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

**CHAIRPERSON'S FINAL REPORT AFTER COMMISSIONER'S RESPONSE**

***Royal Canadian Mounted Police Act***  
**Subsection 45.72(2)**

Complainant

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

File No.: PC-2009-2863

## CHAIRPERSON'S FINAL REPORT AFTER COMMISSIONER'S RESPONSE

### The Chairperson-Initiated Complaint

[1] On September 26, 2009, the Fort St. John RCMP in British Columbia was contacted by a member of the public with respect to an incident involving Valeri George and his family. It was reported that Mr. George stopped a vehicle containing his spouse and children, who were on their way to attend a wedding in another town, and shot out two of the tires with a rifle. The driver of the vehicle was able to proceed to a nearby residence, but Mr. George followed them and shot out the remaining two tires. Mr. George eventually returned to his residence following several failed attempts to speak with his family and to get them to return home. His family travelled on to the wedding and remained out of town until the matter could be resolved, on the advice of the RCMP. Attempts were made by members of the Fort St. John Detachment to speak with Mr. George, but he was not cooperative and insisted that his family be returned to him.

[2] The RCMP North District Emergency Response Team (NDERT) was ultimately activated, and on September 30, 2009, they were deployed to the area of Mr. George's residence to effect a warrant for his arrest. After numerous attempts by the RCMP to make contact with Mr. George to negotiate his surrender, Mr. George drove down his driveway, while carrying a firearm and at a high rate of speed. The NDERT had blocked Mr. George's exit from his property and it appeared that Mr. George was about to ram the barricade, placing at least one NDERT member at risk of serious harm or death. NDERT members fired on the vehicle and Mr. George, who died at the scene.

[3] On October 6, 2009, the then Chair of the Commission for Public Complaints Against the RCMP (now the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police,<sup>1</sup> hereafter referred to as the "Commission") initiated a complaint (**Appendix A**) into the conduct of all RCMP members or other persons appointed or employed under the authority of the *Royal Canadian Mounted Police Act* ("the RCMP Act") involved in this incident, as well as matters of general practice applicable to situations of this nature and, more specifically, those in which RCMP Emergency Response Teams are deployed. Specifically:

1. whether the RCMP members or other persons appointed or employed under the authority of the RCMP Act involved in the events of September 26 to September 30, 2009, from the moment of initial contact through to the subsequent death of Mr. George complied with all appropriate training, policies, procedures, guidelines and statutory requirements relating to the use of force; and

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<sup>1</sup> As a result of the coming into force of the *Enhancing Royal Canadian Mounted Police Accountability Act*, the Commission for Public Complaints Against the Royal Canadian Mounted Police was replaced with the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police.

2. whether the RCMP's national-, divisional- and detachment-level policies, procedures and guidelines applicable to such an incident and to situations in which RCMP Emergency Response Teams are deployed are adequate.

### **The RCMP's Report**

[4] As provided by the RCMP Act, the complaint was investigated by the RCMP, who provided the Commission with a Report dated June 11, 2012. In summary, the RCMP found that the NDERT members acted appropriately and that the use of lethal force was necessary and reasonable, and that the policies, procedures and guidelines applicable to this incident were adequate.

### **The Commission's Review and Interim Report**

[5] The Commission examined the stated rationales for the RCMP members' actions as well as the relevant policies, procedures and guidelines which existed at the time of the events. The Commission provided its Interim Report regarding this matter to the RCMP Commissioner and the Minister of Public Safety Canada on June 10, 2015 (**Schedule 1**). The Interim Report made 49 findings and 8 recommendations.

### **The Commissioner's Response**

[6] Pursuant to subsection 45.72(1) of the RCMP Act, the Commissioner is required to provide a written response indicating any further action that has been or will be taken in light of the findings and recommendations contained in the Commission's Interim Report.

[7] On November 18, 2016, the Commission received the Commissioner's Response, dated November 2, 2016 (**Schedule 2**). The Commissioner agreed with 42 of the Commission's findings; agreed or generally agreed with 3 findings with additional commentary; and disagreed with 4 findings. The Commissioner agreed with 6 recommendations and disagreed with 2 recommendations; however, in several instances the Commissioner stated his support of a recommendation but outlined steps taken by, or current policies of, the RCMP that do not reasonably address the recommendation.

[8] The Commissioner disagreed with 2 findings related to the Crisis Negotiation Team (CNT), namely the Commission's findings that it was not clear from the record whether CNT members fully assessed the limits and capabilities of a third party whom they intended to use to communicate with Mr. George, or whether other options were available; and that it was also not clear whether CNT members considered obtaining assistance from Constable Finkensiep, a German-speaking member, to communicate with Mr. George during the NDERT deployment.

[9] In dispute of these findings, the Commissioner stated that there was no indication in the record that Mr. Dick's (the third party) cultural concerns regarding the age

difference between him and Mr. George (which could result in an unwillingness by Mr. George to listen to him) were conveyed to the CNT at the time; and that CNT members “actually sat down with [Mr. Dick] and discussed the matter, the process and their role at length, coming to the conclusion that he was an asset,” thereby indicating that some form of discussion and assessment was done and that no concerns were identified.

[10] With all due respect to the Commissioner, while it is true that “there is enough information on the record to show that some form of discussion and assessment” was done, “and that no concerns were identified in relation to any limits or capabilities,” the investigation records referenced in the Commissioner’s Response provide little information other than confirmation that *some* form of discussion occurred, that Mr. Dick was being used, and the points he was given to recite should they have made contact with Mr. George. As found by the Commission in its Interim Report, there are too few details of the conversations with Mr. Dick and no clear record of what assessment occurred. At best, this is an issue of poor record keeping, which was the basis of the Commission’s finding and recommendation with respect to this matter.

[11] Unfortunately, this is also an instance where the Commissioner stated that he supported the recommendation (that the RCMP take steps to ensure that CNT members make detailed notes regarding the assessment and involvement of any third parties) but details policy in place that does not in fact address the recommendation. The Commissioner relied only on the policy requiring that the use of a third party be approved by the incident commander. He went on to state that “it is reasonable to believe that this approval process, and what led to such approval, would be detailed by the members involved, as well as by the involved scribe” and concluded that since CNT members made notes regarding the use of a third party, “it is reasonable to conclude that they conducted an assessment and considered other individuals.”

[12] It is notable that the scribe records add nothing to the CNT members’ sparse notes with respect to any discussions with or assessment of Mr. Dick, and make no mention of any discussion or the approval process referenced by the policy identified by the Commissioner. One is left to speculate what that assessment and consideration entailed, and there are too few details in the record; hence the Commission’s finding and recommendation.

[13] As to the availability of options, the Commissioner stated that options were considered, given that 1) an initial civilian identified as a potential interpreter eventually declined, 2) notes indicate that Mr. George’s neighbour was “willing to assist,” 3) there was a reference to Constable Finkensiep in the CNT members’ notes, and 4) CNT members also considered information they had received that Mr. George would not relate to a female. The Commission notes that while the scribe recorded that the Incident Commander told the CNT that they would speak with Constable Finkensiep to see if Mr. George would speak to him again (when direction was sought by the CNT as to what to do if an interpreter could not be found), it is not apparent that Constable Finkensiep was considered as an alternative to a civilian interpreter. There is

simply no detailed record of what considerations may have been given to the selection process.

[14] It is also not clear that any assessment was done with respect to the benefits of using a civilian versus a member of the police force, or if any other sources of interpreters (such as a professional interpreter) were considered. In addition, while the neighbour referenced by the Commissioner was “willing to assist,” the record indicates that he himself needed an interpreter in the past to speak to Mr. George due to the language barrier between them. In addition, the note indicating that he was willing to assist is simply an indication that that expression of willingness was passed on; there is still no indication in the record of whether CNT members collected and assessed this information.

[15] Records should clearly indicate all considerations and decision-making with respect to the use of third parties in critical negotiations. The Commission’s Interim Report points out that the record is not clear in this case, which makes it difficult to effectively assess the CNT members’ conduct. Consequently, specific policy and processes with respect to documenting such considerations and decisions is warranted.

[16] The Commissioner goes on to indicate his support for the Commission’s recommendation that the RCMP take steps to ensure the consideration of members where a particular skill or expertise (such as language capabilities) is required, but states that such steps are already in place. He acknowledges that there is no specific policy dealing with the use of non-ERT personnel during ERT deployment, but states that “it is reasonably expected that any valuable non-ERT resource will be considered, to the extent that safety is maintained.”

[17] To illustrate that point, the Commissioner refers to a guide that has been created in response to the MacNeil Report recommendation for a quick reference guide for non-ERT trained members who may be called upon to offer assistance. The Commissioner stated that “[i]t is therefore clearly recognized that non-ERT personnel can be called upon to assist in ERT deployments.” In the Commission’s view, this does not sufficiently address the Commission’s recommendation and does not demonstrate support for it.

[18] The Commissioner further disagreed with the Commission’s finding that emergency lighting should have been utilized at the police barricade as an additional means to signal Mr. George to stop. The Commission’s Interim Report noted that the RCMP’s internal complaint investigation identified the lack of activation as an issue, given that there were three police vehicles present and that there was a real potential for serious harm to the members if the barricade was breached by Mr. George. The Commission took the position in its Interim Report that any available signals for Mr. George to stop should have been utilized.

[19] The Commissioner disagreed on the basis that the vehicles being parked across the driveway were already a clear indicator to stop and that leaving the emergency

lighting on would have either depleted the vehicles' batteries, rendered the vehicles inoperable, or depleted the vehicles' fuel tanks (thereby weakening the barricade if a vehicle would have had to be driven away for refueling, or creating an unsafe situation if a person was to conduct the refueling while Mr. George was moving about the property with a rifle). As the containment situation could have been lengthy, the Commissioner found that leaving the lighting on the entire time would not have provided a tactical advantage and could have resulted in unsafe situations.

[20] The Commission acknowledges the concerns expressed by the Commissioner. However, while the police vehicles were parked across the driveway to create a barricade, all members were in a position of concealment for safety and tactical considerations and Mr. George could not have known the whereabouts of the members, and in particular the risk to Corporal Arnold's life if he were to breach the barricade. Consideration should have been given to using any means available to signal Mr. George to stop given the expectation that lethal force would otherwise be deployed, particularly given that no NDERT member was specifically tasked with attempting to signal Mr. George in any other manner to stop his vehicle.

[21] It is also notable that Mr. George's residence was located some distance from, and not within sight of, the barricade. When Mr. George was not in sight of the barricade, he was being observed by Constable Shaw, who was located in the bush near his residence and reporting Mr. George's movements to the rest of the team. Consideration should be given as to whether time and distance was sufficient to mitigate the risks identified by the Commissioner, and whether there is alternate technology available to allow for the potential long-term use of emergency lighting.

[22] The Commissioner also disagreed with the Commission's finding that consideration should have been given to blocking off the roads surrounding the George property should Mr. George breach the police barricade on the driveway. The Commissioner stated that at some point during the ERT operation, "general duty members had indeed blocked the road to Mr. George's property." The Commissioner went on to state that he did not support the recommendation that the RCMP take steps to ensure that sufficient resources are made available to block public roads where there is a risk to the public during the critical incident on the basis that the roads were blocked and that RCMP members are diligent in protecting the public in critical incidents.

[23] While it is evident that shortly before the fatal encounter with Mr. George, Corporal MacDonald and Constable Coutney were positioned north of the driveway on Aitken Creek Road (approximately 200 feet from the gate, pointing towards the highway, according to testimony at the Coroner's Inquest) in a van and that Constable Passarell was positioned in a second vehicle approximately one kilometre north of the driveway on Aitken Creek Road, these were minimal resources and the members were in unmarked vehicles. While their presence served to keep the public at some distance (Aitken Creek Road spans a great distance), that presence was not necessarily sufficient to address the threat of Mr. George breaching the barricade in the driveway and leaving the property in his vehicle and with a firearm. Although the internal

public investigation report speaks about a second blockade, these efforts fell short of that. The record does not clearly demonstrate that consideration was given to blocking the road in such a way as to further contain Mr. George should he breach the initial barricade (as opposed to entry by the public).

[24] The Commissioner “generally” agreed with the Commission’s finding that additional resources could have allowed for a more secure perimeter, but noted the steps that had been taken in this case (including resources that were requested by NDERT but did not arrive before the events came to a tragic end) and that containment can sometimes be achieved with few well-placed members.

[25] The Commissioner agreed with the Commission’s finding that NDERT debriefings did not occur in a comprehensive and timely manner, but found that there were some justifiable contributing factors, namely: there was an extensive criminal investigation that hampered the members’ abilities to have in-depth discussions, and delays in the submission of members’ accounts to the investigation team and responses to follow-up questions from investigators. The Commissioner also noted an apparent delay in the NDERT Leader convening the comprehensive debrief after the submission of the initial accounts by the members.

[26] That being said, the Commissioner did not support the Commission’s recommendation with respect to reviewing the process by which the ERT briefings are conducted to ensure that they are conducted in a comprehensive and timely manner. He noted that the psychological debrief, “perhaps the most important and pressing,” has a strict timeline (although it was not followed in this case) and that there is no identified need to set a timeline for the operational debrief, as every situation is different. The Commission notes that setting strict timelines is not the only method by which to ensure timeliness. The Commissioner acknowledged a number of delays, and steps can be taken to prevent or shorten some of those delays. As noted at pages 63–64 of the Commission’s Interim Report:

However, in the Commission’s view, the RCMP’s response [to the Chairperson-initiated Complaint] does not adequately address two important concerns:

- a. The issue raised by the [Independent Officer Review (IOR)] that three of the members responding to this incident had been involved in a fatal shooting within the preceding five days of this call-out, and there was no indication that an evaluation was conducted prior to them being re-deployed to this incident. (The Commission notes that the IOR did state that there was no indication that it adversely affected their decisions in relation to this incident, which the Commission agrees with.)
- b. An indication by the IOR that “there is a general consensus from the members who responded to the critical incident that there is a dire need to improve the manner by which members are dealt with following a shooting. There is a necessity to balance the investigation and health and welfare of our members.”

...

The IOR identified one member involved in this incident who expressed frustration during the Coroner's inquest with what he perceived as a lack of support from the RCMP following the incident. In a statement to investigators, another member indicated that the initial debriefing was a waste of time since they were not able to talk about the details of the incident, and the operational debriefing held seven months after the incident was of little value due to the delay. The Commission recognizes that years have now passed since this incident; however, the Commission recommends that the RCMP review the process by which these briefings are conducted to ensure that they take place in a timelier manner and are conducted in a way that addresses the needs of the members.

[27] The Commission encourages the RCMP to undertake the recommended review of its policies and processes related to critical incident debriefing in order to address the needs of its members, who have expressed dissatisfaction with them.

### **The Commission's Findings and Recommendations**

[28] After considering the Commissioner's Response, the Commission is satisfied that its findings and recommendations, as detailed in the Interim Report of June 10, 2015, are supported by the information presented in the investigation materials provided by the RCMP. In light of the foregoing, the Commission reiterates its findings and recommendations.

**FINDING: RCMP members were duty-bound to investigate the reported actions of Mr. George.**

**FINDING: RCMP members took reasonable steps to investigate the incident.**

**FINDING: RCMP members took appropriate steps to ensure the safety of Mr. George's family pending an arrest.**

**FINDING: RCMP members had reasonable grounds to believe that Mr. George had committed multiple *Criminal Code* offences.**

**FINDING: RCMP members had grounds to arrest Mr. George without a warrant following the incident with his family.**

**FINDING: RCMP members' decision to pursue Mr. George's arrest without a warrant was a reasonable exercise of discretion.**

**FINDING: It was both reasonable and necessary for members to seek a warrant to arrest Mr. George in his home in the event that negotiations failed.**

**FINDING: The warrant application contained a reasonably thorough and accurate representation of the evidence.**

**FINDING: RCMP members made reasonable attempts to communicate with Mr. George in order to negotiate a peaceful surrender.**

**FINDING: RCMP members took reasonable steps to ensure that they could communicate with Mr. George in a language that he understood.**

**FINDING: RCMP members' decision to seek assistance from Mr. Remple Sr. to communicate with Mr. George after he refused to speak with members was reasonable.**

**FINDING: Inspector Egan reasonably decided that using Mrs. George to contact her husband was inappropriate in the circumstances.**

**FINDING: The decision made on September 29, 2009, to activate and deploy the NDERT to facilitate the arrest of Mr. George was reasonably based and consistent with RCMP policy.**

**FINDING: The NDERT members who were deployed during this incident were current with respect to their training.**

**FINDING: Corporal Garcia had not participated in a negotiators refresher course, as required by RCMP directives.**

**RECOMMENDATION: That the RCMP take steps to ensure that all members who are engaged in critical incidents in any capacity are up-to-date with their ongoing training requirements.**

**FINDING: While not required at the time, Inspector Egan had not been trained on the current course standard for Incident Commanders.**

**RECOMMENDATION: That the RCMP ensure that all NDERT members, Incident Commanders, and other supporting personnel receive training on new standards in a timely manner.**

**FINDING: The scribe assigned to the Incident Commander had not taken a scribe's course, although none had been required at the time. Current policy now mandates such training.**

**FINDING: The NDERT briefing prepared and given by members of the Fort St. John RCMP Detachment was reasonably thorough and accurate.**

**FINDING: Inspector Egan's decision to delay deploying NDERT to the George property until the early morning of September 30, 2009, was reasonable in the circumstances.**

**FINDING:** The operational plans were prepared and signed by the Team Leader and Incident Commander prior to the NDERT's deployment at the George property, in accordance with RCMP policy.

**FINDING:** The operation plans were reasonably thorough and appropriate in the circumstances known to members at the time they were developed.

**FINDING:** Constable Shaw stalked to a position near the George residence and reported his observations over the radio in a continual and detailed manner.

**FINDING:** CNT members deployed without a full team; however, it was reasonable in the circumstances.

**FINDING:** CNT members made efforts to locate persons who could communicate with Mr. George on their behalf in the face of a language barrier.

**FINDING:** It is not clear from the record whether CNT members fully assessed the limits and capabilities of a third party who they intended to use to communicate with Mr. George, or whether other options were available.

**RECOMMENDATION:** The RCMP should take steps to ensure that CNT members make detailed notes regarding the assessment and involvement of any third parties in their negotiation process.

**FINDING:** It is not clear from the record whether CNT members considered obtaining assistance from Constable Finkensiep to communicate with Mr. George during the NDERT deployment.

**RECOMMENDATION:** That the RCMP take steps to ensure that all members involved in ERT deployments consider the use of general duty members where a particular skill or expertise (such as the ability to speak a foreign language) is required.

**FINDING:** It was reasonable for members to confront Mr. George when he approached the end of his driveway on foot and in possession of a rifle, particularly given that the members would have already been visible to him.

**FINDING:** Members issued their commands to Mr. George in a language that he was known to understand.

**FINDING:** The decision to move the police barricade to the area of the gate and to fortify it was reasonable.

**FINDING:** The decision not to move the spike belt further into the property, given the risk to members in doing so, was reasonable.

**FINDING:** Emergency lighting should have been utilized at the police barricade as an additional means to signal Mr. George to stop.

**FINDING:** Consideration should have been given to blocking off the roads surrounding the George property should Mr. George breach the police barricade at the driveway.

**RECOMMENDATION:** That the RCMP take steps to ensure that sufficient resources are made available to block public roads where there is a risk to the public during a critical incident.

**FINDING:** Corporals Arnold and Brown appropriately considered all of the risks involved in holding Corporal Arnold's position near the gate, including the risk of bodily harm or death that could justify the use of lethal force against Mr. George, and reasonably concluded that maintaining the tactical advantage was necessary.

**FINDING:** Corporal Brown should have informed Inspector Egan regarding his discussion with Corporal Arnold about the risks in his positioning and their decision to maintain it.

**RECOMMENDATION:** That the RCMP review this report with Corporal Brown to ensure that he is aware of the need to communicate tactical decisions and risks to ERT members to the Incident Commander where there is time to do so.

**FINDING:** Corporal Arnold reasonably feared grievous bodily harm or death when he discharged his firearm at Mr. George.

**FINDING:** It was reasonable for Corporal Arnold to discharge his firearm at Mr. George in his motor vehicle, as no other intervention methods were appropriate.

**FINDING:** Corporal Brown's use of lethal force was reasonable and proportionate to the threat presented by Mr. George, and consistent with the law and RCMP training and policy.

**FINDING:** Constable Warwick's use of lethal force was reasonable and proportionate to the threat presented by Mr. George, and consistent with the law and RCMP training and policy.

**FINDING:** Constable Degen's use of lethal force was reasonable and proportionate to the threat presented by Mr. George, and consistent with the law and RCMP training and policy.

**FINDING:** Constable Merriman's use of lethal force was reasonable and proportionate to the threat presented by Mr. George, and consistent with the law and RCMP training and policy.

**FINDING:** It was reasonable for Constable Atkinson not to have utilized a use of force option, as from his position he did not see Mr. George until he was on the ground and no longer presented a threat to members.

**FINDING:** Non-lethal force and other tactical options were reasonably considered, including disabling Mr. George's vehicle at his residence, obtaining additional ERT resources, using the police service dog to apprehend Mr. George near the residence, as well as resorting to alternative means of communication.

**FINDING:** Additional ERT resources should have been identified and requested earlier in the planning stages.

**FINDING:** Additional resources could have allowed for a more secure perimeter.

**RECOMMENDATION:** That the RCMP establish one or more containment teams in the North District if not already in place.

**FINDING:** Arrangements were made for the provision of emergency medical support during the NDERT operation.

**FINDING:** All reasonable efforts were made by NDERT members to provide immediate and necessary medical treatment to Mr. George following his shooting.

**FINDING:** The NDERT's use of lethal force against Mr. George was investigated by members of the RCMP, as the incident occurred prior to the establishment of the RCMP's external investigation policy and the creation of the Independent Investigation Office of British Columbia.

**FINDING:** Reasonable efforts were made by the RCMP to ensure that the criminal investigation into the NDERT's use of lethal force was conducted in an impartial manner, which included oversight by an inspector from the Vancouver Police Department.

**FINDING:** NDERT debriefings did not occur in a comprehensive and timely manner.

**RECOMMENDATION: That the RCMP review the process by which ERT briefings are conducted following a critical incident that is subject to a criminal investigation, to ensure that they are conducted in a comprehensive and timely manner.**

[29] Pursuant to subsection 45.72(2) of the RCMP Act, the Commission respectfully submits its Final Report and, accordingly, the Commission's mandate in this matter is ended.

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Ian McPhail, Q.C.  
Chairperson