

COMMISSION FOR PUBLIC COMPLAINTS AGAINST THE RCMP

CHAIR'S FINAL REPORT AFTER COMMISSIONER'S NOTICE
Royal Canadian Mounted Police Act
Subsection 45.46(3)

File No.: PC-2010-0861

March 16, 2011

CHAIR'S FINAL REPORT AFTER COMMISSIONER'S NOTICE

THE COMPLAINT

On the evening of December 2, 2008, the family of Mr. John Simon of Wagmatcook, Nova Scotia, were concerned about his well-being and rightfully contacted the police in order to seek assistance. The RCMP responded to this urgent request. Mr. Simon had been drinking, had threatened suicide and had access to firearms. One of the attending members entered Mr. Simon's home despite not receiving authorization to do so. Mr. Simon, after having pointed a rifle at the member, was shot three times and fatally wounded.

The circumstances of the shooting were investigated by the Integrated Critical Incident Team (ICIT) led by the Halifax Regional Police but also comprised of members of the RCMP. The ICIT report, delivered December 9, 2009, one year and one week after the shooting took place, found that no criminal charges were appropriate with respect to any of the persons involved in the incident. The RCMP did not take any disciplinary action against any of the members involved.

On March 16, 2010, I, as the Interim Chair of the Commission for Public Complaints Against the RCMP (the Commission), exercised my authority on behalf of the public to examine the facts that gave rise to the public's concerns, and initiated a complaint and public interest investigation into the incident.

THE COMMISSION'S PUBLIC INTEREST INVESTIGATION AND INTERIM REPORT

The formal parameters of the Commission's public interest investigation, conducted by an experienced and independent investigator, were as follows:

1. whether the RCMP members or other persons appointed or employed under the authority of the RCMP Act involved in the events of December 2, 2008, from the moment of the initial call to the RCMP for assistance, through to the subsequent death of John Andrew Simon, complied with all appropriate training, policies, procedures, guidelines and statutory requirements relating to responding to persons believed to be suicidal, barricaded within a premises, or otherwise potentially of a high-risk nature;
2. whether the RCMP national, divisional and detachment-level policies, procedures and guidelines relating to the manner in which the RCMP responds to persons believed to be suicidal, barricaded within a premises, or otherwise potentially of a high-risk nature, are adequate; and
3. whether the RCMP members involved in the investigation of this incident conducted an investigation that was adequate, and free of actual or

perceived conflict of interest, whether they responded appropriately and proportionately to the gravity of the incident, whether they responded in a timely fashion and whether their conduct adhered to the standards set out in section 37 of the *RCMP Act*.

The Commission issued its Public Interest Investigation and Interim Report into this matter to the RCMP Commissioner and the Minister of Public Safety on December 15, 2010 (**Schedule 1**), in which it made 12 findings and 11 recommendations for change.

Overall, the Commission identified a number of shortfalls both in the conduct of the attending members, and with respect to later actions or lack thereof taken by senior members. The Commission determined that in placing themselves as they did near Mr. Simon's residence prior to the arrival of backup, despite Mr. Simon's repeated communications that police should stay away, the members placed themselves at unnecessary risk. The Commission identified this as being one result of the senior member on the scene failing to ensure that an adequate operational plan had been put in place. In addition, the senior member failed to adequately direct the two other members to appropriately position themselves and later, to pull back from the residence.

The Commission also found that the member who entered Mr. Simon's residence did so without clear instructions, planning or notice to the other members. Nonetheless, once inside the residence and confronted with a situation which the Commission found to be life-threatening, the use of lethal force by the member was found to be appropriate in the circumstances.

The Commission determined that the criminal investigation conducted following the shooting of Mr. Simon was free of bias or subjectivity, although a post-critical incident briefing should have been scheduled in order that deficiencies could have been identified. The Commission adopted all of the recommendations made by the Integrated Critical Incident Team (ICIT) following its investigation, which involved a review of RCMP policy with respect to barricaded persons, and appropriate procedures to be followed when responding to a critical incident. The ICIT also recommended that the RCMP training standards relating to certain aspects of critical incident response be reviewed and that specific training be provided to use of force experts. The Commission agreed with those recommendations, and also adopted a recommendation that the subject members undergo remedial training.

In respect of the disciplinary procedures or lack thereof following the incident, the Commission recommended that a formalized process be adopted to ensure that appropriate steps were taken and decisions documented. The Commission also commented on the RCMP media strategy in this instance, finding that the media responses prepared were not sufficiently fulsome and had the potential to be misleading.

Finally, the Commission recommended, given the deficiencies in the RCMP's handling of this incident and its consequential impact on Mr. Simon's family, friends and community, that the RCMP offer an apology in respect of the incident.

THE RCMP COMMISSIONER'S NOTICE

Pursuant to subsection 45.46(2) of the *Royal Canadian Mounted Police Act* (the RCMP Act), the RCMP Commissioner is required to provide written notification of any further action that has been or will be taken in light of the findings and recommendations contained in the Interim Report.

On March 14, 2011, the Commission received the RCMP Commissioner's Notice dated March 10, 2011 (**Schedule 2**). The RCMP Commissioner fully agreed with all but two of the Commission's findings.

As outlined above, the Commission made 12 findings in relation to the conduct of the RCMP members involved in this incident and its aftermath. The Commissioner disagreed that Constable Bernard should have waited for backup prior to approaching Mr. Simon's residence. He indicated that it was not unreasonable for the member to have approached in order to assess the situation and determine the likelihood of immediate danger.

While I appreciate the importance of timely intervention in situations where immediate danger may exist, Constable Bernard did not simply attend the residence; he approached it and spoke with Mr. Simon through a window, a position which placed him at unacceptable risk given Mr. Simon's known possession of firearms and uncertain emotional state. Constable Bernard had indicated that he feared the possibility of an altercation if he dealt with Mr. Simon alone, and had already spoken by telephone with Mr. Simon, who indicated that he was "fine." He had also spoken with Mr. Simon's aunt and spouse, actions which allowed him to conduct at least an initial assessment of the situation. I reiterate that, taking into account the circumstances which existed, including Constable Bernard's misgivings regarding a possible altercation, the fact that he had called for backup from local members, and his initial telephone conversations with several individuals including Mr. Simon, his immediate approach to the residence was unreasonable in light of the RCMP Back-up Policy, as set forth in bulletin number OM-479.

The Commissioner also disagreed that Staff Sergeant Thompson knew or ought to have known that Constable Frenette was going to enter the residence. The Commissioner cites a section of the Interim Report which I believe was taken out of context. I agree that Staff Sergeant Thompson did not know with certainty that Constable Frenette planned to enter the residence, nor was he immediately alerted to the actual entry. However, the report sets forth a number of factors which made it equally clear that Constable Frenette was considering this course of action.

I note in particular the following facts outlined in the Interim Report. Constable Frenette asked if he should enter the house and later suggested, "Now's the time." After some delay, Staff Sergeant Thompson asked Constable Frenette, "How big is this guy?" I am satisfied from the evidence set forth in the report that Staff Sergeant Thompson knew or ought to have known that Constable Frenette was contemplating an entry to the house.

The Commissioner did not take issue with the second and key element of my finding and, in fact, he acknowledged that Staff Sergeant Thompson should have clearly indicated to the junior member that he should not enter the residence without express instruction.

Accordingly, I reiterate all of my findings.

The Commissioner also addressed the Commission's 12 recommendations, agreeing with all in principle. He outlined various actions taken by the RCMP in response to those recommendations. First, he noted that nationally the RCMP has taken steps to address the handling of critical incidents, including those involving barricaded and/or emotionally disturbed persons. Additionally, the RCMP's "H" Division has already taken a number of steps, through the implementation of policy and revised training standards, towards improving the RCMP response to such incidents.

The Commissioner highlighted several ongoing and already completed reviews of national policy surrounding such incidents, including those relating to a requirement for post-incident debriefings following critical incidents and guidance for Emergency Response Teams and other members responding to critical incidents. The RCMP's "H" Division is already conducting such debriefings in practice. Similarly, "H" Division has already implemented a policy in respect of the handling of barricaded persons, as well as putting in place a Risk Assessment Check Sheet accessible from mobile workstations.

The Commissioner stated that a review of policy surrounding the process involving notification and decision-making in respect of Code of Conduct investigations will take place, building upon a recently issued directive requiring notification of the Professional Integrity Officer and adequate documentation of reasons for decisions regarding such investigations. Additionally, the Commissioner committed to issuing a directive regarding the need for operational commanders to review the content of press releases in order to ensure their accuracy prior to dissemination.

Finally, the RCMP Commissioner addressed the Commission's recommendation that the RCMP apologize to Mr. Simon's family and the Wagmatcook Band in respect of this incident. The Commissioner noted that the RCMP had acknowledged its errors, and indicated an intention to make continuing efforts to engage Mr. Simon's family and the community. In my view, such efforts on the part of the RCMP are integral to restoring public confidence and trust in the police, and only by taking strong positive steps will the RCMP be able to heal the

rift caused by this incident. Ultimately, both the community and Mr. Simon's family will come to their own conclusion as to whether these future efforts meet with their satisfaction.

THE COMMISSION'S FINDINGS AND RECOMMENDATIONS

As a result of the Commission's investigation, I made a number of findings and recommendations that I believed would assist the RCMP in reviewing and amending policies and enhancing its training to ensure that a similar tragic situation does not occur. The RCMP responded to these findings and recommendations, as outlined above. I reiterate the Commission's findings and recommendations.

Findings

FINDING: Constable Bernard placed himself at unnecessary risk by failing to wait for the backup that had been called out, prior to attending the Simon residence.

FINDING: Staff Sergeant Thompson failed to ensure that an adequate operational plan had been put in place and understood by the responding members prior to their deployment.

FINDING: Staff Sergeant Thompson permitted RCMP members to place Mr. Simon and themselves in unnecessary jeopardy by allowing them to position themselves and remain too close to the Simon residence.

FINDING: Staff Sergeant Thompson failed to order Constable Frenette to pull back from the residence when he knew or ought to have known that Constable Frenette was contemplating an entry to the house to apprehend Mr. Simon.

FINDING: Constable Frenette acted in an inappropriate manner by deciding to enter the Simon house with no clear instructions, notice to other members, backup, means of escape or operational plan.

FINDING: Constable Frenette had sufficient grounds to believe his life was in jeopardy and that the decision to resort to the use of lethal force by discharging his service pistol at Mr. Simon was appropriate in the circumstances.

FINDING: There is no evidence of bias or subjectivity in the conduct of the RCMP MCU investigation.

FINDING: It was reasonable in the circumstances for the RCMP to restrict access to Mr. Simon's body.

FINDING: The RCMP members involved in the investigation of this incident acted appropriately, professionally, without bias and in accordance with section 37 of the *RCMP Act*.

FINDING: In accordance with good police management practices, the RCMP should have scheduled a post-critical incident meeting to identify lessons learned.

FINDING: No training deficiencies contributing to this incident were identified.

FINDING: The contents of the media responses prepared with respect to this incident were not sufficiently fulsome and could have misled the public into believing that the investigation was carried out solely by the HRP.

Recommendations

RECOMMENDATION: That following any critical incident in which another agency investigates the actions of a member of the RCMP, a post-incident debriefing take place involving both the outside agency and the RCMP to identify lessons learned or deficiencies.

RECOMMENDATION: That the RCMP undertake a review of its policy with respect to barricaded persons.

RECOMMENDATION: That a guide/checklist be developed and installed in all the police vehicles' mobile workstations to ensure that all operational procedures for a critical incident are followed and completed.

RECOMMENDATION: That a review of the RCMP training curriculum regarding the response process to critical incidents such as barricaded persons be conducted, ensuring that issues of containment and the management of emotionally disturbed persons are adequately addressed.

RECOMMENDATION: That use of force experts receive training in the biomechanics of lethal force encounters.

RECOMMENDATION: That the RCMP consider adopting into RCMP policy a formalized process involving division Internal services to ensure timely notifications and to ensure the proper documentation of decisions during the consultative process of Part IV in order to preserve the decision-making rationale involved.

RECOMMENDATION: That Constable Frenette undergo full remedial training in the IM/IM as well as the CAPRA model.

RECOMMENDATION: That Staff Sergeant Thompson be provided training in operational supervision of junior members and in critical incident planning and management.

RECOMMENDATION: The RCMP may wish to consider entering into a bilateral agreement with non-RCMP ERTs to ensure adequate and timely coverage in the event of an incident requiring the ERT.

RECOMMENDATION: That press releases be reviewed by the operational commander before being released to ensure accuracy and to avoid any possible mischaracterization.

RECOMMENDATION: That the RCMP offer an apology to the Simon family and the Wagmatcook Band in respect of this incident.

Pursuant to subsection 45.46(3) of the RCMP Act, the Commission's mandate in this matter is ended.

March 16, 2011



Ian McPhail, Q.C.
Interim Chair

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