North does not have access to a Mobile Command Centre, or at the very least, a Mobile Command Centre that is specifically built for this type of incident. The Unit Commander, Staff Sergeant Rockel, and the Team Commander, Sergeant Olberg, both indicated to Commission investigators that they did not believe a Mobile Command Centre would suit their needs, as they prefer to base their investigations out of a detachment. The File Coordinator, Constable Wudrick, appeared to be aware of the benefits that a Mobile Command Centre could have provided in this case, especially with respect to improving crime scene management.

[158] The Commission noted that the use of a Mobile Command Centre could have facilitated the ability for investigators and first response police officers to communicate, collaborate, and plan investigative activities while protected from the elements.

⁸ As an example, in one of its previous files from another RCMP Division, the Commission commented on the timeliness of the support that was offered by the divisional MCU on the night of December 25, 2013. In that case, the file materials revealed that no MCU members had to remain available on call in the Division and consequently, all MCU members were outside the province during the holidays. The Unit Commander indicated that this was due to budgetary concerns. As a result, there were delays in providing MCU support and supervision by a senior Non-Commissioned Officer to RCMP members at the crime scene. In that case, the Commission noted in its report that although this issue warranted comment for any action deemed appropriate by the RCMP, there was no information that it had any impact on the outcome of the investigation into the incident.

[159] The Commission acknowledged that, since this incident, “F” Division has created a Crime Scene Manager position as part of its Coordinated Investigative Team. The Commission noted that it might also be beneficial to have a Mobile Command Centre available to facilitate the requirements of not only the Crime Scene Manager position, but many other aspects of investigations.

Commission’s Interim Finding #24	The use of a Mobile Command Centre could have proven to be useful in this case and potentially resulted in avoiding some of the shortcomings or omissions that occurred.
Commission’s Interim Recommendation #8	That RCMP senior management in “F” Division consider acquiring a Mobile Command Centre.

RCMP Commissioner’s Response

[160] The RCMP Commissioner partly agreed with Interim Finding 24. She stated that, while the presence of a Mobile Command Centre could have proven useful in this case, she did not find that its presence could have potentially avoided some of the shortcomings and omissions that occurred. The RCMP Commissioner expressed the view that the omissions, such as the failure to cover the Ford Escape, could have been prevented without a Mobile Command Centre.

[161] The RCMP Commissioner nonetheless supported Interim Recommendation 8, that senior management in “F” Division consider acquiring a Mobile Command Centre. She indicated that this recommendation was submitted to “F” Division senior management for consideration; it was determined that, while the Division does not have a Mobile Command Centre specifically built for this type of incident, they do have access to other types of vehicles that could be used as a Mobile Command Centre when the circumstances warrant it.

[162] The RCMP Commissioner noted that “F” Division finds that it is more effective and efficient to use regular vehicles in most instances due to the nature of their operating environment. For example, there can be difficulties in accessing certain communities by roads, as well as difficulties in navigating a large command post-style vehicle even when communities are accessible by road. Therefore, the RCMP Commissioner indicated that “F” Division senior management determined that acquiring a Mobile Command Centre is not a viable option for “F” Division.

Commission’s Analysis of the RCMP’s Response

[163] The Commission agrees with the view expressed by the RCMP Commissioner that the shortcomings and omissions in this case, such as the failure to cover the Ford Escape, could have been prevented without the presence of a Mobile Command Centre. However, the Commission also finds that, had a Mobile Command Centre been present at the crime scene, the RCMP members responsible for the preservation and

protection of the evidence would likely have been on site when the rain started and could have reacted quickly to protect the vehicle.

[164] It is impossible to determine whether some of the shortcomings and omissions in this case would have in fact been prevented with the presence of a Mobile Command Centre. As the Commission noted in its Interim PII Report, the benefits that a Mobile Command Centre could have provided in this case include improved crime scene management, collaboration, and most importantly, communication between the MCU, first response RCMP members and specialty units such as FIS. Crime scene management and communications were of particular concern in this case.

[165] The Commission notes that there is no information in the file materials indicating that road accessibility would have prevented the use of a Mobile Command Centre or a similar type of vehicle in this particular case.

[166] For these reasons, the Commission reiterates Interim Finding 24.

[167] As for Interim Recommendation 8, the Commission acknowledges that the RCMP Commissioner submitted the Commission's recommendation to senior management in "F" Division for consideration and that it was determined, for the reasons noted above, that acquiring a Mobile Command Centre is not a viable option for "F" Division. In light of this information, the Commission is satisfied that its recommendation for "F" Division to consider the option of acquiring a Mobile Command Centre has been sufficiently addressed.

Processing of the Crime Scene

[168] The Commission found that it was unreasonable in this case for only one FIS member, who was not qualified as a Forensic Identification (FI) Specialist, to be present at the crime scene conducting the processing on his own for a period of three hours.

[169] Constable Heroux arrived at the crime scene at 12:36 a.m. on August 10. Corporal Ryttersgaard arrived at the Biggar Detachment at 1:45 a.m. and processed (for photographs and gunshot residue collection) Mr. Stanley between 2:13 a.m. and 2:32 a.m. Corporal Ryttersgaard arrived at the Stanley farmyard at 3:45 a.m. to assist Constable Heroux with the scene examination. In the meantime, a member of the Biggar RCMP Detachment had been assisting Constable Heroux with the processing of the crime scene.

[170] The Commission examined the RCMP's national policy on crime scene processing, which provides the following:

At least two FI members will be involved in processing the crime scene with one investigator qualified as a FI specialist. If these resources are unavailable, notify the Divisional Manager immediately.

[171] The Commission noted that there was no indication in the materials that Constable Heroux had any discussions with Corporal Ryttersgaard, who was qualified as a FI Specialist, about the processing of the crime scene prior to Corporal Ryttersgaard's arrival at 3:45 a.m. While the Commission acknowledged that Constable Heroux was an FI Technician with considerable training and exposure to FIS work, most of that experience was under the apprenticeship program and he had yet to complete more advanced FI training courses. The Commission noted Constable Heroux's comment to Commission investigators that "with the benefit of hindsight, it's certainly always ideal to have more than one Forensic Identification member at the scene"

[172] The Commission acknowledged that the situation within FIS across the province had since changed, as already explained. Therefore, the Commission found that it was not necessary to recommend remedial measures in this regard.

Commission's Interim Finding #34	It was unreasonable that only one Forensic Identification Services member, not qualified as a Forensic Identification Specialist, was present at the crime scene for nearly three hours to conduct the processing.
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RCMP Commissioner's Response

[173] The RCMP Commissioner disagreed with Finding 34. She stated that she was satisfied that the actions taken by Constable Heroux and Corporal Ryttersgaard were in substantial compliance with the provisions of the RCMP's national policy on crime scene processing, which requires that two FIS members process a major crime scene, one of whom must be an FI Specialist.

[174] The RCMP Commissioner noted that the RCMP members decided that Constable Heroux would begin to process the crime scene and Corporal Ryttersgaard would deal with obtaining gunshot residue from Mr. Stanley. The RCMP Commissioner further noted that Corporal Ryttersgaard attended the crime scene to assist Constable Heroux, which he did for nearly two hours before Mr. Boushie's body was removed and they exited the scene to await the search warrant.

[175] Based on her review of the statements of Corporal Ryttersgaard and Constable Heroux to Commission investigators, the RCMP Commissioner was satisfied that Constable Heroux was in contact with the “F” Division FIS Manager while he was processing the crime scene as per policy requirements.

[176] The RCMP Commissioner indicated that she consulted the RCMP policy centre responsible for the interpretation of the relevant policy and they indicated that sending Constable Heroux to process the scene on his own complied with the policy. The RCMP Commissioner agreed with the policy centre’s interpretation that the requirement that at least two FIS members process a major crime scene does not preclude the first member on scene from beginning the process while awaiting a second member, since this practice eliminates any unnecessary delays in examining the scene. She further stated that the realities of policing, particularly in rural communities, require a flexible approach.

[177] With respect to the communications between Constable Heroux and Corporal Ryttersgaard, the RCMP Commissioner concluded, based on her review of Corporal Ryttersgaard’s statement to Commission investigators, that there was indeed communication between both FIS members while Constable Heroux was at the scene, although the evidence did not inform on the nature of the communications.

[178] The RCMP Commissioner stated that the Commission seemed to give minimal consideration to Constable Heroux’s depth of experience and found that processing the crime scene in a thorough and professional manner without the presence of an FI Specialist was well within Constable Heroux’s capabilities. The RCMP Commissioner expressed the view that Constable Heroux being in the apprenticeship program at the time was of little consequence.

Commission’s Analysis of the RCMP’s Response

[179] The RCMP Commissioner’s response to this finding is essentially proposing a different interpretation and assessment of the evidence, without pointing to new facts or new evidence. As the Commission has stated in a previous case,⁹ the RCMP’s own views about the appropriateness of its members’ actions should not be allowed to govern in a case where the independent review body, having examined all the evidence as it is mandated to do, has reached a different conclusion, and no new factual or evidential information is being offered by the RCMP.

[180] Having reviewed the evidence discussed in the RCMP Commissioner’s response, the Commission reiterates its original assessment of the matter. There are no new facts or evidence that would cause the Commission to change its original finding.

⁹ See paragraph 26 of the Commission’s *Final Report into the RCMP’s Response to Anti-Shale Gas Protests in Kent County, New Brunswick*, which can be found on the Commission’s website at: <https://www.crc-cetp.gc.ca/en/FACR-anti-shale-Gas-Protests-Kent-County>.

[181] With respect to the RCMP Commissioner's comment that Constable Heroux was in contact with the FIS Division Manager while he was processing the crime scene, the Commission notes that, when asked by Commission investigators if he had any dialogue with the FIS Division Manager during the evening of August 9, Constable Heroux replied:

I updated him that -- when we were heading out there. I updated him again before we left the scene, then I'd spoken again the following day, like, that next day.

[182] When asked by Commission investigators if the FIS Division Manager was providing any direction to Constable Heroux while he was at the scene, Constable Heroux replied, "No, he wasn't providing direction no."

[183] Constable Heroux recorded in his notebook that he informed the FIS Division Manager at 9:13 p.m. on August 9 that he and Corporal Ryttersgaard would attend the crime scene. Constable Heroux also recorded that he updated the FIS Division Manager about the status of the investigation at 9:17 a.m. on August 10.

[184] With respect to communications between Constable Heroux and Corporal Ryttersgaard, their reports and handbook notes refer to an initial discussion about the roles undertaken by each of them. There is no record of any conversation between the two while Constable Heroux was examining the crime scene prior to Corporal Ryttersgaard's arrival. During his statement to Commission investigators, Constable Heroux indicated that he called Corporal Ryttersgaard before attending the crime scene to brief him on what he had learned about the incident from MCU. Constable Heroux described to Commission investigators how the events unfolded while he was at the crime scene and stated that he was in contact with the Primary Investigator, Constable Boogaard, and that he had updated the FIS Division Manager. Constable Heroux made no mention of any discussions with Corporal Ryttersgaard.

[185] During his interview with Commission investigators, Corporal Ryttersgaard indicated that he had spoken with Constable Heroux before heading out to the crime scene. He stated that Constable Heroux told him "it was a large area, and so he was covering off photography at that location"

[186] In the Commission's view, the evidence indicates that the communications between the FIS members were limited to an initial discussion about the roles that would be undertaken by each of them, as well as a brief update before Corporal Ryttersgaard headed out to the scene. There is no indication in the materials before the Commission that there was any guidance or advice sought or provided with respect to the processing of the crime scene.

[187] The Commission reiterates its view that the relevant RCMP policy did not provide that only one FIS member, not qualified as an FI Specialist, should be processing the crime scene alone for an extended period under the circumstances of this case. If, as suggested in the RCMP's response, the policy can be interpreted as allowing or encouraging this, it should not be.

[188] With respect to the RCMP Commissioner's comments about Constable Heroux's experience and capabilities, the Commission had recognized in its Interim PII Report that Constable Heroux had considerable training and exposure to FIS work at the time of the incident. The Commission's finding is not about Constable Heroux's personal qualifications. There are reasons to require the presence of a qualified FI Specialist among the members processing the crime scene, and this was the Commission's focus in making this finding.

[189] For instance, the Commission noted that the incident occurred approximately seven months after Constable Heroux's certification as an FI Technician. He had received only a half-day training introduction to bloodstain pattern analysis during his basic forensic training program and had yet to complete more advanced Forensic Identification training courses, one of which was the 40-hour Basic Bloodstain Recognition Course.

[190] Further, despite the training and experience Constable Heroux did have, the evidence revealed that he was involved in some of the errors and deficiencies in the investigation, including the failure to preserve the Ford Escape and blood spatter evidence. The Commission emphasizes that errors are human and inevitable, and that Constable Heroux was clearly not solely responsible for the errors and deficiencies in question. This only emphasizes the importance of having at least two FI members involved in the processing of a crime scene, with one investigator qualified as an FI Specialist, as provided for in the policy and as the Commission found would have been preferable in this case.

[191] The Commission found that the assignment of Constable Heroux as the lead FIS RCMP member, with Corporal Ryttersgaard being in an assisting role, was reasonable given their home detachment locations. It was expected that their roles would be fulfilled through collaboration and teamwork, as it is incumbent on the senior member to provide advice and guidance when needed for more junior members to gain knowledge and confidence. This would have required the presence of Corporal Ryttersgaard, or another FI Specialist, for a longer period while Constable Heroux was processing the scene.

[192] The Commission acknowledges that the realities of policing, particularly in rural communities, require a flexible approach and that there may sometimes be logistical challenges. However, it remains that, in the Commission's view, it was unreasonable in the circumstances of this case for only one FIS member, not qualified as an FI Specialist, to be present at the crime scene for nearly three hours to conduct the processing.

[193] For these reasons, the Commission reiterates Interim Finding 34.

COMMENT REGARDING THE RCMP'S ADMINISTRATIVE REVIEW

[194] On February 20, 2020, the Commission received from the RCMP an Independent Administrative Review Report (IAR) dated January 13, 2020. The RCMP prepared this report following an internal administrative review of the investigation of the death of Mr. Boushie. This administrative review initiated by the RCMP in June 2018 was conducted by RCMP members and encompassed all aspects of the major crime investigation. The RCMP's 217-page IAR and its related relevant materials were disclosed to the Commission after the Commission had issued its interim reports pertaining to the family's complaint and the PII. The RCMP Commissioner's response to the Commission's PII Report makes no mention of the IAR.

[195] The Commission reviewed the RCMP's IAR in light of the Commission's conclusions in its interim report into the family's complaint, as well as its Interim PII Report. The Commission determined that the findings and recommendations relating to issues addressed by both the Commission and the RCMP essentially aligned. The Commission also found that the content of the RCMP's IAR revealed no new information that would cause the Commission to reconsider any of its findings and recommendations.

[196] The RCMP's IAR is estranged to the public complaint process and has no legal basis in Part VII of the RCMP Act. Despite the fact that the IAR does not call into question the Commission's process or its findings and recommendations, the Commission nevertheless has serious concerns about the RCMP's actions in this regard.

[197] The RCMP not only decided to conduct a review on substantively the same issues as the Commission in parallel to the Commission's PII, it also failed to send a formal notification of the existence of the IAR to the Commission in a timely manner. In addition, the RCMP failed to disclose in a timely fashion the relevant materials obtained in the course of the IAR, including the contents of the IAR interviews. These materials were undoubtedly relevant, as they directly related to the Commission's investigation and they were clearly covered by the Commission's ongoing requests for relevant materials.

[198] The Commission is especially concerned about the RCMP's decision to interview many of the same witnesses interviewed by the Commission, and the risks of interfering with the Commission's PII by conducting such interviews, without disclosing detailed plans to the Commission in advance to ensure that there was no interference with the Commission's work.

[199] While the RCMP described its administrative review as “independent,” RCMP members led this review and only RCMP members provided subject matter expertise for the purpose of the review. In contrast to the Commission’s investigation, the RCMP did not conduct interviews with members of Mr. Boushie’s family as part of their review.

[200] For the reasons noted above, the Commission expects that the RCMP will inform the Commission in future cases where such internal reviews are initiated into matters that are being reviewed by the Commission.

COMMISSION'S FINAL FINDINGS AND RECOMMENDATIONS

FINAL FINDINGS

- 1) The RCMP members dispatched to the Stanley property, including Sergeant Sawrenko, acted in accordance with the policy on first response investigations.
- 2) The initial actions taken by the involved RCMP members in response to the complaint were reasonable.
- 3) Sergeant Sawrenko acted reasonably in supervising the initial response to the scene.
- 4) The RCMP members dispatched to the Stanley property responded in a timely fashion.
- 5) It was reasonable to arrest E. M., B. J., and K. W. for the criminal offence of mischief without a warrant.
- 6) E. M. was arrested in a manner consistent with paragraphs 10(a) and (b) of the Charter.
- 7) B. J. and K. W. were arrested in a manner consistent with paragraphs 10(a) and (b) of the Charter.
- 8) The manner in which Corporal Fee and Constable Teniuk conducted the interviews of K. W., B. J., and E. M. was unreasonable in the circumstances.
- 9) The manner in which Constable Teniuk conducted the interview of C. C. was reasonable in the circumstances.
- 10) The continued detention in custody of E. M., B. J., and K. W. following the statements they provided to the RCMP on August 10, 2016, was unreasonable and not justified under subsection 497(1.1) of the *Criminal Code*.
- 11) The decision to reinterview B. J. was reasonable under the circumstances.
- 12) The manner in which Constable Boogaard conducted the reinterview of B. J. was reasonable in the circumstances.
- 13) It was unreasonable for the members of the Command Triangle (Sergeant Olberg and Constables Boogaard and Wudrick) to fail to

consider providing direction that L. S. and S. S. not discuss the incident with each other prior to providing their witness statements to the police.

- 14) It was unreasonable for Sergeant Sawrenko to fail to request that L. S. and S. S. not discuss the incident with each other prior to providing their witness statements.
- 15) Corporal Olney's actions in relation to A. D. were reasonable in the circumstances.
- 16) Corporal Fee and Constables Wright and Teniuk should have attempted to persuade M. F. and G. F. to be interviewed separately.
- 17) Sergeant Olberg had reasonable grounds to believe that Mr. Stanley had committed the offence of murder and that he could be arrested without a warrant pursuant to section 495 of the *Criminal Code*.
- 18) Sergeant Olberg's direction to proceed with the arrest of Mr. Stanley for murder was reasonable.
- 19) Mr. Stanley was arrested in a manner consistent with paragraphs 10(a) and (b) of the Charter.
- 20) The manner in which Constable Gullacher conducted his interview of Mr. Stanley was reasonable in the circumstances.
- 21) Sergeant Olberg failed to ensure that the Information to Obtain a Search Warrant was drafted in a timely manner.
- 22) In this case, insufficient RCMP members were available on a compensated on-call basis to respond in a timely manner to major crime investigations.
- 23) The Major Crime Unit's decision to separate the involved persons in two RCMP detachments was reasonable given the inherent challenges of rural policing.
- 24) The use of a Mobile Command Centre could have proven to be useful in this case and potentially resulted in avoiding some of the shortcomings or omissions that occurred.
- 25) RCMP policies and procedures relating to the preservation and protection of evidence were not reasonably followed and a key piece of evidence, the Ford Escape, was left vulnerable to contamination.
- 26) The RCMP's failure to protect the Ford Escape resulted in the alteration and loss of trace and bloodstain evidence.

- 27) Sergeant Sawrenko's decision to allow L. S. and S. S. to remove a vehicle from the crime scene to travel to the RCMP Biggar Detachment was unreasonable.**
- 28) Given the significance of the Ford Escape as a key piece of evidence in the investigation, it would have been prudent to consult with Crown counsel prior to proceeding to its release.**
- 29) Constable Boogaard's decision to release the Ford Escape following the completion of the examination conducted by Forensic Identification Services fell within the reasonable range of options open to him and therefore constituted a reasonable exercise of his discretion.**
- 30) It was unreasonable for one or more members of the Major Crime Unit not to attend the crime scene in a more timely fashion.**
- 31) Constable Heroux and Corporal Ryttersgaard were adequately trained and qualified to perform the forensic identification tasks they were assigned in this case.**
- 32) The practice at the time of not having a designated on-call RCMP member in each Forensic Identification Services Unit was unreasonable.**
- 33) A local work-around practice of the on-call Forensic Identification Services member attempting to contact a Forensic Identification Services member located in the area of the crime scene was unreasonable.**
- 34) It was unreasonable that only one Forensic Identification Services member, not qualified as a Forensic Identification Specialist, was present at the crime scene for nearly three hours to conduct the processing.**
- 35) Constables Doucette and Park acted reasonably to collect and preserve evidence that was at risk of being lost.**
- 36) Constables Doucette and Park did not adequately document their handling and transfer of the evidence they collected.**
- 37) Constable Heroux's decision to contact a bloodstain pattern analyst three days after the incident was unreasonable.**
- 38) The Major Crime Unit team applied the Major Case Management methodology and its nine essential principles, in adherence to the RCMP's national policy OM 25.3. ("Major Case Management").**

- 39) The investigative team was adequately staffed to conduct the investigation into the death of Mr. Boushie in spite of their stated large caseload and other duties.
- 40) The Coordinated Investigative Team, including the Command Triangle, possessed the necessary training and experience to competently carry out the roles and responsibilities assigned to them in this investigation.
- 41) It was unreasonable for Constables Boogaard and Teniuk to attend the wake to update the family on the progress of the criminal investigation.
- 42) Internal communications were inadequate in some instances in the investigation.
- 43) The lack of communication between the various RCMP units involved in the investigation of the death of Mr. Boushie lead to some of the errors and inefficiencies.
- 44) A *prima facie* case of discrimination is not established with respect to the police's tactical approach and search of the Baptiste family home.
- 45) The police's conduct towards Ms. Baptiste with respect to her sobriety and her credibility was discriminatory on the basis of her race, or national or ethnic origin.
- 46) There is no *prima facie* case of discrimination with respect to the treatment of E. M., B. J., K. W., and C. C. during their police interviews.
- 47) There is no *prima facie* case of discrimination with respect to the gaps in the criminal investigation into Mr. Boushie's death, including issues relating to the securing of evidence.

FINAL RECOMMENDATIONS

- 1) That Corporal Fee and Constable Teniuk be provided with operational guidance with respect to RCMP policy regarding the interviewing of witnesses.
- 2) That Sergeant Olberg be directed to review the reasons for detention listed in subsection 497(1.1) of the *Criminal Code*.
- 3) That the RCMP review its policy OM 24.1. ("Interviews/Statements: Suspect/Accused/Witness") to address the treatment of in-custody witnesses interviewed in criminal investigations in which they are not suspects.

- 4) That the RCMP provide guidance, mentoring and/or training to the members of the Command Triangle (Sergeant Olberg and Constables Boogaard and Wudrick) and Sergeant Sawrenko with respect to witness handling.**
- 5) That Corporal Fee and Constables Wright and Teniuk be directed to review the RCMP's national policy OM 24.1. ("Interviews/Statements: Suspect/Accused/Witness").**
- 6) That the RCMP provide Sergeant Olberg with guidance, mentoring and/or training regarding the timely drafting of an Information to Obtain a Search Warrant.**
- 7) That the RCMP ensure that adequate resources are available in a timely manner for the investigation of major crimes.**
- 8) That RCMP senior management in "F" Division consider acquiring a Mobile Command Centre.**
- 9) That the involved members of the Major Crime Unit and Forensic Identification Services be directed to review the findings in the Commission's Interim PII Report with a senior member of the RCMP.**
- 10) That the involved members of the Major Crime Unit and Forensic Identification Services receive operational guidance with respect to RCMP policies and procedures related to the preservation and protection of evidence.**
- 11) That a senior member of the RCMP provide operational guidance to Sergeant Sawrenko regarding the importance of protecting and preserving evidence at a crime scene.**
- 12) That, in future cases, the Major Crime Unit Commander ensure that a member of the Unit attend the crime scene in a timely fashion.**
- 13) That Constables Doucette and Park be directed to review the policy OM 25.2. ("Investigator's notes").**
- 14) That Constable Heroux be directed to review the Commission's Interim PII Report with a senior Forensic Identification Services member and discuss the significance of the involvement of a bloodstain analyst at a blood letting crime scene.**
- 15) That Constables Boogaard and Teniuk be directed to review finding No. 41 with a senior member of the RCMP.**

- 16) That Corporal Olney as well as the members of the Command Triangle (Sergeant Olberg and Constables Boogaard and Wudrick) be directed to read the Commission's Interim PII Report with a senior member of the RCMP.**
- 17) That cultural awareness training be provided for all RCMP employees bearing in mind the factors identified in recent inquiries.**

CONCLUSION

[201] 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.

Micheline Lahaie
Chairperson

Interim Report

CHAIRPERSON-INITIATED COMPLAINT AND
PUBLIC INTEREST INVESTIGATION INTO THE RCMP'S
INVESTIGATION OF THE DEATH OF COLTEN BOUSHIE
AND THE EVENTS THAT FOLLOWED

SCHEDULE 1

INTERIM REPORT



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 INVESTIGATION OF THE DEATH OF COLTEN
BOUSHIE AND THE EVENTS THAT FOLLOWED**

Royal Canadian Mounted Police Act
Subsections 45.59(1) and 45.66(1)

JAN 21 2020

Complainant

Chairperson of the Civilian Review and
Complaints Commission for the Royal
Canadian Mounted Police

File No.: PC-2018-0505

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1) INTRODUCTION

[1] On August 9, 2016, Colten Boushie (“Mr. Boushie”), a resident of the Red Pheasant First Nation Reserve, was shot and killed on a rural farm property near Biggar, Saskatchewan, by Gerald Stanley (“Mr. Stanley”), the property owner. Following a criminal investigation by the RCMP, Mr. Stanley was charged with murdering Mr. Boushie. On February 9, 2018, Mr. Stanley was acquitted of the murder charge after a trial by jury. Significant attention and public interest followed, including various concerns related to the RCMP’s investigation.

[2] Two separate public complaints were filed with the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police (“the Commission”) with respect to this incident, as follows:

- a. On December 16, 2016, Alvin Baptiste, uncle to Mr. Boushie and brother to Debbie Baptiste (“Ms. Baptiste”), Mr. Boushie’s mother, filed a complaint regarding the conduct of RCMP members who attended Ms. Baptiste’s home on the evening of August 9, 2016, as well as an allegation relating to a police vehicle pursuit. This complaint will be referred to as the “family’s complaint.”
- b. On March 6, 2018, the Interim Chairperson of the Commission initiated a broader separate complaint and public interest investigation into the RCMP’s investigation of the death of Mr. Boushie and the events that followed. This complaint will be referred to as the “Commission Chairperson’s complaint.”

THE FAMILY’S COMPLAINT

[3] The family’s complaint was initially investigated by the RCMP pursuant to the *Royal Canadian Mounted Police Act* (“the RCMP Act”). On October 19, 2017, the RCMP issued a report to the family responding to their complaint. The family was not satisfied with the RCMP’s report and requested that the Commission conduct a review.

[4] The Commission conducted further investigation into the family’s complaint in conjunction with its investigation into its own complaint. On November 4, 2019, the Commission issued an interim report setting out its findings and recommendations related to the family’s complaint. A copy of that report is attached to this report.

THE COMMISSION CHAIRPERSON’S COMPLAINT

[5] In a letter dated February 16, 2018, to the Interim Chairperson of the Commission, the Acting Commissioner of the RCMP noted the concerns raised by Mr. Boushie’s family and others with respect to their interactions with RCMP members, and with various aspects of the criminal investigation that was conducted by the RCMP

into Mr. Boushie's death. The Acting Commissioner requested that the Interim Chairperson consider initiating a complaint and investigation into the matter.

[6] The Commission Chairperson's complaint and public interest investigation were commenced shortly thereafter and focused more broadly than the family's complaint in order to examine:

1. Whether the RCMP members or other persons appointed or employed under the authority of the RCMP Act involved in this matter conducted a reasonable investigation into the death of Mr. Boushie;
2. Whether the 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;
3. Whether the relevant RCMP national, divisional and detachment-level training, policies, procedures and guidelines are reasonable; and
4. Whether 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.

[7] The Commission's role is to examine the conduct of RCMP members in the execution of their duties against applicable training, policies, procedures, guidelines and statutory requirements and where applicable, make remedial recommendations.

[8] This report constitutes the Commission's investigation and its associated findings and recommendations.

2) BACKGROUND FACTS

[9] The Commission is an agency of the federal government, distinct and independent from the RCMP. When conducting a public interest investigation, the Commission does not act as an advocate either for the complainant or for RCMP members. The Commission's role is to reach conclusions after an objective examination of the evidence and, where judged appropriate, to make recommendations that focus on steps that the RCMP can take to improve or correct conduct by RCMP members.

[10] The Commission's findings, as detailed below, are based on a careful examination of the RCMP's operational file, further relevant materials provided by the RCMP,¹ information obtained through the Commission's investigation, as well as

¹ The Commission was initially provided with the original materials from the RCMP's public complaint investigation. However, the Commission determined that these materials were incomplete and requested additional relevant materials, which were received in March 2018. Following a review of those materials, as well as additional information gathered during the Commission's investigation, the Commission submitted a request for additional relevant materials to the RCMP in August 2018. The Commission

relevant policy and law. The Commission's investigation included interviews of Mr. Boushie's family members and civilian witnesses in July and September 2018, as well as interviews of relevant RCMP members between March and July 2019.

[11] The findings and recommendations made by the Commission are not criminal in nature, nor are they intended to convey any aspect of criminal culpability. The Commission's review of this matter involves a quasi-judicial process that requires the evidence to be weighed on a balance of probabilities. The role of the Commission is not to relitigate the criminal matter against Mr. Stanley, but rather to determine whether the conduct of the RCMP members was reasonable in the circumstances. Some of the terms used in this report may concurrently be used in the criminal context. However, such language is not intended to include any of the requirements of the criminal law with respect to guilt, innocence or the standard of proof.

[12] The following account of events flows from the notes and reports of the RCMP members involved in the criminal investigation, as well as the statements provided by RCMP members and witnesses during the criminal and/or Commission investigations. The Commission puts these facts forward, as they are either undisputed or because, on the preponderance of evidence, the Commission accepts them as a reliable version of what transpired.

[13] At approximately 1 p.m. on August 9, 2016, Mr. Boushie stopped at his home on the Red Pheasant First Nation Reserve accompanied by K. W.² He told his mother, Ms. Baptiste, that he was going swimming with some companions and he planned to be home between 5 p.m. and 6 p.m. for dinner. That was the last time Ms. Baptiste saw her son alive.

[14] Mr. Boushie and four companions spent the afternoon swimming and drinking. His companions were two young men, E. M. and C. C., and two young women, K. W. and B. J. As they were returning to the Red Pheasant First Nation Reserve, the Ford Escape that they were driving developed a flat tire. Sometime after 5 p.m. they turned into a driveway leading to the farm where Mr. Stanley lived with his wife, L. S. The Stanleys' adult son, S. S., was also present at the time.

received the sum of these materials by December 6, 2018. Further requests for additional relevant materials were submitted to the RCMP in August and November 2019. The Commission received the requested materials very shortly thereafter.

The Commission also requested various recordings and transcripts of telephone calls and radio communications. In response, the RCMP indicated that these records had been deemed to have no evidentiary value to the criminal investigation, and were destroyed upon the two-year anniversary of their creation pursuant to RCMP document retention policies. The Commission noted its disappointment and frustration with the decision to destroy these records in correspondence sent to the RCMP on February 13, 2019.

² The Commission has identified most third parties as well as young persons by initials only to protect individual privacy.

[15] It is not clear if the five occupants of the Ford Escape shared a common intention when they turned into the Stanley driveway. All had consumed alcohol and some of them were asleep. It does not appear that Mr. Boushie left the vehicle at any point or interacted with any of the Stanleys' property.

[16] The Ford Escape stopped in the Stanleys' yard. E. M. and C. C. got out of the vehicle and appeared to interact with a truck parked on the property. One of the pair then jumped onto an all-terrain vehicle that was also in the yard. After seeing this happen, Mr. Stanley and S. S. ran into the yard and yelled for the strangers to stop what they were doing, as they believed that the group was attempting to steal their property.



Picture 1: Aerial view of the Stanley property showing the Ford Escape (nearest to the house), and RCMP vehicles on the roadway at the entrance to the property

[17] E. M. and C. C. returned to the vehicle and attempted to drive away. In the process, the Ford Escape collided with another vehicle that was parked in the yard and subsequently became stuck as the exposed rim of the wheel with the flat tire dug into the gravel. At the same time, S. S. chased after the Ford Escape and hit the front windshield with a hammer. Mr. Stanley went to a shed, returning armed with a handgun. After the vehicle became stuck, E. M. and C. C. (who was the driver) left the vehicle and fled down the laneway on foot.

[18] Mr. Boushie then moved from the back seat to the driver's seat in an apparent attempt to drive away. Mr. Stanley approached the vehicle's driver-side door with the gun in hand. Although there are disputed facts regarding what happened next and why, it is undisputed that the gun in his hand fired, discharging a bullet that struck

Mr. Boushie in the back of the head, killing him.³ K. W. got out of the Ford Escape, opened the driver-side door, and moved Mr. Boushie onto the ground next to the vehicle, where he was later found by emergency responders.



Picture 2: The Ford Escape where it came to rest on the Stanley property

[19] K. W. and B. J. were both very distraught. K. W. knelt to hold Mr. Boushie in her arms. L. S. approached both B. J. and K. W. and attempted to calm them down. She later reported that K. W. and B. J. punched her (the two were charged with assaulting L. S.). K. W. and B. J. then departed on foot, proceeding down the lane to the roadway outside the Stanley farm.

[20] E. M.'s rifle was in the Ford Escape. He had brought it with him, as he intended to go hunting. The rifle's wooden stock was later found next to a vehicle at M. F. and G. F.'s property, approximately 15 kilometres from the Stanley farm. The barrel section of the same firearm was found next to Mr. Boushie's body. There remains no clear explanation as to how it came to be there.

³ Mr. Stanley was charged with murder and acquitted following a jury trial. Given the nature of jury trials, no findings of fact were made with respect to the incident.

[21] At 5:27 p.m., S. S. called 911. After hearing a brief description of the nature of the emergency, the 911 call taker transferred the call to the RCMP's Operational Communications Centre ("OCC").

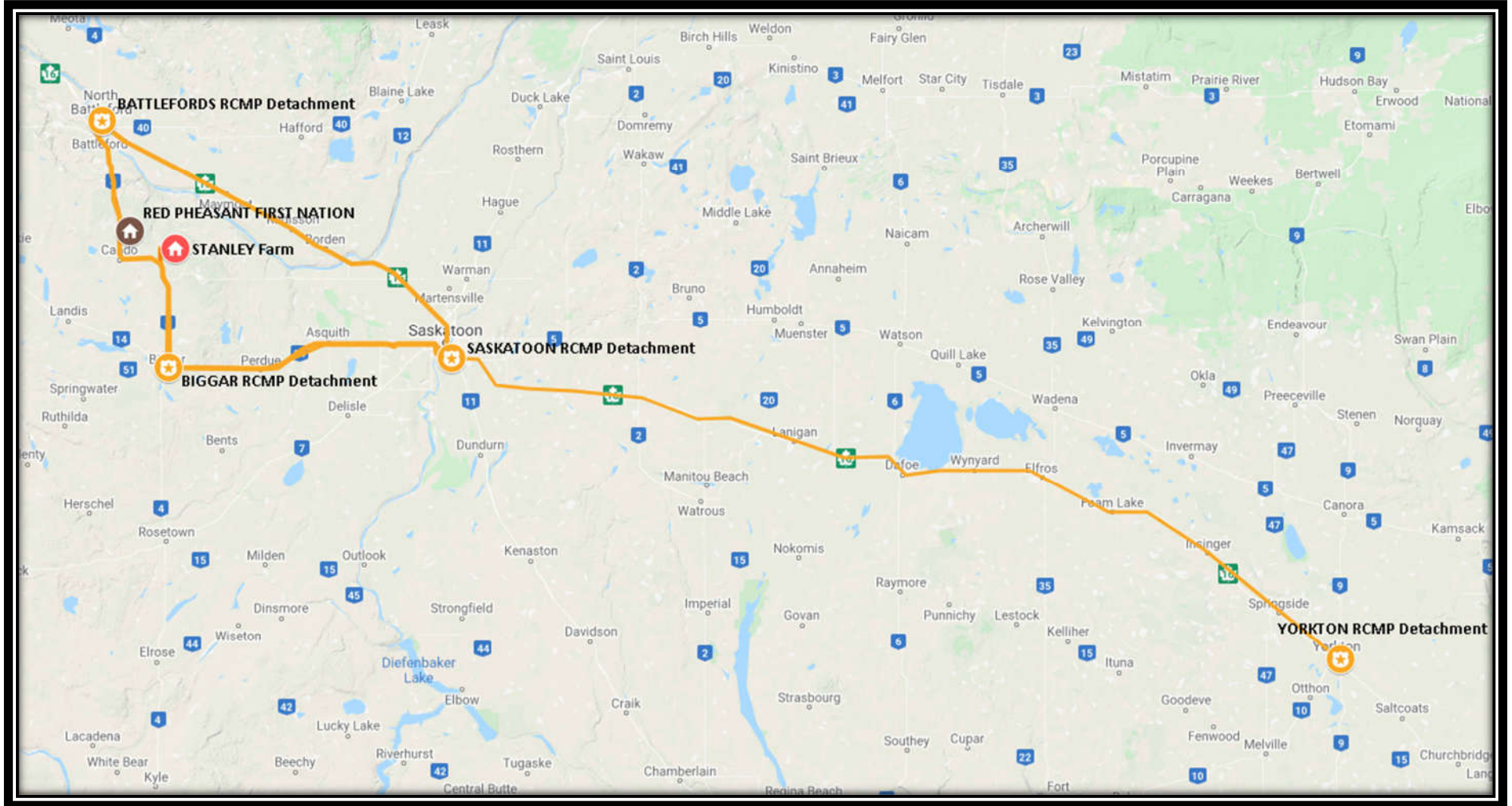
[22] S. S. provided the following information to the OCC call taker:

- a. Three men and two women had come onto their property and tried to steal vehicles from the yard, had almost run someone over, and one of the three men had been shot;
- b. The remaining two men had fled the scene on foot to the west and were armed with a gun;
- c. The two women remained at the scene and his mother, L. S., was speaking to them;
- d. His father was the shooter; and
- e. The man who had been shot may be dead.

[23] The call taker obtained descriptions of the involved persons and asked for specific directions to the Stanley farm.

[24] The Stanley farm is located in the rural municipality of Glenside, between two RCMP detachments: Battlefords (located in North Battleford), which is a driving distance of approximately 68 kilometres to the north, and Biggar, which is 44 kilometres to the south. During S. S.'s call, the call taker determined that the incident fell within the Biggar Detachment's jurisdiction. Due to the nature of the incident, police officers were initially dispatched from both the Biggar and Battlefords detachments.

Figure 1: Driving Distances



Approximate Driving Distances

STANLEY FARM	→	BIGGAR RCMP	44 KM	BIGGAR RCMP	→	BATTLEFORDS RCMP	94 km
STANLEY FARM	→	BATTLEFORDS RCMP	68 KM	BIGGAR RCMP	→	SASKATOON RCMP	98 km
STANLEY FARM	→	SASKATOON RCMP	142 KM	BIGGAR RCMP	→	YORKTON RCMP	465 km
BATTLEFORDS RCMP	→	SASKATOON RCMP	144 KM				

[25] At approximately 5:25 p.m.⁴ on August 9, 2016, Constable Arvind Parmar⁵ of the Biggar Detachment received a call from the OCC informing him of the incident at the Stanley Farm.

[26] Constable Parmar immediately contacted Constable Andrew Park, who was on-call, for assistance. At approximately 5:30 p.m., emergency medical services (“EMS”) personnel were dispatched to attend the scene and the Emergency Air Ambulance Service was also called in to assist. At 5:45 p.m., Sergeant Colin Sawrenko, the Biggar RCMP Detachment Commander, received a call from Constable Parmar regarding the shooting. Sergeant Sawrenko, who was off-duty at the time, directed Constable Parmar to contact all Biggar Detachment resources and those from surrounding jurisdictions.

[27] The RCMP members who responded to the call included Constable Mark Wright of the Biggar Detachment, Corporal Jason Olney, Constables Chad Doucette, Adam Olson and Vanessa French of the Battlefords Detachment, and Corporal Melvin Sansome of the Battlefords Detachment Police Dog Services.

[28] Sergeant Sawrenko initially assigned Corporal Olney as the supervising RCMP member, until he could get to the scene. He instructed Corporal Olney to stage⁶ the area upon arrival. He explicitly directed Corporal Olney to remain off the property until sufficient resources were in place. Specifically, Sergeant Sawrenko was concerned that the individuals involved in the incident had not yet been accounted for and he did not want to jeopardize officer or EMS personnel safety until the scene had been cleared.⁷

[29] Meanwhile, en route to the scene, Corporal Sansome and other RCMP members of the Battlefords Detachment came across E. M., B. J., and K. W. All three were arrested for mischief.

[30] While heading to the scene, Constable Park contacted the Saskatoon Major Crime Unit (“MCU”), as directed by Sergeant Sawrenko, and relayed the information he had at the time.

[31] Attempts were made to re-establish communication with S. S. to obtain additional information. It was soon found out that S. S. was on the line with the OCC call taker, who transferred him to Constable Park’s cell phone at approximately 5:52 p.m. S. S. told Constable Park that there had been no exchange of gun fire, and that only Mr. Stanley had fired a gun. Constable Park relayed the information he obtained from S. S. to the other attending RCMP members via radio.

⁴ This is the approximate time as recorded by Constable Arvind Parmar despite the OCC record of the 911 call being received at 5:27 p.m.

⁵ Constable Parmar is no longer a member of the RCMP.

⁶ A staging area is a place serving as a point of assembly and/or preparation.

⁷ Sergeant Sawrenko indicated to Commission investigators that his main concern at that point was officer safety, as well as the safety of “everybody involved regardless of who fled or whose property it was.”

[32] At approximately 6:10 p.m., Sergeant Sawrenko arrived at the Biggar Detachment and began monitoring radio communications and calls from the MCU, the district management team, as well as RCMP members nearing the scene.

[33] RCMP members arrived at the scene between 6:10 p.m. and 6:35 p.m.⁸ In preparation for clearing and securing the scene, they lined their police vehicles along the road in front of the Stanley property. Sergeant Sawrenko instructed Corporal Olney to move onto the property with at least a three-person arrest team and have other RCMP members take position a short distance away to observe the arrests and the surrounding area, and to be available to react or provide backup should the need arise. Following a briefing held by Corporal Olney with the RCMP members on scene, Mr. Stanley, his wife, L. S., and their son, S. S., were directed to exit their residence one by one with their hands up. All three were arrested without incident.

[34] By approximately 6:52 p.m., RCMP members successfully cleared the residence and outbuildings on the property. EMS personnel entered the scene. They examined Mr. Boushie and declared him deceased.

[35] At approximately 7:15 p.m., Constable Lindsay Wudrick of the Saskatoon MCU contacted the on-call Forensic Identification member, Corporal Mark Ryttersgaard, for assistance.

[36] In the meantime, police at the scene observed two pickup trucks approaching their staging area on the road to the west of the Stanley farm. The trucks repeatedly veered off and approached again. RCMP members speculated that this suspicious behaviour was somehow related to the incident at the Stanley farm. Two RCMP vehicles, one driven by Corporal Sansome and the other driven by Constable Park with Constable Wright as a passenger, were sent to investigate the trucks. Constables Park and Wright were initially unaware that B. J. was held in their vehicle. She was handcuffed and seated in the back seat, but not restrained by a seat belt. After briefly pursuing the two trucks down the road, the police called off the effort.⁹ This interaction formed the basis for part of the family's complaint.

[37] A neighbour of the Stanleys, A. D., approached the RCMP roadblock outside the Stanley farm and informed police that he had just given someone a ride to the Red Pheasant First Nation Reserve. RCMP members determined that the neighbour's description of the person matched that of C. C.

⁸ A Crime Scene Security Log was used to document who entered and exited the crime scene from the time it was secured.

⁹ The identity of the occupants of these vehicles was never established. However, one of the vehicles was later found abandoned near C. C.'s residence at the Red Pheasant First Nation Reserve, and determined to have been stolen prior to this incident. It is unclear whether this vehicle had any involvement in the situation.

[38] RCMP members from the Battlefords Detachment were sent from the scene of the Stanley farm to the Red Pheasant First Nation Reserve to search for C. C. There, they attended Ms. Baptiste's home to search for C. C. while also informing her of the death of her son. The actions of RCMP members while at Ms. Baptiste's home were part of the family's complaint.

3) ANALYSIS OF THE RCMP'S INVESTIGATION

FIRST RESPONSE

[39] The RCMP's national policy on first response investigations¹⁰ provides the following:

2. Member

- 2.1. A continual risk assessment must occur in accordance with the principles of the Incident Management Intervention Model (IMIM) when responding to a complaint and/or attending a scene.
- 2.2. Where grievous bodily harm, death and/or incidents indicating criminal activity that jeopardize public safety have been reported, the investigator must:
 - 2.2.1. depending on the type of investigation make contact with the complainant, either by phone or in person;
 - 2.2.2. determine the nature of the reported incident as well as the location and any potential witnesses;
 - 2.2.3. complete neighbourhood inquiries at the location of the offence, not only for eyewitness evidence, but to confirm there are no other victims;
 - 2.2.4. obtain sufficient details from the subjects on the scene to assess investigative requirements;
 - 2.2.5. consider the use of applicable support units; and
 - 2.2.6. contact the complainant before concluding the file or justify on the file why notification of the complaint was not possible.

...

3. Supervisor

- 3.1. Confirm that all calls are responded to according to the urgency and priority of the call for service.
- 3.2. Provide the necessary support and guidance to responding members.
 - 3.2.1. Document actions and direction provided to the members on the file.
 - 3.2.2. If the call is serious in nature, direct, supervise and confirm that the necessary support units have been contacted.

...

¹⁰ A first response means the initial action taken by a member or members attending or assigned to a complaint. National OM, chap 1.1. "First Response Investigations" s. 1.2.

[40] The Commission is satisfied based on a review of the evidence that the involved RCMP members acted in accordance with the above-noted policy.

[41] Contact was made with the complainant, S. S., by phone and information was obtained from him regarding the incident, the location and the witnesses. Support units including EMS, an emergency air ambulance, the Police Dog Services, the Saskatoon MCU and the Forensic Identification Services (“FIS”) were called to provide assistance. Neighbourhood inquiries were conducted on the night of the incident¹¹ and thereafter.

[42] It is not an uncommon practice for resources to be summoned from other detachments to meet operational requirements. The Commission acknowledges that this may be the only viable option in many cases, to ensure that sufficient resources are available. Given both the seriousness and urgency of the incident described by S. S., the Commission finds that Sergeant Sawrenko took appropriate action to ensure that all available resources, including those from other RCMP detachment areas, were deployed to respond to this incident.

[43] Responding to emergencies in rural areas poses unique challenges. First, obtaining the location of the incident, and subsequently finding it creates unique difficulties that are often overlooked by those unfamiliar with rural living.¹² Next, determining the appropriate detachment to respond to the emergency given the location can be challenging. Finally, distances between emergency service bases, including RCMP detachments, can be much larger.

[44] Given the distance between the Biggar and Battlefords detachments and the Stanley property, the Commission finds that the RCMP members dispatched to the Stanley property responded in a timely fashion.

[45] A review of the evidence, including Sergeant Sawrenko’s notebook entries, shows that Sergeant Sawrenko provided support, guidance and direction to the responding RCMP members. The direction he provided was clearly guided by his own risk assessment. Sergeant Sawrenko’s stated priority at the time was to ensure the safety of those involved. It was reasonable for him to direct that RCMP members await sufficient backup resources before entering the property. This necessarily delayed the RCMP members’ ability to secure the scene and allow EMS personnel to enter the property.

¹¹ On the night of August 9, A. D., a neighbour of the Stanleys, approached RCMP members near the crime scene. Information was obtained from him regarding his interaction with one of the witnesses. Later in the evening, Constable Mark Wright attended the residence of M. F. and G. F., located in the general vicinity of the Stanley farmyard. He obtained a statement from both of them regarding an alleged property crime that appeared to be related to the incident at the Stanley property.

¹² Urban centres tend to be well-mapped and often have access to tools such as GPS mapping and directions, which is not always the case in rural parts of the province. Additionally, in rural areas, street addresses are generally absent, as the majority of roads are unnamed; therefore, land locations or legal land descriptions are commonly used. In many cases, these land locations need to be supplemented by descriptive directions, and are often dependent on the direction or route the emergency responders are taking.

FINDINGS

- 1) The RCMP members dispatched to the Stanley property, including Sergeant Sawrenko, acted in accordance with the policy on first response investigations.**
- 2) The initial actions taken by the involved RCMP members in response to the complaint were reasonable.**
- 3) Sergeant Sawrenko acted reasonably in supervising the initial response to the scene.**
- 4) The RCMP members dispatched to the Stanley property responded in a timely fashion.**

ARREST OF E. M., B. J., AND K. W.

[46] The arrests of E. M., B. J., and K. W. unfolded as follows.

[47] While en route, Corporal Sansome came across a male on foot at approximately two miles west of the scene. Based on the male's clothing, Corporal Sansome determined that he was one of the individuals involved in the incident. Corporal Sansome slowed down and the male put his hands up and began to get down on his knees. Corporal Sansome got out of his vehicle, approached the male and had him sit on the ground. The male identified himself as E. M. Corporal Sansome handcuffed him and informed him that he was under arrest. He did not provide the reasons for the arrest at that time, but he did inform him that he would be provided an opportunity to contact a lawyer.

[48] Shortly afterwards, Constables Justin Blacklock and Laura Cockrum arrived to provide assistance. At 6:30 p.m. Constable Cockrum informed E. M. that he was arrested for mischief. She read him his rights under the *Canadian Charter of Rights and Freedoms* ("Charter")¹³ and provided the police caution. Constable Blacklock searched him, and he was then transported to the Battlefords Detachment. Constable Cockrum arrested E. M. for theft over \$5,000 not long after his arrival at the detachment, further to the direction of another RCMP member.

[49] After his interaction with E. M., Corporal Sansome continued towards the crime scene, followed closely by Constables Olson and French. Corporal Sansome came across two females on Ranger Lake Road, later identified as B. J. and K. W. Corporal Sansome exited his vehicle and directed both of them to lie face down on the ground. Constables Olson and French approached to provide assistance. They handcuffed both females and turned them over to Constable Park, who proceeded to arrest each of them for mischief. Constable Park read both females their Charter rights

¹³ *Canadian Charter of Rights and Freedoms*, s 10, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

and provided the police caution. B. J. and K.W. were later transported separately to the Battlefords Detachment and spoke to counsel prior to providing their statements.¹⁴

Applicable legal principles

[50] E. M., B. J., and K. W. were initially arrested for the criminal offence of mischief.

[51] The *Criminal Code*¹⁵ defines the offence of mischief as follows:

430 (1) Every one commits mischief who willfully

. . .

(c) obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property; or

(d) obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property.

[52] Subsection 495(1) of the *Criminal Code* provides that a police officer may arrest without a warrant any person whom he believes on reasonable grounds has committed an indictable offence. In this case, the power to arrest is limited to situations where the police officer believes on reasonable grounds that the arrest is necessary to establish the identity of the person, to preserve evidence of the offence, to prevent the continuation or repetition of the offence, or to secure the attendance of the accused in court.¹⁶

[53] Police officers must establish that they have reasonable grounds to believe that an individual has committed a criminal offence prior to arresting that individual. The grounds must be justifiable from an objective point of view. That is, a reasonable person placed in the position of the officer must be able to conclude that there were indeed reasonable grounds for the arrest.¹⁷ To determine whether such grounds are objectively reasonable, the totality of the circumstances known to the police officer at the time must be taken into account.¹⁸

¹⁴ Following her arrival at the Battlefords Detachment, B. J. was also arrested for theft over \$5,000 and breach of peace. While the Report to Crown Counsel indicates that E. M., B. J., and K. W. were arrested for “mischief/attempted theft,” the Commission did not find information in the materials about K. W.’s arrest for theft.

¹⁵ RSC 1985, c C-46.

¹⁶ *Ibid*, s 495(2).

¹⁷ *R v Storrey*, [1990] 1 SCR 241.

¹⁸ The threshold to make an arrest is lower than the threshold to convict in court. The fact that a person is arrested but that charges are not proceeded with is not determinative of the appropriateness of the arrest. That is to say, at the time a police officer makes an arrest, it is reasonable for them to not yet have sufficient evidence for the arrestee to be convicted in court. An arrest is a process distinct from criminal charges. Even in cases where a person is reasonably arrested for an offence, charges may not necessarily follow.

[54] In the case at hand, the arrests were conducted by responding RCMP members further to Sergeant Sawrenko's direction.¹⁹

[55] In *R v Debot*, the Supreme Court of Canada expressed the view that a decision to arrest could be made by one officer, but carried out by another. Provided the decision-maker has the necessary lawful basis to make the decision in question, he or she may delegate the task of carrying out the decision to another police officer.²⁰

[56] A review of Sergeant Sawrenko's notebook entries indicates that Constable Parmar informed him at approximately 5:45 p.m. that there had been a shooting in the rural municipality of Glenside. Unknown persons went onto a farmer's property, where one person was shot and killed and others fled the scene on foot. He was also informed that the whereabouts of the shooter were unknown. At 6:10 p.m., he recorded that events were unfolding quickly and calls were coming in non-stop from various RCMP members.

[57] The Commission recognizes that the precise involvement of the suspected individuals in the incident at the Stanley farmyard was not clear in the initial stages of the investigation. However, the information provided to Sergeant Sawrenko at the time was sufficient to support his subjective belief that the vehicle occupants attended the Stanley farmyard and interrupted or interfered with the lawful enjoyment of the owners' property in some form. The Commission recognizes the seriousness of the situation, which involved a deadly shooting, and the significant urgency required to identify involved persons. Accordingly, the Commission finds that Sergeant Sawrenko's direction to conduct the arrests for mischief was reasonable.

FINDING

5) It was reasonable to arrest E. M., B. J., and K. W. for the criminal offence of mischief without a warrant.

Constitutional rights upon arrest

[58] Section 10 of the Charter provides as follows:

- 10.** Everyone has the right on arrest or detention
- (a) to be informed promptly of the reasons therefor;
 - (b) to retain and instruct counsel without delay and to be informed of that right

¹⁹ According to Constable Cockrum's notes, at 6:25 p.m. on August 9, Corporal Sansome asked for direction over the radio regarding the offence for which to arrest E. M. Sergeant Sawrenko provided the direction to arrest for mischief.

²⁰ [1989] 2 SCR 1140 at 34. In *Debot*, a sergeant ordered a constable to stop and search an individual. The Court held that since the constable was carrying out the sergeant's order, the state of knowledge of the constable was immaterial, as he was simply following an order.

[59] In *R v Borden*,²¹ the Supreme Court of Canada stated the following regarding the above-noted provisions:

As this court has previously stated, the rights in s. 10(a) and 10(b) of the *Charter* are linked. One of the primary purposes of requiring the police to inform a person of the reasons for his or her detention is so that person may make an informed choice whether to exercise the right to counsel, and if so, to obtain sound advice based on an understanding of the extent of his or her jeopardy

[60] The person who performs the arrest need not inform the detainee of the specific statute and section that is being relied upon; it is sufficient if the substance of the offence is stated.²²

E. M.'s arrest

[61] According to E. M.'s statement to the Federation of Sovereign Indigenous Nations ("FSIN") investigator on September 15, 2016, Corporal Sansome did not inform him of the reason for his arrest.

[62] Corporal Sansome provided the following information when questioned by Commission investigators on March 26, 2019, regarding the arrest of E. M.:

CRCC: Did you indicate to him the reason for him being under arrest?

CPL. M. SANSOME: I don't know if I placed him under arrest. I probably just told him that I'm just the canine unit here now, or I probably just had him sit on the ground until the police car shows up. I don't arrest a lot of people. I just don't get involved in it because of my roles and responsibilities. I do when I have to, but I -- knowing that members were coming, I have no place to put him, I never put cuffs on him or nothing.

[63] Corporal Sansome's Police Dog Services Case Report clearly indicates that he informed E. M. that he was under arrest. However, there is nothing in his notes or case report indicating that he informed him of the reason for the arrest. On a balance of probabilities, the Commission finds that Corporal Sansome did not inform E. M. of the reason for his arrest.

[64] There is an important distinction between the legal act of an arrest and the requirements pursuant to paragraph 10(a) of the *Charter*. A failure to comply with the requirement under paragraph 10(a) does not, in and of itself, invalidate the legal nature of the arrest; rather, it opens the door to a remedy under section 24 of the *Charter*.²³ Furthermore, notice under paragraph 10(a) of the *Charter* must be provided "promptly" but not necessarily before the arrest itself.

²¹ [1994] 3 SCR 145.

²² *Regina v Fielding*, [1967] 3 CCC 258 (BCCA).

²³ Section 24 permits a person whose *Charter* rights have been infringed or denied to apply to a court for an appropriate remedy. Subsection 24(2) allows courts to exclude evidence that has been obtained as a result of a violation of a *Charter* right.

[65] From a strictly legal sense, there is no general requirement for police to inform a person of the reason for their arrest before carrying out the arrest. This reasoning applies especially to dynamic situations involving an urgent need to gain control of a person.

[66] However, even in dynamic situations, the Commission expects police officers to explain the reasons for arrest promptly. These explanations may de-escalate the situation, thereby promoting voluntary compliance and submission to arrest. This practice is consistent with the RCMP's Incident Management/Intervention Model ("IM/IM"), which trains and guides members in the use of force, promotes risk assessment, depicts various levels of behaviours and provides reasonable intervention options. The model promotes the use of verbal interventions wherever possible, to both defuse potentially volatile situations and to promote professional, polite and respectful attitudes.

[67] In the present case, Constable Cockrum recorded in her notes that, at 6:30 p.m. on August 9, E. M. was arrested for mischief. She further recorded that she had read him both his Charter rights and the police caution. She also recorded his verbatim responses.

[68] The evidence further shows that once they arrived at the Battlefords Detachment, E. M. was once again arrested by Constable Cockrum for theft over \$5,000 following the direction of another RCMP member. Constable Cockrum recorded in her notes that she informed him of the reason for the arrest and also informed him without delay of the right to retain and instruct counsel. According to Constable Blacklock's notes, E. M. was put into contact with a lawyer at Legal Aid at 7:32 p.m. and the conversation ended at 7:41 p.m.

[69] Based on the available information, the time that elapsed between E. M.'s initial arrest by Corporal Sansome and his formal arrest by Constable Cockrum was relatively short. Considering the dynamic nature of the situation, it was reasonable for Corporal Sansome to delegate the task of conducting the formal arrest and reading of rights to assisting RCMP members when they arrived. When Constables Blacklock and Cockrum took over, Corporal Sansome went back on the road to locate the other involved persons. The evidence shows that E. M. spoke to counsel before he provided a statement to the police. As such, the Commission finds that he was not prejudiced by the momentary delay in informing him of the reason for his arrest.

[70] Taking everything into account, the Commission finds that E. M. was arrested in a manner consistent with paragraphs 10(a) and (b) of the Charter.

FINDING

6) E. M. was arrested in a manner consistent with paragraphs 10(a) and (b) of the Charter.

B. J. and K. W.'s arrest

[71] B. J. and K. W. provided very little detail to the public complaint investigator about their encounter with the RCMP on August 9, 2016. B. J. indicated that the RCMP member who arrested her did not inform her of her rights but did inform her that she was arrested for theft. K. W. provided no information other than stating that she and B. J. were arrested by the police when they were walking, trying to find help.

[72] Based on a review of the materials, Corporal Sansome was the first RCMP member to encounter B. J. and K. W. Constables Olson and French arrived shortly thereafter, followed almost immediately by Constable Park.

[73] Constable Park's police report indicates that he observed Corporal Sansome and two North Battleford members on Ranger Lake Road with two females on the ground in handcuffs. Constable Park noted that he brought both females to his police vehicle. He further noted that he arrested K. W. for the offence of mischief at 6:27 p.m. and informed her of her right to counsel at 6:28 p.m. When asked if she understood, K. W. replied, "I do." At 6:30 p.m., he gave her the police caution and when he asked her if she understood, K. W. responded, "I know, I know. My boyfriend is dead." The evidence shows that K. W. contacted a lawyer prior to providing her statement to the police.²⁴

[74] Constable Park then proceeded to arrest B. J. for mischief and informed her of her right to counsel. He asked her if she understood and she replied, "Yeah." He also noted that he gave her the police caution at 6:31 p.m., to which she replied once more, "Yeah." Following her arrival at the Battlefords Detachment, B. J. was also arrested for theft over \$5,000 and breach of peace. She was read her Charter rights and she spoke with a lawyer at Legal Aid at approximately 9:13 p.m.

[75] In light of the above, the Commission finds, based on a balance of probabilities, that B. J. and K. W. were arrested in a manner consistent with paragraphs 10(a) and (b) of the Charter.

FINDING

7) B. J. and K. W. were arrested in a manner consistent with paragraphs 10(a) and (b) of the Charter.

INTERVIEWS

[76] Three of Mr. Boushie's four companions in the Ford Escape—E. M., B. J., and K. W.—were lodged in cells overnight at the Battlefords RCMP Detachment. The RCMP was unable to locate the fourth person, C. C., on the Red Pheasant First Nation

²⁴ Constable Cory Teniuk recorded in his police report that K. W. "was provided a call to a lawyer prior to the statement." The Prisoner Report (RCMP form C-13) completed for K. W. also indicates that she had contacted counsel. The Commission did not find information indicating the time at which the call took place.

Reserve on the evening of August 9, 2016. The next day, his whereabouts were still unknown to police until he voluntarily came to the detachment just after 5 p.m.

[77] Corporal Dallas Fee and Constable Cory Teniuk of the Saskatoon MCU were tasked with interviewing E. M., B. J., and K. W., regarding the homicide of Mr. Boushie. They arrived at the Battlefords Detachment on the evening of August 9. Due to the intoxication of the three witnesses, and pursuant to RCMP policy, they delayed questioning the witnesses until they were sufficiently sober.²⁵ Sergeant Brent Olberg told Commission investigators that, if police had been investigating allegations of theft alone, and if the witnesses had not been intoxicated, the three individuals would have been interviewed immediately, before making a decision to release them. Investigators also wanted to obtain the statements of S. S. and L. S. before they interviewed the three witnesses from the Ford Escape.

[78] The next morning, Corporal Fee and Constable Teniuk told all three witnesses that the interview focus was Mr. Boushie's homicide, not the alleged property crimes and assault. Corporal Fee and Constable Teniuk provided a long preamble at the beginning of all three interviews to inform and reassure the witnesses that they were seeking a "pure" unedited version of events. Both RCMP members also indicated that they did not wish to delve into information that may support charges against the three witnesses. In that regard, Corporal Fee and Constable Teniuk drew a distinction between themselves as homicide investigators, and the uniformed general duty RCMP members from the Biggar Detachment who may want to speak with them at a later date.²⁶

[79] The witness interviews ranged between 45 minutes and two hours. Corporal Fee's interview of K. W. started just after 10 a.m. and ended at 10:49 a.m. He confirmed with K. W. that she had spoken with a lawyer, and told her that her father had been at the detachment the night before. She asked when she could go home. Corporal Fee responded that he had told her lawyer that he did not know and he was not investigating the matters for which she had been charged.

[80] K. W. told Corporal Fee that she, Mr. Boushie, and B. J. were passed out in the back seat. When they awoke, they were in a location she did not recognize. She saw E. M. and C. C. running away. Mr. Boushie jumped over the seats into the front to try to drive away and she heard a gunshot. At first she did not realize that Mr. Boushie had been shot, although she also said that "they put a gun to his head and shot him." She described a tall man with sunglasses as the shooter, and indicated that there were four persons, including another man and a lady on the property. The gun used by the man was a long gun, probably a .22. K. W. tried to awaken Mr. Boushie. She then removed him from the driver's seat and put him on the ground. She and B. J. started walking from the property to try to find another house and were subsequently arrested by police.

²⁵ National OM, chap 24.1. "Interviews/Statements: Suspect/Accused/Witness," s 19.1.

²⁶ "F" Division OM, chap 24.1. "Suspect/Accused/Witness" suggests obtaining a pure version statement of events with clarifications dealt with after, in a question and answer format. National OM, chap 24.1. "Interviews/Statements: Suspect/Accused/Witness," s 3.7. suggests considering obtaining separate statements from a suspect when they begin to provide details of separate offences.

[81] Constable Teniuk's interview of B. J. started at 9:40 a.m. and ended at 11:40 a.m. B. J. lived in Alberta, and had only been in the local area for two or three weeks visiting her boyfriend, E. M. She was unfamiliar with many of the places the group had visited the previous day, and did not even know Mr. Boushie by name, just that he was K. W.'s boyfriend. She was unsure of C. C.'s name, although she knew he was K. W.'s cousin. The previous day was the first time she met Mr. Boushie and C. C. According to B. J., the group had been drinking heavily throughout the day.

[82] B. J. told Constable Teniuk that she could not remember many details of what had happened, and was baffled by the allegation of attempted theft. She recalled that Mr. Boushie was in the back seat of the Ford Escape, and that it was dark when the shooting happened. She did not remember the shooting itself or who did it, only that at one point she was outside the passenger side of the vehicle on the ground with K. W., who was screaming "they shot my boyfriend!" as they knelt beside his body. There was a lot of blood on them and on the ground. A lady was standing over them with a big gun, and B. J. wanted to leave out of fear that the lady would shoot them, too. She did not see anyone else on the property. She got into the driver's seat in the Ford Escape and unsuccessfully tried to start the engine. Constable Teniuk asked B. J. about the firearm found near Mr. Boushie's body. She said that she did not recall seeing a firearm there or in the vehicle.

[83] While Constable Teniuk was out of the room, B. J. broke down and said aloud that she wished for all this to go away and that she wanted to be home with her daughter. Upon his return, Constable Teniuk acknowledged B. J.'s desire to be elsewhere, but said that they would press on with the interview. B. J. told him she did not know what else to say.

[84] Constable Teniuk tried to draw more information out of B. J. by asking her to imagine herself at the scene and to cast her mind back to a time earlier in the day and move forward. B. J. said, "It sucks trying to remember something that you can't."

[85] Constable Teniuk noticed abrasions and bruises on B. J. and asked if she was sore. B. J. replied that her mouth and knees hurt. In his interview with Commission investigators, Constable Teniuk said that B. J. appeared to have been the victim of an assault, although he did not question her further about her injuries in the interview because it seemed to him that she was unwilling to discuss it.

[86] E. M. was interviewed by Corporal Fee starting at 11:15 a.m. for just under an hour. E. M. stated that he was sleeping when C. C. drove the Ford Escape onto the Stanley property. He said that he was sitting in the back seat and Mr. Boushie was in the front passenger seat. He saw a woman riding a lawnmower. C. C. hit another vehicle on the property. Two guys came out of nowhere and smashed their windshield with a hammer. The two guys had a gun with them, so he and C. C. ran away.

[87] E. M. reported hearing two to four shots, which he was certain were directed at him and C. C. He kept walking until a police canine unit found him and asked him where the gun was, which E. M. now believed meant that police thought that he had killed Mr. Boushie. He denied calling or texting anyone after he left the Stanley property, or having much to drink earlier in the day. He indicated that he wanted to contact Victim Services; Corporal Fee said that they would deal with that later.

[88] C. C. came to the Battlefords Detachment on his own accord just after 5 p.m. on the same day that the three other occupants of the Ford Escape were interviewed. His interview was conducted by Constable Teniuk and started at 5:45 p.m. Constable Teniuk expressed his appreciation to C. C. for coming forward and helping the investigation, because police had not expected that he would do so. C. C. said that he wanted to provide his explanation of what happened because his lawyer advised him to, and because his friend had been killed.

[89] As with the other witnesses who had been with Mr. Boushie in the Ford Escape, Constable Teniuk told C. C. that his primary interest in the interview was to obtain information regarding the circumstances of Mr. Boushie's death, and not any potential criminal activity on their part. He told C. C. that the interview was not a "warned statement" of the type that would be conducted if police were in a position to charge C. C. with a crime. Constable Teniuk did not inform C. C. of his Charter rights, nor did he offer him any further opportunity to consult a lawyer. He did tell C. C. that the Biggar RCMP may want to talk to him in the future about charges.

[90] C. C. mentioned that he drove the Ford Escape onto the Stanley property with the intention of seeking help with the tire. He was unfamiliar with the property and did not know who owned it. According to C. C., E. M. left the vehicle and tried to start a quad parked in the yard. Upon seeing this, two men on the property yelled and began to chase them. C. C. and E. M. retreated to the Ford Escape and tried to drive away, but the ruined tire pulled them in an unintended direction and they hit another vehicle.

[91] One of the men smashed the Ford Escape's windshield with an axe. C. C. said that he saw a man approaching the vehicle while loading an old gun. Fearful, C. C. and E. M. fled down the laneway towards the road. He heard two shots, which he assumed to be warning shots in the air, as they did not sound like they were directed towards him. C. C. stated that he was concerned about the companions that he left behind, but thought that the worst that would happen to them was that they would spend a night in jail.

[92] C. C. made his way to a nearby farm and sought a ride from A.D., the farm's owner. A.D. drove him to the Red Pheasant First Nation Reserve. Once there, C.C. went to his grandfather's house and told his mother what had happened. He was not yet aware of the death of Mr. Boushie. He told police that he tried unsuccessfully to get a ride back to the Stanley farm and decided instead to "sleep it off." When he awoke, he was told that Mr. Boushie was dead and that, at first, people had thought C. C. was responsible for his death, until they heard that Mr. Boushie was shot by a farmer.

[93] As with E. M., C. C. fled the scene before the shooting of Mr. Boushie. He said that he did not recall the faces of the two men he saw on the Stanley property; however, Constable Teniuk did obtain rough ages and descriptions of them from C. C.

[94] Constable Teniuk spent considerable time questioning C. C. about the firearm found next to Mr. Boushie's body. He told C. C. that he had to be very clear because this issue could "make or break the case." At first, C. C. refused to answer, citing his lawyer's advice, but then said that E. M. had a .22 rifle with him that looked like a piece of scrap. E. M.'s intention was to go hunting, although they did not hunt that day because they were drinking.

[95] E. M.'s rifle remained in the trunk until E. M. took it with him down the road when they stopped near a farm earlier that day (the farm belonging to M. F. and G. F.). At that property, it appeared to C. C. that E. M. threw away a piece of wood that could have been the stock of a gun. C. C. said that the metal part of the gun was at E. M.'s feet before he got out of the vehicle at the Stanley property. E. M. did not have the gun with him when he fled the vehicle. He stated that the gun was never used or pointed at anyone on the Stanley property. C. C. was unaware of any reason for the gun to be on the ground near Mr. Boushie's body.

[96] C. C. expressed his fear to Constable Teniuk that a gun in the possession of one of the vehicle's occupants would lead those on the property to frame one of them for Mr. Boushie's death.

[97] Constable Teniuk thanked C. C. for his information and told him that it would be very helpful to police. C. C. said that K. W. was likely still in shock and that police would have to give her a couple of days before she was ready to provide a better statement.

[98] The general perception amongst investigators was that far more information was gained from L. S. and S. S. in supporting the case against Mr. Stanley than was learned from the three witnesses in custody. The investigators believed that the three witnesses in custody were withholding information. For example, Constable Ryan Boogaard felt that E. M. was not disclosing 90% of what he knew. Constable Teniuk said that this sense that information was being withheld led them to push the witnesses harder than they normally would.

[99] Further, this sense that the three had not been forthright with police was heightened by the comparative cooperation and wealth of information received from C. C. Moreover, investigators said that the versions of events as described by L. S. and S. S. seemed more in harmony with each other and with the observable facts. Inconsistencies in the statements provided by the three witnesses in custody included where Mr. Boushie was seated in the car when the shooting happened, the side of the vehicle where his body was placed after the shooting, the meteorological conditions at the time, the identity of the suspected shooter (a man with sunglasses or a woman with a long gun), the number of persons on the Stanley property, and the sobriety of the individuals in the Ford Escape.

[100] Unlike the other three witnesses from the Ford Escape, C. C. had not been held in custody and had an opportunity to sober up, rest, and eat. Considering the large volume of alcohol some of the witnesses later admitted to imbibing over an extended period, it is likely that the interviewees were, at the very least, suffering from the after-effects on the morning of August 10. K. W. told Corporal Fee that she had been drinking hard alcohol for several days and felt sick during the interview.

[101] Corporal Fee and Constable Teniuk did not, in any meaningful way, ask the interviewees about their treatment since their arrest, including whether they had eaten and actually rested. Canvassing the witnesses' state of mind in this regard was important to have on the record, as it could leave their perceptions of events open to challenge in later proceedings.²⁷

[102] The lengthy explanations provided to the three witnesses regarding the jeopardy that they faced and the type of information police wanted from them were both confusing and contradictory. They were told to provide a full account of what happened, excluding actions that could lead to charges against them, which, if mentioned, the interviewers could not ignore. However, Corporal Fee and Constable Teniuk drew a difference between themselves and the RCMP members who would investigate the allegations of property offences and assault.

[103] The three witnesses were not asked to repeat their understanding of their rights or the terms of the interview back to the interviewer. In many cases, affirmation of comprehension, when asked, was acknowledged by the interviewee with simply a nod, and the interview continued. For example, both B. J. and E. M. showed confusion during their respective interviews when they repeatedly asked when they would be going to court. Both of them were taken aback when told that they would not be attending court that day.

[104] Investigators were frustrated with what they felt was a lack of cooperation from the three witnesses. However, the interviewers made little effort to establish trust. Given the historic distrust of police by Indigenous communities, the trauma, shock, and chaos of the previous day's events, the lack of sleep and lodging in cells, and potentially severe hangovers, the interviewers did not reasonably foster a state of mind that was conducive to witness cooperation. B. J. stated the following to Constable Boogaard at a later second interview with RCMP:

...when I was arrested ... they told me I was being charged with theft ... Put me in handcuffs and threw me in the vehicle and we went on a high speed chase after that.

[I had been] held there for 19 hours and they expected me to ... sleep, but I wasn't going to ... sleep when there's blood all over my body still and like ... you know, I ... I'm still trying to figure out why I'm in here. You know, why I'm treated

²⁷ It was also noted in reviewing the trial transcript that when B. J. eventually testified in court and was being cross-examined on certain detail discrepancies, she made reference to being held for 19 hours in cells, and not being able to sleep or eat.

like a criminal? You know, and 'cause that ... the guard there, too ... like I was just treated badly the entire time ... through the whole thing. Like, I ... I'm sorry I just ... Like I left with so much ... anger and hurt ... in Saskatchewan.

[105] RCMP policy mandates that interviewers must ensure that the subject of an interview fully understands their position of jeopardy regardless of whether the subject is in custody or not.²⁸ Policy also states that a person may require a more comprehensive explanation of their rights when alcohol use or trauma is involved.²⁹ These aspects of the interviews ran counter to RCMP policy, in that clear explanations of the jeopardy the witnesses faced were not provided to K. W., B. J., and E. M. in the circumstances, and insufficient attempts were made by interviewers to ensure that the witnesses understood what they were told. It is not evident that the three witnesses possessed a “free and operating” mind as set out in RCMP policy; they were unaware that what they were saying may be used to their detriment.³⁰

[106] For these reasons, the Commission finds that the manner in which Corporal Fee and Constable Teniuk conducted the interviews of K. W., B. J., and E. M. was unreasonable in the circumstances. The Commission recommends that Corporal Fee and Constable Teniuk be provided with operational guidance with respect to RCMP policy regarding the interviewing of witnesses.

[107] In contrast, in Constable Teniuk's interview of C. C., it is apparent that C. C. was a motivated, clear-headed witness. He had spoken with a lawyer, who had advised him to cooperate with police. Most importantly, he was not in custody at the time. Therefore, the Commission finds that the interview of C. C. conducted by Constable Teniuk was both reasonable and consistent with RCMP policy.

FINDINGS

- 8) The manner in which Corporal Fee and Constable Teniuk conducted the interviews of K. W., B. J., and E. M. was unreasonable in the circumstances.**
- 9) The manner in which Constable Teniuk conducted the interview of C. C. was reasonable in the circumstances.**

RECOMMENDATION

- 1) That Corporal Fee and Constable Teniuk be provided with operational guidance with respect to RCMP policy regarding the interviewing of witnesses.**

²⁸ “F” Division OM, chap 24.1. “Suspect/Accused/Witness,” s 3.1.

²⁹ National OM, chap 24.1. “Interviews/Statements: Suspect/Accused/Witness,” s 19.1. (amended: 2016-04-05).

³⁰ National OM, chap 24.1. “Interviews/Statements: Suspect/Accused/Witness,” s 1.13. (amended: 2016-04-05).

LAYING OF CHARGES AND DETENTION IN CELLS

[108] Following their interviews, K. W., B. J., and E. M. were returned to their cells. The investigators' notes and reports show that there was discussion amongst the investigative team about treating them as witnesses. However, the approach taken with respect to charges and jeopardy is not as clear, which was evident in the preambles given to the witnesses prior to the statements being taken. Consultation with Crown counsel regarding charges was not undertaken by Constable Boogaard until 1:39 p.m. on August 10, which was after the statements were completed.

[109] At 3:02 p.m., Constable Boogaard told Constable Teniuk that they could no longer hold the witnesses in custody and to release all three of them. Constable Boogaard then recorded the following in his notes concerning the release of E. M., B. J., and K. W.:

I talked to [Sergeant Olberg] & it was discussed that we are still investigating offences at Stanley property, ie suspect interview at this time with Gerald, so decision reversed to release [B. J.], [E. M.] & [K. W.], will keep in custody as long as investigation requires but no further than 24 hrs – Re evaluate evidence.³¹

[110] According to Constable Boogaard's notes, he and Sergeant Olberg also discussed that L. S. and S. S. had accused B. J. and K. W. of assaulting L. S. Constable Boogaard and Sergeant Olberg felt that B. J. and K. W. could be charged in relation to that matter.

[111] When questioned about B. J.'s assault charges following her statement, Constable Teniuk stated, "There was confusion about where are we going with it. I mean they all have jeopardy right?" Constable Teniuk's response to Commission investigators' questions regarding the statement he took from B. J. on August 10, 2016, is illustrative of the confusion in the investigative team:

CST. C. TENIUK: I get why there was concern about her [B. J.] getting charged because of some of the circumstances they just witnessed and went through. At the same time, I also didn't want a witness statement about what happened on the property. To me it was more important at that time ---

CRCC: M'hm.

CST. C. TENIUK: --- then addressing her charges and what exactly was coming out of it. Because frankly I wasn't quite sure at that point in time what they were planning on doing with her.

³¹ Mr. Stanley's interview took place on August 10, 2016, from 1:29 p.m. to 6 p.m.

[112] Sergeant Olberg's interview with Commission investigators provides some insight into the issues of the detainment and release from custody:

CRCC: Okay. So in terms of lodging [E. M., B. J. and K. W.] in cells, is that something that would normally occur for an arrest for theft? What was the rational behind continuing to detain them?

SGT. B. OLBERG: Well they're grossly intoxicated. I mean, first and foremost, that's the reason. I mean, had they been sober, they -- this could have probably taken a slightly different route. Likely, if there was grounds to arrest for theft, as there was in this case, they would have been arrested anyhow, but we could have proceeded directly to interview and then determined, once the investigation was completed, whether or not we wanted to advance those theft charges or not.

. . .

CRCC: Okay. So the Stanley interviews [L. S. and S. S.] happened the evening before and after it was determined that the witnesses are in the form to be so, the interviews are connected with that. But it appears that there was a decision not to release them until some time later. Can you speak to that and what was discussed and decided in terms of their release?

SGT. B. OLBERG: Well there's a lot of issues at play. First of all, we have 24 hours to either charge or ensure that they're released. Given the lack of clarity with what they were telling us, and shall I say -- I don't want to say lack of cooperation, because, I mean, when you review the statement, you -- especially I reflect on [B. J.]. And I mean, she just seems very sincere in her account that she can't remember anything; right? And so you take it at face value. But when you piece everything together and you look at it, we're still determining whether or not they are facing jeopardy for the theft and who should be facing jeopardy for the theft. So the fact that they were held 24 hours I think was just a cautious approach.

CRCC: M'hm.

SGT. B. OLBERG: And a lawful approach. I mean, I've heard [B. J.], I've heard it said that, "I didn't talk -- I didn't tell the police what I knew because I didn't feel comfortable talking to them or because they held me for 36 hours." She wasn't held for 36 hours. So again, we have to rely on facts. And the facts of the matter is, they were held within the prescribed period of time that we're allowed to hold them by law. They were arrestable. They were certainly, if not complicit in the property crime, there was a high likelihood that they were involved in some way, shape or form, or perhaps had knowledge of. That needed to be thoroughly examined before we released them.

[sic throughout]

[113] E. M. was released unconditionally at 4:55 p.m., whereas B. J. and K. W. were released at 5:04 p.m. and 5:20 p.m. respectively, on promises to appear³² for charges of assault in relation to L. S.

[114] The *Criminal Code* contains specific provisions regarding the release of a person following their arrest.³³

497 (1) Subject to subsection (1.1) . . . the peace officer shall, **as soon as practicable**,

- (a) release the person from custody with the intention of compelling their appearance by way of summons; or
- (b) issue an appearance notice to the person and then release them.

Exception

(1.1) A peace officer shall not release a person under subsection (1) if the peace officer believes, on reasonable grounds,

- (a) that it is necessary in the public interest that the person be detained in custody or that the matter of their release from custody be dealt with under another provision of this Part, having regard to all the circumstances including the need to
 - (i) establish the identity of the person,
 - (ii) secure or preserve evidence of or relating to the offence,
 - (iii) prevent the continuation or repetition of the offence or the commission of another offence, or
 - (iv) ensure the safety and security of any victim of or witness to the offence; or
- (b) that if the person is released from custody, the person will fail to attend court in order to be dealt with according to law.

[Emphasis added]

³² A Promise to Appear is a document issued by a police officer stating that, in order to be released from custody, the accused person promises to attend court for their matter on a specified date.

³³ The *Criminal Code* contains various release provisions depending on the nature of the offence. Since E. M., B. J. and K. W. were arrested for mischief and theft, section 497 of the *Criminal Code* applies to their release. While section 498 of the *Criminal Code* could also be applied to their release, it is unnecessary to consider this argument, as the issue in question is resolved in the same manner for either *Criminal Code* section.

[115] The decision to hold E. M., B. J., and K. W. in cells overnight can be reasonably justified on the grounds of public interest and safety under paragraph 497(1.1)(a) of the *Criminal Code*.³⁴ Police were investigating a homicide, the details of which only began to emerge during the interviews of L. S. and S. S. conducted late on the night of August 9 and into the early morning of August 10. Allegations of assault against B. J. and K. W. and allegations of theft against all three had been made. Finally, there was the as yet unknown involvement of a firearm brought onto the Stanley property.

[116] However, the reasons provided for their ongoing detention following their interviews the next morning are clearly based on their involvement in the alleged property crime and assault. Even though they were detained in custody for less than 24 hours,³⁵ Sergeant Olberg did not articulate grounds in support of any of the lawful reasons for detention listed in subsection 497(1.1) of the *Criminal Code*. Consequently, he was bound by a statutory obligation to release E. M., B. J., and K. W. as soon as practicable.

[117] Crown counsel and investigative agencies such as the RCMP play complementary roles in the criminal process. Both have roles to play before and after charges are laid. Police officers have a responsibility and discretion over the investigation of a criminal offence and the laying of criminal charges except where the consent of the Attorney General is required by statute. While both the police and the Attorney General, through Crown counsel, exercise discretion independently and objectively, their relationship is one of cooperation and mutual reliance. Cooperation and effective consultation between the police and Crown counsel are essential to the proper administration of justice, as investigators are expected to gather evidence that is admissible and relevant to the charge.

[118] In the case at hand, the involvement of the Crown was not required as a matter of law prior to the laying of charges. However, given the legal implications, the tie-in with the homicide and the confusion amongst the investigators, it may have been desirable to seek advice from Crown counsel before the statements were taken from E. M., B. J., and K. W. to ensure that there was a clear understanding and a consensus about their intentions respecting these witnesses.

[119] It is the Commission's view that E. M., B. J., and K. W., although being appealed to as witnesses, were not treated as such. They were returned to cells after their interviews and B. J. and K. W. were charged the same day with assault. This was despite investigators telling them just hours before that they were not interested in

³⁴ Subsection 497(1.1) lists factors to be considered in the decision to detain. These include the public interest, establishing identity, securing and preserving evidence, preventing the continuation of the offence or the commission of another offence, ensuring the safety and security of the victim, as well as administrative concerns such as ensuring court attendance. The public interest is determined by looking at all the circumstances that existed at the time of the arrest, including the factors enumerated in subsection 497(1.1).

³⁵ According to the prisoner reports (RCMP Form C-13), E. M., B. J., and K. W. were booked in on August 9 at 7:04 p.m., 8:55 p.m. and 9:50 p.m. respectively.

dealing with the allegations of property crime or assault, and that general duty RCMP members from the Biggar Detachment would be handling that at a later date.

[120] A review of the relevant RCMP policy reveals that it is lacking in direction to RCMP members on how they should handle situations such as the one encountered here. When interviewing a witness to a criminal incident who is in custody for a separate criminal incident, the jeopardy facing the witness is unclear. The Commission recommends that RCMP policy be revised to address the treatment of in-custody witnesses interviewed in criminal investigations in which they are not suspects.

[121] The Commission suggests that a preferable way to approach the situation in this case would have been to release E. M., B. J., and K. W. in the morning once the RCMP had obtained statements from L. S. and S. S. and they had a better picture of what happened on the Stanley property. At that point, police could have charged the three, or waited to conduct a separate investigation before doing so. In any event, the status of the three would be clarified and police could have asked them to then provide witness statements in the homicide investigation. Those statements would not be used against the three if any charges against them proceeded, and the witnesses would have less incentive to edit what they told police. Moreover, although still suffering from the after-effects of excessive alcohol consumption, they would be in better condition than they were the night before. As an alternative, police could have waited a reasonable period of time before obtaining formal witness statements.

[122] The Commission finds that the continued detention in custody of E. M., B. J., and K. W. following the statements they provided to the RCMP on August 10, 2016, was unreasonable and not justified under subsection 497(1.1) of the *Criminal Code*.

FINDING

10) The continued detention in custody of E. M., B. J., and K. W. following the statements they provided to the RCMP on August 10, 2016, was unreasonable and not justified under subsection 497(1.1) of the *Criminal Code*.

RECOMMENDATIONS

- 2) That Sergeant Olberg be directed to review the reasons for detention listed in subsection 497(1.1) of the *Criminal Code*.**
- 3) That the RCMP review its policy OM 24.1. (“Interviews/Statements: Suspect/Accused/Witness”) to address the treatment of in-custody witnesses interviewed in criminal investigations in which they are not suspects.**

REINTERVIEWS

[123] Sergeant Olberg recorded in his supplementary occurrence report on August 13 that “the group of four require re-interview with a goal of starting with the females as they have not been implicated in the property crime activities other than merely being present. Those could be without warning however both [E. M.] and [C. C.] must be warned.”

[124] On August 16, Staff Sergeant Dale Rockel and Constable Boogaard attended a meeting at the Regional Crown Prosecutor’s office in North Battleford. In his interview with Commission investigators, Staff Sergeant Rockel explained that the purpose of the meeting was to discuss the circumstances of the case against Mr. Stanley and the charges with respect to some of the vehicle occupants. Ultimately, no property-related crime charges were laid against the vehicle occupants and the charges laid against B. J. and K. W. for assault were withdrawn.³⁶

[125] Regarding the four vehicle occupants’ role as witnesses in the case against Mr. Stanley, Crown counsel suggested that it was not necessary to reinterview the witnesses because they would have an opportunity to provide their version of clarifying information at the preliminary hearing.

[126] The one exception was E. M. It was not clear to Crown counsel that E. M. understood at the interview on August 10 that he was being questioned as a witness rather than as a suspect. Soon after, investigators learned that E. M. had spoken about the incident in the media, and his public account of what happened varied dramatically from what he had told police. As E. M. would be under oath when he gave his testimony at the preliminary hearing, it was decided that an unsworn statement at a reinterview would not be beneficial to the investigation.

[127] In the course of arranging for B. J.’s attendance at the preliminary hearing scheduled for April 2, 2017, Constable Boogaard contacted her to ask if she would like to add, amend, or remove anything from her initial statement to police. B. J. informed Constable Boogaard that her second statement was different from her first statement. Confused by this, Constable Boogaard asked her what she meant by a second statement, and was informed by B. J. that she and E. M. had provided recorded statements to the FSIN weeks after the incident. She expressed surprise that these had not been shared with the RCMP.

[128] Constable Boogaard conferred with Sergeant Olberg and decided that an interview needed to be conducted with B. J. to clarify the differences between her first interview with the RCMP and her second with the FSIN. In preparation for this, Constable Boogaard emailed B. J. a transcript of her RCMP interview.

³⁶ The decision to withdraw the charges was an exercise of prosecutorial discretion. The exercise of prosecutorial discretion does not in and of itself mean that the police actions that led to the charge were unreasonable.

[129] On February 27, 2017, Constable Boogaard and Constable Bill Groenen met with B. J. in the St. Paul, Alberta, RCMP Detachment near where B. J. lived. They confirmed that she was not an active suspect in an RCMP investigation and did not need a lawyer present. The RCMP members had not yet seen the FSIN recordings or transcripts. Constable Boogaard understood that B. J. had also not seen the transcript of her FSIN interview. She told Constable Boogaard that she had only read to page 8 of the RCMP transcript. During this interview, B. J. relied exclusively on her memory of the differences between the two interviews, both of which were conducted more than five months before.

[130] Additional information obtained from B. J. was quite limited. She recalled more of what happened earlier in the day on August 9, 2016, that she saw a lady on a tractor as they entered the Stanley farm, and that Mr. Stanley had a handgun. She also said that Mr. Stanley told his son to go get a gun.

[131] B. J. explained that the variation in her recollection of events was due to being in shock and hungover at the time of the first RCMP interview. She also said that she has a hard time trusting police because of her experience in Saskatchewan, set out in the description of B. J.'s first RCMP interview, above.

[132] The Commission finds that Constable Boogaard conducted a reasonable reinterview of B. J. in keeping with RCMP policy, in that he ensured that B. J., as a witness, understood her position of jeopardy.

[133] Corporal Doug Nordick prepared an application for a court order to obtain the FSIN interview transcripts, using B. J.'s second interview with the RCMP as support material. The order was granted on March 22, 2017. The transcripts and other materials were provided to the RCMP by the FSIN the following day.

[134] Although Corporal Fee had the impression from his other dealings with E. M. that he wanted to speak again with police, E. M. insisted that his lawyer should be present. This was not acceptable to Corporal Fee and Crown counsel, and they decided not to proceed with an interview of E. M. regarding his statement to the FSIN. A planned reinterview of K. W. was not conducted for the same reason.

FINDINGS

- 11) The decision to reinterview B. J. was reasonable under the circumstances.**
- 12) The manner in which Constable Boogaard conducted the reinterview of B. J. was reasonable in the circumstances.**

S. S. AND L. S.

[135] At approximately 6:40 p.m. on August 9, the members of the Stanley family were ordered by the police to come out of their residence one by one with their hands up. The first to exit the residence was a woman, followed by two men, later identified as L. S., S. S., and Mr. Stanley. L. S. and S. S. were arrested and detained for safety purposes.

They were handcuffed and placed in separate police vehicles. Mr. Stanley was also arrested. L. S. and S. S. were released from custody at approximately 7:25 p.m.

[136] In reviewing the documentation, the Commission noted that L. S. and S. S. were permitted to travel on their own to the Biggar Detachment to provide voluntary witness statements. They drove together, using their personal vehicle. Upon arrival at the detachment, they waited together in the lobby until the arrival of MCU investigators.

[137] Sergeant Sawrenko's notebook entries indicate that he sought direction from the MCU on the matter of transport for L. S. and S. S. at 7:25 p.m. on August 9. He recorded that he informed Constable Boogaard that L. S. and S. S. were being cooperative and they were permitted to travel on their own to the Biggar Detachment.

[138] The Commission investigators asked Sergeant Sawrenko if the issue of segregation came up during his conversation with Constable Boogaard. Sergeant Sawrenko replied that he did not recall discussing that issue. He added that since he was told that they could attend the Biggar RCMP Detachment of their own free will, there would have been no reason to have such a conversation.

[139] The Commission reviewed Constable Boogaard's notes and there is no indication of a discussion between him and Sergeant Sawrenko concerning the transportation of S. S. and L. S. to the Biggar Detachment. When Commission investigators asked Constable Boogaard if he gave any direction on how they were to get to the detachment, he replied, "No. It was my understanding that was done before I was assigned as the primary investigator." He further explained that the information regarding L. S. and S. S. being arrested, released, and going to Biggar was obtained during a team briefing that took place at approximately 8 p.m. on the evening of August 9.³⁷

[140] The following excerpt from Sergeant Olberg's interview with the Commission investigators shows the need for the Command Triangle³⁸ to provide proper guidance to other RCMP members tasked with conducting important activities.

CRCC: Okay. And so when you have witnesses such as these, to an extent of you're not necessarily aware of their full involvement, ---

SGT. B. OLBERG: M'hm.

CRCC: --- but they're not under arrest, would you give any instruction about, I guess, not speaking about the incident or anything like that? Like what would ---

³⁷ A review of Constable Wudrick's notes indicates that Sergeant Sawrenko gave him an update at 7:24 p.m. There is no indication that direction was provided concerning the transportation of L. S. and S. S.

³⁸ The Command Triangle is composed of the Team Commander, the Primary Investigator and the File Coordinator.

SGT. B. OLBERG: Well I would hope; right? I mean, I can only hope that that was achieved at the scene. I mean, it's rather common sense that they shouldn't -- they're witnesses, we're going to be relying on each of their accounts separately, we shouldn't allow them to hopefully travel together or discuss the incident prior to their interview.

[141] The following observation is noted in Sergeant Olberg's report:

21:50 hours. Arrive at Biggar Detachment with Cst. GULLACHER and observe an adult male and female in front lobby (later identified as [S. S.] and [L. S.]).

[142] The Commission did not see any other information in the materials regarding what took place with these two witnesses between 9:50 p.m. and 10:45 p.m., when the interview of S. S. began.

[143] The segregation of witnesses is essential, particularly with key witnesses to a serious crime. Precautions must be taken to avoid creating an opportunity where witnesses may inadvertently or intentionally cross-contaminate each other's recollections, or in some cases perhaps concoct a falsehood to cover up some element of culpability. Police must always be mindful that this potential exists. Witnesses are segregated to maintain as much as possible the purity of their statements. Witnesses are compelled to rely upon their own recollection of events without the aid or influence of others.

[144] In cases such as this one, where witnesses may have interacted prior to being interviewed, they should be asked if they have discussed the event with anyone else or been privy to anyone else's version of events. Witnesses should be both cautioned and encouraged to disregard anyone else's version of events and limit their statement to what they have seen and heard personally.

[145] In this case, since L. S. and S. S. were released from custody, the police could not compel them to attend the police detachment to provide witness statements. While the police could have offered to transport them to the detachment separately, the Commission recognizes that there may not have been sufficient resources to do so. In any event, it is quite clear that the segregation of L. S. and S. S. was not considered at all. L. S. and S. S. were not told not to speak to each other about the incident prior to being interviewed and this issue was not raised during their interview with the RCMP investigator.

[146] The members of the Command Triangle (Sergeant Olberg and Constables Boogaard and Wudrick) should have considered providing direction to Sergeant Sawrenko about communications between witnesses. Specifically, the Command Triangle should have ensured that the witnesses were told to refrain from speaking to each other about the incident prior to providing their statements to the police.

[147] Further, it was unreasonable for Sergeant Sawrenko to neglect to provide instruction to L.S. and S.S. regarding communications about the incident. L. S. and S. S. should have been told to refrain from speaking to each other prior to providing their witness statements.

[148] It is therefore recommended that the RCMP provide guidance, mentoring and/or training to the members of the Command Triangle (Sergeant Olberg and Constables Boogaard and Wudrick) and Sergeant Sawrenko with respect to witness handling.

FINDINGS

- 13) It was unreasonable for the members of the Command Triangle (Sergeant Olberg and Constables Boogaard and Wudrick) to fail to consider providing direction that L. S. and S. S. not discuss the incident with each other prior to providing their witness statements to the police.**
- 14) It was unreasonable for Sergeant Sawrenko to fail to tell L. S. and S. S. not discuss the incident with each other prior to providing their witness statements.**

RECOMMENDATION

- 4) That the RCMP provide guidance, mentoring and/or training to the members of the Command Triangle (Sergeant Olberg and Constables Boogaard and Wudrick) and Sergeant Sawrenko with respect to witness handling.**

A. D.

[149] Shortly after RCMP members gained control of the crime scene, a neighbour of the Stanleys, who will be subsequently known as A. D., approached them with information that a young man had come onto his property asking for a ride to the Red Pheasant First Nation Reserve. He explained that he drove him there and returned home. While A. D. did not know C. C.'s identity, the description he provided to police matched that given to them by S. S.

[150] The information before the Commission reveals that, after taking C. C. to the reserve, A. D. drove to the crime scene area. He initially interacted with Sergeant Sawrenko, who referred him to Corporal Olney. Based on his conversation with A. D., Corporal Olney recorded some notes in his notebook, including a description of the male, but a statement was not taken at that time. Corporal Fee of the MCU was tasked on August 9 with obtaining a statement from A. D. This task was completed on August 11.

[151] Corporal Olney led the next-of-kin notification and the search for C. C. He determined that the likelihood of C. C. being present at the Boushie/Baptiste residence and being armed and possibly dangerous created a high-level risk assessment. According to his notes, Corporal Olney did not ask A. D. about any comments C. C. might have made, his demeanour, whether he was carrying anything or appeared to be concealing anything, and whether C. C. entered a residence or was just dropped off

nearby. This information could have been relevant to the investigation and also in forming the risk assessment. While it would have been ideal for Corporal Olney to ask for this information and document it, the Commission recognizes that, in the context of a critical incident, there were overriding public safety concerns that guided police actions.

[152] Considering the foregoing, the Commission finds that Corporal Olney's actions were reasonable in the circumstances.

FINDING

15) Corporal Olney's actions in relation to A. D. were reasonable in the circumstances.

M. F. AND G. F.

[153] M. F and G. F. occupied a property in the general vicinity of the Stanleys. The investigation into the death of Mr. Boushie revealed that Mr. Boushie and his four companions, E. M., C. C., B. J., and K. W., had apparently attempted theft and damaged vehicles at M. F. and G. F.'s property prior to moving on to the Stanley property.

[154] Constable Wright was tasked with interviewing M. F. and G. F. the night of the incident and obtaining statements. He audio-recorded a short statement that evening with both of them at the same time.

[155] M. F. and G. F. were reinterviewed two days later by MCU members Corporal Fee and Constable Teniuk. The latter conducted the interview while Corporal Fee monitored it. The interview was recorded and once again conducted simultaneously. Constable Teniuk was questioned on this point during his interview with Commission investigators:

CRCC: M'hm. Is it common to interview multiple witnesses together?

CST. C. TENIUK: It happens. It's not ideal, but it does happen. We try and separate everyone as much as we can. But them being an elderly couple and we were in their house, and them willingly, you know, to do it right then and there it was kind of hard to just drag them one in the vehicle, one in the thing.

They wanted to do it at the kitchen table and pour coffee and everything. And it's pretty hard to split them up at that time, but obviously we tried to make it clear that we're just talking to her. Getting her details of what she saw. And obviously they see things differently, just like any file. We want to get their accurate account without them speaking at the same time, so. I mean it's not the best, but we did do it that time.

[156] The RCMP's national policy OM 24.1. ("Interviews/Statements: Suspect/Accused/Witness")³⁹ provides that statements "should be verbatim, obtained individually, and obtained in person." [Emphasis added]

[157] There is no indication in the materials before the Commission that M. F. and G. F. insisted on being interviewed together or that the RCMP members made any attempt on either occasion to persuade them to be interviewed separately.

[158] While an investigator may be of the opinion that a witness has minimal evidentiary value, it does not diminish the requirement to conduct the interview in an appropriate manner (i.e. separate from any other witness). While there may not have been any negative impact in the case at hand, such an approach could at some point have a detrimental impact on a case. It is quite common for two people to witness the same activity and have different recollections. One person may then change their mind about a particular fact or observance to concur with the other when in fact they may have been correct in the first place.

[159] In light of the above, the Commission finds that Corporal Fee and Constables Wright and Tenuk should have attempted to persuade M. F. and G. F. to be interviewed separately. Therefore, the Commission recommends that these RCMP members be directed to review the RCMP's national policy OM 24.1.

FINDING

16) Corporal Fee and Constables Wright and Tenuk should have attempted to persuade M. F. and G. F. to be interviewed separately.

RECOMMENDATION

5) That Corporal Fee and Constables Wright and Tenuk be directed to review the RCMP's national policy OM 24.1. ("Interviews/Statements: Suspect/Accused/Witness").

MR. STANLEY

Arrest, transport and detention in cell

[160] The evidence reveals that on August 9, 2016, at 6:04 p.m., Sergeant Olberg received a telephone call from Constable Wudrick, who informed him of a potential homicide near Biggar, Saskatchewan. According to the suspect's son, several people had attended a property and one person was shot and killed by the homeowner. The police were notified and were on their way. The suspect's son was present but was unsure of the location of the suspect.

[161] At 6:39 p.m., Sergeant Olberg received another call from Constable Wudrick, who informed him of the following:

³⁹ National OM, chap 24.1. "Interviews/Statements: Suspect/Accused/Witness," s 2.2.

- Five people came onto the property and attempted to steal a vehicle in the yard;
- One of the males was shot, possibly in the head, by the homeowner;
- The shooter was cooperative and directed that the police be called;
- It was believed that two males either fled in a vehicle or on foot, possibly with a firearm;
- One male and two females (vehicle occupants) were located at the scene;
- The local Commander, Sergeant Sawrenko, was on scene and would attempt to have the shooter surrender.

[162] Sergeant Olberg recorded in his notes at 6:39 p.m. that Mr. Stanley “should be arrested for most serious offence to promote evidence collection.”

[163] At 6:53 p.m., Constable Parmar arrested Mr. Stanley for murder further to the direction provided by Sergeant Olberg.

[164] Section 229 of the *Criminal Code* reads as follows:

Culpable homicide is murder

(a) where the person who causes the death of a human being

(i) means to cause his death, or

(ii) means to cause him bodily harm that he knows is likely to cause his death, and is reckless whether death ensues or not;

(b) where a person, meaning to cause death to a human being or meaning to cause him bodily harm that he knows is likely to cause his death, and being reckless whether death ensues or not, by accident or mistake causes death to another human being, notwithstanding that he does not mean to cause death or bodily harm to that human being; or

(c) if a person, for an unlawful object, does anything that they know is likely to cause death, and by doing so causes the death of a human being, even if they desire to effect their object without causing death or bodily harm to any human being.

[165] Considering the foregoing, the Commission finds that Sergeant Olberg had reasonable grounds to believe that Mr. Stanley had committed the offence of murder and that he could be arrested without a warrant pursuant to section 495 of the *Criminal Code*. As such, his direction to arrest Mr. Stanley for murder was reasonable under the circumstances.

[166] Constable Parmar’s notebook entries and police report indicate that he informed Mr. Stanley of his right to counsel and provided him the police caution immediately upon arrest. Mr. Stanley’s responses that he understood were also noted.

[167] Constable Parmar transported Mr. Stanley to the Biggar Detachment. They arrived at 8:08 p.m. Mr. Stanley was provided the opportunity to contact legal counsel. He spoke with a Legal Aid representative at 8:15 p.m. The call lasted approximately nine minutes. A second lawyer called for Mr. Stanley at 10:40 p.m. Mr. Stanley spoke with the lawyer until 10:58 p.m.

[168] In light of the above, the Commission is satisfied that Mr. Stanley was arrested in a manner consistent with paragraphs 10(a) and (b) of the Charter.

[169] Mr. Stanley was placed in a dry cell⁴⁰ and at 2:09 a.m., Corporal Ryttersgaard of the Yorkton FIS, with the assistance of Constable Parmar, took gunshot residue swabs from Mr. Stanley's hands and face and also seized his clothing. He was held in custody pending a bail hearing.

FINDINGS

- 17) Sergeant Olberg had reasonable grounds to believe that Mr. Stanley had committed the offence of murder and that he could be arrested without a warrant pursuant to section 495 of the *Criminal Code*.**
- 18) Sergeant Olberg's direction to proceed with the arrest of Mr. Stanley for murder was reasonable.**
- 19) Mr. Stanley was arrested in a manner consistent with paragraphs 10(a) and (b) of the Charter.**

Interview

[170] Constable Aaron Gullacher was chosen from among the members of the MCU to interview Mr. Stanley because of his experience and his background in rural Saskatchewan. The investigative team sought to decrease Mr. Stanley's fear and anxiety and increase his sense of affinity with the interviewer in order to encourage him to open up to police.

[171] Constable Gullacher took a non-confrontational approach towards Mr. Stanley in keeping with both RCMP policy⁴¹ and his specific training in conducting suspect interviews. He employed the "Phased Interview Model." This model emphasizes gaining information from the suspect in a conversational manner over efforts to obtain a confession. The suspect's alleged guilt is not put to him with the goal of seeking an admission; rather, the interviewer uses what the suspect says and what the interviewer knows from other sources to gradually build a picture of the facts and close off avenues

⁴⁰ A dry cell is one without running water. Sergeant Olberg explained to the Commission investigators that the purpose of placing Mr. Stanley in a dry cell was to preserve evidence such as gunshot residue, which could be destroyed with the use of water.

⁴¹ National OM, chap 24.1. "Interviews/Statements: Suspect/Accused/Witness" (amended: 2016-04-05): "1. 1. A non-custodial/custodial interview is a structured, phased approach designed to elicit truthful information from a suspect."

for the suspect to deny or explain what happened. Keeping the suspect talking is key to this interview model.⁴²

[172] As previously indicated, Mr. Stanley was arrested at 6:53 p.m. Therefore, the investigators had until 6:53 p.m. on August 10 before they would be compelled to bring him before a justice.⁴³ They wanted the interview completed before then. Ideally, the suspect's interview would not be conducted so soon after the incident due to the lack of evidence available to present to the suspect for him to confirm, corroborate, or refute, which usually leads to a more truthful version of events.

[173] In general, better preparation results in a better interview. Constable Gullacher had only the morning of August 10 to prepare for his interview of Mr. Stanley. The interview began at 1:30 p.m. He had already interviewed L. S. and S. S. late the night before.

[174] At the time of the interview, most of the information police had to work with was obtained from the statements of S. S. and L. S., which corroborated each other, and which police believed gave them a good picture of what had happened on the Stanley farm. RCMP investigators indicated that they did not attain much useful information from the interviews of E. M., B. J., and K. W. conducted just prior to Mr. Stanley's interview, and what information they did obtain was contradictory.

[175] Prior to Mr. Stanley entering the interview room, Constable Gullacher stated for the record⁴⁴ that Mr. Stanley had been informed of his rights upon arrest, had spoken with counsel twice, was provided with a change of clothes, and had eaten. Constable Gullacher later confirmed this with Mr. Stanley, and that he had been treated well in custody.

[176] At the outset, Constable Gullacher spent a good deal of time building rapport with Mr. Stanley by discussing subjects of common interest and their similar backgrounds. As Constable Gullacher turned the conversation towards the events of the previous day, Mr. Stanley immediately expressed his understanding that his lawyer was to contact him that morning, but that he had not heard from her. Constable Gullacher then confirmed with Mr. Stanley that he was satisfied with the advice he had received on the two occasions he consulted with lawyers the evening before, that he understood the nature and gravity of the jeopardy he faced, and that what he said could be used in court proceedings against him. Constable Gullacher left the room briefly, and upon his return he told Mr. Stanley that his lawyer had left word that morning saying she would not be coming to see him.

⁴² *Royal Canadian Mounted Police Gazette*, "The art of an effective interview: Why non-accusatory is the new normal" (January 13, 2017), online: <<http://www.rcmp-grc.gc.ca/en/gazette/the-art-an-effective-interview>> (accessed September 16, 2019).

⁴³ *Criminal Code*, *supra* note 15, s 503.

⁴⁴ The interviews of Mr. Stanley and other witnesses were video- and audio-recorded pursuant to RCMP policy.

[177] Mr. Stanley repeatedly resisted Constable Gullacher's attempts to get him to "tell his side of the story" until he spoke with his lawyer about what he should do. Mr. Stanley's apparent confusion led to Constable Gullacher being concerned that, especially in the context of a murder investigation, Mr. Stanley would be in a position to later make a successful claim that his rights had been violated, resulting in the statement being excluded at trial.

[178] Constable Gullacher again left the interview room to consult with another RCMP member who was monitoring the interview. Upon his return, he mentioned the following to Mr. Stanley:

I think it's going to be in your best interest to talk to [your lawyer] again just because I understand where you're coming from. You said you wished you had talked to her, and I can tell you want to talk to her. I think it's going to be in the best interest to let you speak to her because, like you said, this probably doesn't look very good.⁴⁵

[179] At the same time, a lawyer who had been retained by Mr. Stanley's family contacted the detachment. Mr. Stanley was given an opportunity to speak with him rather than Legal Aid. When the interview resumed, Mr. Stanley told Constable Gullacher, "I'd like to get it over with as bad as you, but I've got to do what he says."

[180] Despite this, Constable Gullacher continued the interview for more than three hours, during which he felt that he was building rapport with Mr. Stanley and "chipping away" at gaining information about what could seem like peripheral issues. However, Mr. Stanley would catch himself saying too much and stop talking.

[181] Although he did not make as much progress as he had hoped in the interview, Constable Gullacher says the "bits and pieces" of information he managed to obtain were beneficial to the investigation. Mr. Stanley explained how he came to be in possession of the firearm used to shoot Mr. Boushie and his familiarity with firearms in general. Information obtained helped police find a shell casing from the shots fired on the Stanley property. Constable Gullacher also gained an admission from Mr. Stanley that he did not see the gun in the Ford Escape, which, in his opinion, helped forestall a claim of self-defence at his trial.

[182] At one point, Constable Gullacher explained to Mr. Stanley that some uses of force can be justified, depending on the circumstances, and that providing police with his side of the story right now would help guide their investigation. As indicated by the trial judge, "[r]eferencing the differences between the types of murder and manslaughter and introducing the notions of self-defence and accident were obviously intended as a segway [*sic*] to encourage Mr. Stanley to open up."⁴⁶

⁴⁵ Transcript of Constable Gullacher's interview with Mr. Stanley held August 10, 2016, at page 20.

⁴⁶ *R v Stanley*, 2017 SKQB 367 at para 60 [*Stanley*].

[183] Constable Gullacher concluded the interview when it became clear to him that Mr. Stanley's irritation and frustration with his repeated attempts to get him to provide more information were counter-productive. Mr. Stanley said or indicated more than fifty times during the interview that he did not wish to discuss the matter with police at that time, with the frequency of the refusals increasing as the interview progressed.

[184] At a *voir dire* hearing⁴⁷ before the trial judge prior to Mr. Stanley's trial, the Crown sought a ruling from the Court that the statement by Mr. Stanley to police was made voluntarily and thus admissible at trial. Mr. Stanley's defence counsel argued that the entire statement was not voluntary on the basis that Constable Gullacher's questioning continued long after Mr. Stanley had explicitly stated that he wanted to remain silent or speak to his lawyer again, and that deceptive tactics employed by Constable Gullacher had the effect of overriding Mr. Stanley's intention not to provide a statement.⁴⁸

[185] The trial judge's decision provides a detailed analysis of the circumstances of the interview relating to Constable Gullacher's conduct and Mr. Stanley's perceptions. He found beyond a reasonable doubt that all the statements made by Mr. Stanley in the interview were made voluntarily and were therefore admissible in court proceedings, and that Constable Gullacher need not have given Mr. Stanley yet further access to his lawyer in addition to the three opportunities already provided, because:

First, the objective circumstances had not changed significantly enough to engage a further right to counsel. Mr. Stanley was arrested for murder and had consulted with counsel on two occasions prior to the interview and once early on in the interview. He had been permitted to engage and seek advice from legal counsel respecting the very matter that was the subject of the interview. There were no new objectively observable developments that would trigger an additional opportunity to consult counsel. Accordingly, Mr. Stanley was not, at that point, legally entitled to another legal consultation and, therefore, Cst. Gullacher cannot be criticized for not providing it.

Second, and perhaps of equal importance, is that it is clear that Mr. Stanley was not suggesting that he wanted to speak with his lawyer again at that time. Rather, a fair interpretation of what he was relaying was that he was aware of his right to remain silent, that he was choosing to exercise that right with respect to most of the details of the incident and that he may, at some later date, choose to provide a more fulsome statement – but, that would only happen after he had an opportunity to meet with his lawyer and his lawyer advised him to do so.⁴⁹

[186] It is clear from the trial judge's decision that Constable Gullacher took sufficient care to avoid a breach of Mr. Stanley's Charter rights. In his interview with the Commission, Constable Gullacher cited the Supreme Court of Canada's decision in *R v Sinclair*⁵⁰ as informing his decision to provide Mr. Stanley with the third opportunity to speak with his lawyer. That case set out some of the factors that will trigger the right

⁴⁷ A *voir dire* is a "trial within a trial" to determine the admissibility of evidence.

⁴⁸ *Stanley*, *supra* note 46 at para 5.

⁴⁹ *Ibid*, paras 66–67.

⁵⁰ *R v Sinclair*, 2010 SCC 35.

to additional access to counsel, including an objectively observable change in the circumstances of the jeopardy facing the suspect, as noted by the trial judge, above. The Supreme Court also stated the reason that first or additional opportunities to consult counsel should be provided by police:

The purpose of the right to counsel is “to allow the detainee not only to be informed of his rights and obligations under the law but, equally if not more important, to obtain advice as to how to exercise those rights”: *R. v. Manninen*, [1987] S.C.R. 1233 at pp. 1242-43. The emphasis, therefore, is on assuring that the detainee’s decision to cooperate with the investigation or decline to do so is free and informed. Section 10(b) does not guarantee that the detainee’s decision is wise; nor does it guard against subjective factors that may influence the decision. Its purpose is simply to give detainees the opportunity to access legal advice relevant to that choice.⁵¹

[187] The Saskatchewan Court of Appeal applied the Supreme Court’s reasoning in making the following finding:

The police do not have an obligation to respond to a detainee’s misunderstandings of his rights or how to implement them if that misunderstanding is not communicated to the police or if there are no other indicators suggestive of a lack of comprehension (*R v Sinclair*) These indicators viewed objectively must signal confusion or misunderstanding⁵²

[188] Early on in his interview, Mr. Stanley communicated his confusion about whether and when he should give police his version of events, and his expectation that his lawyer was to provide him with additional advice that morning. In light of his understanding of the law, and the limited information obtained by the investigation at that point, these explicit statements by Mr. Stanley were reasonable for Constable Gullacher to interpret as warning signals that proceeding without providing Mr. Stanley with further access to counsel could have perilous results for any information Constable Gullacher obtained from Mr. Stanley for potential use at his trial.

[189] After Mr. Stanley’s third conversation with counsel, having satisfied himself that Mr. Stanley could no longer make reasonable objections on the basis of not knowing what he should do, Constable Gullacher doggedly continued with his questioning despite Mr. Stanley’s expressed wishes for even further access to counsel before he would speak with police. The trial judge found that Constable Gullacher’s persistence was not improper in the circumstances, in that “[p]olice are not required to refrain from questioning an accused who states that he does not wish to speak with the police. There is a distinction to be drawn between the right to remain silent and the right not to be spoken to.”⁵³

⁵¹ *Idem*, at para 26.

⁵² *R v Dunford*, 2017 SKCA 1 (CanLII) at para 27.

⁵³ *Stanley*, *supra* note 46 at para 16, referencing *R v Singh*, 2007 SCC 48 at para 28.

[190] Overall, Constable Gullacher conducted a reasonable interview of Mr. Stanley in the circumstances. He skillfully kept Mr. Stanley talking and approached subjects of interest from a different angle when Mr. Stanley offered resistance to a line of questioning. His approach and tactics were in keeping with his experience and training, and RCMP policy.

FINDING

20) The manner in which Constable Gullacher conducted his interview of Mr. Stanley was reasonable in the circumstances.

INVESTIGATIVE TIME MANAGEMENT

[191] Obtaining and securing all available evidence during the early stages of a major case is critical, and key to this is efficient time management. In the case at hand, several circumstances were present that increased the need to move the case forward in the most timely manner possible.

[192] Investigators knew at the outset that Mr. Stanley had been arrested for murder and was in custody, and they had 24 hours to lay a charge and bring him before a justice.⁵⁴ They also knew that the crime scene was perishable, as it was for the most part outdoors and inclement weather was expected. Additionally, the crime scene was on the private property of Mr. Stanley and a *Criminal Code* search warrant would be required to process the scene and collect evidence. Geographical challenges existed, given that the MCU home office was situated in Saskatoon, the detachment with jurisdiction was located in Biggar (where the Stanleys were awaiting interview), three other key witnesses were in custody at the Battlefords Detachment and the crime scene was situated somewhat central to these three locations. Generally speaking, there was a drive of an hour or more from any one location to another.

[193] The above-noted factors should have been taken into account by the Primary Investigator—Constable Boogaard—for the direction, speed and flow of the investigation. Based on a review of the early stages of the investigation, the Commission found a number of issues that appear to have resulted in some inefficiency with respect to investigative time management.

Search warrant

[194] Sergeant Olberg began calling in MCU members to form the investigative team as soon as he was notified of the homicide. He called Corporal Nordick, who stated that he was not immediately available. The two agreed that Corporal Nordick would start drafting the Information to Obtain a Search Warrant (“ITO”) the next morning. Corporal Nordick attended the MCU office at approximately 6 a.m. on the morning of August 10. The warrant was signed and completed at approximately 8 p.m. that evening and the search commenced the following morning.

⁵⁴ *Criminal Code*, *supra* note 15, s 503.

[195] During his interview with Commission investigators, Sergeant Olberg was asked about the assignment of MCU members to specific tasks. He noted that Corporal Nordick was one of his team leaders and was an experienced affiant.⁵⁵ In response to the Commission investigators' question as to whether other affiants were available to him at the time, Sergeant Olberg replied that he believed anybody on the team could have performed that specific role.

[196] When asked whether the timing to commence the ITO writing process in this case was typical Sergeant Olberg replied as follows:

SGT. B. OLBERG: It can be. At times we will have the affiant embedded with us and they can type as it goes. But in this particular case, well, you have to remember, we didn't -- hadn't got a word spoken out of [the three vehicle occupants who were in custody] to fill in the blanks; right? We were relying exclusively on Gerald -- or pardon me, on [S. S.] and [L. S.] to give us the crux of what had happened; right? We had some police officer notes and observations, but we really didn't have a lot to put in an ITO at that point; right? So I think under those circumstances, he hadn't -- he could have -- you could have worked through the night, there was, quite frankly, nothing to type.

CRCC: So if I understand correctly, it was your opinion that to begin typing an ITO with only limited amounts of information wouldn't have been in holding with the full, frank, and fair role of an affiant?

SGT. B. OLBERG: It would have been very difficult to tell a complete story or a story that's complete enough to get a Justice to issue that warrant.

. . .

CRCC: You had a 12-hour delay from when the ITOs began. As you stated, it wasn't worthwhile ---

SGT. B. OLBERG: What? Sorry, if I can interrupt. I don't know if I would call it a delay. I mean, there's nothing to type yet; right? I mean, we're still -- you've got to think -- you've got to subtract the travel time. We've got to travel to the scene. We have to wrap our heads around the initial information. We have to see what evolved from what we were initially told. So I would pare that down immensely and say we don't have a 12 hour -- at very best, he could have turned on his computer, but he wouldn't have started typing until well after midnight, or probably 2:00 in the morning anyhow. And then fatigue factors into the occasion as well; right?

[197] During his interview with Commission investigators, Corporal Nordick indicated that he would normally begin writing an ITO right away in a case like the present one.

⁵⁵ The affiant police officer's role is to provide a factual foundation to justify the issuing of a search warrant.

[198] In the Commission's view, the overriding concern requiring the prompt attendance of an affiant was the perishable crime scene and deteriorating weather conditions in the forecast.

[199] While the Commission appreciates that not all MCU members can be available on a 24/7 basis, the above-noted circumstances required that an affiant begin writing the ITO in a more timely fashion.

[200] The Commission respectfully disagrees with Sergeant Olberg's opinion that there would have been nothing to write. There was a complete narrative of events that had already unfolded and been established from the outset, including the initial police response, the location and status of the crime scene, Mr. Stanley's arrest and the arrest of three other individuals. In fact, the grounds necessary to search the Stanley property were well established after the interviews of L. S. and S. S. The fact that the other witnesses had not yet been interviewed due to their intoxicated state had no impact on the reality that a judicial authorization was required to process the crime scene given Mr. Stanley's expectation of privacy. If an affiant had been working contemporaneously with the investigative team from the outset, a warrant could have been sought from a justice (and likely obtained) in the morning of August 10.

[201] The Commission is aware that the members of the Command Triangle and other RCMP members were required to travel to Biggar from Saskatoon to set up at the detachment. However, it is noted that when Corporal Nordick commenced writing the ITO, he did so from his office in Saskatoon. As such, he or another member could have started writing the foundational information that was available from the first instance upon reporting to the Saskatoon office when first called out.

[202] Sergeant Olberg indicated in his interview with the Commission investigators that any of his team members could have drafted the ITO given their training and experience. However, there was no indication in the information before the Commission that he considered other options in an effort to expedite the process. The Commission notes that Corporal Fee and Constable Teniuk were called out to the Battlefords Detachment to interview E. M., B. J., and K. W., who were then deemed not to be in suitable condition to be interviewed. Their notes do not reflect that they were tasked with any other investigative actions until they retired for the night and attended the team meeting the next morning. As such, nothing appeared to prevent either one of them from starting to write the ITO.

[203] The delay incurred in the writing of the ITO ultimately deferred the attendance of FIS until the morning of August 11. Constable Terry Heroux of the Saskatoon FIS cited fatigue (he was up all night on August 9 and waited all day on August 10 for the search warrant). This precluded the option of seeking authorization within the warrant to commence a night-time execution on August 10.

[204] In light of the above, the Commission finds that Sergeant Olberg failed to ensure that the ITO was drafted in a timely manner. The Commission recommends that

Sergeant Olberg be provided with guidance, mentoring and/or training regarding the timely drafting of an ITO.

FINDING

21) Sergeant Olberg failed to ensure that the Information to Obtain a Search Warrant was drafted in a timely manner.

RECOMMENDATION

6) That the RCMP provide Sergeant Olberg with guidance, mentoring and/or training regarding the timely drafting of an Information to Obtain a Search Warrant.

[205] One of the responsibilities of the Team Commander in the Major Case Management model is to ensure that adequate resources are deployed to meet the needs of the investigation.⁵⁶

[206] Aside from the direct questions regarding the call-out of Corporal Nordick, the Commission notes that Sergeant Olberg made reference to the issue of financial compensation, or lack thereof, for RCMP members, several times during his interview with the Commission investigators.

[207] Sergeant Olberg stated that his options were limited and that his primary choice for an affiant was not immediately available. He made the decision to wait until Corporal Nordick was available the next day.

[208] Sergeant Olberg stated the following during his interview with the Commission investigators:

We've grown. That's made us more effective, grown in numbers. Not specifically because of this case, but because of our workload in general.

I think we could probably -- there's still some room for growth in recognizing the off-duty commitments of our investigators and having a level of compensation that's commensurate with the expectations we place upon them.

[209] Corporal Nordick's interview with the Commission investigators also provides some insight into this issue. In response to the investigators' question relating to resources, Corporal Nordick mentioned the issue of compensation:

CPL. D. NORDICK: However, the big issue is that we're not -- we weren't compensated for being on call which may have resulted, obviously in my situation, if I would have been compensated on call, I would have been able to respond immediately to it. And that, I know it's gotten better and we have made a lot of changes with regards to certain thing, but yeah, it was obviously availability of Members within the unit to respond to that.

⁵⁶ National OM, chap 25.3. "Major Case Management," s 2.2.2.1.

CRCC: What has changed?

CPL. D. NORDICK: There is -- we have identified new roles within our triangle. We have a dedicated crime scene manager now which their sole purpose is to basically take control of any scene and direct ident Members, direct officers who are examining the scene. Their roles obviously would be for weather forecasts for anything that may be destroyed or crime scene security, directing the -- how the scene is examined in consultation with the ident Members. So that is one thing that we have incorporated in the last few years. We do have more Members on call on the weekends so that has increased. But still, during the week, we have two Members on call who answer the phone and who basically are being compensated to be available to go to a call.

Again, the rest of us are -- through our commitment to our job and to the community and our profession, we answer the phone voluntarily. . . .

[210] Constable Boogaard also touched on the issue of compensation in his interview with the Commission investigators when he described receiving a call to assist with the investigation. He stated that on August 9, he had worked his regular shift from 7 a.m. to 4 p.m. Although he was not on call, he still answered his phone. He stated:

You know, the unit kind of survives to rely on people to still answer their phone, regardless, and you kind of -- when you get in Major Crimes, you understand what you're getting into. You know it's going to be busy, you know you're going to be deploying at a moment's notice, and you know you're not necessarily going to be getting compensated while you're on call.

[211] It is apparent based on the above-noted information that compensation was and still remains an issue that impacts off-duty members' responses and/or timeliness of responses when called out for assistance.

FINDING

22) In this case, insufficient RCMP members were available on a compensated on-call basis to respond in a timely manner to major crime investigations.

RECOMMENDATION

7) That the RCMP ensure that adequate resources are available in a timely manner for the investigation of major crimes.

Geographical efficiency

[212] As indicated at figure 1, in the case at hand, the investigative team was faced with multiple challenges related to distance:

- The home office of the MCU North was situated in Saskatoon;
- Mr. Stanley as well as his wife and son were transported to the Biggar Detachment, which had jurisdiction of the homicide;

- E. M., B. J., and K. W. were transported to the Battlefords Detachment;
- The Stanley farm crime scene was somewhat central to the above-noted three locations; and
- The Red Pheasant First Nation Reserve was also involved early on.

[213] The time needed to drive from any one of these locations to another was anywhere from thirty to ninety minutes. The Commission acknowledges that these factors were beyond the control of the investigative team and that some travel time could not be avoided.

[214] Nevertheless, this was a time-sensitive case and there appears to have been an instance where efficiency could have been achieved to lessen the impact of time and distance. For example, the members of the Coordinated Investigative Team⁵⁷ travelled from Biggar to North Battleford to retreat for the night after the witness interviews of S. S. and L. S., knowing that they would have to return to Biggar the next day.

[215] Staff Sergeant Rockel touched on the issue of geographical challenges during his interview with Commission investigators when he stated, “Unfortunately that’s the reality that we live in, in Saskatchewan with the geography and the distance that we have to travel.” He indicated that the RCMP does not have the capability or the ability to have everybody in one location.

[216] Sergeant Olberg also made a comment to Commission investigators in relation to this issue:

I think it’s important to realize that some of the challenges we face are unique, perhaps, to the RCMP in a rural environment. Geography can very easily divide us. We’re not afforded with the same level of infrastructure and access to services and additional support, or not as quickly, certainly.

[217] Sergeant Olberg provided some insight regarding the Biggar and Battlefords detachment capacities during his interview with Commission investigators:

SGT. B. OLBERG: . . . In this particular case, the crime scene itself was part of the Biggar Detachment area. The Biggar Detachment itself is quite small. It’s very limited in infrastructure. So that said, it was determined that Gerald Stanley would go to that location and the three remaining people that were arrested . . . would go to North Battleford Detachment, which offers the ability to keep them separate and -- as you would hope and like.

CRCC: Would there have been any ability to keep them all at the North Battleford Detachment?

⁵⁷ According to section 2.3. of the RCMP policy on Major Case Management, OM chap 25.3., the Coordinated Investigative Team is formed with the exclusive purpose of investigating a major case. It includes the members of the Command Triangle, investigators, some of whom may be seconded from their primary duties, support staff, and other employees.

SGT. B. OLBERG: Potentially. But then we would have been booking them in at the same time as well, potentially. So I mean it -- there's pros and cons with both. It did give us the ability to work independently, but it also severed our team and created some communication issues and challenges.

[218] The Commission investigators questioned Staff Sergeant Rockel about the size of the Battlefords RCMP Detachment and whether it would have been large enough to accommodate the Stanleys as well as E. M., B. J., and K. W. He responded that “[i]n terms of interview rooms, probably not, no.” Later in his interview, he noted that there were probably two or three interview rooms at the Battlefords Detachment.

[219] Bringing various involved persons (witnesses, victims, suspects) to the same police facility is not uncommon. The logistics and timing may be appropriately managed and coordinated via internal communication and consultation with the investigative team. Centralizing the involved persons and the investigative team in one location can facilitate communication and allow a more efficient use of time. That said, in the present case, given the limitations in terms of space in both detachments, the Commission finds that the MCU’s decision to separate the involved persons between the two closest RCMP detachments was reasonable under the circumstances.

FINDING

23) The Major Case Unit’s decision to separate the involved persons in two RCMP detachments was reasonable given the inherent challenges of rural policing.

Mobile Command Centre

[220] Upon review of the documentation, one of the first issues the Commission noted was the geographical and environmental challenges confronting the MCU. In the Commission’s view, the use of a Mobile Command Centre could have proven to be useful in this case and potentially resulted in avoiding some of the shortcomings or omissions.

[221] A Mobile Command Centre is essentially a self-contained field office and staging unit. Many major municipal and provincial police agencies have them at their disposal. They are used for both urban and rural scenes of crime. They are equipped with all the necessary communication, computer linkages and TV monitors, are climate-controlled and contain eating and washroom facilities. Generally, Mobile Command Centres are the size and configuration of a larger recreational vehicle. They facilitate the ability for investigators and first response police officers to collaborate and plan investigative activities while protected from the elements and out of sight and hearing from any members of the public or media who may be present at the scene.

[222] Interviews conducted by Commission investigators with the MCU members revealed that MCU North does not have access to a Mobile Command Centre, or at the

very least, a Mobile Command Centre that is specifically built for this type of incident. The Unit Commander, Staff Sergeant Rockel, and the Team Commander, Sergeant Olberg, both indicated that they did not believe a Mobile Command Centre would suit their needs, as they prefer to base their investigations out of a detachment. They appeared unaware of the efficiencies and resources that a Mobile Command Centre could provide, including improved crime scene management, collaboration, and most importantly, communication between the MCU, first response RCMP members and specialty units such as FIS.

[223] The File Coordinator, Constable Wudrick, appeared to be aware of the benefits that a Mobile Command Centre could have provided in this case, especially with respect to improving crime scene management. He stated the following during his interview with Commission investigators:

CRCC: If you were to think back to those first important three days and thereafter, can you think of any resources that weren't available to you or your team that may have been helpful?

CST. L. WUDRICK: Yeah. An issue that has come up or what we definitely have discussed since then is when the FIS went to the scene, worked well into the night. Maybe if the FIS had some sort of mobile command centre to be able to go to that scene, maybe -- because there was the exhibit where Mr. Boushie was killed in, there had been rain the next night or the night or the morning before it was fully processed. Maybe that could have been guarded or covered better.

[224] The Commission acknowledges that since this incident, "F" Division has created a Crime Scene Manager position as part of its Coordinated Investigative Team. The RCMP member fulfilling this role is primarily responsible for overseeing and managing evidence collection. It may also be beneficial to have a Mobile Command Centre available to facilitate the requirements of not only the Crime Scene Manager position, but many other aspects of investigations. Accordingly, the Commission recommends that senior management in "F" Division consider acquiring a Mobile Command Centre.

FINDING

24) The use of a Mobile Command Centre could have proven to be useful in this case and potentially resulted in avoiding some of the shortcomings or omissions that occurred.

RECOMMENDATION

8) That RCMP senior management in "F" Division consider acquiring a Mobile Command Centre.

CRIME SCENE MANAGEMENT

Protection of evidence

[225] The correct handling and collection of physical evidence within a crime scene is a critical aspect of any investigation. Police officers must know their duties relating to evidence, including the means to protect short lived evidence at the earliest opportunity to prevent it from loss or destruction.

[226] The RCMP's national policy on scene security provides some guidance relative to members' responsibility in relation to the protection of evidence.⁵⁸

Protect or seize perishable evidence which may be lost prior to the arrival of Forensic Identification Services personnel.

[227] The RCMP's national policy on human deaths⁵⁹ also addresses the issue of preservation and protection of evidence:

2.2. Investigator

2.2.3. Note that crime scene evidence involving human material (DNA, hair and fibre, blood spatters) can reveal the identification of the victim or offender, cause of death or type of weapon. Leave the recovery and preservation of the physical evidence for the direction of the exhibit manager or FIS.

EXCEPTION: Any evidence that is subject to contamination by weather or other exigent circumstances should be preserved and protected immediately, and the actions documented accordingly.

[Emphasis added]

Ford Escape

[228] The failure to protect the Ford Escape at the crime scene was a significant error in the investigation into Mr. Boushie's death. This vehicle was a key piece of physical evidence. A review of the materials before the Commission reveals an apparent lack of appreciation or concern for the integrity of the vehicle evidence.

[229] Many of the police officers involved in this case (first responders, FIS, and MCU members) knew that weather conditions were forecasted to deteriorate in the short term and that policy requires that steps be taken to ensure that evidence is both protected and preserved. During their interviews with the Commission investigators, RCMP members acknowledged this; however, there is no clear explanation as to how the oversight occurred.

⁵⁸ National OM, chap 1.2. "Scene Security," s 2.5.

⁵⁹ National OM, chap 41.3. "Human Deaths," s 2.2.3.

[230] Based on a review of the materials before the Commission, the Primary Investigator, Constable Boogaard, had direct communication with Sergeant Sawrenko about the incoming weather and possible loss of evidence. Constable Boogaard recorded the following in his handbook notes at 11 p.m. on August 9, 2016:

Colin Sawrenko called: possible rain coming for weather & concerned as outdoor scene – I told Colin Terry would be here soon & weather conditions will be monitored to ensure no loss of evidence.

[231] When interviewed by Commission investigators, Constable Boogaard noted that he did not recall passing on the information he received from Sergeant Sawrenko about the weather to Constable Heroux of the FIS because he assumed that Constable Heroux was en route to the scene and would assess the weather upon arrival. Based on his notebook entries, Constable Heroux was aware of the incoming weather. Sometime after 11:25 p.m. on August 9, he recorded that he had spoken with the MCU and his plan was to “try to capture the scene in case poor weather sets in.”⁶⁰

[232] Constable Heroux told Commission investigators that it had not rained during his initial attendance at the scene, but it had rained prior to his arrival.

[233] During his examination at Mr. Stanley’s trial, Constable Heroux stated the following while describing a picture of the Ford Escape once he had returned to the crime scene after the search warrant was obtained:

Q – So photograph 33, was that a nighttime photograph?

A – Yes.

Q – Okay.

A – That was the night that we arrived. I’ll just flip back to 33. So image number 34 is – like I say, this is an overall view of the vehicle, how I – how we came to it after it had sat for a day while the warrant was being written.

Q – Okay. And what happened then?

A – So there’s an obvious change. I had looked over Environment Canada’s weather report for this time period. **Between the – between the 8th of August and the 11th of August when we had arrived, approximately 44 millimeters of rain had fallen, and it was very obvious it had washed away a lot of the red substance consistent with blood from the door panel and on the ground.**

[Emphasis added]

⁶⁰ Constable Heroux’s notebook entries do not indicate what the conditions were at the scene upon his arrival. In accordance with the RCMP’s national policy IFIM chap 1.3. (“Reports and Exhibit Management”), s 3.1.1., documentation of the environmental conditions and lighting would be expected as part of a member’s notes upon arrival at a scene, including at any point where there would be significant changes while present at the scene. In addition, of the several members who participated in scene security from the time of the RCMP’s initial attendance through the late evening of August 11, only two noted the weather conditions in their notes. Both of these entries were general in nature and did not include when the rain stopped or started or its strength.

[234] When asked if anything was done to protect the scene while they were waiting to re-enter pursuant to the search warrant, Constable Heroux responded as follows:

No. And regrettably, it wasn't. I was under the impression that the warrant was – was forthwith, that it was on its way, and I had totally anticipated being back to the scene within a couple hours. It ended up not being the case. It ended up not being completed until much later that night, and it was decided that we would process it on the 11th, first thing in the morning.⁶¹

[235] During their interviews with the Commission investigators, Constable Heroux and Corporal Ryttersgaard indicated that they did not consider covering the vehicle. The weather was clear at the time of their departure and they expected to be returning to the scene shortly under the authority of a search warrant. Constable Heroux noted that tarps were available at the scene, but no tents or shelters. He further noted that using a tarp could potentially alter evidence on the vehicle. This comment was provided in retrospect, as both members stated that they did not consider covering the vehicle at all at the time. In the Commission's view, the reasoning regarding potentially altering the evidence is weak given the condition of the exterior of the vehicle and the potential greater loss of evidence from not protecting it.

[236] As for the RCMP members' comments regarding their expectation to return shortly to the scene, this was simply an assumption, as there is no evidence of ongoing communication between Constable Heroux and the MCU team regarding when the warrant would be available.

[237] While it appears that Constable Heroux was aware of the potential for poor weather, neither he nor Corporal Ryttersgaard spoke to police officers at the scene to discuss weather, or protection of short-lived evidence. They took no steps to protect the Ford Escape prior to leaving the scene or thereafter.⁶²

[238] Despite the foregoing, it was apparent during the interviews conducted by the Commission investigators that the RCMP members were aware that the failure to protect the vehicle was a mistake and that it should not have happened.

[239] The Team Commander, Sergeant Olberg, noted during his interview with the Commission investigators that "mistakes are made in every case" and that in the end it did not have an impact on the outcome of the trial. He also stated, ". . . by my own description, we didn't follow RCMP existing policies. It was not indicative of our normal practice or best practices at all. That, I regret. I wish that could have been avoided."

⁶¹ Constable Heroux recorded in his handbook notes on August 11 at 4:05 p.m. that it was "pouring rain - shut down for moment." FIS members and other RCMP members were present at the scene to execute the search warrant at this time. However, there is no information indicating that measures were taken to protect the vehicle.

⁶² It is noted that first response members had the presence of mind to place protection over the deceased and the rifle part located on the ground near the body.

[240] The MCU has taken responsibility for this error as per the interview of Staff Sergeant Rockel:

S/SGT. D. ROCKEL: I mean to put it on a detachment member that's not fair.

CRCC: Okay.

S/SGT. D. ROCKEL: I mean, you know, detachment members, just like everybody else, everybody's busy doing things and there's lots of moving parts including detachment members to put a blame or that responsibility — no, **I think the buck stops with us.**

[Emphasis added]

[241] Despite this acceptance of responsibility on the part of one unit of the RCMP, the preservation of evidence in such circumstances is a duty every RCMP member should recognize and act upon regardless of whether they have been specifically told to do so. Concerns were expressed by RCMP members about not having a warrant to enter the Stanley property. In this instance, acting in good faith to cover the vehicle and shield evidence from the rain was unlikely to have been viewed by the court as a willful and deliberate breach of Charter rights warranting exclusion of evidence.⁶³ The certain loss of evidence at a crime scene has to be weighed against its potential exclusion in circumstances with little or no impact on the privacy interests of the residents of the property.

[242] There was no doubt about the relevance of the Ford Escape in this case. The Commission considers the RCMP's failure to protect the vehicle as a serious omission. RCMP policies and procedures related to the protection and preservation of evidence were not followed and a key piece of evidence was left vulnerable to contamination. This omission resulted in the alteration and loss of trace and bloodstain evidence, as fragile evidence was left exposed to outdoor elements and poor weather, including heavy rain.

[243] It is impossible to determine what evidence was compromised, diminished or lost aside from the blood spatter. To say that the RCMP's failure to protect evidence at the crime scene did not have an outcome on the case is essentially reverse logic. The potential relevance or importance of any piece of physical evidence may be unknown at the outset of an investigation. For this reason, all evidence must be preserved and properly processed in the timeliest way possible. The impact or value of the evidence contained in the Ford Escape, and in particular, the blood spatter, in relation to the investigation outcome will remain unknown, as it was not properly preserved.

⁶³ *R v Grant*, 2009 SCC 32 (CanLII) at para 75.

[244] As for remedial measures, the Commission recognizes that the MCU team discussed this shortcoming and instituted new procedures to prevent a similar reoccurrence. Specifically, standard procedure now requires that an MCU member (the Crime Scene Manager) attend all homicides to oversee and manage evidence collection. This new procedure is discussed in more detail below. Of note, the Saskatoon FIS has purchased fitted car covers, which will likely prove to be useful in situations such as this one.

[245] With this in mind, the Commission recommends that the involved members of the MCU and FIS be directed to review the findings in this report with a senior member of the RCMP. The Commission also recommends that the involved members of the MCU and FIS receive operational guidance with respect to RCMP policies and procedures related to the preservation and protection of evidence.

FINDINGS

- 25) RCMP policies and procedures relating to the preservation and protection of evidence were not reasonably followed and a key piece of evidence, the Ford Escape, was left vulnerable to contamination.**
- 26) The RCMP's failure to protect the Ford Escape resulted in the alteration and loss of trace and bloodstain evidence.**

RECOMMENDATIONS

- 9) That the involved members of the Major Crime Unit and Forensic Identification Services be directed to review the findings in this report with a senior member of the RCMP.**
- 10) That the involved members of the Major Crime Unit and Forensic Identification Services receive operational guidance with respect to RCMP policies and procedures related to the preservation and protection of evidence.**

Allowing S. S. and L. S. to remove vehicle from crime scene

[246] Preserving the crime scene to the greatest extent possible in the state that it was at the time of the actual offence is a basic tenet for any criminal investigation.

[247] In the case at hand, L. S. and S. S. were permitted to drive to the Biggar Detachment on their own to provide witness statements. To do so, they took S. S.'s vehicle, which was parked on the property, and definitely within the crime scene. At the time of this decision, investigators could not have known what role, if any, S. S.'s vehicle played in the commission of the crime. Depending on where it was parked, it may have contained evidence or played a part in the sequence of events leading up to the shooting. Should the need have arisen to conduct a re-enactment of the incident to prove or disprove a particular aspect of someone's testimony, the removal or absence of the vehicle could have been significant.

[248] Once an item has been removed from a crime scene, the scene has been permanently altered from its original state. It is virtually impossible to return an item, particularly a vehicle, to its exact position. Any evidence it may have contained becomes questionable as to its origin and/or quality.

[249] The Commission investigators questioned Sergeant Sawrenko regarding this matter. He explained that when he arrived at the Stanley farmyard, L. S. and S. S. were in separate police vehicles. The direction he received from Constable Boogaard from the MCU was that they were to attend the Biggar Detachment on their own.⁶⁴ Sergeant Sawrenko informed L. S. and S. S. that they were free to go to the detachment on a voluntary basis. He recalled L. S. and S. S. attending the detachment in one vehicle. However, he did not recall exactly which vehicle they had taken. He also mentioned that he did not raise any concerns in relation to them using a vehicle from the crime scene, nor did he recall any conversations with the MCU pertaining to this.

[250] According to Constable Boogaard's notes recorded on August 9, a briefing took place at 8:02 p.m. at the MCU North office. His notes from the briefing include the following entry, "Sawrenko advised of a complaint, possibly related, 'gun parts' left behind, members assigned for follow up. – Son & wife initially arrested, released, will go to Biggar RCMP."⁶⁵ There is no indication in his notes of a discussion between him and Sergeant Sawrenko concerning the transportation of S. S. and L. S. to the Biggar Detachment.

[251] The Commission investigators asked Constable Boogaard if it was common to remove a vehicle from a crime scene. He responded as follows:

CST. R. BOOGAARD: It all depends on the circumstances. Yeah, I don't know what the Member's rationale was, what – I'm not going to comment on what the reasons are.

. . .

CST. R. BOOGAARD: Kind of a loaded question there.

CRCC: I agree. [. . .] But we are establishing that they were there prior to your arrival through no direction received by you?

⁶⁴ Sergeant Sawrenko recorded in his handbook notes on August 9, 2016, at 7 p.m. that the MCU direction was to "send females to NB separate cells" and to "have mom, son & shooter brought to Biggar." At 7:25 p.m. he noted the following: "Update MCU Ryan Boogaard. – Adv 1 u/k male poss on foot in area. – Can we have son & mom attend det on own? They've been co-op – Yes." Sergeant Sawrenko further recorded that he updated S. S., who advised that he would go to the Biggar Detachment.

Sergeant Sawrenko noted: "I told him if he does so of his own free will & can go in his own vehicle." He further noted that L. S. "adv of exact same thing."

⁶⁵ The meeting minutes taken by RCMP Public Service Employee Shirley Prochera on August 9, 2016, at 8:02 p.m. indicate the following: "The son and the wife were very cooperative and were unarrested. They were going to go to Biggar." There is no further information about the transportation of L. S. and S. S. to Biggar.

CST. R. BOOGAARD: That's correct. It was in the briefing that Lindsay had said that was -- they were arrested, released, and heading to Biggar.

CRCC: Yeah. I just wanted to establish that that was not under your direction.

CST. R. BOOGAARD: No, no.

[252] During his interview with the Commission investigators, Sergeant Olberg acknowledged that he was not aware of this at the time. He added that he would have expected the members to transport L. S. and S. S. separately and that everything at the scene would have remained at the scene.

[253] In light of the foregoing, the Commission finds on a balance of probabilities that Sergeant Sawrenko was responsible for allowing L. S. and S. S. to remove a vehicle from the crime scene. For the above-mentioned reasons, the Commission finds that such decision was unreasonable under the circumstances. Therefore, the Commission recommends that a senior member of the RCMP provide operational guidance to Sergeant Sawrenko regarding the importance of protecting and preserving evidence at a crime scene.

FINDING

27) Sergeant Sawrenko's decision to allow L. S. and S. S. to remove a vehicle from the crime scene to travel to the RCMP Biggar Detachment was unreasonable.

RECOMMENDATION

11) That a senior member of the RCMP provide operational guidance to Sergeant Sawrenko regarding the importance of protecting and preserving evidence at a crime scene.

Release of Ford Escape

[254] Mr. Boushie was shot by Mr. Stanley while seated in K. W.'s Ford Escape. Following a consultation with the Bloodstain Pattern Analyst and the forensic examination conducted by FIS, the vehicle was released on August 13, 2016. Astro Towing towed the vehicle to their compound and it was subsequently taken to a Saskatchewan Government Insurance compound after an insurance claim was made by K. W.

[255] In response to a letter dated September 13, 2016, from counsel representing the Boushie/Baptiste family, concerning the preservation of the vehicle, Sergeant Olberg consulted with the regional Crown prosecutor. The regional Crown prosecutor and Sergeant Olberg mutually agreed that efforts would be undertaken by the RCMP to retrieve the vehicle (under consent of the owner) and retain it until the end of the legal

proceedings.⁶⁶ However, these efforts were unsuccessful due to the unresolved insurance claim and issues involving the consent of K. W. On September 19, Corporal Fee and Constable Teniuk attended the Saskatchewan Government Insurance compound and covered the vehicle with a tarp.

[256] Prior to his trial on the charge of second degree murder, Mr. Stanley brought an application before the Saskatchewan Court of Queen's Bench pursuant to section 7 and subsection 24(1) of the Charter respecting the Crown's alleged failure to preserve, among other things, the Ford Escape. Defence counsel argued that the Crown's failure to preserve this evidence amounted to a failure to disclose significant, relevant evidence, and was therefore a breach of section 7 of the Charter. As a remedy, a stay of proceedings was requested or, in the alternative, a direction to the jury that the Crown was under an obligation to preserve the evidence and failed to do so, and that the defence should not be faulted for not gaining access to the evidence before it was released or for gaps in the evidence.

[257] Since this application was brought prior to the commencement of the trial and would not be argued until all the evidence had been presented, the Court requested that the defence provide a brief overview of its argument and the anticipated factual base so that it could consider whether the application had some merit.

[258] On December 13, 2017, the Court ruled that Mr. Stanley was entitled to pursue his application respecting the alleged Charter breach relating to the Ford Escape, commenting as follows:⁶⁷

The defence is entitled, independent of the *Charter*, to highlight the police's failure to preserve relevant evidence or take relevant investigative steps. The defence can attempt to focus on these inadequacies and the effect that the lack of evidence has on the trier of fact. As the Supreme Court of Canada noted in *R v Lifchus*, [1997] 3 SCR 320 at para 39, a reasonable doubt can be "derived from the evidence or absence of evidence."

[259] The issue was argued by the defence and the Crown during Mr. Stanley's trial. Essentially, defence counsel argued that the RCMP should have maintained custody of the vehicle until the defence had the opportunity to examine it. Crown counsel argued that Constable Heroux conducted a very thorough examination of the vehicle after

⁶⁶ In a letter dated September 13, 2016, forwarded to the attention of Sergeant Olberg and Constable Boogaard, Crown counsel requested that steps be taken to retrieve the vehicle and keep it in RCMP possession until the matter was concluded. Crown counsel outlined the reasons for his request as follows:

1. We have not yet received disclosure with respect to the forensic examination of this vehicle and depending on what's in that disclosure we may want further examination to be done.
2. Depending on what the witnesses testify to at the preliminary hearing, further examination may be required.
3. The accused prior to trial may want to conduct his own forensic examination of this vehicle.

⁶⁷ Ruling re The Threshold Requirement of the *Charter* Application Relating to a Ford Escape and a Pink iPhone, 2017 SKQB 366 at para 6.

which it was released by the RCMP and placed in a secure compound. He added that the defence had the opportunity to seek an authorization from the Court to access the vehicle to conduct its own examination but did not do so.

[260] In the end, the Court's instructions to the jury were that "the defence claims that the grey Escape should have been maintained by the RCMP until the defence was offered the opportunity to examine it. This did not happen, and the vehicle was released before the defence had that opportunity."

[261] The RCMP's "F" Division policy on crime scene exhibits⁶⁸ speaks to the preservation of large exhibits:

1. 1. **Biological Exhibit-** Includes hair, blood, vitreous humor, urine, semen, saliva, DNA, human tissue/bone and any other substance whose origins were from living matter. This includes exhibits which are non-biological in nature which have the remnants of former living matter on them.

NOTE: Normal practice would be to keep only the portion of the non-biological item which contains the living matter (i.e. retain the portion of car seat fabric containing blood and not the entire vehicle).

1. 1. 2. Biological Exhibits also include exhibits which are non-biological in nature that have the remnants of living matter on them, ie. a pair of blood stained pants or semen stained sheet. **Note:** For larger non-biological exhibits, it is normal practice to keep only the portion of the item which contains the living matter, ie. retain the portion of the car seat fabric containing blood and not the entire vehicle.

[262] Constable Heroux stated the following regarding the release of the vehicle during his cross-examination by defence counsel at the preliminary inquiry on April 3, 2017:

Q – Okay. When was the grey Escape released?

A – It was released on the 14th –

Q – Of?

A – Of August.

Q – And the incident occurred on the 9th?

A – It started on the 9th, yeah.

Q – So less than a week you had released essentially the primary scene of the tragedy?

A – Yes.

Q – What was the rush?

A – Well, I didn't necessarily release it, but I was – my processing was complete, and then it was released to – like, Major Crimes was notified that I was complete with it. And after that it was up to them.

Q – Okay. Is that a practice to, in less than a week, release the most fundamental physical evidence that you have in relation to such a serious situation?

⁶⁸ "F" Division OM, chap 22.2. "Crime Scene Exhibits."

A – Yeah, it is because otherwise we would have every house that had been part of a crime, every business that had been part of a homicide investigation, every vehicle that's been involved in a homicide for – like, we would have – we would have houses seized for endless amounts of time with – like, I've been to many homicides scenes. They all would be still tied up, so it's common practice that once our policies and procedures are followed, and our evidence is collected, then the vehicle – then I'm – FIS or Ident is finished with it, then it's released to Major Crimes, and then once they're finished with it, then it's released.

[263] Staff Sergeant Rockel confirmed during his interview with the Commission investigators that it was practice to release a vehicle once it was processed and the forensic examination was completed.

[264] When asked by Commission investigators whose decision it was to release the Ford Escape, Constable Boogaard replied that he made the decision on August 13 after a discussion with Constable Heroux regarding the examination of the vehicle. Constable Boogaard explained that he was satisfied, based on his discussion with Constable Heroux and his expertise as an FIS investigator, that he had conducted a thorough examination of the vehicle and that the examination was complete. As such, the vehicle was no longer required for investigative purposes.

[265] Constable Boogaard further explained, “As the police, we don't look at things with a partial lens. We're not looking just now for evidence for to go against Gerald. We're an impartial investigating body, although it doesn't seem like that sometimes in terms of what the public might say. But when we're processing things, we're looking for all evidence, whether it goes against the police theory or not.”

[266] A review of Constable Boogaard's handbook notes of August 13, 2016, indicates that he received an update from Constable Heroux concerning the processing of the vehicle at 5:09 p.m. Constable Boogaard noted “seat tapings, swabs, prints, photographs” He also recorded the exhibits that were seized by Constable Heroux while processing the vehicle.

[267] The Commission also reviewed Constable Heroux's handbook notes wherein he recorded that the processing of the vehicle commenced on August 13 and ended the next day. While Constable Heroux recorded detailed notes of his examination of the vehicle, there is no reference to an update provided to Constable Boogaard prior to contacting Astro Towing.

[268] The police have a duty to conduct a reasonably thorough investigation of allegations of criminal conduct. The main objective of a criminal investigation is to gather enough information to be able to form reasonable grounds to arrest or to lay a charge. Determining the scope of an investigation and whether to lay charges are legitimate uses of police discretion. However, the exercise of this discretion is not unfettered; it must be reasonable. The reasonable exercise of discretion takes into account the total context of the case, demonstrates the use of common sense, and is consistent with RCMP values and professional standards. The very essence of

discretion is that reasonable people may make different choices in similar circumstances. In questions surrounding the exercise of police discretion, the test is not whether the Commission would have acted in the same manner but rather whether the decision made by the member fell within the reasonable range of options available to them.

[269] Relevant evidence should be seized, handled, and preserved in accordance with the applicable rules and with regard to the nature of the exhibit. The Commission recognizes that there are logistical and financial implications related to the storage of large exhibits such as vehicles. Moreover, based on the information available to the Commission, there is no RCMP policy requiring the retention of vehicles. Nonetheless, in the case at hand, given the significance of the Ford Escape as a key piece of evidence, it would have been prudent to consult with Crown counsel prior to releasing it. Despite this, the Commission is satisfied, based on the available evidence, that the decision made by Constable Boogaard to release the vehicle fell within the reasonable range of options open to him and was a reasonable exercise of his discretion.

FINDINGS

- 28) Given the significance of the Ford Escape as a key piece of evidence in the investigation, it would have been prudent to consult with Crown counsel prior to proceeding to its release.**
- 29) Constable Boogaard's decision to release the Ford Escape following the completion of the examination conducted by Forensic Identification Services fell within the reasonable range of options open to him and therefore constituted a reasonable exercise of his discretion.**

Non-attendance of Major Crime Unit at crime scene

[270] The MCU assembled in Saskatoon for its initial briefing. Following the briefing, five RCMP members, including the members of the Command Triangle, went to the Biggar Detachment to deal with Mr. Stanley, his wife, L. S., and their son, S. S. Two field investigators went to the Battlefords Detachment to deal with E. M., B. J., and K. W. The witness statements of L. S. and S. S. were completed in the early hours of the morning of August 10. The members then left Biggar and drove to North Battleford to lodge for the night.

[271] Up until this point in time, no member of the MCU had attended the crime scene. Several investigative steps had been taken by the first response police officers, including the arrest and transport of Mr. Stanley and the arrest and transport of E. M., B. J., and K.W. The next-of-kin notification and the initial search for the missing male, C. C., had also been completed. The body of Mr. Boushie had been removed and the scene was held awaiting judicial authorization to conduct the search. The two investigators assigned to conduct the interviews with E. M., B. J., and K. W. were unable to deal with them at the time due to their state of intoxication. The interview of Mr. Stanley was pending for later that day. During the course of these events, there was

discussion regarding some of these activities between the MCU and the members at the scene.

[272] The Commission recognizes the geographical issues facing the Coordinated Investigative Team. However, when the team decided to lodge for the night in North Battleford, the RCMP members had to travel north, in the direction of the crime scene. As no other tasks were planned, it was an opportune time to visit the crime scene. A visit would have provided the team with a visual perspective of the scene including its location and an understanding of how it had been secured. A visit to the crime scene would have facilitated direct discussion with on-scene RCMP members, thereby ensuring that adequate resources were in place and tasks were properly managed and conducted. Discussions could have been held with already on scene FIS members regarding their observations, scene preservation and timeline expectations for the search warrant. Moreover, Constable Gullacher was tasked with the interview of Mr. Stanley. Having the opportunity to at least get a sense of the scene, whether in great detail or not, could have been useful for the interview.

[273] In the Commission's view, the decision to lodge for the night led to a loss of momentum in a time-sensitive case with an in-custody suspect. There was considerable time lost in the attempt to get what would have been little more than a few hours' rest for the investigators. With the members of the Command Triangle and Constable Gullacher returning to North Battleford, the entire Coordinated Investigative Team would have been present, as Corporal Fee and Constable Teniuk were already there. The team could have assembled to discuss the information obtained thus far, in particular the Stanleys' evidence and the crime scene. Further, discussions about the conduct of the interviews with E. M., B. J., and K. W. could have been held, thereby potentially avoiding the issues previously mentioned in this report.

[274] When questioned by Commission investigators about MCU attendance at the crime scene, Sergeant Olberg replied, "We couldn't have lawfully been there until we had our warrant in hand." The Commission recognizes that entering the farmyard for the purpose of conducting a search prior to obtaining a warrant would have been unlawful. The Commission also realizes that unnecessary attendance at crime scenes should be avoided, especially given the risk of cross-contamination. However, MCU members in this case could have attended the perimeter to collaborate with other members, to observe the scope and general layout of the scene and to gain an appreciation of ongoing activities.

[275] The Commission investigators asked Sergeant Olberg if there was anything that would have prevented members of the MCU from viewing the exterior of the scene prior to obtaining the warrant. Sergeant Olberg responded, "Nothing excluding me specifically from it, aside from the fact that we had other roles to do at that time. Again, at that point, it's a delegated responsibility and it's -- I can't be everywhere. Because then the argument would be, 'Well, why weren't you taking an active role in monitoring statements?'" The Commission acknowledges that there may be exigent circumstances in some cases where attendance is not immediately possible. However, in the case at

hand, the interviews of L. S. and S. S. were completed and the MCU team was travelling in the direction of the crime scene. There was an opportunity present for one or more MCU members to attend the scene.

[276] The Commission investigators asked Sergeant Olberg whether, in his opinion, it would have been beneficial to send a member of his team to have a look at the crime scene. Sergeant Olberg responded, “Yes. Yeah, we actually -- since this has -- since this event, we now have a Crime Scene Manager position as part of our coordinating investigative team.”⁶⁹ It is noted that Staff Sergeant Rockel stated during his interview with the Commission investigators that the attendance of the Crime Scene Manager was now mandatory for all homicide call-outs.

[277] The Commission reviewed the roles and responsibilities document for the Crime Scene Manager position in “F” Division as provided by the RCMP and notes that it refers primarily to overseeing and managing evidence collection. The Commission would expect that the RCMP member on scene would also be able to ensure that other tasks more investigative in nature are being carried out in a manner in keeping with best practices and procedures.

[278] Undoubtedly, having a member of the Coordinated Investigative Team (Crime Scene Manager) present at the scene in the early stages of all homicide investigations will prove to be beneficial.

FINDING

30) It was unreasonable for one or more members of the Major Crime Unit not to attend the crime scene in a more timely fashion.

RECOMMENDATION

12) That, in future cases, the Major Crime Unit Commander ensure that a member of the Unit attend the crime scene in a timely fashion.

⁶⁹ On August 22, 2019, the Commission submitted a request to the RCMP for all national and “F” Division documents relating to the “Crime Scene Manager.” On the same date, the RCMP provided the Commission with a document described by the RCMP as the “roles/responsibilities of the Crime Scene Manager in homicide investigations in “F” Division.” The RCMP noted that this position was not an official Command Triangle position and that there was no “F” Division policy related to this position. The RCMP further noted that “F” Division took the initiative to officially add the Crime Scene Manager position to its Coordinated Investigative Team structure. The RCMP also provided a “Crime Scene Manager Check Sheet” further to the Commission’s request.

As no other documentation was provided, the Commission inferred that the creation of the Crime Scene Manager position was an “F” Division initiative only.

COLLECTION AND PROCESSING OF PHYSICAL EVIDENCE

[279] The collection and processing of physical evidence are important aspects of a crime scene investigation. The completion of these tasks is essential in maintaining the integrity of the physical evidence and providing the final outcome of the criminal investigation. The success of the analysis of the forensic evidence is based on a system that emphasizes teamwork, advanced investigative skills and tools, and the ability to process a crime scene properly by recognizing, collecting and preserving all relevant physical evidence. As such, members of forensic identification teams require highly specialized formal training before they are able to attend crime scenes and give evidence before the courts.

[280] In the case at hand, at approximately 7:15 p.m. on August 9, 2016, Constable Wudrick of the MCU contacted Corporal Ryttersgaard of the Yorkton FIS to request FIS assistance at the crime scene.⁷⁰ Being the only on-call FIS member in the south district of the province at the time of the incident, Corporal Ryttersgaard made attempts to contact several RCMP members from other FIS units to assist him. Upon receiving a message from Corporal Ryttersgaard at approximately 7:35 p.m., Constable Heroux of the Saskatoon FIS confirmed that he would also attend, despite being off-duty.

[281] Constable Heroux began his policing career with the RCMP in 2003. In the spring of 2014 he attended the Basic Forensic Identification Training Program at the Canadian Police College in Ottawa, where he began his 24-month RCMP Forensic Identification Apprentice Training Program. In January 2016, he was certified as a Forensic Identification Technician.⁷¹ He was not yet promoted to the rank of Corporal, as he had yet to complete more advanced Forensic Identification courses. The incident in this case occurred approximately seven months after Constable Heroux was certified as a Forensic Identification Technician. Constable Heroux stated during his interview with the Commission investigators that prior to this incident, he had attended approximately 15 homicides, being in the lead role in about half of the cases.

⁷⁰ Forensic identification is an area that provides essential support to criminal investigations, including bloodstain pattern analysis and crime scene examination for physical evidence such as fingerprints and footwear or tire impressions. Specialists in these units can attend crime scenes or can be called upon to provide advice on the collection and packaging of evidence.

⁷¹ RCMP IFIM, chap .1. "Training and Development," s 2.5. defines "Forensic Identification Technician" as a forensic identification member who has successfully completed the Qualification Board and occupies a position within the Forensic Identification Apprentice Training Program and has been qualified as a technician.

[282] As for Corporal Ryttersgaard, he began his policing career with the RCMP in 2007. In October 2012, he began working with the Yorkton FIS. In 2013–2014, he attended the Basic Forensic Identification Training Program at the Canadian Police College in Ottawa. He completed the RCMP Forensic Identification Apprentice Training Program in June 2015, after which he was certified as a Forensic Identification Specialist.⁷² The incident involving Mr. Boushie occurred approximately 14 months after his certification as a Forensic Identification Specialist. Corporal Ryttersgaard stated that he had been to several homicide scenes prior to this incident. He had taken the lead in some cases and was in a supporting role in others.

[283] In the Commission’s view, Constable Heroux and Corporal Ryttersgaard were adequately trained and qualified to perform the tasks they were assigned in this case.

FINDING

31) Constable Heroux and Corporal Ryttersgaard were adequately trained and qualified to perform the forensic identification tasks they were assigned in this case.

Availability and attendance of Forensic Identification Services

[284] Many types of evidence undergo changes over time and can become altered, contaminated or completely lost if not documented or preserved in a timely manner. When the evidence is in an outdoor setting exposed to nature and the elements, it is in greater danger of changes or loss. As such, a timely response by FIS members is important in minimizing potential changes or loss of evidence.

[285] In this case, there were difficulties incurred by Sergeant Olberg in obtaining FIS resources at the outset of the investigation. These circumstances were beyond his control and the Coordinated Investigative Team had to wait until the FIS members could attend.⁷³ Sergeant Olberg explained that, at the time, only one FIS unit in the province had an RCMP member on call.⁷⁴ As such, at any given time, the on-call FIS member could be a great distance from the crime scene that they were required to attend. It was therefore not unusual to sometimes have to wait a considerable amount of time for their arrival.

⁷² RCMP IFIM, chap 1.1. “Training and Development,” s 2.3. defines “Forensic Identification Specialist” as a Forensic Identification Technician who has successfully completed the Forensic Identification Apprentice Training Program and all the required integrated forensic identification program training and has been certified as a specialist.

⁷³ Sergeant Olberg was informed early on about the difficulties in obtaining FIS resources. However, as he explained to the Commission investigators: “I can’t make someone answer their phone. I mean, that’s an organizational challenge that we face; right? . . . And they were under no obligation to answer their phone outside of working hours either; right?”

⁷⁴ When the incident involving Mr. Boushie occurred, the on-call FIS unit was located in Yorkton, Saskatchewan.

[286] There appears to have been an underlying issue regarding RCMP members' compensation that directly affected Sergeant Olberg's ability to acquire certain resources in the early stages of the investigation. The Commission previously referred to a compensation issue in relation to the affiant, Corporal Nordick. There appears to have been similar issues within the FIS, as noted in the following excerpt from Sergeant Olberg's interview with Commission investigators:

There were significant challenges posed by the FIS deployment beyond my control. There were, at the time, -- organizationally, there was a determination, and I mentioned before, about compensation for members to be available outside of working hours. There was a determination that one IDENT location would be on call for the entire province...Now, just to put that in context, there are two forensic IDENT offices much, much closer, Saskatoon and North Battleford. But at that time, and I think my notes will demonstrate, that efforts by the Cpl. Wittersguard (phonetic) from Yorkton to try to reach somebody closer, calls were unanswered. Now, if you ask me why I think that happened, I think it was probably a work to rule demonstration.

[287] Corporal Ryttersgaard's interview with Commission investigators provides additional insight regarding the situation at the time:

So at the time this incident happened in 2016, the on-call system for forensics in the province, there's a few municipal police forces, and they obviously cover only their city. Aside from that, the RCMP has the responsibility of covering the Province of Saskatchewan, so to the northern and southern boundary and then from Manitoba to Alberta. At that time our on-call system represented two members. So after working hours, whatever the day may be, about 7:00 to 5:00, 2 members would go on call, one for the south -- excuse me -- and one for the north of the province. I was the on-call member for the south the evening that this came in, and so my area of responsibility would have been for the detachments of Yorkton Ident, Saskatoon Ident, Regina Ident and Swift Current Ident, and that covers the province from east to west and then down to the U.S. border.

[288] The practice at the time of not having a designated on-call RCMP member in each FIS Unit created availability issues and a delayed response time. The local work-around practice of the on-call FIS member attempting to contact a local FIS member in the area of the crime scene is not a best practice. Off-duty members cannot be expected or relied upon to be available or to respond to calls for service. It is unreasonable to expect a timely FIS response to criminal investigations using this practice. The situation can become even more difficult when a two-member response is required, such as when a homicide occurs. Preservation of evidence is directly affected by a timely response. If a timely response is expected, then there must be on-call FIS members within each FIS Unit.

[289] That said, according to the information before the Commission, the situation has since changed. As explained by Sergeant Olberg to Commission investigators, every FIS Unit in the province now has an RCMP member on call.

[290] In the case at hand, Constable Heroux was called out at approximately 7:35 p.m. on August 9, 2016. He arrived at the crime scene at 12:36 a.m. on August 10, and started processing the scene at 1:40 a.m. Six hours elapsed between initial notification and his arrival at the scene. Given the travel time of approximately one hour between Saskatoon and Biggar, and allowing time for logistics, mustering, and initial briefings, it is reasonable to expect that he would have arrived at the Biggar Detachment within two to three hours after being notified. It is unclear why Constable Heroux's arrival was delayed.

[291] Corporal Ryttersgaard's detachment location (Yorkton) was significantly further. His response time was reportedly approximately five hours. He arrived at the Biggar Detachment at 1:45 a.m., six hours after the initial notification. This is a reasonable response time under the circumstances given his travel time. He processed (photographs and gunshot residue collection) Mr. Stanley between 2:13 a.m. and 2:32 a.m. Corporal Ryttersgaard's notebook entries indicate that he arrived at the Stanley farmyard at 3:45 a.m. to assist Constable Heroux with the scene examination.

[292] In the Commission's view, the assignment of Constable Heroux as the lead FIS RCMP member, with Corporal Ryttersgaard being in an assisting role was reasonable given their home detachment locations. Moreover, it was expected that their roles would be fulfilled through collaboration and team work. It is incumbent on the senior member to provide advice and guidance when needed in order for more junior members to gain the knowledge and confidence.

[293] Many police services have a practice of dispatching a team of two FIS police officers to a major incident such as a homicide. Given the complexity of a particular investigation and the number of scenes involved, additional resources may be deployed.

[294] The RCMP's national policy on crime scene processing addresses this issue:⁷⁵

At least two FI members will be involved in processing the crime scene with one investigator qualified as a FI specialist. If these resources are unavailable, notify the Divisional Manager immediately.

[Emphasis added]

[295] In the present case, Constable Park of the Biggar RCMP Detachment assisted Constable Heroux with the processing of the crime scene until Corporal Ryttersgaard arrived nearly three hours later. There is no indication in the materials that Constable Heroux had any discussions with Corporal Ryttersgaard about the processing of the crime scene prior to his arrival at 3:45 a.m. Although it was not the most complex crime scene, it did have several areas of importance that would have been better processed with a team of two FIS members. Constable Heroux had considerable training and exposure to FIS work. However, most of that experience was

⁷⁵ RCMP IFIM, chap 2.4. "Crime Scene Processing," s 5.1.2.

under the apprenticeship program and he had yet to complete more advanced Forensic Identification training courses. Constable Heroux told Commission investigators that “with the benefit of hindsight, it's certainly always ideal to have more than one Forensic Identification member at the scene”

[296] For these reasons, the Commission finds that it was unreasonable in this case for only one FIS member, who was not qualified as a Forensic Identification Specialist, to be present at the crime scene conducting the processing on his own for a period of three hours.

[297] The Commission's findings in this section are related to resourcing issues at the time. Given that the situation has since been addressed as explained by Sergeant Olberg, above, the Commission finds that it is not necessary to recommend remedial measures in this regard.

FINDINGS

- 32) The practice at the time of not having a designated on-call RCMP member in each Forensic Identification Services Unit was unreasonable.**
- 33) A local work-around practice of the on-call Forensic Identification Services member attempting to contact a Forensic Identification Services member located in the area of the crime scene was unreasonable.**
- 34) It was unreasonable that only one Forensic Identification Services member, not qualified as a Forensic Identification Specialist, was present at the crime scene for nearly three hours to conduct the processing.**

Collection of evidence

[298] In reviewing the evidence, the Commission noted several instances where frontline RCMP members were either tasked or took it upon themselves to collect various types of evidence, either physical or photographic.

[299] For instance, once Mr. Stanley had been arrested and taken to the Biggar Detachment, Constable Boogaard requested that Sergeant Sawrenko have a member of the Biggar Detachment conduct gunshot residue swabbing on Mr. Stanley. According to the police report completed by Constable Boogaard, this was decided following a discussion between Constable Boogaard and Constable Heroux at 9:05 p.m. on August 9, 2016. Constable Heroux indicated that his arrival at the Biggar Detachment would be delayed and therefore he was unable to conduct the gunshot residue test on Mr. Stanley. At 9:53 p.m., Constable Boogaard recorded in his handbook notes that he spoke with Constable Parmar of the Biggar Detachment, who had been tasked with conducting the gunshot residue test on Mr. Stanley. Constable Parmar informed Constable Boogaard that Constable Heroux told him “not to do GSR because of possible cross contamination.” In the end, Corporal Ryttersgaard of the Yorkton FIS conducted the gunshot residue test on Mr. Stanley.

[300] Another frontline RCMP member, Constable Doucette, took photographs of a pair of shoes and tire track impressions made by the Ford Escape on the gravel road. Although the expectation would be that any police officer who takes a photograph, for whatever reason, would notate and/or report it to the file, it can easily be forgotten or overlooked. This point is evident in the responses of Constable Doucette when questioned by the Commission investigators:

CRCC: In this case, how do you pass the photos off to the Major Crime team?

CST. C. DOUCETTE: Geez, that's tough to recall now. I think what I -- typically what I would have done is burnt them to a disc and then someone would have probably given them to Cpl. Olney or someone of a higher rank that would be (indiscernible) at Major Crimes later on.

CRCC: Okay.

CST. C. DOUCETTE: I can't recall what I did in this specific incident and -- but anyway, I did hand them on somehow.

[301] The Commission believes that Constable Doucette was well-intentioned and legitimately concerned about the possibility of the tire track impressions being disrupted by subsequent vehicle traffic or impending rain. While it was reasonable for Constable Doucette to take photographs to preserve perishable evidence, these concerns should also have been communicated to the scene supervisor and the MCU. In the interim, steps must be taken to protect the evidence as part of the entire crime scene. Constable Doucette acknowledged that, since the MCU was involved, he knew that FIS would be attending.

[302] As previously mentioned, later in the evening of August 9, amidst the response to the initial call involving the Stanley property, Constables Park and Wright were directed to a call about an incident that occurred at a nearby farming property located approximately 15 kilometres from the Stanley property. Constables Park and Wright attended the farming property at 8:56 p.m. They were met by the owner, M. F., and were shown a quonset where a red truck was located with scratch marks on the windows, and what appeared to be the butt stock of a firearm on the ground by the driver's side door. Constable Park took photographs of the scene and seized the rifle part, while Constable Wright took a statement from both M. F. and his wife, G. F. It was suspected that this incident had happened prior to the incident at the Stanley property and that it may be related, due to the rifle part that was found⁷⁶ and the description of the vehicle reported on the property.

[303] There was no apparent discussion between these two RCMP members and their supervisor or the MCU as to whether the scene should be protected for processing by FIS and potentially treated as a second scene. Aside from seizing the rifle part, there is no indication as to whether there was a comprehensive search of the property for any other potential discarded items or evidence. The MCU and FIS did not attend the scene

⁷⁶ Part of a rifle (barrel) was also found on the ground near Mr. Boushie's body at the Stanley property.

until two days later, on August 11, at which time a variety of photographs were taken. The notebook entries of Constables Park and Wright are quite brief and lack detail regarding the actions they took at this other scene. At Mr. Stanley's trial, Constable Park was questioned about photographs taken at M. F. and G. F.'s property.⁷⁷ He was uncertain whether some of the photographs entered as exhibits at trial were taken by him or someone else. Proper and comprehensive notebook entries would likely have helped him recall.⁷⁸

[304] When asked by the Commission investigators how this other scene was treated in relation to the homicide, Sergeant Olberg responded as follows:

Well it's unrelated to the homicide; right? I mean, it's -- I guess it affords a similar packed evidence in relation to property crime. But it has no bearing, per say, on the homicide scene.

[305] The Commission does not disagree with Sergeant Olberg that what occurred at this other scene appeared in essence to be a property crime. Nevertheless, it cannot always be known how relevant or important an item or other location is until later in the investigation.

[306] The Commission recognizes that in this particular case, the above-noted matters did not have an impact on the overall investigation. However, any potential impact could not have been known at the time. These matters are mentioned because in the Commission's view, some instances demonstrate initiative by frontline RCMP members to preserve evidence by collecting or protecting it. As with the protection of evidence related to the Ford Escape, discussed above, such good faith efforts are to be encouraged. However, the best practice for the handling of such evidence, in a major case, remains for it to be done by those with specialized training, in particular members of FIS. Where FIS members are delayed or the evidence is at risk of being lost, frontline members should bring their actions to the attention of the scene supervisor, and make efforts to contact FIS by phone to seek direction. In any event, accurate and complete notes should be kept, and procedures for documenting and transferring evidence should be followed.

[307] In light of the above, the Commission recommends that Constables Doucette and Park be directed to review the policy OM 25.2. ("Investigator's Notes").

FINDINGS

35) Constables Doucette and Park acted reasonably to collect and preserve evidence that was at risk of being lost.

36) Constables Doucette and Park did not adequately document their handling and transfer of the evidence they collected.

⁷⁷ Transcript of trial of Mr. Stanley held before the Court of Queen's Bench for Saskatchewan, January 29 to February 9, 2018, at Battleford, at page 238.

⁷⁸ National OM, chap 25.2. "Investigator's Notes," s 1.1. and 1.2.

RECOMMENDATION

13) That Constables Doucette and Park be directed to review the policy OM 25.2. (“Investigator’s notes”).

Processing of Ford Escape and bloodstain analysis

[308] During his initial examination of the crime scene, Constable Heroux took some general photographs of the Ford Escape. He did not collect detailed notes or forensic photographs of the bloodstain evidence at that time. The vehicle was exposed to inclement weather for over two days and as a result, evidence was altered and the bloodstain patterns in the vehicle were lost. As previously mentioned, Constable Heroux reported that, according to Environment Canada, over 44 millimeters of rain fell during the period between August 8 and August 11 2016. As a result of the loss of the bloodstain patterns and only general photographs being available, a more detailed bloodstain analysis could not be completed.

[309] Constable Heroux did not contact a bloodstain pattern analyst until approximately three days after the shooting. According to his notebook entries, he spoke with Sergeant Jennifer Barnes, RCMP Bloodstain Pattern Analyst at the National Forensic Laboratory Services in Edmonton on August 12, 2016, at 2 p.m. During this conversation, they discussed the bloodstains that Constable Heroux had observed at the scene, as well as witness statements relating to the incident. Sergeant Barnes also reviewed the photographs Constable Heroux had sent her. The decision was made that she would not attend to conduct a further examination of the vehicle.

[310] The bloodstain pattern analysis of the Ford Escape was conducted from photographs and notes taken by Constable Heroux at the crime scene. The analysis is restricted when working from photographs, as the analyst can only speak to what has been documented. Without the analyst attending the scene and actually examining the surfaces for bloodstain evidence, there is a potential for such evidence to be missed. In fact, Sergeant Barnes made the following remark in her report:⁷⁹

Examination of bloodstains from photographs requires assumptions by the analyst. These assumptions are that the stains observed are blood, the photographs have recorded all the stains, the orientation of the objects to each other is correct and the information provided is accurate. Opinions offered must be weighted, bearing in mind the restrictions imposed by this type of examination.

[311] Early discussion with a bloodstain pattern analyst while the responding FIS member is at the scene or during some point in the initial processing is important. The analyst can discuss the scene with the FIS member and potential areas where bloodstain may be located. The decision regarding their attendance should be made through discussion with the FIS member who is on scene.

⁷⁹ Forensic Science and Identification Services Laboratory Report issued on April 5, 2017.

[312] A number of RCMP policies outline the procedures and protocols that FIS members are to follow in major crime investigations that involve blood-letting. More particularly, the RCMP's policy IFIM chap 2.2. ("Crime Scene Processing")⁸⁰ provides the following:

1.3. For a blood-letting crime scene, the FI members will:

- 5.3.1. conduct a visual assessment of the bloodstain evidence;
- 5.3.2. evaluate its probative value; and
- 5.3.3. consider contacting the Bloodstain Pattern Analyst to discuss the crime scene and determine whether their attendance is required.

[313] The Commission recognizes that not all blood-letting scenes require the attendance of a bloodstain pattern analyst and that there is an element of discretion available to the police in such instances. However, based on the information before the Commission, at the time of the incident Constable Heroux had only completed the basic Forensic Identification Course at the Canadian Police College in Ottawa. He had not yet completed the 40-hour Basic Bloodstain Recognition Course that would have provided him with a better understanding of bloodstain evidence within a crime scene. Given his lack of additional formal training, Constable Heroux should have contacted an analyst while at the scene for consultation and assistance, as suggested in the above-noted policy. Doing so may have provided him an opportunity to examine the vehicle for smaller traces of blood spatter, and possibly assisted in the bloodstain evidence being better recorded and preserved. While further analysis may not have affected the investigation, the Commission nevertheless finds that Constable Heroux's decision to contact a bloodstain pattern analyst three days after the incident did not constitute a reasonable exercise of his discretion under the circumstances.

[314] That being said, the Commission understands that Constable Heroux has since completed the 40-hour Basic Bloodstain Recognition Course and therefore he has now received greater training regarding bloodstain evidence within a crime scene.

[315] The Commission recommends that Constable Heroux be directed to review this report with a senior FIS member and discuss the significance of the involvement of a bloodstain analyst at a blood-letting crime scene.

FINDING

37) Constable Heroux's decision to contact a bloodstain pattern analyst three days after the incident was unreasonable.

⁸⁰ RCMP IFIM, chap 2.2. "Crime Scene Processing."

RECOMMENDATION

14) That Constable Heroux be directed to review this report with a senior Forensic Identification Services member and discuss the significance of the involvement of a bloodstain analyst at a blood-letting crime scene.

MAJOR CASE MANAGEMENT AND MAJOR CRIME UNIT

[316] Major crimes comprise the most serious incidents of violence and death investigated by police. Such incidents have a devastating impact on victims, families and communities.

[317] Major crime investigations can vary significantly in terms of complexity and time sensitivity. From a Major Case Management (“MCM”) perspective, the investigation into the death of Mr. Boushie was not overly complex.⁸¹ The incident was contained to a single location and there were only eight people directly involved. These included Mr. Stanley, who was arrested at the scene, as well as his wife, L. S., and their son, S. S. Both L. S. and S. S. provided witness statements shortly afterwards and were released. Mr. Stanley was charged with second degree murder the next day and held in custody pending a bail hearing. Four of the five occupants of the vehicle were immediately accounted for, including the deceased, Mr. Boushie. The fifth person, C. C., who had fled the scene and was not located the night of the incident, voluntarily attended the RCMP detachment the next day and provided a witness statement. Three of the vehicle occupants, B. J., K. W., and E. M., were arrested in close proximity to the Stanley farm shortly after the incident and they provided witness statements the next day.

[318] The crime scene was immediately controlled by the first responding police officers. It was subsequently processed by the FIS and assisting RCMP members once a *Criminal Code* search warrant was obtained.

[319] Essentially, three days after the incident, the primary components of the investigation had been completed. Many of the additional resources, particularly investigators from both the MCU and the General Investigative Section (“GIS”), as well as members of the FIS and general duty members, could return to normal duties.

[320] Despite the foregoing, the Commission recognizes that even the more contained cases can involve a variety of obstacles and challenges, whether they are internal to the

⁸¹ Higher complexity cases can involve such elements as, but not limited to, the following: either an unknown or multiple suspects, or an identified suspect still at large; an unidentified victim; multiple scenes; multi-jurisdictional issues involving other law enforcement agencies; an extensive number of witnesses; the requirement of numerous additional judicial authorizations and in some cases interception of private communications (wiretaps); the requirement for ongoing support from various specialty units (surveillance, drug, intelligence units, etc.). Any of these circumstances would likely require the commitment of extensive resources over an extended period of time. This comment in no way understates or downplays the level or importance of the investigation required into the death of Mr. Boushie. It is meant only to add some context in terms of the magnitude and complexity of the case.

investigation or external, such as media attention and political and/or racial implications. The investigative team must be astute as to the existence or likelihood of these circumstances occurring and be prepared to deal with them so as not to let them influence or interfere with the investigation.

Adherence to Major Case Management principles

[321] All major crime investigations conducted by the RCMP are governed by MCM principles. Regardless of the division or detachment, the investigation of all homicides are managed by an MCU in the division. In Saskatchewan ("F" Division), MCUs are located in Regina and Saskatoon. Areas of responsibility for the units are: Regina – South District and Saskatoon – North District.

[322] The RCMP's national policy OM 25.3. ("Major Case Management")⁸² was developed in 2004. The policy defines major cases as cases or investigations that are serious in nature and, due to their complexity and risk, require the application of MCM principles. The model provides accountability, clear goals and objectives, planning, resource allocation and control over the direction, speed and flow of the investigation.

[323] The MCM policy emphasizes the importance of decision-making, intelligence processing, regular reporting and the use of an electronic database management system. The policy also provides that major cases are managed by a Command Triangle. The roles within the Command Triangle include a Team Commander, a Primary Investigator and a File Coordinator. The remainder of the investigative team consists of investigators, support staff and other employees.

[324] The first item to consider in the case at hand is whether the principles and practices of MCM were applied and taken into consideration throughout the investigation. The RCMP's methodology of MCM encompasses nine essential principles⁸³:

1. The Command Triangle;
2. Managerial considerations;
3. Crime-solving strategies;
4. Leadership and team-building;
5. Legal considerations;
6. Ethical considerations;
7. Accountability;
8. Communication; and
9. Partnerships.

⁸² National OM, chap 25.3. "Major Case Management."

⁸³ *Idem*, s 1.3.

[325] Based on a review of the materials, it is apparent that the MCU members and particularly the members of the Command Triangle were aware and mindful of their role and responsibilities in relation to the methodology of MCM. The application of the MCM methodology and practices by the MCU and consideration of the nine essential principles were in adherence to the RCMP's national policy on major case management.

[326] The incident was referred to the Saskatoon MCU North in a timely manner. A Coordinated Investigative Team was formed immediately and a Command Triangle was established, with the Team Commander, Primary Investigator and File Coordinator positions assigned. A civilian member was also assigned as an Information Processor to ensure that all information related to the investigation was properly entered in the electronic case management system. Several Saskatoon MCU North members were also called in as field investigators and interviewers. Investigative support units such as the FIS and the GIS were engaged at the outset. Although there were some contentious issues regarding media releases, the Team Commander liaised with the Media Relations Officer to complete the releases. Furthermore, the Team Commander routinely reported, either orally or in writing, to the chain of command on the process and status of the case.

[327] The RCMP's policy on MCM further provides that all major cases should be debriefed at the conclusion of the case or at the discretion of the Team Commander to identify best practices and lessons learned.⁸⁴

[328] In this case, both the Unit Commander, Sergeant Sawrenko, and the Team Commander, Sergeant Olberg, acknowledged that this was done, and several measures have been implemented as a result. These measures, which are discussed in more detail in other sections of this report, include the implementation of a Crime Scene Manager position, whose mandatory attendance is required in all homicide call-outs; the increase in staffing of the Saskatoon MCU North from 8 to 13 members; and the improvement of issues related to member compensation to facilitate response and deployment.

[329] Moreover, aside from the Command Triangle positions, it is now mandatory to assign members to the positions of Crime Scene Manager and Affiant at the initial call-out.

[330] In its investigation, the Commission looked at issues that arose in the course of the investigation, how they were dealt with at the time, and how some MCM principles may have been impacted negatively by not employing best practices. That being said, the Commission acknowledges that team discussions and collaboration occurred when legal considerations or investigative actions were involved. Furthermore, the members of the MCU properly recorded their rationale and involvement in their notes and reports.

⁸⁴ *Idem*, s 11.1.

The Commission does not necessarily concur with all of the decisions that were made but it recognizes the element of discretion available to the members in those instances.

FINDING

38) The Major Crime Unit team applied the Major Case Management methodology and its nine essential principles, in adherence to the RCMP's national policy OM 25.3. ("Major Case Management").

[331] The Commission takes notice that the RCMP presented evidence before the National Inquiry into Missing and Murdered Indigenous Women and Girls ("MMIWG national inquiry") in June 2018, in relation to MCM and related best practices.

[332] During her testimony before the MMIWG national inquiry on June 28, 2018, former RCMP Deputy Commissioner Brenda Butterworth-Carr, Commanding Officer of "E" Division at the time, provided an overview of the RCMP's MCM policy and principles. She also talked about the Office of Investigative Standards and Practices in "E" Division, which is deemed a best practice.⁸⁵

[333] The overview of Deputy Commissioner Butterworth-Carr's testimony on this issue provides some insight:⁸⁶

The success of "E" Division OISP [Office of Investigative Standard and Practices] has led to the creation of a new unit at RCMP National Headquarters. The **National Investigation Standards and Practices Unit (NISPU)**⁸⁷ is located in Ottawa as part of Contract and Aboriginal Policing. NISPU is still in its infancy. When fully staffed, it will be an RCMP center of expertise and oversight for high profile and major case investigations with a goal of increasing the prospect of successful investigations and criminal prosecutions. It will provide national oversight, governance and coordination of major and high risk investigations and ensure MCM principles are applied to these investigations.

While cases are still under investigation, NISPU will provide recommendations and guidance to investigative teams in the divisions. NISPU will help provide consistency across the country, notwithstanding geographic location or internal capacity of the investigating detachment or unit.

⁸⁵ Transcript of National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth – Gathering Process – Part 2 Institutional Hearings "Police Policies and Practices", Part 2 Volume 9, pp. 87–89.

⁸⁶ National Inquiry into Missing and Murdered Indigenous Women and Girls: Institutional Hearing – Policing Practices – Investigative Policies & Practices Panel – June 28–29, 2018 – Overview of Testimony of Deputy Commissioner Brenda Butterworth-Carr, p. 3.

⁸⁷ The recommendations of the MMIWG Commission of Inquiry's interim report, released on November 1, 2017, identified changes that could be implemented to improve the functioning of the inquiry and better address the needs of survivors and family members. The Government of Canada took action in these areas, including investing \$9.6 million over five years to support the establishment of the RCMP's new National Office of Investigative Standards and Practices. (Actions taken by the Government of Canada since the launch of the inquiry – Crown-Indigenous Relations and Northern Affairs Canada, online: <<https://www.rcaanc-cirnac.gc.ca/eng/1559566331686/1559566355192>>).

It is expected that a significant portion of the investigative support work done by NISPU, approximately 40%, will focus on cases involving Indigenous and vulnerable victims of crime in RCMP jurisdictions.

[Emphasis in original]

“F” Division Saskatoon Major Crime Unit – North

[334] There are a number of significant staffing challenges related to the management of major cases. Of most significance is the availability of adequate investigative resources.

[335] In this case, the Team Commander, Sergeant Olberg, did not have many options. He could not select particular employees and assign them to specific roles, because he had essentially needed to call in the entire unit. Nevertheless, he believed that he had sufficient resources to deal with this investigation. The following excerpt from his interview with the Commission investigators provides some insight regarding staffing issues at the time.

CRCC: To circle back to the Major Crime Unit, you had made mention that there are two jurisdictions, Major Crime north and south; right?

SGT. B. OLBERG: Yes.

CRCC: And you were part of the north ---

SGT. B. OLBERG: That's correct.

CRCC: --- based out of Saskatoon?

And you made mention to staffing challenges.

What are -- if you know off the top of your head, what the proper numbers should be and what they were at the time?

SGT. B. OLBERG: Well, I can say where we are today is a lot closer to that ideal number.

So in 2012, when I arrived at the Unit, there was -- I'm going to make some generalized comments for the south team, because obviously I believe I know it, but I'm not sure.

But there's eight of us in the north Unit. As I explained, there's a staff sergeant, a sergeant, and then three corporal constable teams.

I recognized from the time I got there that we were overtaxed. I drafted a business case in 2012, identifying the need for more resources.

I mean, there's financial challenges, there's fiscal realities, right, that don't often support -- they don't often align with needs and they'd been identified for an organization.

But I did that.

And with -- largely, I think due to the record number of cases we had in 2015/2016, we are now -- I think the north office has 13 people.

So, you know, I think you could still say, perhaps not enough at times, at other times sufficient. But it's a significant step forward in acknowledging the level of expectation on the teams and the seriousness of the investigations.

CRCC: And you also made mention to the staff that you had available to you, how there's effort being made to make sure that they are equipped to be within the Major Crime Unit. At the time of this incident, in your opinion, did you have a fully staffed qualified team at your disposal?

SGT. B. OLBERG: I had as much staff as I'm normally availed with. And they are a tremendously professional, committed, group of people. We're good at our jobs. We're successful. We have -- around that time, we had a good solve rate, despite some very challenging investigations in remote areas with unreliable witnesses. Yeah, I believe I had a good team and we were equipped to manage this file.

[336] The File Coordinator, Constable Wudrick, articulated similar views in his interview with Commission investigators. When asked whether he felt that he had all the resources needed, Constable Wudrick responded, "Yeah. I didn't think we were under-resourced in any way."

[337] The Affiant, Corporal Nordick, was also questioned by Commission investigators about the issue of resourcing. He stated that he truly believed that they had adequate resources to sufficiently investigate this crime.

[338] Later during his interview, Corporal Nordick was asked to speak to what he thought were some of the lessons learned or things that were done especially well in this investigation. In his response, the issue of resources surfaced once again:

. . . You know, we have -- there's only 13 of us on the unit, I believe, if my numbers are correct. So you do the numbers. If we have one file that needs nine if not more going, then if another file comes in, which happens on a regular basis that we're deployed to one and then you have to redeploy to another one, obviously, your team's breaking up and the numbers are, for the workload, of course, do a better job with more people, obviously, especially this day and age with the investigations becoming more and more complex, more and more road bumps that where we experience in these types of investigations. They're a lot more involved, take a lot longer to obtain the evidence that we're required for a successful charge and prosecution, and the -- unfortunately, the calls for service just aren't slowing down either.

[339] In light of the foregoing and considering the level of complexity of the case and the fact that Sergeant Olberg was able to call in other sections for additional resources, the Commission finds that the investigative team was adequately staffed to conduct the investigation.⁸⁸

⁸⁸ Issues surrounding the availability of Corporal Nordick (affiant) are addressed in another section of this report.

[340] That being said, the Commission notes that Sergeant Olberg commented on the large caseload they carried at the time and the difficulty with managing both a large caseload and the other duties assigned to them.

CRCC: So as mentioned earlier, the case load, as far you remember, was ---

SGT. B. OLBERG: Exceptionally high.

CRCC: Exceptionally? A high case load?

SGT. B. OLBERG: Yes.

CRCC: Okay.

SGT. B. OLBERG: I think three times the national average, with respect to team commander.

CRCC: That would be on a per capita basis?

SGT. B. OLBERG: That's right, yeah.

CRCC: Okay.

SGT B. OLBERG: Yeah.

CRCC: And at that time of the incident, that would have been the case?

SGT. B. OLBERG: Yeah, 2015/2016 would have been right in the midst of it. As I said, -- but let me qualify that and say that that did not impact our initial deployment. That did not impact this investigation that I see it. I mean, it was a consideration. You balance your tasks and responsibilities on a priority basis. And I believe we did that. So I can't say that that impacted our investigation. Would more people have been helpful? Of course they would have been. But we didn't have them; right?

CRCC: So just to clarify on that, everybody on your team was assigned to this investigation?

SGT. B. OLBERG: Yes. And more. I also used some members from the North Battleford JS office as well.

[341] Sergeant Olberg and other members of the "F" Division Saskatoon MCU North noted in their interviews with Commission investigators that the Unit had since increased its staffing from 8 to 13 members. While the situation has improved, it remains unclear whether this increase is sufficient. Any gaps in capacity and capability may be informed by an assessment of the number and range of cases undertaken by this Unit in the past five years.

FINDING

39) The investigative team was adequately staffed to conduct the investigation into the death of Mr. Boushie in spite of their stated large caseload and other duties.

Training and experience of investigative team

[342] MCM methodology requires that major case investigations be carried out by those with adequate training and appropriate skill sets. It is important to ensure that all investigative actions are conducted properly from both a procedural and policy perspective and in accordance with legislative requirements, to ensure that evidence withstands judicial scrutiny.

[343] In conducting its review of the training and experience of the investigative team, the Commission primarily focused on the RCMP members assigned to the three positions within the Command Triangle: the Team Commander, Sergeant Olberg, the Primary Investigator, Constable Boogaard and the File Coordinator, Constable Wudrick. The Commission also looked at the remaining members of the MCU North who were assigned to the investigation: Corporals Nordick and Fee, as well as Constables Gullacher and Teniuk.

[344] The Commission's primary considerations included:⁸⁹

- Prior investigative background, including major cases;
- Prior experience in a Command Triangle position;
- Requisite training, including Major Case Investigation Techniques and MCM; and
- Other relevant and specialized training/skill sets (e.g. interviewing, affiant).

[345] Major case investigations rely heavily on team work and collaboration. Aside from investigative responsibilities, it is incumbent on the senior team members to provide advice and guidance when needed for newer members to gain the knowledge and confidence necessary to fulfill roles of increasing responsibility.

[346] The Commission understands that an RCMP member's rank, in and of itself, is not a factor in the consideration of the member's qualifications for major case investigations. A Constable or Corporal's training and experience might far outweigh that of a Sergeant who may have only been recently assigned to the unit or who is simply less experienced in major case investigations.⁹⁰

⁸⁹ The Commission's review of the training and experience of the members of the investigative team in relation to First Nations is addressed later in this report.

⁹⁰ As previously noted, the ranks attributed to the members in this report are what they were at the time of the investigation. During the interviews conducted by the Commission investigators, it was apparent that with the passage of nearly three years since the incident, there have been promotions, transfers and additional courses taken.

[347] Therefore, the Commission finds that the Coordinated Investigative Team, including the Command Triangle, possessed the necessary training and experience to competently carry out the roles and responsibilities assigned to them in this investigation.

FINDING

40) The Coordinated Investigative Team, including the Command Triangle, possessed the necessary training and experience to competently carry out the roles and responsibilities assigned to them in this investigation.

COMMUNICATIONS

[348] Maintaining effective communication is one of the key elements of successful MCM.⁹¹ This relates to internal and external communications, including interactions and communication with victim families, the media, the public,⁹² elected officials, and other stakeholders.

Communications with family / Victim liaison

[349] The importance of effective communication with families in the context of major case investigations is reflected in the relevant RCMP policies.

[350] The first contact between the police and the family can set the tone for an important relationship that will exist up until the completion of court proceedings and possibly beyond.

[351] In this case, the first contact between police and the victim's family was on the night of August 9, 2016, when police informed Ms. Baptiste of her son's death.

[352] Several issues arose from this first contact. The Commission has substantially reviewed these issues in its interim report related to the public complaint submitted by Alvin Baptiste. While the issues addressed in the Commission's interim report will not be repeated here, the interim report should be read in conjunction with the following, as it speaks to how the initial communication with the family was established.

[353] Unfortunately, the manner in which the next-of-kin notification unfolded adversely set the tone for some of the subsequent communications between the RCMP and the family.

⁹¹ The RCMP national policy on MCM indicates that communication constitutes one of the nine essential principles of MCM. (National OM, chap 25.3. "Major Case Management," s. 1.3.8.).

⁹² The issues relating to the media releases are addressed in the Commission's interim report on the complaint submitted by Alvin Baptiste (CRCC File No. PC-2017-0363).

[354] Early communications were further challenged by the fact that RCMP members went to the funeral hall where Mr. Boushie's wake was being held to update Ms. Baptiste on their investigation.

[355] The RCMP members' presence at the funeral hall was not welcome by the family; it further upset Ms. Baptiste at a moment of acute emotional vulnerability. She had just witnessed the opening of the casket and felt the need to go outside. As she exited the funeral hall, she saw two RCMP members, one of whom walked towards her. According to Ms. Baptiste, the police said that they needed to talk to her and she asked why. Constable Teniuk stated that they were "... kind of giving her a rundown of kind of where [they] were at." Constable Boogaard referred to the conversation turning to Ms. Baptiste's displeasure with the RCMP's media release and how it portrayed her son. Ms. Baptiste also said that the police should have done more with respect to the Stanleys. Ms. Baptiste stated that the conversation ended when she said she was going to get more people from inside the hall.

[356] During interviews, family members indicated that the police presence at the funeral intruded upon their grief and added to the negative experience they had already had with police during the next-of-kin notification.

[357] The funeral arrangements were already difficult for the family due to the circumstances surrounding the criminal investigation, which prevented them from having access to the body. This disrupted their ability to enact their cultural protocol in relation to the death, where four days are needed and each day has its own meaning and significance.

[358] The members' motivation—to update the family—did not temper the context of their presence at the funeral, nor did their presence soften the tone of the communication that was set during the next-of-kin notification.

[359] Neither Constable Boogaard nor Constable Teniuk, who attended the funeral hall, had been involved in the next-of-kin notification, and they had first attempted to reach Ms. Baptiste by phone and at her residence before being informed by a neighbour that she was at the wake. They sought the neighbour's help to see if Ms. Baptiste would be willing to talk to them, but Ms. Baptiste was stepping outside at the same time as they arrived at the funeral hall.

[360] In his interview with the Commission, Constable Teniuk recognized that this was not the best time to provide an update, but that there is no good timing. Constable Boogaard stated that he did not get the impression at all that the family was bothered by the fact that the police were present at the wake. However, both RCMP members acknowledged that the family definitely had animosity towards them.

[361] Regardless of their motivation, the Commission finds that the RCMP members' presence at the wake was unreasonable and had a negative effect on the early communications with family. At funerals, the emotional well-being of bereaved relatives

is particularly vulnerable; allowing family members to have a few final hours of peace before their loved one is laid to rest would not have undermined the need to ensure that they be updated about the investigation.

FINDING

41) It was unreasonable for Constables Boogaard and Tenuk to attend the wake to update the family on the progress of the criminal investigation.

RECOMMENDATION

15) That Constables Boogaard and Tenuk be directed to review this finding with a senior member of the RCMP.

Internal communications

[362] Rapidly evolving situations can present challenges with respect to internal communications, given the involvement of police officers from various units performing different tasks and the need to continually process incoming information. Poorly managed information and/or miscommunication can lead to faulty decision-making, loss of evidence, a failure to properly prioritize operational activities and a lack of coordination.

[363] While ongoing, accurate and timely communication within the Command Triangle and with the other members of the Coordinated Investigative Team is essential to the team's effectiveness, such communication is just as important between the various policing units involved in the investigation.

[364] Upon review of the documentation in the case at hand, the Commission noted a lack of communication in the following instances:

- **Next-of-kin notification:** Despite the discussion that took place between Corporal Olney and general duty members prior to their attendance at the Baptiste residence, several RCMP members were unaware of or unclear as to the dual purpose in approaching the house: to inform Colten Boushie's family of his death and to search for and arrest C. C.;
- **Search for C. C.:** Not all RCMP members who attended the Baptiste residence were aware of concerns that C. C. might be armed, nor were they all aware of the risk assessment involved in attending the residence;
- **Protection of evidence:** Constable Boogaard failed to relay information received from Sergeant Sawrenko to Constable Heroux of the FIS about the incoming weather and crime scene preservation;
- **Search warrant:** Members of the Command Triangle failed to inform Constable Heroux of the FIS about their timeline expectation for the search warrant.

[365] The Commission addressed these issues and their impact on the investigation in various sections of this report as well as in the Commission's interim report on the complaint submitted by Alvin Baptiste. Of note, however, is the common element in the above-noted instances when RCMP members did not convey or adequately convey important information to other RCMP members involved in the investigation.

[366] The Commission finds that the internal communications in the above-noted instances were inadequate and lead to some of the errors and inefficiencies in the investigation.

[367] As previously mentioned in this report, a timely visit to the crime scene by one of more members of the MCU could have facilitated direct discussions with on-scene RCMP members, including FIS members, regarding their observations, scene preservation and timeline expectations for the search warrant.

[368] The Commission acknowledges that "F" Division has since created a Crime Scene Manager position as part of its Coordinated Investigative Team. The RCMP member fulfilling this role is responsible for liaising with all necessary support services. This should facilitate communications and timely information sharing between the various involved policing units and help prevent situations such as those that occurred in the present case.

[369] With this in mind, the Commission recommends that Corporal Olney as well as the members of the Coordinated Investigative Team be directed to read this report with a senior member of the RCMP.

FINDINGS

42) Internal communications were inadequate in some instances in the investigation.

43) The lack of communication between the various RCMP units involved in the investigation of Mr. Boushie's death lead to some of the errors and inefficiencies.

RECOMMENDATION

16) That Corporal Olney as well as the members of the Command Triangle (Sergeant Olberg and Constables Boogaard and Wudrick) be directed to read this report with a senior member of the RCMP.

DISCRIMINATION AND CULTURAL AWARENESS TRAINING ANALYSIS

Discrimination

Law and policy concerning bias-free policing and discrimination

[370] In the course of the Commission's review and ongoing monitoring of events related to this tragic incident, additional matters relating to the conduct of the subject RCMP members needed to be examined in order to determine whether the conduct involved in this matter amounted to discrimination on the basis of race or perceived race.

[371] The RCMP's national operational policy specifies a commitment to equitable treatment of all persons regardless of an individual's race, or national or ethnic origin, among other protected grounds.⁹³

[372] Similarly, under the *Canadian Human Rights Act* ("CHRA"), it is prohibited to discriminate against individuals on the basis of race, or national or ethnic origin.⁹⁴ These provisions in the CHRA have been found to apply to law enforcement officials.⁹⁵

⁹³ National OM, chap 38.2. "Bias-Free Policing":

2.1. Bias-free policing means equitable treatment of all persons by all RCMP employees in the performance of their duties, in accordance with the law and without abusing their authority regardless of an individual's race, national or ethnic origin, colour, religion, gender, sexual orientation, marital status, age, mental or physical disability, citizenship, family status, socio-economic status, or a conviction for which a pardon has been granted.

2.2. Racial or colour profiling means attributing certain criminal activity to an identified group in society on the basis of race or skin colour resulting in the targeting of individual members of that group. Racial profiling may be consciously or unconsciously held.

⁹⁴ *Canadian Human Rights Act*, RSC 1985, c H-6 [CHRA]:

3 (1) For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

...

5. It is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public

(a) to deny, or to deny access to, any such good, service, facility or accommodation to any individual, or

(b) to differentiate adversely in relation to any individual, on a prohibited ground of discrimination.

⁹⁵ See, for example, *Phipps v Toronto Police Services Board*, [2009] OHRTD, No. 868 [*Phipps*] and *Davis v Canada (Border Services Agency)*, 2014 CHRT 34 [*Davis*].

[373] In *Moore v British Columbia (Education)*, the Supreme Court of Canada set out a multi-part test for assessing allegations of discrimination.⁹⁶ The complainant must establish a *prima facie* case of discrimination by:

- a. indicating that they possess a characteristic that is protected from discrimination;
- b. exhibiting an adverse impact with respect to the delivery of services or conduct; and
- c. showing that the prohibited ground was one of the factors in the adverse impact.

Once the complainant has brought forward a *prima facie* case, the evidentiary burden then shifts to the service provider to justify the differential treatment. If no reasonable explanation is provided or the evidentiary burden is not met, the trier of fact may draw an inference of discrimination and find accordingly.

[374] For the purposes of the test above, circumstantial evidence can be relied upon to draw an inference from the impugned conduct.⁹⁷ There is no need to prove that the conduct was only consistent with discrimination,⁹⁸ and proof of intention to discriminate is not necessary.⁹⁹ In discrimination cases involving grounds of race or perceived race, direct evidence is usually not available because it is undertaken in a subtle manner or unconsciously.¹⁰⁰ For that reason, courts have stated that the focus should be on the effect of the treatment, rather than the motivation or intention.¹⁰¹

[375] Social context may also be used as a background, but on its own will not constitute evidence that discrimination took place.¹⁰² To review whether there has been discrimination in a substantive sense, the analysis must take “. . . into account the full social, political and legal context” of the allegations.¹⁰³

⁹⁶ *Moore v British Columbia (Education)*, 2012 SCC 61.

⁹⁷ *Idem* at para 184.

⁹⁸ *Shaw v Phipps*, 2012 ONCA 155 at para 31.

⁹⁹ *Idem* at para 34: “There is seldom direct evidence of a subjective intention to discriminate, because ‘[r]acial stereotyping will usually be the result of subtle unconscious beliefs, biases and prejudices’ and racial discrimination ‘often operates on an unconscious level.’ For this reason, discrimination is often ‘proven by circumstantial evidence and inference’” See also *Radek v Henderson Development (Canada) Ltd. (No. 3)*, [2005] BCHRTD No. 302 at para 482.

¹⁰⁰ *Davis*, *supra* note 95 at paras 196, 203 and 234; see also *Basi v Canadian National Railway Company*, 1988 CanLII 109 (CHRT).

¹⁰¹ *Peel Law Assn. v Pieters*, 2013 ONCA 396 at para 60.

¹⁰² *Commission des droits de la personne et des droits de la jeunesse (Mensah) c Ville de Montréal (Service de police de la Ville de Montréal)*, 2018 QCTDP 5 at paras 92–94.

¹⁰³ *Law v Canada (Minister of Employment and Immigration)*, 1999 CanLII 675 (SCC), [1999] 1 SCR 497 at para 30.

[376] With respect to Indigenous peoples, this social context includes long-standing colonial assertions, stereotypes, and a troubled history of police and Indigenous peoples' relations.¹⁰⁴

Social context

[377] In the present matter, many of the involved parties are Indigenous. Several of them are from the Red Pheasant First Nation Reserve, located in Treaty Six territory, near Battleford, Saskatchewan.

[378] Reports stemming from major commissions and inquiries have referred to historic events in the Treaty Six and Battleford areas as emblematic of the impact of colonialism and its collective traumas that continue to reverberate across Indigenous communities.¹⁰⁵

[379] The Supreme Court of Canada has taken judicial notice¹⁰⁶ of several of the findings in these commission and inquiry reports,¹⁰⁷ and of the social factors affecting Indigenous peoples.¹⁰⁸ This Commission may also take notice of these findings, reports and social factors.

[380] Reports of the Truth and Reconciliation Commission of Canada as well as other major reports have documented that Battleford was the site of the following events:

¹⁰⁴ See *R v Turpin*, 1989 CanLII 98 (SCC), [1989] 1 SCR 1296 at 1332; *Corbiere v Canada (Minister of Indian and Northern Affairs)*, 1999 CanLII 687 (SCC), [1999] 2 SCR 203 at para 66; *Lovelace v Ontario*, 2000 SCC 37 (CanLII), [2000] 1 SCR 950 at para 69; *R v Kapp*, 2008 SCC 41 (CanLII), [2008] 2 SCR 483 at para 59; and *R v Ipeelee*, 2012 SCC 13 (CanLII), [2012] 1 SCR 433 at para 60.

¹⁰⁵ Council of Canadian Academies, 2019. *Toward Peace, Harmony, and Well-Being: Policing in Indigenous Communities*. Ottawa (ON): The Expert Panel on Policing in Indigenous Communities, Council of Canadian Academies (Commissioned by the Ministry of Public Safety), p 14 [CCA, *Toward Peace, Harmony, and Well-Being*].

¹⁰⁶ In *R v Find* [2001] 1 SCR 863, as cited in *R v Spence* 2005 SCC 71, at para 53 [*Spence*], the Supreme Court established a “strict” threshold for judicial notice. A court may take judicial notice of facts that are either: “(1) so notorious or generally accepted as not to be the subject of debate among reasonable persons, or (2) capable of immediate and accurate demonstration by resort to readily accessible sources of indisputable accuracy”

¹⁰⁷ In *R v Williams*, [1998] 1 SCR 1128 [*Williams*], the Supreme Court took judicial notice of the findings of the Royal Commission on Aboriginal Peoples, *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada* (1996) at p 33; Royal Commission on the Donald Marshall Jr., Prosecution, vol. 1, Findings and Recommendations (1989) at p 162; Report on the Cariboo-Chilcotin Justice Inquiry (1993) at p 11 (as cited at para 30 of *Spence*, *supra* note 106).

¹⁰⁸ *Idem*, *Williams*; *R v Gladue*, [1999] 1 SCR 688; *R v Ipeelee*, [2012] 1 SCR 433.

- The first industrial¹⁰⁹ residential school, an infamous system¹¹⁰ that the RCMP was later mandated to enforce.
- The often-cited 1885 trial where a court in Battleford, without any translation being provided, convicted Indigenous men of murder; eight were executed on November 27, 1885, inside the Mounted Police's stockade at Fort Battleford.¹¹¹
- While he was the Indian Agent in Battleford, Hayter Reed labelled Indigenous people as the "scum of the Prairies." Later, as Deputy Minister of Indian Affairs, Mr. Reed implemented one of the most notorious symbols of colonialism and inter-generational trauma: the pass system that prevented Indigenous people from leaving their reserve, unless they obtained permission from an Indian agent. The NWMP police (RCMP) were mandated with enforcing the pass system on a daily basis to send "any Indians without passes to their reserves."¹¹²
- The National Inquiry into Missing and Murdered Indigenous Women and Girls ("MMIWG national inquiry") found that the pass system had the worst repercussions on some Indigenous women in and around Battleford, as they were subject to, or threatened with, having their hair cut off by the Mounted Police to limit their movements off reserve.¹¹³
- Chief Poundmaker or Pihtokahanapiwiyin surrendered himself at Fort Battleford before being wrongfully convicted and only exonerated more than 130 years later when the Government of Canada recognized that "the

¹⁰⁹ Schools were termed "industrial" as a variation of their original design "manual labour" schools since pupils were proposed to perform manual labour eight to twelve hours per day in addition to two to four hours of instructions; see the 1847 "Ryerson Report," by Chief Superintendent of Education in Upper Canada Egerton Ryerson, advocating the use of industrial schools for educating Indigenous children, online: <<http://nctr.ca/assets/reports/Historical%20Reports/Ryerson%20Report.pdf>>.

¹¹⁰ "Industrial schools" were modeled from the United States as the principal feature of the policy known as "aggressive civilization"; see the 1879 "Davin Report," commissioned by Prime Minister Sir John A. Macdonald, online: <<http://nctr.ca/assets/reports/Historical%20Reports/Davin%20Report.pdf>>.

Recommendations in this report led to the creation of government-funded industrial schools in Canada.

¹¹¹ Then Prime Minister Macdonald believed the public executions in Battleford would "convince the Red Man that the White man governs." To press home the message, it was arranged to have Indigenous people present to watch the hangings, including children from the residential schools. Following these executions, there was further anger felt in the community over the government's refusal to release the bodies for a traditional burial.

¹¹² Truth and Reconciliation Commission of Canada, citing Hayter Reed's knowledge of the unlawful nature of the pass system he was introducing, at p 127: "I am adopting the system of keeping the Indians on their respective Reserves and not allowing any [to] leave them without passes—I know this is hardly supportable by any legal enactment but we must do many things which can only be supported by common sense and by what may be for the general good. I get the police to send out daily and send any Indians without passes back to their reserves."

¹¹³ Canada, National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, p 261: "Reports from Battleford, Saskatchewan, in 1886 described the case of a woman who had refused to leave town. In response, the officers had taken her to their barracks and cut off some of her hair. The action apparently had important consequences."

unjust conviction and imprisonment of Chief Poundmaker had, and continues to have, a profound impact” on Indigenous peoples.¹¹⁴

[381] The Report of the Aboriginal Justice Inquiry of Manitoba refers to several of the above-listed precedents to document how they continue to impact the relationship between Indigenous peoples and the RCMP:¹¹⁵

Although the force did not make the policies, it was the main instrument employed to carry them out. The police were responsible for moving Indians to reserves and for keeping them there, and they were intimately involved in administering treaties and Indian affairs generally. Whenever an Indian agent felt the need for assistance in enforcing government policy regarding Indian people, he called upon the Mounted Police. Indian children who ran away from residential schools were sought and returned by NWMP officers. Indian adults who left their reserves without a pass from the Indian agent were apprehended by the Mounted Police.

. . .

Much of the suspicion and hostility which Aboriginal people feel toward the police is rooted in . . . history . . . and in the troubled relationship between Aboriginal People and the Royal Canadian Mounted Police.

. . .

The impact of past wrongs has been reinforced by the negative experiences of today.

[382] 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.¹¹⁶ Historical events are inextricably linked to the policing of Indigenous communities, where a disrupted social fabric and lack of trust between police and the community are central challenges to effective policing.¹¹⁷ Police response to criminal incidents in such communities requires awareness and sensitivity to these fundamental contextual factors.

¹¹⁴ Statement of Exoneration for Chief Poundmaker, Prime Minister Justin Trudeau, May 23, 2019, online: <<https://pm.gc.ca/en/news/speeches/2019/05/23/statement-exoneration-chief-poundmaker>>.

¹¹⁵ Manitoba, Aboriginal Justice Implementation Commission (November 1999), Report of the Aboriginal Justice Inquiry of Manitoba, Volume I: The Justice System and Aboriginal People, Chapter 16: Policing, online: <<http://www.ajic.mb.ca/volume1/chapter16.html>>.

¹¹⁶ See for example: RCMP, Commissioner Brenda Lucki, *Statement of apology to families of missing and murdered Indigenous women and girls*, online: <<http://www.rcmp-grc.gc.ca/en/news/2018/statement-apology-families-missing-and-murdered-indigenous-women-and-girls>>; see also: Commissioners Giuliano Zaccardelli and Bob Paulson, *Indian Residential School apologies*, online: <<http://www.rcmp-grc.gc.ca/aboriginal-autochtone/apo-reg-eng.htm#a2>>.

¹¹⁷ CCA, *Toward Peace, Harmony, and Well-Being*, *supra* note 105.

[383] The Commission will now apply the test set out in *Moore* (outlined above), as well as consider the broader social context, to determine whether the conduct of RCMP members involved in this matter amounted to discrimination.

Did those involved in this matter possess a characteristic that is protected from discrimination under the *Canadian Human Rights Act*?

[384] It is undisputed that those involved in this matter—Mr. Boushie, his companions in the Ford Escape, and his family members (mother and brothers) who were present when police attended Ms. Baptiste’s home on the evening of August 9, 2016—are Indigenous and, as such, possess characteristics protected from discrimination under the CHRA, namely race and national or ethnic origin.¹¹⁸

Did those involved in this matter suffer one or more adverse impacts?

Were any of the prohibited grounds a factor in the adverse impacts?

[385] These two elements of the test will be addressed together.

[386] At issue is whether those involved in this matter were adversely impacted by the RCMP’s¹¹⁹ response and, if so, whether prohibited grounds of discrimination such as race, or national or ethnic origin, were factors in the adverse impacts. A critical consideration when assessing these questions is whether there is evidence of deviation from standard practice or discourtesy in comparison to how the events would have usually unfolded.¹²⁰

¹¹⁸ CHRA, *supra* note 94, s 3(1) “Prohibited grounds of discrimination.” The case law applying the CHRA in relation to Indigenous peoples considers that there is no dispute that they possess the characteristics of both (1) race and (2) national or ethnic origin; see *Polhill v Keeseekoowenin First Nation*, 2019 CHRT 42; and *First Nations Child and Family Caring Society of Canada et al. v Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2.

¹¹⁹ The Commission considers that the RCMP offers a service within the meaning of section 5 of the CHRA, as it “protects all Canadians by enforcing federal, provincial and municipal laws and leveraging specialized units and general duty police officers for those tasks.” See RCMP Services, online: <<http://www.rcmp-grc.gc.ca/en/services>>.

¹²⁰ For example, citing from *Johnson v Halifax Regional Police Service (No. 1)*, (2003) 48 CHRRD/307 (NS Bd Inq), the Quebec Human Rights Tribunal offered the following (*CDPDJ v Service de police de la Ville de Montréal*, 2012 QCTDP 5 at para 181): “The Tribunal must focus on the factual and circumstantial evidence in order to determine whether improper behaviour such as the police officer’s lack of courtesy or his intransigence allows the finding of differential or unusual treatment as compared with usual practices in similar circumstances A board of inquiry must try to establish how events usually unfold in a given situation. Deviations from normal practice and evidence of discourtesy or intransigence are grounds for finding differential treatment.” See also *Davis*, *supra* note 95 at para 206 for its application in the CHRA context.

[387] The Commission has identified three areas of concern that were also raised by Mr. Boushie's family members and their representatives during interviews with Commission investigators:

- i) The treatment of Ms. Baptiste and her family during the next-of-kin notification,
- ii) The treatment of E. M., B. J., K. W., and C. C. during their police interviews; and
- iii) The gaps in the criminal investigation into Mr. Boushie's death, including issues relating to the securing of evidence.

[388] Each of these areas will now be discussed in turn.

The treatment of Ms. Baptiste and her family during the next-of-kin notification

[389] The first issue concerns the encounter between Ms. Baptiste's family and the RCMP, when RCMP members came to Ms. Baptiste's home on the Red Pheasant First Nation Reserve on August 9, 2016, to inform her of her son's death.

[390] The loss of a child causes extreme distress in a parent. In certain situations, police are tasked with notifying a parent of the death of their child—a duty referred to in police language as a next-of-kin notification. The manner in which this communication takes place may impact the degree of distress and how the emotional pain is later processed.

[391] In the present matter, there is evidence that the encounter differed from how a next-of-kin notification would have normally unfolded. The police approached Ms. Baptiste's home at night with a dual purpose: to inform Mr. Boushie's family of his death and to search for and arrest C. C. In doing so, the police first surrounded Ms. Baptiste's home with multiple police officers and vehicles; then, while standing on the front porch, RCMP members informed Ms. Baptiste of her son's death, after which they conducted a search inside her home while questioning its occupants.

[392] The totality of the encounter lasted approximately twenty minutes, but left a lasting memory on the family, part of which resulted in a public complaint to the Commission submitted by Mr. Baptiste. The facts and details of this encounter are reviewed at length in the Commission's interim report on the complaint submitted by Mr. Baptiste,¹²¹ which should be read in conjunction with the present report.

¹²¹ CRCC File No. PC-2017-0363.

[393] In this case, the police approach to Ms. Baptiste's residence and the subsequent search included the following factors:

- employing seven police officers;
- using several police vehicles;
- directing headlights at the residence;
- tactically surrounding a small private dwelling;
- deploying carbines;
- using flashlights to search the perimeter and underneath the residence;
- resorting to a police service dog to search at the end of the operation; and
- conducting the operation in a context where social considerations were heightened, given the documented history of the relations between police and Indigenous communities.

[394] In its interim report, the Commission found that "[t]he overall approach to Ms. Baptiste's residence in this case was disproportionate with a reasonable risk assessment of the situation and lacked cultural sensitivity and compassion."¹²² The Commission further found that "it is clear that [the family] suffered emotional prejudice from the manner in which the police searched the premises."¹²³

[395] From the Commission's review of the encounter during the next-of-kin notification, there are two areas that are directly relevant to a discrimination analysis: a) the police's tactical approach and search of the family home, and b) the police's conduct towards Ms. Baptiste with respect to her sobriety and her credibility.

The police's tactical approach and search of the family home

[396] With respect the police's tactical approach and search of the family home, the evidence of adverse impact is clear: for the police to notify a mother of her child's death while concurrently surrounding and searching her home is not a standard practice, and the Commission accepts the family's evidence that they found the overall experience demeaning.

[397] Linking this adverse impact to the family being Indigenous is more challenging. In this case, the optics of the disproportionate approach and search interconnect with the social context of disproportionate policing of Indigenous communities and the history of policing in Treaty 6 territory. Therefore, it is reasonable that the social context would have impacted the family's perception that race was a factor in the police's conduct, which objectively appeared out of context, especially where the family was not properly informed of the reason for the police to be surrounding the home and searching it.

¹²² *Idem*, at para 73.

¹²³ *Idem*, at para 64.

[398] However, the available evidence provides an explanation for the police's actions that is not discriminatory: to search for, locate and arrest a missing individual who (some of the RCMP members believed) may have had a weapon. Several of the RCMP members' notes, reports and statements documented this as being the factor behind the police's conduct. The evidence does not reveal that another factor, such as race, played a part in the police's conduct.

[399] While the evidence does not establish a *prima facie* case of discrimination in this regard, it does not mitigate the fact that the family was not provided with an informed rationale that could have offered some explanation about the police actions that were at odds with a next-of-kin notification. Specifically, the family was not properly informed of the subject, object, or consequences of the proposed search. This topic was addressed in the Commission's interim report that reviewed Mr. Baptiste's public complaint.

FINDING

44) A *prima facie* case of discrimination is not established with respect to the police's tactical approach and search of the Baptiste family home.

The police's conduct towards Ms. Baptiste with respect to her sobriety and her credibility

[400] During the next-of-kin notification and search of the home, Ms. Baptiste was questioned about whether she had been drinking, was told to "get it together," and one or more RCMP members smelled her breath. She found this conduct insensitive and irrelevant to the next-of-kin notification that was taking place. The Commission made the following finding with respect to the second allegation raised by Mr. Baptiste in his public complaint:¹²⁴

Accordingly, on a balance of probabilities, the Commission concludes that one or more unidentified members of the RCMP did make the comments and take the actions described by Ms. Baptiste. Given that the sole purpose of the police interactions with Ms. Baptiste was to conduct a next-of-kin notification, such comments and actions were unnecessary and insensitive.

[401] Not only were these words and actions insensitive, they are also linked to a stereotypical understanding of Indigenous peoples: "The stereotype of the 'drunken Indian' [which] is endemic in our culture."¹²⁵ Stereotypes lead to conscious or unconscious prejudicial attitudes that can result in a discriminatory act toward the stereotyped person or group.

¹²⁴ CRCC File No. PC-2017-0363, at para 107.

¹²⁵ *Radek v Henderson Development (Canada) and Securiguard Services (No. 3)*, 52 CHRR 430, 2005 BCHRT 302 (CanLII) at para 574; see also *Chubb-Kennedy v Edgewater Casino (No. 3)*, 2016 BCHRT 2 at para 17.

[402] In this case, the stereotypical assumption with respect to drinking is tangibly related to the unreasonable conduct—resulting in Ms. Baptiste’s race possibly being a factor in the adverse treatment she experienced.

[403] A similar finding can be made in relation to an RCMP member looking in the microwave in the course of the search. Ms. Baptiste indicated in her interview with the public complaint investigator that, shortly after being informed of her son’s death, she had repeatedly mentioned that his dinner was in the microwave. She remembered a female police officer who “was in [her] kitchen looking in the microwave like [she] was lying” about it.

[404] The Commission concluded in its interim report on Mr. Baptiste’s public complaint that the conduct left a particular impact on Ms. Baptiste. She had placed Mr. Boushie’s meal inside the microwave after he had not shown up for dinner. As the hours passed, she worried and feared that something was not right, which was unfortunately confirmed when police arrived at her home. During the Commission’s interview with Ms. Baptiste, she linked the conduct to questioning her credibility by stating:

It hurt the most when they said that I lied. They went and looked in the microwave to see if my son’s food was in there. And I was like, just shocked, because I didn’t know what did I do wrong they’d have to treat me like I was lying?

[405] This conduct perpetuates the negative stereotypes about Indigenous peoples’ lack of credibility. In *Williams*,¹²⁶ the Supreme Court recognized that Indigenous people are the target of hurtful biases, stereotypes, and assumptions, including stereotypes about credibility, worthiness, and criminal propensity.

[406] The evidence does not reveal a non-discriminatory justification for both of these conducts. It is significant that evidence from the police officers on these issues consisted primarily of some variations of “I don’t recall.” The Commission has not been able to identify which RCMP member(s) engaged in this conduct, and therefore has not been provided with an explanation for their actions. Because there is no evidence to explain the conduct, the Commission is left with the adverse impact it had on Ms. Baptiste and her family members, and the fact that the prohibited ground of race was one of the factors in the adverse impact. Accordingly, the Commission finds that a *prima facie* case of discrimination has been established with respect to the police’s conduct towards Ms. Baptiste with respect to her sobriety and her credibility.

[407] In the absence of an identifiable person who took these actions and who may be able to explain the context or reason for them, the remainder of the *Moore* test is incomplete. Given that the Commission has already concluded that these actions were unreasonable and insensitive in its interim report on Mr. Baptiste’s public complaint, this analysis serves to further amplify these findings.

¹²⁶ *Williams*, *supra* note 107.

FINDING

45) A *prima facie* case of discrimination is established concerning the police's conduct towards Ms. Baptiste with respect to her sobriety and her credibility.

[408] Pursuant to the *Moore* test, the evidentiary burden now shifts to the RCMP to justify the differential treatment. If no reasonable explanation is provided in the Commissioner's response to this interim report or the evidentiary burden is not met, the Commission may draw an inference of discrimination and find accordingly in its final report.

The treatment of E. M., B. J., K. W., and C. C. during their police interviews

[409] The Commission outlined above its concerns around the manner in which RCMP members treated E. M., B. J., and K. W. while in custody. The Commission found that the manner in which their interviews were conducted was unreasonable. The Commission further found that their continued detention in custody following the provision of their statements was unreasonable and unjustified under the *Criminal Code*.

[410] In contrast to how they were treated, a typical witness to a crime has the ability to choose the timing of their statement and has the ability to ensure that they are rested and well-nourished before entertaining an interview. In the context of a discrimination analysis, the Commission accepts that the approach taken with these witnesses was unusual and could reasonably appear to be coercive and intimidating.

[411] However, C. C. was not subject to the same treatment despite also being Indigenous. The circumstances, timing, and availability of additional information were all different at the time C. C. made himself available for an interview with the police. Unlike the other three witnesses, C. C. had not been held in custody and had an opportunity to obtain sufficient rest and food, and to sober up. These factors, rather than race, appear to explain the difference in how he was interviewed compared to the others.

[412] The fact that an individual within a group has not experienced differential treatment may be relevant, but it is not determinative on its own, as discrimination may present itself very differently between individuals. Likewise, asserting that racial discrimination could not have occurred because a person alleged to be involved is themselves a racialized person is also not necessarily relevant.¹²⁷

[413] In the present circumstances, there is further evidence of a non-discriminatory reason for the differential treatment of the other three witnesses, as the Commission

¹²⁷ See, for example, *Policy and guideline on racism and racial discrimination*, Ontario Human Rights Commission, 2005, online: <http://www.ohrc.on.ca/sites/default/files/attachments/Policy_and_guidelines_on_racism_and_racial_discrimination.pdf>.

found above that the decision to hold the three witnesses in cells overnight could be reasonably justified on the grounds of public interest given the circumstances that led to their arrest.

[414] While the Commission finds that E. M., B. J., and K. W. were subject to differential treatment in their interviews, it does not appear that a prohibited ground of discrimination was a factor in the police's conduct.

FINDING

46) There is no *prima facie* case of discrimination with respect to the treatment of E. M., B. J., K. W., and C. C. during their police interviews.

The gaps in the criminal investigation into Mr. Boushie's death, including issues relating to the securing of evidence

[415] In the context of criminal investigations, issues of discrimination may arise in situations where there is concern that the deceased or the family were not treated equally because the deceased was Indigenous. For instance, this may be the case where the failure to conduct an adequate investigation involved premature conclusions that were attributable, at least in part, to stereotypes. Discrimination has been found to be established in such cases where stereotypes become part of a process of generalization based on race, and these generalized notions are relied upon by police officers about how Indigenous people possibly came to their deaths.¹²⁸

[416] In the present matter, the Commission has found the following gaps in the criminal investigation into Mr. Boushie's death:

- There was a failure to ensure that the Information to Obtain a Search Warrant was drafted in a timely manner.
- Insufficient RCMP members were available on a compensated on-call basis to respond in a timely manner to major crime investigations.
- RCMP policies and procedures relating to the preservation and protection of evidence were not reasonably followed and a key piece of evidence, the Ford Escape, was left vulnerable to contamination.
- The RCMP's failure to protect the Ford Escape resulted in the alteration and loss of trace and bloodstain evidence.
- The decision to allow L. S. and S. S. to remove a vehicle from the crime scene to travel to the RCMP Biggar Detachment was unreasonable.
- It was unreasonable for one or more members of the MCU not to attend the crime scene in a more timely fashion.

¹²⁸ Ontario, Office of the Independent Police Review Director, *Broken Trust*, 2018, at p 9, online: <<http://oiprd.on.ca/wp-content/uploads/OIPRD-BrokenTrust-Final-Accessible-E.pdf>>.

- It was unreasonable that only one FIS member, not qualified as a Forensic Identification Specialist, was present at the crime scene for nearly three hours to conduct the processing.
- The decision by an FIS member to contact a bloodstain pattern analyst three days after the incident was unreasonable.

[417] Some of the RCMP members rationalized that errors are made in all investigations. While the Commission accepts that mistakes may be made in any criminal investigation into a death, irrespective of the deceased's race, some of the mistakes in this case were about basic tenets of criminal investigations.

[418] In the context of a discrimination analysis, gaps in a criminal investigation can amount to an adverse impact. However, to amount to discrimination, this adverse effect must be linked to a prohibited ground of discrimination such as race or perceived race. Put together, these gaps may reasonably cause a person to question whether discrimination played a role in the overall quality of this investigation.

[419] However, on a balance of probabilities, the evidence before the Commission does not demonstrate that the investigative gaps that took place were based on discriminatory considerations.

[420] As previously discussed in this report, each gap had a non-discriminatory explanation. Many of these explanations were related to resourcing, the distances involved between various locations, and communication problems between the involved RCMP members. The Commission is satisfied that there is no evidence to support a *prima facie* case of discrimination with respect to the gaps identified in the criminal investigation.

FINDING

47) There is no *prima facie* case of discrimination with respect to the gaps in the criminal investigation into Mr. Boushie's death, including issues relating to the securing of evidence.

Cultural awareness training and experience

[421] The final report of the MMIWG national inquiry indicates that many of the barriers experienced by Indigenous peoples are rooted in the police's (and the justice system's) limited or lack of understanding of the complex historical relationships as well as the realities of intergenerational trauma among Indigenous peoples. According to the report, police officers who attended the inquiry shared that "police receive limited training on these very issues that are so fundamental to ensuring that a victim's experience with the police is safe and takes place in a relationship that demonstrates this knowledge."¹²⁹

¹²⁹ Canada, National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, 2019 p 631.

[422] In response to the MMIWG national inquiry's final report, RCMP Commissioner Lucki stated that the RCMP made many changes to its policies, procedures, and training over the course of the inquiry. Such changes included but were not limited to, strengthening cultural awareness training for all employees, including at the RCMP Training Academy, in Regina.

[423] During their interviews with the Commission, RCMP members outlined a number of organizational and local initiatives that have been implemented to enhance cultural education and awareness among staff.

[424] However, as was noted by one RCMP member during the Commission's investigation, Indigenous-related training is not mandatory for everyone, particularly if there are "no" Indigenous populations within the jurisdiction of a detachment. Significantly, one of the two main RCMP detachments involved with this file, Biggar, was mentioned as one of the detachments where such training was not mandatory—therefore, there may be a discrepancy between the current reality in the field and the institutional objective to provide such training to all. This is particularly noteworthy for the RCMP, as it is the national police force responsible for policing approximately 40% of the Indigenous population.¹³⁰

[425] For the last 30 years, from the 1989 Marshall Inquiry to the 2019 MMIWG national inquiry, several major commissions and inquiries have increasingly recommended and called for accrued cultural competency training for police with respect to Indigenous, Inuit, and Métis peoples, including ensuring that the training meets the following standards:¹³¹

- Ongoing throughout a police officer's career;
- Trauma-informed;
- Skills-based in intercultural competency, conflict resolution, human rights, and anti-racism;

¹³⁰ Canada, National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, Volume 1b, Annex 1, "The Cooperation of Police Forces", p 242.

¹³¹ Nova Scotia, The Marshall Inquiry: Royal Commission on the Donald Marshall Jr., Prosecution, 1989 online: <https://novascotia.ca/just/marshall_inquiry>; Manitoba, Aboriginal Justice Implementation Commission (November 1999), Report of the Aboriginal Justice Inquiry of Manitoba, Volume I: The Justice System and Aboriginal People, Chapter 16: Policing, 1991, online: <<http://www.ajic.mb.ca/volume1/chapter16.html>>; Saskatchewan, Report of the Commission of Inquiry into matters relating to the Death of Neil Stonechild, 2004, online: <http://www.publications.gov.sk.ca/freelaw/Publications_Centre/Justice/Stonechild/Stonechild-FinalReport.pdf>; Canada, Truth and Reconciliation Commission of Canada, *Canada's Residential Schools*, 2015; Ontario, OIPRD, *Broken Trust*, Toronto, 2018; Canada, National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, 2019.

- “Experiential training” that includes Elders and community members who can share their perspective and answer questions based on their own lived experiences in the community;
- Informed by content determined at the local level, and informed by all best practices;
- Indigenous, Inuit, and Métis peace officers as course leaders;
- Interactive and allows for respectful dialogue involving all participants;
- Distinctions-based and reflective of the diversity within Indigenous, Inuit, and Métis communities, rather than focusing on one culture to the exclusion of others; and
- Knowledgeable about traditional restorative justice principles.

[426] The Commission recommends that the cultural awareness training be provided for **all RCMP employees** bearing in mind the factors identified in recent inquiries.

RECOMMENDATION

17) That cultural awareness training be provided for all RCMP employees bearing in mind the factors identified in recent inquiries.

4) CONCLUSION

[427] Mr. Boushie’s death is profoundly tragic. The pain and loss felt by his family, friends, and community was evident in their interviews and throughout the Commission’s investigation. It was also clear that this incident affected RCMP members, some of whom expressed deep sadness in their interviews. Several of the RCMP members involved self-identify as members of Indigenous communities. With this in mind, the Commission thoughtfully and carefully reviewed the conduct of the RCMP members that were involved in the investigation of Mr. Boushie’s death in keeping with its mandate to improve policing.

[428] One of the Commission’s primary observations was the lack of attendance of the MCU at the crime scene. In the Commission’s opinion, this was a contributing factor in many of the issues raised in this report. The more serious oversights or omissions could have been diminished or avoided had there been an on-site MCU presence, most significantly as pertaining to protection of evidence (Ford Escape) and issues arising out of the next-of-kin notification.

[429] The Supreme Court of Canada confirmed that police officers are required to conduct a reasonably thorough investigation. That standard does not demand a perfect investigation. Police officers are allowed a degree of discretion in the decision-making process given the resource limitations inherent in the modern policing dynamic.¹³²

¹³² *Hill v Hamilton-Wentworth Police Services Board*, [2007] 3 SCR 129.

[430] Notwithstanding the critique made in this report regarding a number of issues, the Commission finds that, when considered as a whole, the RCMP's investigation of Mr. Boushie's death was conducted in a professional manner by adequately trained and experienced criminal investigators employing the MCM methodology.

[431] The RCMP has taken important steps to remediate some of the issues identified in this report. The Commission trusts that the recommendations contained herein will further strengthen such efforts and assist the RCMP in improving the way it deals with major crime investigations.

[432] The RCMP Commissioner, Brenda Lucki, has outlined the changes the RCMP has made to its policies, procedures, and training, such as strengthening cultural awareness for all RCMP employees. The Commission highlights the importance of the example set by the recent best practices in Indigenous policing and encourages the RCMP to continue to strive to reinforce its relationships with all the communities it serves and with Indigenous peoples in particular.

[433] Finally, as public confidence is the cornerstone of effective policing, the Commission hopes that this report will contribute to the enhancement of public confidence in the RCMP.

[434] Pursuant to subsection 45.76(1) of the RCMP Act, I respectfully submit my Public Interest Investigation Report.

Micheline Lahaie
Chairperson

APPENDIX A – Summary of Findings and Recommendations

FINDINGS

1) FINDING: The RCMP members dispatched to the Stanley property, including Sergeant Sawrenko, acted in accordance with the policy on first response investigations.

2) FINDING: The initial actions taken by the involved RCMP members in response to the complaint were reasonable.

3) FINDING: Sergeant Sawrenko acted reasonably in supervising the initial response to the scene.

4) FINDING: The RCMP members dispatched to the Stanley property responded in a timely fashion.

5) FINDING: It was reasonable to arrest E. M., B. J., and K. W. for the criminal offence of mischief without a warrant.

6) FINDING: E. M. was arrested in a manner consistent with paragraphs 10(a) and (b) of the Charter.

7) FINDING: B. J. and K. W. were arrested in a manner consistent with paragraphs 10(a) and (b) of the Charter.

8) FINDING: The manner in which Corporal Fee and Constable Teniuk conducted the interviews of K. W., B. J., and E. M. was unreasonable in the circumstances.

9) FINDING: The manner in which Constable Teniuk conducted the interview of C. C. was reasonable in the circumstances.

10) FINDING: The continued detention in custody of E. M., B. J., and K. W. following the statements they provided to the RCMP on August 10, 2016, was unreasonable and not justified under subsection 497(1.1) of the *Criminal Code*.

11) FINDING: The decision to reinterview B. J. was reasonable under the circumstances.

- 12) **FINDING:** The manner in which Constable Boogaard conducted the reinterview of B. J. was reasonable in the circumstances.
- 13) **FINDING:** It was unreasonable for the members of the Command Triangle (Sergeant Olberg and Constables Boogaard and Wudrick) to fail to consider providing direction that L. S. and S. S. not discuss the incident with each other prior to providing their witness statements to the police.
- 14) **FINDING:** It was unreasonable for Sergeant Sawrenko to fail to request that L. S. and S. S. not discuss the incident with each other prior to providing their witness statements.
- 15) **FINDING:** Corporal Olney's actions in relation to A. D. were reasonable in the circumstances.
- 16) **FINDING:** Corporal Fee and Constables Wright and Teniuk should have attempted to persuade M. F. and G. F. to be interviewed separately.
- 17) **FINDING:** Sergeant Olberg had reasonable grounds to believe that Mr. Stanley had committed the offence of murder and that he could be arrested without a warrant pursuant to section 495 of the *Criminal Code*.
- 18) **FINDING:** Sergeant Olberg's direction to proceed with the arrest of Mr. Stanley for murder was reasonable.
- 19) **FINDING:** Mr. Stanley was arrested in a manner consistent with paragraphs 10(a) and (b) of the Charter.
- 20) **FINDING:** The manner in which Constable Gullacher conducted his interview of Mr. Stanley was reasonable in the circumstances.
- 21) **FINDING:** Sergeant Olberg failed to ensure that the Information to Obtain a Search Warrant was drafted in a timely manner.
- 22) **FINDING:** In this case, insufficient RCMP members were available on a compensated on-call basis to respond in a timely manner to major crime investigations.
- 23) **FINDING:** The Major Crime Unit's decision to separate the involved persons in two RCMP detachments was reasonable given the inherent challenges of rural policing.
- 24) **FINDING:** The use of a Mobile Command Centre could have proven to be useful in this case and potentially resulted in avoiding some of the shortcomings or omissions that occurred.

25) FINDING: RCMP policies and procedures relating to the preservation and protection of evidence were not reasonably followed and a key piece of evidence, the Ford Escape, was left vulnerable to contamination.

26) FINDING: The RCMP's failure to protect the Ford Escape resulted in the alteration and loss of trace and bloodstain evidence.

27) FINDING: Sergeant Sawrenko's decision to allow L. S. and S. S. to remove a vehicle from the crime scene to travel to the RCMP Biggar Detachment was unreasonable.

28) FINDING: Given the significance of the Ford Escape as a key piece of evidence in the investigation, it would have been prudent to consult with Crown counsel prior to proceeding to its release.

29) FINDING: Constable Boogaard's decision to release the Ford Escape following the completion of the examination conducted by Forensic Identification Services fell within the reasonable range of options open to him and therefore constituted a reasonable exercise of his discretion.

30) FINDING: It was unreasonable for one or more members of the Major Crime Unit not to attend the crime scene in a more timely fashion.

31) FINDING: Constable Heroux and Corporal Ryttersgaard were adequately trained and qualified to perform the forensic identification tasks they were assigned in this case.

32) FINDING: The practice at the time of not having a designated on-call RCMP member in each Forensic Identification Services Unit was unreasonable.

33) FINDING: A local work-around practice of the on-call Forensic Identification Services member attempting to contact a Forensic Identification Services member located in the area of the crime scene was unreasonable.

34) FINDING: It was unreasonable that only one Forensic Identification Services member, not qualified as a Forensic Identification Specialist, was present at the crime scene for nearly three hours to conduct the processing.

35) FINDING: Constables Doucette and Park acted reasonably to collect and preserve evidence that was at risk of being lost.

36) FINDING: Constables Doucette and Park did not adequately document their handling and transfer of the evidence they collected.

37) FINDING: Constable Heroux's decision to contact a bloodstain pattern analyst three days after the incident was unreasonable.

38) FINDING: The Major Crime Unit team applied the Major Case Management methodology and its nine essential principles, in adherence to the RCMP's national policy OM 25.3. ("Major Case Management").

39) FINDING: The investigative team was adequately staffed to conduct the investigation into the death of Mr. Boushie in spite of their stated large caseload and other duties.

40) FINDING: The Coordinated Investigative Team, including the Command Triangle, possessed the necessary training and experience to competently carry out the roles and responsibilities assigned to them in this investigation.

41) FINDING: It was unreasonable for Constables Boogaard and Teniuk to attend the wake to update the family on the progress of the criminal investigation.

42) FINDING: Internal communications were inadequate in some instances in the investigation.

43) FINDING: The lack of communication between the various RCMP units involved in the investigation of the death of Mr. Boushie lead to some of the errors and inefficiencies.

44) FINDING: A *prima facie* case of discrimination is not established with respect to the police's tactical approach and search of the Baptiste family home.

45) FINDING: A *prima facie* case of discrimination is established concerning the police's conduct towards Ms. Baptiste with respect to her sobriety and her credibility.

46) FINDING: There is no *prima facie* case of discrimination with respect to the treatment of E. M., B. J., K. W., and C. C. during their police interviews.

47) FINDING: There is no *prima facie* case of discrimination with respect to the gaps in the criminal investigation into Mr. Boushie's death, including issues relating to the securing of evidence.

RECOMMENDATIONS

- 1) **RECOMMENDATION:** That Corporal Fee and Constable Teniuk be provided with operational guidance with respect to RCMP policy regarding the interviewing of witnesses.
- 2) **RECOMMENDATION:** That Sergeant Olberg be directed to review the reasons for detention listed in subsection 497(1.1) of the *Criminal Code*.
- 3) **RECOMMENDATION:** That the RCMP review its policy OM 24.1. (“Interviews/Statements: Suspect/Accused/Witness”) to address the treatment of in-custody witnesses interviewed in criminal investigations in which they are not suspects.
- 4) **RECOMMENDATION:** That the RCMP provide guidance, mentoring and/or training to the members of the Command Triangle (Sergeant Olberg and Constables Boogaard and Wudrick) and Sergeant Sawrenko with respect to witness handling.
- 5) **RECOMMENDATION:** That Corporal Fee and Constables Wright and Teniuk be directed to review the RCMP’s national policy OM 24.1. (“Interviews/Statements: Suspect/Accused/Witness”).
- 6) **RECOMMENDATION:** That the RCMP provide Sergeant Olberg with guidance, mentoring and/or training regarding the timely drafting of an Information to Obtain a Search Warrant.
- 7) **RECOMMENDATION:** That the RCMP ensure that adequate resources are available in a timely manner for the investigation of major crimes.
- 8) **RECOMMENDATION:** That RCMP senior management in “F” Division consider acquiring a Mobile Command Centre.
- 9) **RECOMMENDATION:** That the involved members of the Major Crime Unit and Forensic Identification Services be directed to review the findings in this report with a senior member of the RCMP.
- 10) **RECOMMENDATION:** That the involved members of the Major Crime Unit and Forensic Identification Services receive operational guidance with respect to RCMP policies and procedures related to the preservation and protection of evidence.
- 11) **RECOMMENDATION:** That a senior member of the RCMP provide operational guidance to Sergeant Sawrenko regarding the importance of protecting and preserving evidence at a crime scene.

12) RECOMMENDATION: That, in future cases, the Major Crime Unit Commander ensure that a member of the Unit attend the crime scene in a timely fashion.

13) RECOMMENDATION: That Constables Doucette and Park be directed to review the policy OM 25.2. ("Investigator's notes").

14) RECOMMENDATION: That Constable Heroux be directed to review this report with a senior Forensic Identification Services member and discuss the significance of the involvement of a bloodstain analyst at a blood-letting crime scene.

15) RECOMMENDATION: That Constables Boogaard and Teniuk be directed to review this finding with a senior member of the RCMP.

16) RECOMMENDATION: That Corporal Olney as well as the members of the Command Triangle (Sergeant Olberg and Constables Boogaard and Wudrick) be directed to read this report with a senior member of the RCMP.

17) RECOMMENDATION: That cultural awareness training be provided for all RCMP employees bearing in mind the factors identified in recent inquiries.

APPENDIX B – Primary RCMP members involved in the RCMP investigation into the death of Colten Boushie

DETACHMENT	NAME	RANK	DUTIES/INVOLVEMENT
Saskatoon MCU	Boogaard, Ryan	Constable	Major Crime Unit primary investigator; second interview of B. J.
	Fee, Dallas	Corporal	Interview of K. W., E. M., M. F., G. F., and A. D.; efforts to protect Ford Escape in storage
	Groenen, Bill	Constable	Second interview of B. J.
	Gullacher, Aaron	Constable	Interview of S. S., L. S., and Mr. Stanley; attended scene and found shell casing
	Nordick, Doug	Corporal	Affiant for search warrant; attended autopsy and secured exhibits; liaised with toxicologist; prepared court application to obtain FSIN interview materials
	Olberg, Brent	Sergeant	Major Crime Unit Team Commander; media release
	Rockel, Dale	Staff Sergeant	Acting Team Commander while Sergeant Olberg absent
	Teniuk, Cory	Constable	Interview of C. C., A. D., M. F., and B. J.; investigation at M. F. and G. F. property; efforts to protect Ford Escape in storage
	Wudrick, Lindsay	Constable	Major Crime Unit file co-ordinator; assigned tasks to officers and investigators; initial contact of on-call FIS member
Saskatoon FIS	Heroux, Terry	Constable	Forensic processing of scene
Yorkton FIS	Ryttersgaard, Mark	Corporal	Forensic processing of Mr. Stanley; forensic processing of scene
Battlefords	Ahlers, Michelle	Constable	Next-of-kin notification and search of Baptiste residence
	Blacklock, Justin	Constable	Next-of-kin notification and search of Baptiste residence; scene security; transport of E. M. to Battlefords Detachment
	Carter, Jeff	Corporal	Next-of-kin notification and search of Baptiste residence; scene security
	Cockrum, Laura	Constable	Arrest of E. M.; next-of-kin notification and search of Baptiste residence; transport of E. M. to Battlefords Detachment
	Doucette, Chad	Constable	Next-of-kin notification and search of Baptiste residence
	French, Vanessa	Constable	Arrest and custody of K. W
	Sansome, Melvin	Corporal	Police Dog Services; arrest of E. M.; pursuit of suspicious pickup trucks; next-of-kin notification and search of Baptiste residence

DETACHMENT	NAME	RANK	DUTIES/INVOLVEMENT
Battlefords	Olney, Jason	Corporal	Initial scene supervisor; scene security; next-of-kin notification and search of Baptiste residence; received information regarding C. C. from A. D.
	Olson, Adam	Constable	Arrest and custody of E. M., K. W., B. J.
Biggar	Park, Andrew	Constable	Initial communication with S. S.; arrest and custody of K. W. and B. J.; scene security; investigation at M. F. and G. F. property; pursuit of suspicious pickup trucks; exhibit custodian
	Parmar, Arvind	Constable	Received initial call from OCC regarding incident; conducted call-out of Biggar and Battlefords officers; set up scene perimeter; arrested, transported, and photographed Mr. Stanley; assisted in forensic processing of Mr. Stanley
	Sawrenko, Colin	Sergeant	Biggar Detachment Commander; directed initial call-out of resources to scene; scene supervisor; pursuit of suspicious pickup trucks
	Wright, Mark	Constable	Took Stanleys into custody; pursuit of suspicious pickup trucks; investigation at M. F. and G. F. property; interview of M. F. and G. F.; scene security; transport of Mr. Boushie to hospital

Note: Ranks indicated are those held at the time of the investigation.

RCMP Commissioner's Response

CHAIRPERSON-INITIATED COMPLAINT AND
PUBLIC INTEREST INVESTIGATION INTO THE RCMP'S
INVESTIGATION OF THE DEATH OF COLTEN BOUSHIE
AND THE EVENTS THAT FOLLOWED

SCHEDULE 2

COMMISSIONER'S RESPONSE

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 professionnalisme, la compassion, le respect et la responsabilisation

DEC 04 2020

Ms. Michelaine Lahaie
Chairperson
Civilian Review and Complaints Commission
for the RCMP
P.O. Box 1722, Station "B"
Ottawa, Ontario
K1POB3

Dear Ms. Lahaie:

I acknowledge receipt of the Commission's interim report regarding the Chairperson-initiated complaint and public interest investigation into the RCMP's investigation of the death of Mr. Colten Boushie and the events that followed, file number PC-2018-0505.

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 the RCMP members dispatched to the Stanley property, including Sergeant Colin Sawrenko, acted in accordance with the policy on first response investigations.

I agree with Finding No. 2 that the initial actions taken by the involved RCMP members in response to the complaint were reasonable.

I agree with Finding No. 3 that Sergeant Sawrenko acted reasonably in supervising the initial response to the scene.

I agree with Finding No. 4 that the RCMP members dispatched to the Stanley property responded in a timely fashion.

I agree with Finding No. 5 that it was reasonable to arrest E. M., B. J., and K. W. for the criminal offence of mischief without a warrant.

I agree with Finding No. 6 that E. M. was arrested in a manner consistent with paragraphs 10(a) and (b) of the *Charter*.

I agree with Finding No. 7 that B. J. and K. W. were arrested in a manner consistent with paragraphs 10(a) and (b) of the *Charter*.

I agree with Finding No. 8 that the manner in which Corporal Dallas Fee and Constable Cory Teniuk conducted the interviews of K. W., B. J., and E. M. was unreasonable in the circumstances.

I support Recommendation No. 1 that Corporal Fee and Constable Teniuk be provided with operational guidance with respect to RCMP policy regarding the interviewing of witnesses. I will direct that this be done.

I agree with Finding No. 9 that the manner in which Constable Teniuk conducted the interview of C. C. was reasonable in the circumstances.

I agree with Finding No. 10 that the continued detention in custody of E. M., B. J., and K. W. following the statements they provided to the RCMP on August 10, 2016, was unreasonable and not justified under subsection 497(1.1) of the *Criminal Code*.

I support Recommendation No. 2 that Sergeant Brent Olberg be directed to review the reasons for detention listed in subsection 497(1.1) of the *Criminal Code*. I will direct that this be done.

I support Recommendation No. 3 that the RCMP review its policy *Operational Manual* (OM) 24.1. "Interviews / Statements: Suspect / Accused / Witness" to address the treatment of in-custody witnesses interviewed in criminal investigations in which they are not suspects. I agree that the current policy does not provide sufficient guidance to members in that regard. I will direct that the OM 24.1. be amended to provide members with available options when obtaining a statement from a person, who is held in custody, and who is both a witness and an accused to offences having a temporal connection. Further guidance will direct members to consult with Crown counsel, where possible, prior to obtaining statements in the above circumstances and will address the need for members to ascertain the prisoner's state of mind and care received while in police custody.

I agree with Finding No. 11 that the decision to re-interview B. J. was reasonable under the circumstances.

I agree with Finding No. 12 that the manner in which Constable Ryan Boogaard conducted the re-interview of B. J. was reasonable in the circumstances.

I agree with Finding No. 13 that it was unreasonable for the members of the Command Triangle (Sergeant Olberg and Constables Boogaard and Lindsay Wudrick) to fail to consider providing direction that L. S. and S. S. not discuss the incident with each other prior to providing their witness statements to the police.

I agree with Finding No. 14 that it was unreasonable for Sergeant Sawrenko to fail to tell L. S. and S.S. not discuss the incident with each other prior to providing their witness statements.

I support Recommendation No. 4 that the RCMP provide guidance, mentoring, and/or training to the members of the Command Triangle (Sergeant Olberg and Constables Boogaard and Wudrick) and Sergeant Sawrenko with respect to witness handling. I will direct that this be done. Additionally, I wish to inform the Commission that the applicable policy, OM 24.1. "Interview / Statements: Suspect / Accused / Witness" will be amended to provide guidance with respect to advising witnesses not to discuss the incident with other witnesses and instructing members to escort the witnesses to the detachment for the taking of the statements separately, when possible.

I agree with Finding No. 15 that Corporal Jason Olney's actions in relation to A. D. were reasonable in the circumstances.

I agree with Finding No. 16 that Corporal Fee and Constables Mark Wright and Tenuk should have attempted to persuade M. F. and G. F. to be interviewed separately.

I support Recommendation No. 5 that Corporal Fee and Constables Wright and Tenuk be directed to review the RCMP's national policy OM 24.1. "Interviews / Statements: Suspect / Accused / Witness". I will direct that this be done.

I agree with Finding No. 17 that Sergeant Olberg had reasonable grounds to believe that Mr. Stanley had committed the offence of murder and that he could be arrested without a warrant pursuant to section 495 of the *Criminal Code*.

I agree with Finding No. 18 that Sergeant Olberg's direction to proceed with the arrest of Mr. Stanley for murder was reasonable.

I agree with Finding No. 19 that Mr. Stanley was arrested in a manner consistent with paragraphs 10(a) and (b) of the *Charter*.

I agree with Finding No. 20 that the manner in which Constable Aaron Gullacher conducted his interview of Mr. Stanley was reasonable in the circumstances.

I agree with Finding No. 21 that Sergeant Olberg failed to ensure that the Information to Obtain a Search Warrant was drafted in a timely manner.

I generally support Recommendation No. 6 that the RCMP provide Sergeant Olberg with guidance, mentoring, and/or training regarding the timely drafting of an Information to Obtain (ITO) a Search Warrant. I find it is clear from Sergeant (now Inspector) Olberg's Curriculum Vitae that he is a subject matter expert with respect to the preparation of judicial authorizations. Consequently, there is little use in providing mentoring and/or training to Inspector Olberg with respect to the need to ensure the timely drafting of an ITO. Furthermore, I find that the delay in drafting the ITO in this case was due to extenuating circumstances and not because of a deficiency in Inspector Olberg's training. Therefore, I will direct that Inspector Olberg be provided operational guidance in this regard.

I disagree with Finding No. 22 that in this case, insufficient RCMP members were available on a compensated on-call basis to respond in a timely manner to major crime investigations. I note that the Commission concludes that "[i]t is apparent based on the above-noted information that compensation was and still remains an issue that impacts off-duty members' responses and/or timeliness of responses when called out for assistance." This conclusion is apparently based on comments formulated by members during their interview with the Commission's investigators.

With respect to Corporal Douglas Nordick's comments that members are not compensated for being on call, I wish to inform the Commission that it is incorrect. RCMP members who are designated as being on call either for Immediate Operational Readiness or Operational Availability pursuant to OM Chapter 16.12. "Operational Response" are and were at the time of this incident, eligible for compensation in amounts set out in the *National Compensation Manual*, Chapter 2.7. "Extra Duty Pay". In Corporal Nordick's situation, the information in the file reveals that he was not designated by his superiors as being on-call on August 9, 2016. Essentially, he was on time off at the time and thus he was not eligible for the applicable compensation provided for being on call. However, had he agreed to return to duty at Sergeant Olberg's request (or direction) he would have been paid overtime as compensation in accordance with RCMP policy.

The relevant material indicates that Constable Wudrick was the on-call member for the Saskatoon Major Crime Unit (MCU) on the night of the incident. The purpose of having an on-call member is to ensure that someone is available to receive a call of a possible major crime. On receipt of the call from a detachment, the on-call member notifies his or her supervisor—in this case, Sergeant Olberg since Staff Sergeant Dale Rockel was on annual leave. Sergeant Olberg then contacted the other members of the Saskatoon MCU (who were on time off), until he had at least nine members to respond to the incident.

In the event that Sergeant Olberg could not find nine available MCU members, then, as Sergeant Olberg stated, he could have obtained more resources from General Investigation Section (GIS) units. I note that Sergeant Olberg specified that everyone he called answered the phone and agreed to return to duty. Notwithstanding that only one member was designated to be on call, all the members of the MCU team that were not on leave (as some were) responded to the call.

I note that at paragraph 207 of its report, the Commission quotes Sergeant Olberg as stating that his options for an affiant were limited so he decided to wait until the following morning when Corporal Nordick was available. However, in his statement to the Commission Sergeant Olberg stated that any of the MCU or GIS members that responded to this incident could have drafted the ITO. In addition, had Sergeant Olberg deemed it necessary, he had the option of recalling Corporal Nordick to duty notwithstanding his personal commitment. I note that Sergeant Olberg told the Commission investigators that Corporal Nordick had a "brief" personal commitment. It would appear that the decision to await Corporal Nordick's availability was a matter of preference, not one that was imposed by restrictions relating to compensated on-call policies.

As acknowledged by the Commission, I note that Corporal Fee and Constable Teniuk, both members of Saskatoon MCU, were released from duty the evening of August 9, 2016 until the next day, since there were no tasks for them to carry out. I am satisfied that this is a clear indication that there were sufficient resources on hand to deal with the workload. Furthermore, while Corporal Nordick is quoted by the Commission as stating that not being compensated for being on-call was a significant issue for him, he also states the following with respect to the adequacy of the resources available to respond to this incident (*sic* throughout):

In this instance, I truly believe that they had adequate resources to sufficiently investigate it at the time. Obviously, the role that I took with the affiant wasn't available that night and the decision was made for me to deal with it in the morning, to fulfil my role in the morning. But I truly believe we did have the resources. Everyone in our unit is fully trained, very well skilled at their job, great abilities.

To put a finer point on Corporal Nordick's statement, the information in the file reveals that members from North Battleford, Biggar and Unity Detachments, MCU members from Saskatoon and Forensic Identification Services (FIS) members from Saskatoon and Yorkton responded to this incident.

I also note, as the Commission did in its report, that Constable Wudrick, the File Coordinator, felt that the RCMP was adequately resourced for this investigation. When asked if, as the on-call person, he felt that he had the resources that were needed to carry out the investigation he states (*sic* throughout):

Yeah. I didn't think we were under-resourced in any way. I know from even when I first got to Major Crime whatever tool or resource you had as an option was a phone call away for asking or requesting it. And because this one was so dynamic I did know initially that the resources that you wanted were either on the way, but you knew what the difference is. A lot of times those resources would take several hours to get there.

And as far as people resources needed, I think that was well taken care of and the relationship with have with detachments, other general investigation sections, it was usually when we would ask for assistance it was always would be responded that people would help.

For the above reasons, I find that in this case, the RCMP had sufficient members available on a compensated on-call basis to respond in a timely manner to major crime investigations.

I nonetheless support Recommendation No. 7 that the RCMP ensure that adequate resources are available in a timely manner for the investigation of major crimes, as the RCMP seeks to achieve this standard as a matter of normal business practice.

As the Commission is aware, many considerations are taken into account when deciding resourcing levels for any detachment or unit in the RCMP. Factors such as workload, geography and availability of required expertise, to name only a few, will inform the required level of resourcing. While MCU managers are constantly assessing their needs and making them known to Divisional Staffing units, Senior Management continuously assess those needs to ensure an adequate level of resourcing.

I find that the MCUs in "F" Division were adequately staffed at the time of this incident. Additionally, as noted by Corporal Nordick and Sergeant Olberg, further improvements have been made to the resourcing of MCUs and other support units. Indeed, since 2016, "F" Division has increased the number of MCU and FIS members on-call during off duty hours and receiving operational availability compensation. Furthermore, the five provincial GIS, located in Yorkton, Regina, Saskatoon, North Battleford and Prince Albert, each have one on-call member during the week and two on weekends, who can supplement the MCU members if needed. With respect to FIS, there are now currently five FIS members on call during off duty hours: one FIS member on call in each of the five FIS service areas in Saskatchewan. These enhancements were not a result of this

incident specifically but rather a function of increased workload. Accordingly, given the measures that were in place at the time of this incident in "F" Division and the enhancements implemented since, I will not direct any further action on this recommendation.

I agree with Finding No. 23 that the Major Case Unit's decision to separate the involved persons in two RCMP detachments was reasonable given the inherent challenges of rural policing.

I partly agree with Finding No. 24. While I am satisfied that the use of a Mobile Command Centre could have proven to be useful in this case, I do not find that its presence could have potentially avoided some of the shortcomings and omissions that occurred. While some of the members indicated in their statements to the Commission that a Mobile Command Centre could be an asset, after reviewing the totality of the available information, I am unable to conclude that a Mobile Command Centre on scene would have been able to prevent the identified shortcomings. I believe that these omissions, such as the failure to cover the Ford Escape, could have been prevented without a Mobile Command Centre.

I support Recommendation No. 8 that RCMP senior management in "F" Division consider acquiring a Mobile Command Centre. I wish to inform the Commission that the present recommendation was submitted to "F" Division senior management for consideration and it was determined that, while the Division does not have a Mobile Command Centre specifically built for this type of incident, they do have access to other types of vehicle that could be used as a Mobile Command Centre when the circumstances warrant it. The Division finds it is more effective and efficient to use regular vehicles in most instances due to the nature of their operating environment. For example, a Mobile Command Centre would need to be driven to the site of the incident and many of the communities served by the MCU in the Division are either not reasonably accessible by road or, when the communities are accessible by road, those roads would not be navigable by a large command post-style vehicle, given their austere nature. Therefore, "F" Division senior management determined that acquiring a Mobile Command Centre is not a viable option for "F" Division.

I agree with Finding No. 25 that RCMP policies and procedures relating to the preservation and protection of evidence were not reasonably followed and a key piece of evidence, the Ford Escape, was left vulnerable to contamination.

I agree with Finding No. 26 that the RCMP's failure to protect the Ford Escape resulted in the alteration and loss of trace and bloodstain evidence.

I support Recommendation No. 9 that the involved members of the Major Crime Unit and Forensic Identification Services be directed to review the findings in this report with a senior member of the RCMP. I will direct that this be done.

I support Recommendation No. 10 that the involved members of the Major Crime Unit and Forensic Identification Services receive operational guidance with respect to RCMP policies and procedures related to the preservation and protection of evidence. I will direct that this be done.

I agree with Finding No. 27 that Sergeant Sawrenko's decision to allow L. S. and S. S. to remove a vehicle from the crime scene to travel to the RCMP Biggar Detachment was unreasonable.

I support recommendation No. 11 that a senior member of the RCMP provide operational guidance to Sergeant Sawrenko regarding the importance of protecting and preserving evidence at a crime scene. I will direct that this be done.

I agree with Finding No. 28 that given the significance of the Ford Escape as a key piece of evidence in the investigation, it would have been prudent to consult with Crown counsel prior to proceeding to its release.

I agree with Finding No. 29 that Constable Boogaard's decision to release the Ford Escape following the completion of the examination conducted by FIS fell within the reasonable range of options open to him and therefore constituted a reasonable exercise of his discretion.

I agree with Finding No. 30 that it was unreasonable for one or more members of the Major Crime Unit not to attend the crime scene in a more timely fashion.

I support Recommendation No. 12 that, in future cases, the Major Crime Unit Commander ensure that a member of the Unit attend the crime scene in a timely fashion. I consider that it goes without saying that, as a matter of standard practice, MCU personnel are expected to attend the crime scene in a timelier manner than what occurred in this case. I am satisfied that the creation of a Crime Scene Manager position within the MCU structure in "F" Division is a positive step forward in ensuring that MCU members attend a crime scene within a reasonable time. Consequently, I will not direct any further actions with respect to this recommendation.

I agree with Finding No. 31 that Constable Terrance Heroux and Corporal Ryttersgaard were adequately trained and qualified to perform the forensic identification tasks they were assigned in this case.

I agree with Finding No. 32 that the practice at the time of not having a designated on-call RCMP member in each Forensic Identification Services Unit was unreasonable.

I agree with Finding No. 33 that a local work-around practice of the on-call Forensic Identification Services member attempting to contact a Forensic

Identification Services member located in the area of the crime scene was unreasonable.

For the reasons to follow, I disagree with Finding No. 34 that it was unreasonable that only one Forensic Identification Services member, not qualified as a Forensic Identification Specialist, was present at the crime scene for nearly three hours to conduct the processing.

In support of its conclusion, the Commission cites section 5.1.2. of the *Integrated Forensic Identification Manual* (IFIM), Chapter 2.4 "Crime Scene Processing" (amended 2013-09-11), which requires that two FIS members process a major crime scene, one of whom must be a Forensic Identification (FI) Specialist. If a FI Specialist is not available to attend then the Division Manager is to be contacted. Section 5.1.2.1. of the IFIM 2.4. states that, in exigent circumstances, a Divisional Manager may approve a technician as leader of the investigation.

I am satisfied that the actions taken by Constable Heroux and Corporal Ryttersgaard were in substantial compliance with the provisions of the IFIM. Indeed, Corporal Ryttersgaard and Constable Heroux decided that Constable Heroux would begin to process the crime scene pursuant to the *Coroner's Act* and Corporal Ryttersgaard would deal with obtaining gun shot residue from Gerald Stanley. After processing Mr. Stanley, Corporal Ryttersgaard attended the crime scene to assist Constable Heroux. He assisted him for almost two hours before Mr. Boushie's body was removed and they exited the scene to await the preparation of a search warrant.

In his statement to the Commission's investigators, Constable Heroux indicated that he was in contact with Staff Sergeant Bart Morhart, the FIS Division Manager, while he was processing the scene. Additionally, Constable Heroux states that he updated Staff Sergeant Morhart prior to his arrival at the scene and again when leaving the scene. Furthermore, Corporal Ryttersgaard, in his statement to the Commission, confirms that Constable Heroux had "multiple" conversations with Staff Sergeant Morhart while he was at the crime scene. Constable Heroux states that he did not request advice or direction from Staff Sergeant Morhart, but simply updated him during the course of his processing of the crime scene pursuant to the *Coroner's Act*. Obviously, had Constable Heroux required advice, Staff Sergeant Morhart was available for that purpose. Therefore, I am satisfied that the relevant material is clear that Constable Heroux was in contact with the "F" Division FIS Division Manager as per policy requirements.

I also wish to inform the Commission that I consulted with the policy center responsible for the interpretation of the IFIM 2.4. and it indicated that sending Constable Heroux to process the scene on his own was within the policy, as FIS members would be expected to attend and immediately begin processing a crime scene while awaiting additional resources. This practice eliminates any

unnecessary delays in examining the scene, as well as identifying any perishable evidence that would need to be processed immediately. The fact that policy requires at least two FIS members to process crime scenes does not preclude the first member on scene from beginning the process while awaiting a second member.

I agree with this interpretation of the policy, as policy cannot address every contingency faced by RCMP members. The realities of policing, rural policing in particular, often require a flexible approach. In my view, actions taken to comport with the exigencies of the situation do not automatically render the action taken unreasonable.

I also note that the Commission states that “[t]here is no indication in the materials that Constable Heroux had any discussions with Corporal Ryttersgaard about the processing of the crime scene prior to his arrival at 3:45 AM.” However, my review of the relevant material reveals that at pages 30 and 36 of the transcript of Corporal Ryttersgaard’s statement to the Commission’s investigators he confirms that he spoke to Constable Heroux while Constable Heroux was at the scene. While the investigator did not inquire as to the nature of the conversation between Corporal Ryttersgaard and Constable Heroux, it is reasonable to assume they discussed how the processing of the scene was progressing. Presumably, if Corporal Ryttersgaard had any concerns with the information being imparted by Constable Heroux he would have made them known at the time.

The Commission also cites Constable Heroux’s statement to its investigators that in hindsight it would have been “ideal” to have two members at the scene. In my view, his comment is more consistent with the sentiment that more resources are always welcome rather than with a concession that being on his own for three hours in any way hindered his ability to carry out his duties in a thorough and professional manner. I find that the following excerpt from page 58 of the transcript of Constable Heroux’s statement amplifies his earlier comment and places it into the proper context (*sic* throughout):

Would it be nice to have three or four more Ident members? Would it be nice to have a tent where I could cover the whole yard? You know, there's lots of things—it would be nice to have a mobile command unit, you know, all those things would be great, but, you know, the reality of where we work in, and the remote areas that we deal with, it's—we do the best with the resources that we have.

I also note that at paragraph 295 of its report, the Commission states, “[a]lthough it was not the most complex crime scene, it did have several areas of importance that would have been better processed with a team of two members.” Unfortunately, the Commission does not support this conclusion with

reference to any concrete examples of areas of importance that would have necessitated the presence of two FIS members.

The Commission also seems to give minimal consideration to Constable Heroux's depth of experience. The Commission states that while Constable Heroux "had considerable training and exposure to FIS work [...] most of that experience was under the apprenticeship program and he had yet to complete more advanced Forensic Identification training courses". The information in the file reveals that Constable Heroux had been to approximately 15 homicides prior to the Boushie scene and that he was the lead in at least half of them. Constable Heroux also indicated during his interview with the Commission's investigators that he was confident in his ability to handle the scene on his own.

In my view, Constable Heroux was qualified to process the crime scene pursuant to the *Coroner's Act*. As noted by the Commission in its report, the scene was not a complex one. The fact that Constable Heroux was on the apprenticeship program when he was the lead member in processing numerous homicide scenes is of little consequence. During his apprenticeship program, Constable Heroux was responsible for the quality of his work to his superiors, file investigators and the courts. Further, it appears that Corporal Ryttersgaard, a FI Specialist and highly experienced in homicide scene processing himself, had no hesitation in allowing Constable Heroux to begin to process the crime scene on his own (although he did have assistance from Constable Park). I find that processing the crime scene in a thorough and professional manner without the presence of a FI Specialist was well within Constable Heroux's capabilities.

I agree with Finding No. 35 that Constables Chad Doucette and Andrew Park acted reasonably to collect and preserve evidence that was at risk of being lost.

I agree with Finding No. 36 that Constables Doucette and Park did not adequately document their handling and transfer of the evidence they collected.

I support Recommendation No. 13 that Constables Doucette and Park be directed to review the policy OM 25.2. "Investigator's notes". I will direct that this be done.

I agree with Finding No. 37 that Constable Heroux's decision to contact a bloodstain pattern analyst three days after the incident was unreasonable.

I support Recommendation No. 14 that Constable Heroux be directed to review this report with a senior Forensic Identification Services member and discuss the significance of the involvement of a bloodstain analyst at a blood-letting crime scene. I will direct that this be done.

I agree with Finding No. 38 that the Major Crime Unit team applied the Major Case Management methodology and its nine essential principles, in adherence to the RCMP's national policy OM 25.3. "Major Case Management".

I agree with Finding No. 39 that the investigative team was adequately staffed to conduct the investigation into the death of Mr. Boushie in spite of their stated large caseload and other duties.

I agree with Finding No. 40 that the Coordinated Investigative Team, including the Command Triangle, possessed the necessary training and experience to competently carry out the roles and responsibilities assigned to them in this investigation.

I agree with Finding No. 41 that it was unreasonable for Constables Boogaard and Teniuk to attend the wake to update the family on the progress of the criminal investigation.

I support Recommendation No. 15 that Constables Boogaard and Teniuk be directed to review Finding No. 41 with a senior member of the RCMP. I will direct that this be done.

I agree with Finding No. 42 that internal communications were inadequate in some instances in the investigation.

I agree with finding No. 43 that the lack of communication between the various RCMP units involved in the investigation of Mr. Boushie's death lead to some of the errors and inefficiencies.

I support Recommendation No. 16 that Corporal Olney as well as the members of the Command Triangle (Sergeant Olberg and Constables Boogaard and Wudrick) be directed to read this report with a senior member of the RCMP. I will direct that this be done.

I agree with Finding No. 44 that a *prima facie* case of discrimination is not established with respect to the police's tactical approach and search of the Baptiste family home.

I generally agree with Finding No. 45 that a *prima facie* case of discrimination is established concerning the police's conduct towards Ms. Baptiste with respect to her sobriety and her credibility. It is undisputed that the manner in which the next of kin notification was communicated to the family was insensitive and demonstrated poor judgement. I also acknowledge the existence of a link between the manner by which the service was provided in this case and the Indigenous historical context, as indicated by the Commission in its report. I am prepared to agree with the Commission's finding with respect to this specific allegation in this particular matter.

I agree with Finding No. 46 that there is no *prima facie* case of discrimination with respect to the treatment of E. M., B. J., K. W., and C. C. during their police interviews.

I agree with Finding No. 47 that there is no *prima facie* case of discrimination with respect to the gaps in the criminal investigation into Mr. Boushie's death, including issues relating to the securing of evidence.

I support Recommendation No. 17 that cultural awareness training be provided for all RCMP employees bearing in mind the factors identified in recent inquiries. I wish to advise the Commission that the RCMP has implemented a continuum of Indigenous Cultural Awareness learning opportunities for all categories of RCMP employees. In fact, the Cultural Awareness training is mandatory for all employees. Some of these learning opportunities were already implemented and its delivery in progress as a result of guidance provided by the Commission in previous matters such as, for example, in the interim report following investigation into a Chairperson Initiated Complaint and Public Interest Investigation into the RCMP's response to anti-shale gas protests in Kent County, New Brunswick, and other matters. Some of the recently added learning opportunities include:

- The Aboriginal and First Nations Awareness course provides information about the history, geography, and contemporary issues pertaining to Aboriginal lands, cultures, and communities. This online course defines the terms that are commonly used to refer to indigenous peoples in Canada as well as outlines the history, geography and demographic characteristics of Aboriginal people. The course describes how Aboriginal people perceive their relationships with the land, outlines the history of Aboriginal treaties and describes the culture and its influence on the Aboriginal way of life, communication, and points of view. The characteristics of the six indigenous cultural regions in Canada are presented, as well as a description of the differences between Aboriginal and traditional Western cultures.
- The Blanket Exercise is an interactive learning activity that was developed with Indigenous Elders, knowledge keepers, and educators. Participants stand on blankets that represent the land of Indigenous Peoples in Canada. As a facilitator guides participants through an eye-opening version of Canadian history, the blankets are folded and the blanketed area diminishes in size, representing the taking of the land. The exercise provides an appreciation of the resilience and resistance of Indigenous peoples through ongoing colonialism. Every cadet participates in the Blanket Exercise as part of the Cadet Training Program at Depot Division. It has been delivered in several other divisions, including "F" Division.

- Indigenous Perceptions/Awareness workshops delivered in the divisions are distinctions-based and mandatory for members policing Indigenous communities. These workshops provide employees with experiential teachings that are reflective of the history, culture and background of the local Indigenous people. The workshops are facilitated by local Elders and include teachings delivered by Elders and Indigenous community leaders.
- A Trauma-informed Approach is an online course aimed at assisting employees in recognizing the widespread impact of trauma; recognizing the signs and symptoms of trauma for people involved in the justice system; combining knowledge about trauma into policies, procedures, and practices; and understanding how to incorporate this knowledge and sensitivity into everyday functions to avoid causing more trauma to survivors.
- The Cultural Awareness and Humility course was developed to enhance awareness of self and others, ensuring an understanding of Canadian laws and RCMP policies and to recognize and apply a culturally informed approach. It is mandatory for all RCMP employees and it will be available to other law enforcement agencies via the Canadian Police Knowledge Network.

The RCMP is continuously improving and updating its learning opportunities, as appropriate, to ensure the most up to date information and best practices. For example, in 2019, the RCMP updated the Canadian Police College's Human Trafficking course to include Indigenous awareness and human trafficking prevention elements. The RCMP remains committed to continuous learning and improvement, particularly as it relates to inclusivity and cultural sensitivity with respect to the people they serve.

To increase RCMP referrals to Restorative Justice, the RCMP is collaborating with the Department of Justice's Indigenous Justice Programs on the creation of online training for RCMP employees. The training will encourage pre-charge police referrals to community-based Restorative Justice Programs, particularly those under the Indigenous Justice Programs. This training has been informed by interviews with RCMP regular members, supervisors, and community-based program representatives.

Furthermore, in 2019, "F" Division implemented a division-wide community familiarization program in each detachment. Through this program, each new member to a detachment is shown the local culture by a resident of the community they serve thus allowing members to become familiar with the people, customs, and structure of that community, whether it be an Indigenous community, a farming community, or any other community with specific characteristics.

Finally, in response to difficulties that presented itself in this matter with respect to communications with the victim's family, I wish to inform the Commission

that "F" Division has revised its MCU Business Rules to clarify the Team Commander's role and responsibility in ensuring that the death notification is properly resourced and completed and that all plans and all communication strategies and tasks are documented within the investigational decision logs, allowing for more transparency and accountability with respect to decisions taken within an investigative file. Furthermore, "F" Division has also developed the "Saskatchewan RCMP Family Guide", which is provided to families of homicide victims or to families of missing persons where foul play is suspected. This reference tool can be used by family members to gain a better understanding of the investigative process and assist in identifying resources available to them to obtain further support or information.

I look forward to receiving your final report on this matter.

Kindest regards,

Brenda Lucki
Commissioner