

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

**Report Following a Public Interest Investigation into the Shooting Death of
Gregory Matters in Prince George, B.C.**

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

Complainant

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

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Table of Contents

INTRODUCTION.....	1
CHAIR-INITIATED COMPLAINT AND PUBLIC INTEREST INVESTIGATION	2
COMMISSION'S REVIEW OF THE FACTS SURROUNDING THE EVENTS	3
Background	4
Location of the incident.....	5
Initial incident between the brothers	6
Investigation of motor vehicle incident.....	9
Continued negotiations with Mr. Matters prior to the deployment of the ERT	15
ERT deployment.....	21
ANALYSIS OF THE RCMP'S INVOLVEMENT WITH MR. MATTERS ON SEPTEMBER 9 AND 10, 2012.....	24
Adequacy of the initial investigation.....	24
a) Responding to and securing the scene.....	25
b) Obtaining statements	26
c) Physical evidence	27
d) Evaluating and reporting on the evidence.....	28
e) Allegations of bias.....	31
f) Supervision of investigation	32
Grounds to arrest Mr. Matters.....	33
Conduct of RCMP members prior to the activation of the ERT.....	36
a) Initial attempt to arrest	36
b) Negotiations by Staff Sergeant Anderson	37
c) Follow-up with Trevor Matters.....	39
d) Containment	40
Activation and deployment of the NDERT	41
NDERT briefing and risk assessment.....	46
Availability of NDERT personnel.....	48
RCMP members' entry onto private property.....	49
Work done by the NDERT Crisis Negotiator Team.....	53
Third-party intermediaries.....	55
a) Lorraine Matters.....	57
b) Valerie Pinko.....	57

c) Dr. Passey	58
Events leading up to the confrontation between the NDERT and Mr. Matters.....	61
Equipment available to the NDERT	65
Confrontation between the NDERT and Mr. Matters	70
RCMP members' use of force.....	75
a) CEW	78
b) Bean bag shotgun (sock rounds)	81
c) Lethal force	83
d) Police service dog.....	85
e) Handcuffing.....	88
Communications	88
Operational plan	91
Medical treatment following the shooting	94
RCMP involvement following the shooting.....	94
Next-of-kin notification	95
CONCLUSION	96
APPENDIX A – Chair-initiated Complaint and Public Interest Investigation, dated May 1, 2013	97
APPENDIX B – Complaint of the British Columbia Civil Liberties Association in relation to the shooting death of Gregory Matters, dated February 6, 2013.....	99
APPENDIX C – Summary of Findings and Recommendations	101
APPENDIX D – Primary RCMP Members Involved in the Events of September 9 and 10, 2012, up to and including the Shooting Death of Gregory Matters	107
APPENDIX E – RCMP Incident Management / Intervention Model	108
APPENDIX F – Categories of Resistance of Individuals	109

INTRODUCTION

[1] On September 9, 2012, Mr. Gregory Matters and his brother engaged in a dispute near the residence of an off-duty RCMP member. That member called 911, as did Mr. Matters. Two on-duty RCMP members attended. Over the course of that day, members of the Prince George RCMP Detachment had repeated contact with Mr. Matters, and a decision was reached to arrest Mr. Matters for dangerous driving, assault with a weapon, assault, and breach of a peace bond. While arrangements were made on multiple occasions for Mr. Matters to submit to an arrest, he decided he would not do so.

[2] The RCMP's North District Emergency Response Team (NDERT) was deployed in order to effect the arrest, and attended his rural property to do so. Mr. Matters continued to negotiate his surrender with RCMP members by telephone while the NDERT stood by, and neared his location on the property. Following an apparent surrender attempt that was not completed, Mr. Matters was approached more closely by the four-member NDERT. Mr. Matters was in possession of a hatchet, which he did not release upon being directed to do so. Ultimately, Mr. Matters was shot twice by a member of the Emergency Response Team and died at the scene.

[3] The fatal shooting of Mr. Matters by RCMP members was a human tragedy. It serves to illustrate the unique challenge sometimes faced by the RCMP to balance their duty to act with compassion toward the mentally ill and their duty to protect the public from harm. While efforts must be made to accommodate the needs of individuals suffering from mental illness who have committed serious crimes, they may pose a continuing threat to themselves and others, and that threat cannot be ignored.

[4] Mr. Matters' mental health issues led him to behave in a way that was unpredictable and, at critical times, irrational. He admitted to police that he had pursued his brother and forced his vehicle off of the road, and the RCMP were seeking to arrest him in relation to that serious incident. As a result of a deep-seated, irrational fear of being mistreated by the police, and despite tremendous efforts by Staff Sergeant Brad Anderson to gain his trust and negotiate a peaceful surrender, Mr. Matters would not cooperate. In one of Mr. Matters' last communications with Staff Sergeant Anderson, he stated that he was ready to die, that he was going to give the police a reason to kill him, and that he was going to grab a knife so the police would have to shoot him. Not long after, he produced a hatchet while approaching a member of the NDERT and was fatally shot by another member of the team.

[5] The credibility of, and public confidence in, the police is called into question whenever there is a fatal incident involving the police, and is particularly so when those incidents involve vulnerable members of society, such as persons suffering from mental illness. This report serves to provide a thorough review of the RCMP's handling of this incident and of the policies and protocols that governed their conduct.

CHAIR-INITIATED COMPLAINT AND PUBLIC INTEREST INVESTIGATION

[6] On May 1, 2013, the Interim Chairperson of the Commission for Public Complaints Against the RCMP (now the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police,¹ hereinafter “the Commission”) initiated a complaint and public interest investigation into the conduct of those RCMP members involved in the interaction with Mr. Matters from the time of the family dispute which occurred on September 9, 2012, to Mr. Matters’ death following a police-involved shooting on September 10, 2012 (**Appendix A**). The investigation was initiated to examine:

1. whether the RCMP members or other persons appointed or employed under the authority of the *Royal Canadian Mounted Police Act* (RCMP Act) involved in the events of September 9 and 10, 2012, from the moment of initial contact through to the subsequent shooting death of Mr. Matters, complied with all appropriate training, policies, procedures, guidelines and statutory requirements;
2. whether the RCMP national-, divisional- and detachment-level policies, procedures and guidelines relating to such incidents are adequate; and
3. whether the actions taken by the RCMP in response to the incident were taken in accordance with all applicable policies, procedures, guidelines and statutory requirements.

[7] On February 6, 2013, the British Columbia Civil Liberties Association (BCCLA) filed a complaint in relation to the shooting death of Mr. Matters (**Appendix B**). The BCCLA complained about the conduct of an unknown number of unidentified members of the Prince George RCMP NDERT, following an incident on September 10, 2012, which resulted in the death of Mr. Matters, and specifically that RCMP NDERT members:

1. were inappropriately deployed given that they were conducting an arrest related to a domestic disturbance on private property;
2. displayed poor communication, which placed Mr. Matters at risk and may have contributed to his death; and
3. placed emphasis on show of force and use of firearms, and limited emphasis on planning, forethought and preparation to protect the safety of the person they were attempting to arrest, which may have resulted in officers using excessive force and failing to de-escalate the situation, putting Mr. Matters at risk and contributing to his death.

[8] On May 1, 2013, the Commission notified the BCCLA that the public interest investigation would address the allegations set out in their complaint.

¹ As a result of the coming into force of the *Enhancing Royal Canadian Mounted Police Accountability Act*, the Commission for Public Complaints Against the RCMP was replaced with the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police (CRCC).

[9] The Independent Investigations Office (IIO) of British Columbia conducted an investigation into the actions of the RCMP members involved in the incident, and determined that no criminal offence was committed. Independent investigative bodies, such as the IIO, conduct investigations into officer-related incidents of death or serious harm in order to determine whether or not an officer may have committed a criminal offence. 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.

[10] Pursuant to subsection 45.76(1) of the RCMP Act, I am required to prepare a written report setting out my findings and recommendations with respect to the complaint. This report constitutes my investigation into the issues raised in the complaint, and the associated findings and recommendations. A summary of my findings and recommendations can be found in **Appendix C**.

COMMISSION'S REVIEW OF THE FACTS SURROUNDING THE EVENTS

[11] It is important to note that 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. As Vice-Chairperson of the Commission, my 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.

[12] My findings, as detailed below, are based on a careful examination of the extensive investigation materials, the RCMP's criminal investigation report, and the applicable law and RCMP policy. It is important to note that the findings and recommendations made by the Commission are not criminal in nature, nor are they intended to convey any aspect of criminal culpability. A public complaint involving the use of force is part of the quasi-judicial process, which weighs evidence on a balance of probabilities. Although some terms used in this report may concurrently be used in the criminal context, 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.

[13] A coroner's inquest into the death of Mr. Matters was held in Prince George, British Columbia, in October 2013 and concluded in January 2014. The purpose of such an inquest is to ascertain how, when, where and by what means the deceased died. Although the mandate of an inquest is quite limited, I considered the evidence heard to be an important part of the fact-finding process related to Mr. Matters' death. It is for this reason that the Commission has considered all of the testimony given during the inquest.

[14] The circumstances related to the death of Mr. Matters were also reviewed as part of an Independent Officer Review (IOR), which was conducted by RCMP Superintendent Timothy Head in Kelowna, British Columbia. He issued a report dated March 9, 2014. An IOR is an internal administrative review. The IOR Report states that the overall mandate was to conduct a fact-finding inquiry to ensure that:

- a thorough, professional and unbiased investigation was conducted by the Prince George Detachment members regarding the circumstance prior to the member-involved shooting incident;
- training, officer safety skills, approved procedures and tactics and policies were appropriate and followed;
- appropriate information was provided to agencies such as the IIO-BC and/or the Coroner's Service;
- appropriate information has been provided to the Commission for their public interest investigation; and
- the members' conduct was in accordance with the RCMP Act and the RCMP regulations.

[15] The findings and recommendations of the IOR will be referenced throughout this report, where applicable to the issues being examined.

[16] It should be noted that the RCMP's "E" Division provided complete cooperation to the Commission throughout the Chair-initiated complaint and public interest investigation process. In addition, the IIO provided the Commission with unfettered access to all materials contained in its investigative file. Unless otherwise noted, the members named in this report are referred to by their rank at the time this incident occurred.

[17] The following account of events flows from witness statements provided during the criminal and public interest investigations. I put these facts forward, as they are either undisputed or because, on the preponderance of evidence, I accept them as a reliable version of what transpired. A list of the primary RCMP members involved in the incident can be found at **Appendix D**.

Background

[18] Mr. Matters was born and raised on the family farm in Pineview, a 15-minute drive from Prince George, B.C. Mr. Matters left Pineview to serve in the Canadian Forces. He spent 15 years in the Army before returning home in July 2009. When he was discharged, Mr. Matters was suffering from post-traumatic stress disorder (PTSD). He had been receiving treatment in New Brunswick prior to his discharge, but when he came home to the family farm in British Columbia, help was more difficult to find. In 2011, thanks to the efforts of his sister, Mr. Matters became a patient of Dr. Greg Passey of Vancouver.

[19] While living in Pineview, Mr. Matters involved himself in activities which drew the attention of the RCMP. Mr. Matters was upset that a public complaint he had made against RCMP officers in New Brunswick was not resolved as he had hoped. He made threats against the then Interim Chairperson of the Commission for Public Complaints Against the RCMP and was arrested. Then he sent harassing emails to his former psychiatrist in New Brunswick. He also took exception to the way Crown counsel made reference to him during court submissions and he threatened that person as well.

[20] In addition, Mr. Matters made threats to kill members of the RCMP. Those threats earned him a reputation amongst police officers working in Prince George. He was warned about that reputation during an interview conducted by Corporal Ryan Arnold in June 2011. As it turned out, Corporal Arnold was the NDERT Team Leader in September 2012. Mr. Matters spent time in custody and he was the subject of an assessment while at the Prince George Regional Correctional Facility.

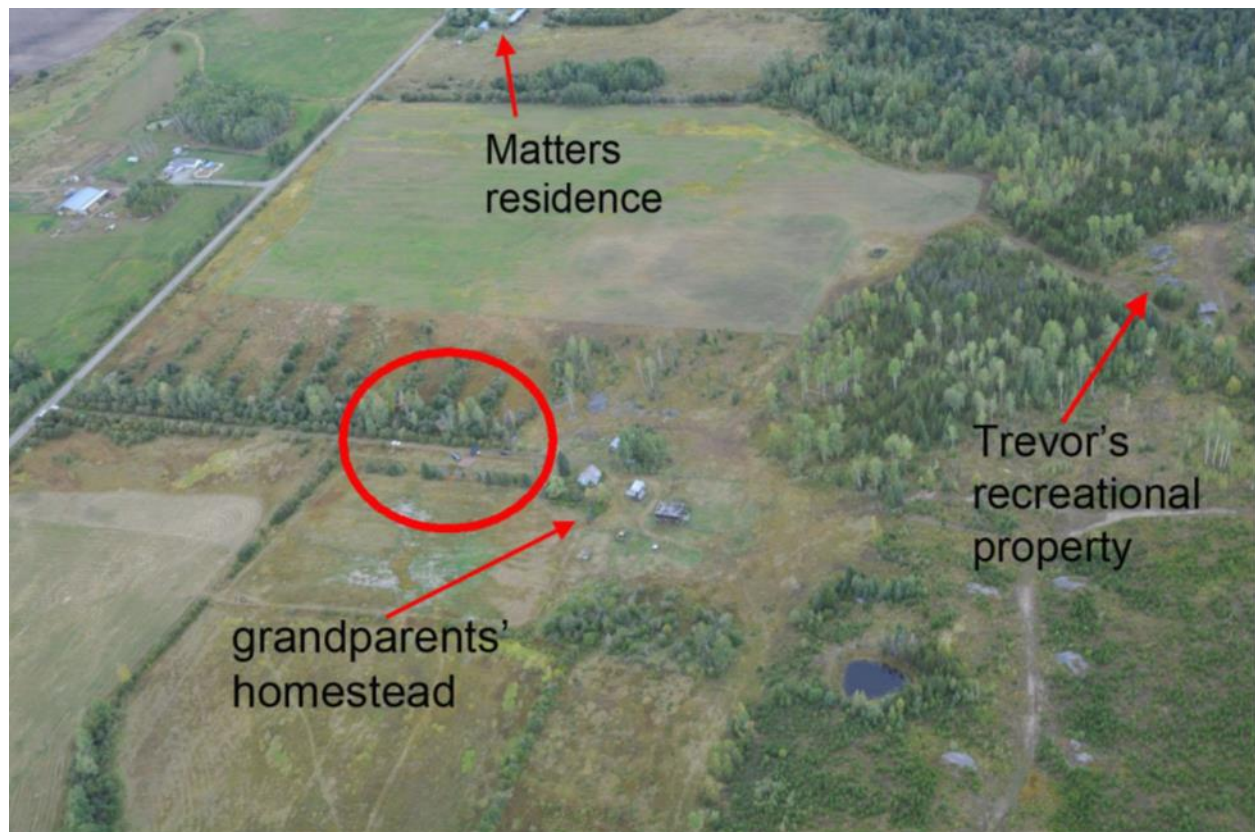
[21] Mr. Matters and his brother Trevor, who resides in Prince George, co-owned a section of the family farm. They could never agree on what should be done with the property and that disagreement was the source of problems between them. Prior to September 2012, there were two documented instances of violence between the brothers. Both had occurred after Trevor had come to the residence where Mr. Matters lived with his mother. In May 2011, an altercation took place at the Matters residence and Mr. Matters was subsequently charged with assaulting Trevor. When that charge went to trial, the Judge acquitted Mr. Matters and made both Mr. Matters and Trevor the subjects of common law peace bonds with the conditions that they have no contact or communication with each other except during arbitration over the property dispute.

[22] Trevor was not content with being bound by such an order, so he retained counsel and made an application to the British Columbia Supreme Court to have the peace bond order expunged. That application was granted on August 20, 2012. Mr. Matters was apparently not notified of the hearing or the outcome in the days leading up to the incident in question. He continued to believe that Trevor was bound by the terms of the peace bond.

Location of the incident

[23] This incident, from start to finish, was centred in and around two properties long-owned by the Matters family. In 1953, Mr. Matters' grandparents built a home on a section of land in the community of Pineview near Prince George. That section was later subdivided and Mr. Matters' father and mother, Lorraine Matters, built a house of their own next door. In September 2012, the grandparents' homestead was unoccupied. The property consists of a quarter section of land measuring 156.37 acres, according to BC property records. The property fronts onto Pinko Road and is bordered to the east by Alpine Drive. Several derelict buildings stand on the property. Access to buildings is made by a driveway running east from Pinko Road. The buildings are also accessible via a cross-country trail. Prior to Mr. Matters' death, the grandparents' homestead was jointly owned by Mr. Matters and Trevor Matters.

[24] The home of Lorraine Matters is situated to the north of the grandparents' homestead. On September 9, 2012, Mr. Matters was living with his mother. Trevor owns a recreational property located on the east side of the family section. This portion of the property fronts onto Alpine Drive and is also accessible by a cross-country trail from the grandparents' house. The properties are depicted in the aerial photograph below. The location of the confrontation between Mr. Matters and the NDERT is depicted by the red circle.



Initial incident between the brothers

[25] On Saturday, September 8, 2012, Trevor was at a recreational property that he owned which is located on the back half of a section of the family farm. That evening he drove to a neighbour's home very close to the residence that Mr. Matters shared with his mother. During the evening, Trevor had several drinks. At 3 o'clock in the morning, Trevor left his friend's home and drove to his mother's property with the declared intention of wanting to speak to his mother.

[26] According to Lorraine Matters, she was asleep in her bed when her son, Trevor, drove onto the property. She was awakened when Mr. Matters got up from his bed to see what was going on outside. They found a small, noisy vehicle in the yard. Mr. Matters described the vehicle as doing "donuts." Lorraine Matters later said that she saw it drive in a circle and drive out onto Pinko Road.

[27] Mr. Matters told his mother he was going to find out who that was in the vehicle and he got into his mother's pickup truck and drove off along Pinko Road in pursuit. Some distance away from the residence he caught up to the vehicle, a Suzuki Samurai which was not licenced for use on the roadway. Mr. Matters passed the Samurai and tried to bring it to a stop. Trevor pulled out around the pickup truck and a collision occurred. Trevor continued on and turned left onto Alpine Drive with Mr. Matters in pursuit.

[28] Approximately two hundred metres along Alpine Drive, Mr. Matters used his pickup truck to contact the rear of the Samurai and push it off the travelled portion of the road and into the ditch on the right side of the roadway. Trevor said that he was not injured when the Samurai went into the ditch, but he was scared. Mr. Matters then got out of his vehicle and went to the driver's side of the Samurai. What happened next is not clear. Trevor said that when Mr. Matters arrived at the window to his vehicle, Mr. Matters started punching him in the head. What is certain is that Trevor was struck in the face and sustained minor injuries. Mr. Matters said in a written statement that he was trying to get the car keys to prevent Trevor from driving away. Trevor recalled:

When he started hitting me, he hit me about three or four times and then eventually, and I'm yelling at him, "I'm your brother. I'm your brother." And I put my arm up, like against the window so he couldn't hit my head no more. And he started hitting my arm. And I think that's when... I'm assuming that's when, because I couldn't see, because I'm facing north and Steve come up, and I'm assuming that's when Steve come up [sic throughout]

[29] Steven Pelletier, an off-duty member of the RCMP, was awakened by the noise on the roadway and he got dressed and went outside to see what had happened. Constable Pelletier found Mr. Matters' Dodge pickup truck on the roadway. Initially, as he approached, he did not see the Samurai in the ditch. As Constable Pelletier recalled:

So after seeing Greg's truck on the road, it was... like I said, it was kind of slightly... slightly pointed towards the east side ditch. And as I was getting closer, Greg's yelling... call the cops, I have a restraining order against this guy. And up till that point I didn't see any other vehicles or anyone else. And from Greg yelling that and pointing in that direction, behind a big tree – not tree, but kind of brush or whatever from inside the ditch, right tight, right next to my driveway was that little... that little vehicle. And I associated it being the same vehicle because it had the big off light roads... off road lights on the top of it, and at that time I saw Trevor starting to get out of the vehicle. [sic throughout]

[30] When he took steps to keep the brothers apart, Mr. Matters became aggressive and knocked the flashlight out of Constable Pelletier's hand. Then Mr. Matters left, saying he was going to call the police. Constable Pelletier noted the following in his report on the incident:

T. MATTERS uttered that Greg had punched him in the face.

Cst PELLETIER observed T. MATTERS vehicle was upright in the ditch and also had two large off-road lights on the roof.

Cst PELLETIER observed the front of G. MATTERS truck appeared to have the front passenger side signal light broken. Cst PELLETIER observed a small piece of orange colour lens hanging.

Cst PELLETIER attempted to calm G. MATTERS down and ask him what was going on and to back away from T. MATTERS. G. MATTERS was quite irate and continued directing Cst PELLETIER to call the cops as he has a restraining order against T. MATTERS.

Cst PELLETIER questioned G. MATTERS on what had happened. G. MATTERS stated that this guy was doing donuts in his driveway and that he had run him down. G. MATTERS again directed Cst PELLETIER to call the cops. [sic throughout]

[31] Constable Pelletier brought Trevor to his residence and told him to wait by the porch while he went inside to use the telephone. Constable Pelletier then called the police. In the meantime, Trevor left and walked back towards his recreational property. Mr. Matters returned home and also called the police to complain that Trevor had violated the peace bond. He was on the telephone line having a conversation with a 911 operator at the same time Constable Pelletier was on the telephone line with a police dispatcher. Mr. Matters reported the following:

MALE CALLER [MR. MATTERS]: Brother came in here drunk, in his vehicle, doing donuts in the yard and I gave chase. I caught him down the road and now he's being harboured by one of his neighbours.

...

911 MALE DISPATCHER: So he showed up drunk at your place and spun some donuts in your yard?

MR. MATTERS: Yeah.

911 MALE DISPATCHER: Why'd he do that?

MR. MATTERS: He's done this before, but I got a restraining order on him this time.

911 MALE DISPATCHER: Why would he do that?

MR. MATTERS: Because he's an idiot. He's -- we got a restraining order up on him and he doesn't like that idea. So now he's just doing what he can. He thought he could get away with it. Sped off doing (inaudible).

911 MALE DISPATCHER: And so now where is he?

MR. MATTERS: He's in the ditch just on Alpine.

911 MALE DISPATCHER: So he crashed then?

MR. MATTERS: Yeah.

...

MR. MATTERS: I tried shutting off his vehicle, he wouldn't shut it off. I tried walking a third yelling over to the neighbours for police. The neighbour finally came over with the flashlight and I said, calling the Police, calling the Police. And he's trying to get involved, and then I just got fed up. He's not calling the police, and then I said fine, I'm coming -- I came back home and called you guys myself.

...
MALE DISPATCHER: Okay, we'll be on our way there.

Anything changes call me back, all right?

MR. MATTERS: Will do. If -- yeah. I'll, I'll try -- did you want me to be at the scene or do you want me just direct you from my driveway?

911 MALE DISPATCHER: If it's going to cause any trouble that you're there, then maybe not.

MR. MATTERS: No, but -- I want this -- I've already had an issue with him since I've got this restraining order and I let it go, as a warning, but not any more. I'm just -- this is just unacceptable, you know. [sic throughout]

[32] The Communications Centre dispatcher also told Constable Pelletier that units would be sent as soon as someone became available. Constable Pelletier asked that the responding units stop by his residence so he could advise them of what had transpired.

[33] No units had been dispatched by 3:21 a.m. when Mr. Matters called 911 a second time. He asked if the police were en route and was told that it would be a little while yet. Mr. Matters expressed concern that his brother had been drinking and driving and that there was a wreck in the ditch. He stated that the neighbour, who was possibly a police officer, looked like he was protecting Trevor. Mr. Matters asked whether he needed to go "secure the scene or something" so that Trevor did not get away with it, and that he had a peace bond. The dispatcher told him that the police would attend as soon as someone was available and that there was an off-duty police officer that heard the incident and would be available to the on-duty members. Mr. Matters reiterated that his brother had been "doing this kind of stuff for years" and that there needed to be a prosecution this time, and that he had already given his brother a warning.

Investigation of motor vehicle incident

[34] While on the line with the 911 operator the second time, Mr. Matters received a call from Constable Nathan Poyzer, who was dispatched to the incident. Constable Poyzer noted the conversation in his report as follows:

Cst POYZER contacted Gregory by phone while driving to the area of the ditched vehicle. Gregory advised that he witnessed the vehicle in his yard doing donuts and when the vehicle left he got into his truck and started to pursue. Gregory stated that he made contact with Trevor's vehicle using his truck and eventually Trevor crashed into a ditch on Alpine Dr. When asked why he pursued the vehicle, Gregory said that it was the only way to get justice as it would take police too long to come out.

[35] Constable Poyzer and Constable Jason Dickinson arrived on scene at approximately 3:38 a.m. Constable Pelletier noted in his report that he met the responding members in his driveway at 3:45 a.m. Constable Pelletier wrote:

At approximately 3:45am, Cst PELLETIER observed Cst POYZER and Cst DICKINSON walking along Cst PELLETIER's driveway. Cst PELLETIER explained to the on duty members what had occurred and directed the members where Cst PELLETIER believed to be the driveway of T. MATTERS.

Cst DICKINSON believed he knew T. MATTERS and provided a description of him. The description Cst DICKINSON provided was accurate as to the male Cst PELLETIER had dealt with.

[36] At 3:46 a.m., shortly after constables Poyzer and Dickinson had arrived on scene on Alpine Drive, 911 operators received a third call from Mr. Matters. He expressed concern about his brother not being in custody, suggesting that he may have access to firearms and if he was upset over this he could grab a weapon and make his way to the Matters residence. The dispatcher told him that she was not sure if Trevor was in custody at that point but that as soon as the members had a chance they would give him a call. I note that Mr. Matters did not express any concerns for his safety during his previous calls to the RCMP. He also did not express any concern for his safety when he spoke with the investigating officer, Constable Poyzer. Trevor was located by the members shortly thereafter.

[37] Then at approximately 3:59 a.m., constables Poyzer and Dickinson drove their marked patrol vehicles down Alpine Drive and turned into the laneway leading to the recreational property owned by Trevor Matters. Trevor had not gone home, but was hiding on the opposite side of Alpine Drive near a laneway leading to another neighbour's home. Constable Poyzer located Trevor's wife, who provided Trevor's cell phone number. Trevor answered when called by the members and agreed to meet them. Trevor later explained the rationale for his actions to the Commission's investigator as follows:

COMMISSION INVESTIGATOR: While he [Constable Pelletier] was in using the phone, why did you leave?

TREVOR MATTERS: Umm, he said he was going to call 911. Umm, I was standing there. Greg... Greg had left. I... my wife was at... at our home. And I was worried that Greg was going to come back and if he went there, my wife was alone and I didn't know what he was gonna do. This rage thing again was in my mind. So as soon as Steve went in the house, he said he's calling 911, I went down towards my house.

...

TREVOR MATTERS: I went up to my driveway and I went around the corner 'cause the road goes to the right. And I stood out there. And just to see if Greg was going to come in the driveway, what was going to happen. And so I stood there, till the police come up.

...

COMMISSION INVESTIGATOR: Okay. Umm, so why did you go there as opposed to going home if you were worried about your wife's safety?

TREVOR MATTERS: I wasn't sure with... if Greg was going to come back. I wanted to be close to Jim's because... because, you know, he's a sheriff, he kind of knew Greg from... we talked earlier, months before that. So I was caught between watching my driveway and getting Jim involved.

...
TREVOR MATTERS: . . . I didn't want Greg in trouble. I didn't... I thought he'd go home and figure something out in the morning. Just figure this out. But I mean, not directly but I thought he'd just go home and be done with it. And then Steve had called 911, so if they were going to deal with him in whatever way, I was just in... I was just sitting on the road, in shock, and didn't know what to do or...
[sic throughout]

[38] Because Constable Dickinson was familiar with Trevor, Constable Poyzer, who was the primary investigator, was content to have Constable Dickinson conduct an audio-taped interview with Trevor. When he still had not heard back from Constable Poyzer since their initial conversation, Mr. Matters made a fourth call to 911, looking for an update and expressing concern that no one was getting back to him. The dispatcher told him that the members were very busy in Prince George City, and that he should call the non-emergency line and leave a message for someone to get back to him for file updates. Constable Poyzer was made aware of the call by dispatch.

[39] At about the same time, Constable Dickinson was recording an audio statement in his vehicle with Trevor Matters, who gave his account of events, as outlined earlier in this report. He assumed that the other vehicle was being driven by his brother because it left from the Matters residence, but he did not know for sure until Mr. Matters got out and approached his vehicle. Trevor indicated that he had never met Constable Pelletier before. During his statement to Constable Dickinson, he explained that Mr. Matters hit the rear wheels of his vehicle, which kicked it to the side. The second time, he hit him in the side and pushed him into the ditch. Trevor explained that there had been a peace bond preventing him from going to the residence but that it had been expunged. That is why he felt comfortable going there to see his mother. When asked, he indicated that he was not sure whether or not Mr. Matters was aware that the peace bond had been expunged, as he was not at the hearing.

[40] Constable Dickinson also took a photograph of the facial injuries sustained by Trevor during the incident.

[41] At 5:14 a.m., Mr. Matters placed a fifth call to the 911 call centre, asking whether the police had located his brother. He was reminded by the dispatcher not to call the 911 number for updates. Mr. Matters apologized for the inconvenience but stated that the 911 number is easier to remember. He stated that if the police were looking for Trevor, he knew where he was.

[42] A few minutes later, the police dispatcher had a telephone conversation with Constable Poyzer and passed along the message from Mr. Matters. Following that conversation, at approximately 5:23 a.m., Constable Poyzer contacted Mr. Matters by telephone. In his report, Constable Poyzer recorded the following description of that phone call:

Cst POYZER advised Gregory that the investigation was ongoing and that Trevor had not been arrested. Gregory became furious at this information and made several threats to both police and Trevor saying he would shoot Trevor if he ever sees him again and that if the police don't deal with him then he will. Gregory continued on his rant and said that if anyone came into his yard and was threatening him, he would shoot them dead. Gregory also made reference to the police attending his residence and stated that if anyone points a gun at him, including police, he would shoot them dead.

Cst POYZER spoke with Gregory for a while longer and advised him that the investigation would take time and that evidence would be gathered which included attending his residence to see the "donuts" in the yard. Gregory began to calm down and stated it would be no problem for police to attend his residence and he would make himself available. At the end of the conversation, Gregory seemed to be less agitated and more pleasant to speak with. While speaking with Gregory, Cst POYZER noted his demeanor would change rapidly and would go from calm to an escalation where he would be yelling on the phone. Gregory's behaviour change would come without warning and appeared to be set off randomly. [sic throughout]

[43] At 5:32 a.m., just about the time Constable Poyzer indicated that he had called Mr. Matters by telephone, the police dispatcher contacted Constable Poyzer by radio to check on his status. The dispatch recording captured part of the conversation occurring in the background, which was as follows:

FEMALE DISPATCHER: Alpha 6 and Alpha 22, Prince, check.
(VOICE IN BACKGROUND) Why are your guys protecting Trevor?

[44] When Constable Poyzer spoke with Mr. Matters, the latter became upset when he learned that Trevor was not in custody for violating the peace bond. He made several threats, which Constable Poyzer recorded in his notebook and in his report. Mr. Matters apparently said that he would shoot anyone who came on his property and was threatening him. That included the police. Mr. Matters also told Constable Poyzer that if the police did not deal with Trevor, then he would.

[45] Before completing his shift, Constable Poyzer submitted a report on the incident, which included a "Pass-On" comment asking members to attend 10680 Pinko Road and arrest and hold Mr. Matters for dangerous driving, assault with a weapon, assault, and breach of a peace bond; to make note of "donuts" in the yard of the accused; and to photograph Mr. Matters' vehicle, as it was used to force the victim's vehicle off the road and may have evidence of same. The comment did not include a request to have Forensic Identification Services attend to photograph the scene or take photos and

collect samples from the Samurai. Constable Poyzer exercised his discretion not to pursue charges against Trevor for any driving offences during the incident.

[46] The day shift Watch Commander telephoned Staff Sergeant Brad Anderson, who was serving as the detachment's Operations Officer. Staff Sergeant Anderson was familiar with the Matters family from a past situation where police had seized firearms from the house while Mr. Matters was in custody. Staff Sergeant Anderson formulated a plan and instructed members to contact Mr. Matters to have him come in to the detachment. Failing that, members would go to the residence and attempt an arrest if it was safe to do so.

[47] In the morning, Trevor returned to the scene and pulled the Samurai from the ditch. He took it back to his recreational property. At that point, no photographs had been taken of the vehicle or the scene. In the afternoon, Mr. Matters and Lorraine Matters got into the pickup truck and tried to drive to the detachment to turn in Mr. Matters' statement. Unfortunately, they had to turn around and go home because the damage to the left front of the truck reportedly made it unsafe to drive. The only other vehicle at their disposal was a recently purchased van that was still unlicensed.

[48] Constable Kyle Sharpe was assigned to follow up and make the arrest, as requested by Constable Poyzer. Constable Sharpe telephoned Mr. Matters at 11:14 a.m. on September 9 and made several other calls to that number throughout the day. His report indicated the following:

- He made several calls to the Matters residence throughout the day and spoke with Mr. Matters' mother, Lorraine Matters.
- In the afternoon he was able to make contact with Mr. Matters, who initially agreed to attend the detachment to provide a statement and a copy of his active peace bond.
- Mr. Matters later advised that he would not be able to attend the detachment due to vehicle problems, but that the police could attend his residence to pick up the peace bond and a handwritten statement that he had completed.
- A plan was made to have Constable Sharpe attend the Matters residence with another member, with a police dog service member as available backup.
- When Constable Sharpe was in the area, he called Mr. Matters and asked him to meet members at the end of his driveway and wave them down. Constable Sharpe and Constable Jared Sweeney were waved down by Mr. Matters and when they exited their vehicle, Mr. Matters walked back up into his driveway.
- Mr. Matters provided a handwritten statement and a copy of a peace bond.
- At all times while the members were on the property, Mr. Matters kept his distance and would not allow either member to get between him and the residence. He eventually retreated to the door of the residence.

- When Constable Sharpe asked Mr. Matters to show him the “donuts” in the driveway, he would not leave his doorway. He pointed to his truck, which Constable Sharpe observed and made note of. (His report indicates that he observed damage along the driver’s side, beginning at the front headlight and running along the door. The front bumper was dented in the middle and the licence plate was no longer on it.)
- Constable Sharpe observed that Mr. Matters was acting strangely and that he was nervous and believed that the police were there to arrest him.

[49] Constable Sharpe noted that due to Mr. Matters’ history and the availability of possible weapons (tire irons, hammers, axes, etc.) within his direct reach, it was not safe for members to attempt to make an arrest at that time. They decided to leave the area. At no time did Constable Sharpe tell Mr. Matters that they were there to arrest him.

[50] The written statement obtained from Mr. Matters, dated September 9, 2012, reads as follows:

Statement Greg Matters September 9, 2012

Earlier this day at approximately 3.40 a.m. I was awoke by a vehicle in High RPM’s entering the yard. The vehicle proceeded to do tight circles (donuts) in the yard and then took off southward, on Pinko Road. Note, I made a quick decision to take pursuit, as it felt a crime was just committed and no police were near-by to contact. I caught up to the vehicle near Alpine Drive, noted that it had no licence plate – I saw an opening to pass, so I did – when I slowed down to make the vehicle stop it aggressively moved to my right where there as only mostly ditch and passed only after striking my vehicle (scrapping side, braking plastic fender pinned and bending bumper. At the top of the hill he looked to wishing to enter a residence. (Now looking back, he may have viewed the driveway as Grave Road, not to much further on the right). Not wishing to see this pursuit continue towards a nearby house/home, I made contact (more pushing than hitting) and the vehicle went into the willows, next to the driveway. I got out with my flashlight and noted that the driver was Trevor Matters. Earlier after several incidents involving Trevor I ask a Judge for Restraining Order/Common Law Bond and it was granted. Trevor broke the Bond the first week (message on the home phone recorder) and a police officer issued Trevor a warning. This is obviously more serious and request that appropriate legal action be taken. While in the willows Trevor was making attempts to escape I fought to get the keys and did manage after taking a few punches to the head.

Trevor got out of the vehicle, and at this time a male from a near-by home came with a flashlight – I asked him if he called the police and he stated no. When I asked him to he would not react. Trevor then spoke (smell of alcohol very apparent) stating that the guy wears a uniform – this gave me the feeling of familiarity between the two so I left to go to a phone. I telephoned 911 numerous times (apologies if I telephoned too many). I needed to know if/when Trevor was in custody. I have not felt comfortable in my own home (mother shes stressed) for years. Please stop Trevor from this incessant behaviour. I do not wish to take

defensive measure in the future – stop him from violating people in/at their own homes.

Greg Matters

250 963 7337

10680 Pinko Road Prince George BC

V2N 5V8

PS – I still have the recording of the incident which took place earlier this year.

[sic throughout]

Continued negotiations with Mr. Matters prior to the deployment of the ERT

[51] As Acting Operations Officer, Staff Sergeant Anderson was responsible to provide oversight for the work of general duty members in the detachment. During this investigation he became directly involved in establishing the strategy for the arrest of Mr. Matters and became involved in direct negotiations with him. Staff Sergeant Anderson was briefed in the morning of September 9, 2012, and provided guidance to the Watch Commander. Staff Sergeant Anderson recalled that he had had previous dealings with the Matters family over the seizure of guns at the Pinko Road residence. Staff Sergeant Anderson stayed in touch with members throughout that day (which was his day off) and received approximately three further updates by telephone. At approximately 5:30 p.m., he went to the detachment and stood by in the radio room, monitoring the situation while constables Sharpe and Sweeney went to attempt to effect the arrest of Mr. Matters.

[52] Following the failed attempt to arrest, Corporal Colin Warwick remained at the property so that he could observe if Mr. Matters left the residence, and to be in a position to facilitate a safe surrender if negotiations proved successful. Staff Sergeant Anderson spoke with Superintendent Eric Stubbs at approximately 8 p.m. before making his first call to the Matters residence.

[53] Staff Sergeant Anderson made his first telephone call to the Matters' residence at approximately 8:50 p.m. At the time, members were in place around the Pinko Road area, including Corporal Warwick. Sergeant Blaine Gervais was in the radio room with Staff Sergeant Anderson. Based on his past dealings with Mr. Matters and Lorraine Matters, Staff Sergeant Anderson was cautious. As he said to IIO investigators during his interview:

At this point, there was no way that -- you know, it is a dark, rural area. Knowing what I know about them, I am not sending my members up to the door to deal with him, or his mom.

[54] Staff Sergeant Anderson recalled that he first spoke with Mr. Matters on the telephone at approximately 9:05 p.m., after speaking with Lorraine Matters. He related his conversation in this way:

I then asked to speak with Greg at about 2105 hours. A male gets on the phone who identifies himself as Greg. And we begin talking. I explain to him that we need to talk about the allegation involving his brother from earlier that day, and that the allegation from Trevor is that he, being Greg, rammed him off the road, and put him in the ditch, and that he punched him in the face several times.

Immediately Greg becomes extremely -- very agitated, stating that there is a peace bond in place, that Trevor is not supposed to be on the property, that Trevor scared his mother by coming onto the property at that time of the night or morning and spinning donuts. Greg said initially when that happened, he had no idea who that was that was on the property, and that is why he took off and tried to track down to identify who that person was. [sic throughout]

[55] From the outset he told Mr. Matters that the police wanted to get his version of events and they were not there to harm him. Staff Sergeant Anderson stated at the inquest that he was always honest with Mr. Matters and his mother about their intention to arrest him. He conveyed to them several times that he was in on his day off because he wanted to make sure that the arrest was done peacefully and right. He explained the allegations to Mr. Matters, who was clearly angry and agitated. They spoke about the peace bond. They spoke about farming and other things. Mr. Matters' mood was up and down. Mr. Matters spoke suddenly of going to get his gun. Staff Sergeant Anderson recalled:

Then, he started asking me if Trevor was arrested for coming into the yard and breaching the peace bond against him. I told Greg I wasn't aware of the existence of any peace bond, but that said, I said that is something we certainly can follow up on and look in to. And if he has contravened or done anything to break the law that we will certainly follow up with that, that's not a problem, that's all part of getting his side of the story.

I kept telling Greg to keep calm, and we'd listen to anything he had to say, and that I would have investigators follow up on anything he did say. And he remained agitated, and then he just made the comment, "I am going to get a gun right now." With that, I am advising -- as I am talking, Sergeant Gervais is in the room with me, so I am conveying to him what is going on so he can feed that information to members that are out on the scene there that this is what is happening. [sic throughout]

[56] As that first conversation between Staff Sergeant Anderson and Mr. Matters continued, Staff Sergeant Anderson realized that the fact that Trevor had not been arrested for breaching the peace bond was the “core of his big issue” Staff Sergeant Anderson explained that realization as follows:

I kept talking with Greg, same voice, in the same manner. I want to hear from him, what is happening. I asked, “What guns do you have in the house?” And he made that comment and then he immediately started, in my mind, coming down. He started to mellow out. He stated there was no guns in the house, he was just angry and frustrated, primarily with Trevor, as Trevor was a liar in his words about what happened. [sic throughout]

[57] Staff Sergeant Anderson then went on to explain to Mr. Matters that the police had reasonable and probable grounds to arrest him based on the evidence. That said, he told Mr. Matters that he wanted to hear Mr. Matters’ side of the story. Staff Sergeant Anderson stated:

Then I am explaining to -- he is asking why the police are focusing on him, on Greg, and I explained to him about reasonable and probable grounds. We discuss that, and piece by piece, I said, “You know, here is what we have, Greg. We have a situation where, you know, I don’t think there is much dispute here. You are saying that you did follow somebody out of the yard, contact was made between vehicles, but at this point, we have Trevor your brother’s vehicle in the ditch, we have physical injuries on Trevor’s face, and we have a statement from Trevor. This is what is called reasonable probable grounds. It gives us grounds to seek and to arrest.” I said, This does not mean by any stretch that this is something where you are going to be even charged. That is up to Crown counsel. We are information gatherers, we pass that along to Crown, they make that final decision, along with your side of the story. You know, you’re telling me that isn’t what happened, Trevor’s a liar. I’m absolutely wanting to hear from you what actually took place there. [sic throughout]

[58] During that conversation, Staff Sergeant Anderson was relaying details from his phone conversation with Mr. Matters to officers surrounding the Matters residence who were prepared to receive Mr. Matters if he came out to give himself up. Staff Sergeant Anderson recounted that at approximately 9:24 p.m., Mr. Matters agreed to come out and meet with members. He indicated that he was putting on his socks and shoes, and Staff Sergeant Anderson reported this information to Sergeant Gervais to pass on to the members. But Mr. Matters did not immediately come out to meet the officers who were waiting for him and so the conversation continued. Staff Sergeant Anderson recalled when interviewed:

He told me that he was in the basement and he was going to the bathroom. Again, he’s staying calm. He puts the phone down to go to the bathroom and then he comes back on and probably I’ve got, for about the next 20 minutes he continually spoke about his brother. He goes back to breaking that court order, that he wasn’t allowed to be Greg’s property.

I just kept talking to him. Kept talking, talking, talking. Again I assured him we'd look into his allegation. Over the next few minutes he would get a little bit agitated and then he'd say, "I really appreciate you listening to me." And his level of agitation, he'd go up and start talking about his brother and saying "Why you guys doing this to me?" [*sic* throughout]

[59] At one point, Mr. Matters apparently put the phone down and Staff Sergeant Anderson heard what he thought was the door opening and closing. Mr. Matters did go outside, but not to meet the officers. Instead he took a walk. After a few minutes, Lorraine Matters picked up the telephone and she had a conversation with Staff Sergeant Anderson. Staff Sergeant Anderson recounted that he asked Lorraine Matters whether there were any guns at the property and she said that the police had seized them years ago, which Staff Sergeant Anderson understood was during a previous investigation that he was involved in. Those guns were now in the possession of a neighbour. Lorraine Matters told him that she believed Mr. Matters to be walking around in the backyard to clear his head. At one point during the conversation, Mr. Matters came back inside the house. According to Lorraine Matters, and as reported by Staff Sergeant Anderson, Mr. Matters went into his bedroom and closed the door. He did not resume his discussions with Staff Sergeant Anderson at that point. As Staff Sergeant Anderson recalled in his interview with IIO investigators:

. . . I really felt it was necessary to having a cooling down period. It was quite apparent to me at that time that -- you know, two things. That one is that I wasn't going to be able to talk her or him out of that house at that particular time, and secondly, I was not sending my members up to the door there to try to amp things up at all. [*sic* throughout]

[60] Staff Sergeant Anderson spoke to Lorraine Matters, and she said that she would speak to Mr. Matters and asked Staff Sergeant Anderson to call back in 10 minutes, which he did at 10:03 p.m. At that point, Lorraine Matters advised that Mr. Matters was still in his bedroom. Lorraine Matters told Staff Sergeant Anderson that Mr. Matters ". . . [would] not talk or deal with the situation until Trevor [was] arrested." As Staff Sergeant Anderson recalled, Lorraine Matters became increasingly argumentative with him on the phone about his plan to arrest Mr. Matters. He believed that they needed a cooling-off period, so the call was terminated.

[61] At 10:42 p.m., Staff Sergeant Anderson called back. Lorraine Matters indicated that Mr. Matters was calm and watching television and asked if she could bring him into the detachment the following day. Staff Sergeant Anderson decided that since it was dark out and he was not gaining any ground with them, and given his knowledge of Mr. Matters, it was best to have that cooling-off period and agree to that.

[62] Lorraine Matters agreed to bring Mr. Matters to the detachment between 10 a.m. and 12 noon the following day. Staff Sergeant Anderson told Lorraine Matters that there were members posted in the area who would follow her to the detachment when she left the property with Mr. Matters in her vehicle, and that Mr. Matters could turn himself in at the front counter. He did not believe it necessary at the time to do a high-risk takedown. Following that last conversation with Lorraine Matters, Staff Sergeant Anderson struck plans to ensure that the perimeter around the Matters residence was secured; the Matters' firearms were seized from the neighbours who held them, and a safety plan was established with Trevor Matters and his family.

[63] There were no incidents on Pinko Road overnight. In the morning, Lorraine Matters had her sister-in-law pick her up to drive her into Prince George so she could purchase the registration required for her vehicle. As the women were leaving the Matters residence, members posted on the perimeter stopped the vehicle. Lorraine Matters was upset by their presence and swore at them. At 10 a.m., Lorraine Matters left a voicemail message for Staff Sergeant Anderson. He spoke with her at 10:15 a.m. and reported that she began arguing again about the necessity of arresting Mr. Matters. She indicated that she needed additional time to come to the detachment, and Staff Sergeant Anderson agreed, telling her that he wanted her to make it happen and to "[h]elp [them] help [her] and [her] son here."

[64] At 12:30 p.m., Staff Sergeant Anderson made a telephone call to the Matters residence and spoke with Mr. Matters. Staff Sergeant Anderson recalled:

He stated he would not be turning himself into police at this time until he spoke to a lawyer. I said, "Okay, you know, you're talking to lawyer. Okay, who is your lawyer?" And he was very -- well, not even vague. I mean he didn't tell me who he was calling. I mean he just said he was waiting for calls. He then became very angry again, right off the hop stating that, again going back to Trevor, Trevor being arrested, judge told Trevor that he's not allowed to be on his property. Trevor needs to be arrested before he does anything.

Again, we go back to, "You tell me what Trevor did, we will follow-up with that, absolutely." He continued to be very angry. I told him again that I will listen and again will ensure that his side of the story is heard and we will follow-up on that. He thanked me stating his history with police in the past was not good and he appreciated me listening to him.

He was calm for a few minutes and then he would become very agitated again saying, "My mother doesn't speak for me and she has no right to be saying when I'm going to be coming in, if I'm ever going to coming in." [*sic* throughout]

[65] Shortly after that call ended, Mr. Matters left a voicemail message for Staff Sergeant Anderson, and stated:

Uh, hi, Mr. Anderson. Um, look, you guys really don't want to approach me on my property or my family's property. I appreciate you guys putting vehicles on the road, though I don't really understand why. Until I am fully -- you know, until I understand everything fully, I -- I -- believe me from past experiences -- believe me from past experiences, (short laugh), I have no reason to trust the police. Believe me. And, you know -- and please, you do not want to approach me on this property. And please understand that. And anyway I will wait for my -- the -- for the -- what was it? A lawyer to contact me. Chantelle legal service to me. [sic throughout]

[66] As this was going on, officers remained on the perimeter around the Matters residence on Pinko Road. Upon receiving the voicemail, Staff Sergeant Anderson again called Mr. Matters. He recalled the conversation as follows:

Again starts talking about Trevor being arrested and charged. Then at this point I just said we're doing the same thing over and over and over again. I said to Greg, I said, "You tell me exactly what I can do. You tell him. Put it on the table exactly what I can do to make this happen. You just lay it out. Whether I can or can't, let's discuss that. Tell me what it's going to change here, like what I need to do here."

...

He said, "Arrest Trevor. You need to arrest Trevor. You need to show me that he's going to be charged." With that I said, "Listen, let me go and find Trevor. I'm going to bring him in here. I'm going to talk to him about what some of the things that you're telling me and if there is anything there, absolutely. If I can basically hang my hat on charging him, that's what will transpire." And I said, "You know, I want to end this peacefully and if that's what it takes, then I'm going to get Trevor in here and we'll see where we're at." [sic throughout]

[67] Staff Sergeant Anderson told him that he would speak with Trevor and then they would discuss "his end of the bargain, being Greg's coming in and again giving himself up peacefully."

[68] Approximately one hour later, a member working the perimeter around the Matters property reported seeing a Subaru vehicle drive away from the area of the residence, across the fields towards the grandparents' homestead. It was believed to be driven by Mr. Matters. Members were scrambling to ensure containment around the perimeter. The members working containment along the perimeter surrounding the Matters property were waiting for an ERT activation. They were also concerned that there were not enough members to maintain the containment, and they requested additional cars.

[69] Once Staff Sergeant Anderson was notified that Mr. Matters was in his vehicle driving across a field away from the residence, he telephoned the Matters residence. Lorraine Matters told him that Mr. Matters was not in the house and that he had probably gone to the grandparents' farm to think. Staff Sergeant Anderson understood it to be an adjacent property accessible through the fields. She told him that Mr. Matters would be driving a grey Subaru, that he did not have any weapons, and that he was not violent. Lorraine Matters stated that the police had nothing to fear from Mr. Matters, and provided Staff Sergeant Anderson with the number of the cell phone that Mr. Matters had with him. She told him, "Greg enjoys chatting with you, so here's the number."

[70] Staff Sergeant Anderson immediately called the cell phone and Mr. Matters picked up. He would not give his exact location, but indicated that he was on the back half of his mother's property, just trying to clear his head. They again spoke about Trevor and the incident, and Staff Sergeant Anderson reiterated that they would look into the matter fully. Mr. Matters stated that maybe he would come into the detachment the next day, but he had to know that Trevor was arrested. Following that conversation, Staff Sergeant Anderson contacted Superintendent Stubbs, and the decision to activate the NDERT was made. Staff Sergeant Anderson recalled expressing concern to Superintendent Stubbs that Lorraine Matters was becoming problematic in defending Mr. Matters and that they may end up having to deal with two people, not just one, or even potentially could have a hostage situation.

ERT deployment

[71] Staff Sergeant Anderson consulted with Superintendent Stubbs, the Incident Commander, and at approximately 2 p.m., the NDERT was officially activated. Staff Sergeant Anderson and Superintendent Stubbs also spoke about removing Lorraine Matters from the scene lest they be dealing with two persons instead of one, and possibly a hostage situation. It is standard operating procedure in ERT situations to try and remove persons from the area. Superintendent Stubbs agreed. Staff Sergeant Anderson sent out instructions that Lorraine Matters should be removed if the opportunity arose.

[72] Superintendent Stubbs explained his decision to activate the NDERT. He made reference to the seriousness of the charges, the threats Mr. Matters had made against Trevor, and the duty to protect the public, as Mr. Matters had threatened to shoot anyone who came onto the property. Superintendent Stubbs was particularly concerned that an uninvolved third party such as a Purolator courier, a BC Hydro worker or a hiker could be in danger if they entered the property.

[73] At 3:05 p.m., Trevor met with Staff Sergeant Anderson at the detachment. That meeting lasted 11 minutes and was primarily focused on collecting intelligence about the layout of the Matters residence and the grandparents' homestead, where Mr. Matters was located. Staff Sergeant Anderson did ask Trevor if he had been drinking that night, and Trevor said he had not. Staff Sergeant Anderson also asked Trevor about the peace bond, and Trevor explained that Mr. Matters had tried to obtain one against him but that it was thrown out of court.

[74] Staff Sergeant Anderson called the Matters residence and spoke to Lorraine Matters. Just before hanging up, Lorraine Matters said that she was going to go to the homestead to try and persuade Mr. Matters to surrender. Immediately after that conversation she left her residence and drove a short distance along Pinko Road and turned into the laneway which lead to the homestead. A police vehicle operated by Corporal Warwick pulled into the laneway behind her and activated its emergency lights. Lorraine Matters stopped and got out of her vehicle. She was questioned by Corporal Warwick and arrested for obstructing a peace officer. She resisted and was forcibly taken to the ground, handcuffed and removed from the area.

[75] Corporal Warwick drove the van off the property to a place of safety. Moments later he noticed that the gate to the laneway had been closed and locked. He and Constable Josh Grafton scouted the area for Mr. Matters and then broke the lock on the gate so that the gate could not be secured.

[76] At 4:13 p.m. a briefing was held at the detachment. Officers were provided with copies of a subject profile on Mr. Matters as prepared by Constable Dickinson. Constable Poyzer briefed the group on the investigation. The NDERT was given instructions to arrest Mr. Matters and the authority to use force, if necessary. Corporal Claudette Garcia, a trained and experienced negotiator, was assigned to speak with Lorraine Matters, who was in the cell block, in order to secure her cooperation in attempts to have Mr. Matters surrender.

[77] Shortly after 5 p.m., a three-member ERT deployed to the area of Pinko Road to connect with Corporal Warwick, who was still in the area. A command post was set up in a farmer's field along Bendixon Road. A helicopter was brought in to assist in locating Mr. Matters so that a tactical plan could be developed.

[78] Following the briefing, Superintendent Stubbs directed that Staff Sergeant Anderson continue to negotiate with Mr. Matters because of the rapport he had established during the preceding hours. None of the conversations were recorded.

[79] At 5:24 p.m., Staff Sergeant Anderson had another telephone conversation with Mr. Matters. He told Mr. Matters that he had met with Trevor and there was nothing he could charge Trevor with. On receiving that news, Mr. Matters became very upset and said he was ready to die. He told Staff Sergeant Anderson that he was going to give the police a reason to kill him, and that he was going to grab a knife so the police would have to shoot him. That information was relayed to the command post and to the NDERT.

[80] At 5:48 p.m., the NDERT met Corporal Warwick in an observation post he had established not far from Trevor's recreational property along Alpine Drive. Constable Brian Merriman was in command of the team. He briefed Corporal Warwick on their authorities and Corporal Warwick updated the team as to what his observations were. Corporal Warwick was the fourth member of the NDERT team deployed that day.

[81] At approximately 6:40 p.m., Mr. Matters had a telephone conversation with a neighbour and long-time friend, Valerie Pinko. Ms. Pinko told Mr. Matters that this situation had to end, because the school bus would not let the kids off the bus in the area given all the police activity. With that news, Mr. Matters asked her to come and pick him up and drive him to the detachment. She agreed and left her home within five minutes to drive the short distance to the laneway along Pinko Road.

[82] Mr. Matters called Staff Sergeant Anderson and told him of the plan. As they were talking, a notification of the surrender was transmitted to the command post. Staff Sergeant Anderson explained the surrender procedure to Mr. Matters and coached him as he walked down the laneway from the homestead. By this time the helicopter was overhead and “spooked” Greg, so orders were given to have the helicopter land in a field near the command post.

[83] Ms. Pinko stopped at a checkpoint to explain to the officer what was happening. Constable Lee Bellamy relayed that information to the command post, and he was instructed to keep her there with him.

[84] Sometime earlier, Superintendent Stubbs directed that attempts be made to contact Dr. Passey in Vancouver. Corporal Garcia made a number of calls before finally reaching Dr. Passey at 6:42 p.m. Unfortunately, at 6:56 p.m., that call was disconnected. As soon as that happened, Corporal Garcia passed along the information she had already gathered from Dr. Passey.

[85] When Mr. Matters neared the end of the laneway, no one was there to meet him. He saw that the locking mechanism on the gate had been broken. That made him angry and he told Staff Sergeant Anderson that he was going back to the homestead.

[86] Superintendent Stubbs had authorized the NDERT to meet Mr. Matters at the end of the laneway and take him into custody. However, the team was not where the Team Leader thought they were, but rather were on foot with Corporal Warwick near Trevor’s recreational property. Their vehicles were parked on Alpine Drive, approximately two kilometres from the laneway along Pinko Road. They were instructed to get to the laneway to meet Mr. Matters, but by the time they arrived, Mr. Matters had returned to his grandparents’ homestead.

[87] The NDERT was then instructed to “compress down the driveway” and establish an observation point. The intention was to have them park their vehicles and covertly work up the laneway using the concealment that was available. They parked their vehicles in full view of anyone at the homestead, and approached by foot through the treeline. Shortly thereafter, NDERT members showed themselves to Mr. Matters, who appeared angry that they were on the property. Mr. Matters approached them and produced a hatchet. He was told by members to drop the weapon but would not do so. Constable Merriman called for the conducted energy weapon² (CEW), and

² The conducted energy weapons used by the RCMP are commonly referred to by the brand name of the models authorized for use by RCMP policy: Taser[®], which is manufactured by TASER International.

Constable Matthew Reddeman ran forward and deployed that weapon. Unfortunately it did not appear to have any effect on Mr. Matters and left Constable Reddeman in a dangerous situation. Fearing that Mr. Matters was about to strike Constable Reddeman in the head with the hatchet, Corporal Warwick fired two shots from his rifle. One bullet struck Mr. Matters in the left side and the second in the back. The bullets entered his chest and caused his death. Efforts were made to revive Mr. Matters, but he was declared dead at the scene.

ANALYSIS OF THE RCMP'S INVOLVEMENT WITH MR. MATTERS ON SEPTEMBER 9 AND 10, 2012

Adequacy of the initial investigation

[88] The police (including the RCMP) have a duty to investigate a complaint of criminal activity when there is a reasonable suspicion of wrongdoing. Paragraph 18(a) of the RCMP Act states that it is the duty of members:

18(a) to perform all duties that are assigned to peace officers in relation to the preservation of the peace, the prevention of crime and of offences against the laws of Canada and the laws in force in any province in which they may be employed, and the apprehension of criminals and offenders and others who may be lawfully taken into custody.

[89] Constable Poyzer was the primary investigator called to the scene of the vehicle collision involving Mr. Matters and his brother. On the face of the observations reported by off-duty Constable Pelletier and the call to police by Mr. Matters, Constable Poyzer had a duty to investigate the incident that occurred between the brothers. The duty to investigate was heightened by the history of disputes between them and the seriousness of the incident itself, which included acts of aggression and violence that could have resulted in more serious injury. There were also immediate concerns about whether there would be a continuation of those actions.

[90] An adequate investigation requires, in part, that members:

1. Pursue all leads provided promptly and effectively.
2. Interview possible sources and suspects promptly and effectively.
3. Request relevant forensic tests/reports to check for physical evidence and consult with other experts with specialized knowledge.
4. Follow related RCMP policy and reference other related police technical texts as required.
5. Maintain good case management of the file, ensuring that properly written notes support the actions taken during the investigation, as well as support any subsequent prosecution.

a) Responding to and securing the scene

[91] Mr. Matters left the scene and Trevor accompanied Constable Pelletier to his residence. Constable Pelletier told Trevor to wait outside while he went inside to use the telephone. Records confirm that at approximately 3:05 a.m. Constable Pelletier spoke with a dispatcher at the RCMP's Communications Centre. Minutes later Mr. Matters was also on the telephone line with a dispatcher. The dispatcher told Constable Pelletier that police units would be sent as soon as they became available. Constable Pelletier asked that the responding units stop by his residence so he could tell them what had transpired.

[92] As Constable Poyzer later explained in an interview, at the time he was dispatched to the call, he believed he was responding to a traffic complaint. While on the line a second time with an RCMP dispatcher, Mr. Matters received a call from Constable Poyzer. In his notebook, Constable Poyzer recorded that at 3:30 a.m. he placed a telephone call to Mr. Matters while en route to the scene. Constable Poyzer noted the following in his report:

Cst POYZER contacted Gregory by phone while driving to the area of the ditched vehicle. Gregory advised that he witnessed the vehicle in his yard doing donuts and when the vehicle left he got into his truck and started to pursue. Gregory stated that he made contact with Trevor's vehicle using his truck and eventually Trevor crashed into a ditch on Alpine Dr. When asked why he pursued the vehicle, Gregory said that it was the only way to get justice as it would take police too long to come out.

[93] Constables Poyzer and Dickinson arrived on scene at Alpine Drive at approximately 3:38 a.m. They located the vehicle in the ditch and noted that there was no one around. At the time, Constable Poyzer could not tell if there was any damage, but there was some blood in the vehicle. They met with Constable Pelletier, who explained what he had observed and directed the members to where Constable Pelletier believed to be the driveway of Trevor, some distance down the road. Constables Poyzer and Dickinson drove their patrol vehicles to the recreational property owned by Trevor, but discovered that he had not gone home. Trevor's wife provided his cell phone number and the members were able to make contact and arrange to meet him nearby, where he was apparently hiding. As noted earlier in this report, Trevor stated to the Commission's investigator that he was fearful that Greg was going to come back and was watching his driveway. He explained that he wanted to stay near his neighbour's house, as he was a local sheriff, in case he needed his assistance. When asked by the Commission's investigator why he did not want the police involved, he indicated that he did not want Mr. Matters to be in trouble and hoped he would just go home and be done with it.

[94] In my view, constables Poyzer and Dickinson responded to the scene in a timely fashion. While en route, Constable Poyzer contacted Mr. Matters by telephone and collected information from him.

[95] Shortly after arriving on the scene, Constable Poyzer checked the vehicle in the ditch and spoke to the only apparent witness—off-duty Constable Pelletier—and collected information from him. He then proceeded to check the area for the driver—Trevor—who had been injured during the incident. Constable Poyzer indicated in his interview with the Commission’s investigator that their main concern at that point was to locate the driver, given that there had been a collision, his injuries were unknown, and there was blood in the vehicle. In my view, Constable Poyzer’s stated priority at the time to locate and confirm the welfare of Trevor Matters was reasonable, and necessarily delayed his ability to secure the scene of what he had already determined through his conversations with Constable Pelletier and Mr. Matters to be the scene of a criminal offence. Subsequent issues relating to the scene and the collection and processing of physical evidence are discussed later in this report.

FINDING: Constables Poyzer and Dickinson responded to the scene of the vehicle collision in a timely fashion.

FINDING: Constable Poyzer’s stated priority at the time to locate and confirm the welfare of Trevor Matters was reasonable, and necessarily delayed his ability to secure the scene of the alleged criminal offence.

b) Obtaining statements

[96] The primary parties and witnesses to the incident were Mr. Matters, Trevor and Constable Pelletier. As noted above, the investigating members met Constable Pelletier at the scene and gathered the necessary information from him, which he later detailed in a formal report. That information was timely and detailed. Members reasonably focused on locating and ensuring the health and safety of the driver, Trevor, in the initial hour following the incident. Constable Poyzer spoke to Mr. Matters by telephone to gather preliminary information and instructed the next shift to obtain a formal statement from him. Mr. Matters ultimately chose to provide a typed statement despite members’ efforts to have him attend the detachment. In my view, those efforts were reasonable and timely.

[97] A recorded statement was taken from Trevor once he was located by members. That interview was approximately 14 minutes in length. In my view, it was conducted in an appropriate manner and permitted Trevor to give an uninterrupted account of what had transpired, from his point of view. Some follow-up questions were asked by Constable Dickinson, who conducted the interview in his police vehicle. I note that the interview length may have been affected by the fact that the batteries of the recorder were about to run out, and Constable Dickinson can be heard stating so on the recording. While some follow-up may have been necessary had charges gone ahead, that is not unusual in a criminal investigation, and I find that the interview was reasonable in the circumstances and provided members with sufficient information to pursue their investigation.

[98] Issues were raised by Mr. Matters' family with respect to the personal relationship that may have existed between Trevor Matters and Constable Dickinson, who conducted the recorded interview. However, there is nothing in the record to indicate that the two had a social relationship. Trevor Matters stated the following about Constable Dickinson to the Commission's investigator:

He was a coach on my son's football team. Umm, but we've... we've communicated very little. He's a defensive coach. My son's a quarterback. So we had limited... I rarely spoke to him. You know, the odd time, say hi. Talk about a game, whatever, and that'd be it. We weren't very personable. So it was very, very limited conversations at the best of times with him.

[99] Constable Dickinson confirmed in his testimony at the Coroner's inquest that he knew Trevor Matters only in the context of coaching his child in football. Constable Dickinson told IIO investigators that he had no further relationship with Trevor Matters. Constable Poyzer also stated to the Commission's investigator that while he was aware that Constable Dickinson knew Trevor, it was not on a personal level and was from having been within the community or a sports team. Having thoroughly reviewed the interview recording, I find that there is no indication of any social relationship or any irregularities with how the interview was conducted.

FINDING: Statements were taken from the involved parties and witnesses in a timely manner and were reasonably thorough in the circumstances.

c) Physical evidence

[100] As noted above, the scene could not initially be secured while members searched for the driver of the vehicle in the ditch. Unfortunately, it was not secured subsequently or prior to obtaining physical and photographic evidence of the tire marks, the vehicle in the ditch, and any debris that may have resulted from the collision. While Constable Poyzer left a "Pass-On" request that the case be followed up by the day shift, the request did not include a request for the Forensic Identification Services to attend Alpine Drive to photograph the scene or collect any physical evidence. It is not clear from the record when that request ultimately occurred, or if there was any reason for the delay.

[101] There were environmental factors that would have affected the member's ability to immediately obtain photographs and comprehensively inspect the scene for debris (which could have provided evidence of the location of the point of impact), as it was after dark and the area would not have been well lit, if at all. According to his reports and the exhibits, Constable Poyzer arranged to have photographs taken of Trevor's vehicle and the tire marks on September 10, 2012. However, by that time, Trevor had already removed his vehicle from the ditch and returned it to his property. There is no indication in the record that Trevor was given any instruction with respect to the removal of his vehicle and the timing.

[102] While the matter was not being pursued under the provincial motor vehicle legislation, serious criminal charges were being considered in relation to the collision, and Mr. Matters was to be arrested. At the very least, investigative efforts were not well documented in the members' notebooks, either with respect to any instructions given to Trevor, or with respect to any efforts or impediments to preserving the physical evidence until such time as it could be collected and processed. Had Mr. Matters not been killed and the charges gone to court, that may have affected the prosecution. In my view, because these basic investigative techniques were not employed, evidence was left vulnerable to contamination.

FINDING: Basic investigative techniques relating to the securing and collection of physical evidence were not reasonably employed and left evidence vulnerable to contamination.

RECOMMENDATION: That a supervisor review this report with Constable Poyzer and provide operational guidance with respect to the securing and collection of relevant evidence.

d) Evaluating and reporting on the evidence

[103] Constable Poyzer was the primary investigator and responsible for compiling and assessing the evidence, which he detailed in an occurrence report and draft Report to Crown Counsel, in support of the charges sought. While those reports contained a detailed summary of the recorded statement given by Trevor and mention a written statement submitted by Mr. Matters, they do not reference the details of Mr. Matters' statement. In addition, the reports include the observations Constable Sharpe made of the damage to Mr. Matters' vehicle but make no attempts to reconcile that damage with either version of events. As an example, Trevor reported that Mr. Matters had struck the driver's side door of his vehicle during the incident; however, there was no physical damage located on that portion of his vehicle, as demonstrated by the photographs taken on September 10, 2012. I note that the physical evidence is not fully consistent with the statements of either Mr. Matters or Trevor.

[104] In the initial hours following the incident, Constable Poyzer noted physical evidence—tire marks on the roadway, the location of the vehicle in the ditch, and injuries to his face—that supported Trevor's statement. Those observations were the best evidence available at the time the incident occurred given what would have been challenging lighting conditions. Constable Poyzer then spoke by telephone with Mr. Matters, who he indicated responded in a hostile manner and made a number of threats. Constable Poyzer noted that, at that time, he formed reasonable and probable grounds to believe that Mr. Matters had committed a number of serious criminal offences and his efforts then focused on the safe arrest of Mr. Matters for the noted offences (a decision which will be examined later in this report). However, it is important that investigators continually reassess new information/evidence as it is received and give it appropriate consideration and weight. While it was still relatively early in the investigation and Constable Poyzer's report had yet to be submitted to Crown counsel, a failure to accurately report all of the evidence that had been received and attempt to

reconcile the physical evidence with the witness statements could compromise the credibility of the entire investigation.

[105] It is also apparent that Constable Poyzer did not report the discrepancies in the evidence to his superiors, which may have been due to the fact that he did not perceive there to be discrepancies. This raises concerns about whether or not all of the evidence was properly reviewed and considered by Constable Poyzer. While I find later in this report that those discrepancies did not ultimately affect the validity of the charges sought and grounds for arrest, they were important considerations and could have affected the lawfulness of subsequent actions taken by RCMP members. While some evidence was received later in the course of the ongoing events, even that received early on did not appear to be addressed in Constable Poyzer's report.

[106] Superintendent Stubbs was the Detachment Commander responsible for the delivery of policing services in Prince George. He was also the Incident Commander during the deployment of the NDERT. He asked Constable Poyzer some questions when he met him outside of Staff Sergeant Anderson's office shortly before the decision was made to deploy the NDERT. As Superintendent Stubbs said, "A lot of times we do these things and the charges fall apart after a lot of effort because maybe things are missed and whatnot." Superintendent Stubbs was seeking assurances that nothing had been missed. The reports produced by Constable Poyzer suggest that not all the information and evidence received was properly considered, or reflected in his discussions with Staff Sergeant Anderson and Superintendent Stubbs.

FINDING: Constable Poyzer did not reasonably consider and account for the discrepancies in the evidence as it was received.
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RECOMMENDATION: That a supervisor review the findings in this report with Constable Poyzer and provide operational guidance with respect to appropriately accounting for all evidence and dealing with discrepancies when preparing notes and reports.

[107] There was also an issue raised by the family of Mr. Matters with respect to the alleged intoxication of Trevor at the time of the incident, which could affect the credibility of Trevor and the outcome of the investigation. I note that Constable Pelletier was the first to interact with the brothers following the incident. Constable Pelletier made a reference in his report to having asked Trevor whether or not he had had anything to drink, a question that was not answered immediately and apparently not pursued due to the subsequent actions of Mr. Matters. Constable Pelletier stated to the Commission that he had asked the question because at one point Trevor stumbled getting out of the ditch, although he could not say if it was because of the ditch, an impairment issue, loose gravel, etc. They were in a rural area and it was Saturday night, so Constable Pelletier just assumed at the start of the encounter that Trevor had gone out, was drinking and came back and eventually crashed his vehicle. He did not get within arm's reach of Trevor and did not smell any odour off of him, i.e. he did not otherwise observe any signs that would have led him to suspect that Trevor was intoxicated.

[108] Constables Dickinson and Poyzer were the next to interact with Trevor. Constable Dickinson made no reference in his notes or reports to alcohol consumption. Upon approach, Constable Poyzer noted that Trevor's breathing sounded restricted and that he had dried blood on his face and shirt. Constable Dickinson noted a "goose egg" on Trevor Matters' forehead, as well as a bloody nose and lip. Again, there is no indication that alcohol consumption was of any concern, suggesting that there were no signs that Trevor was intoxicated at the time.

[109] Approximately two months after the incident, in a response to written questions from the IIO, Constable Poyzer stated:

Greg MATTERS stated that his brother was intoxicated when this occurred however there was no continuity of Trevor from the time of the collision to the time that police finally located him. When Trevor was located he showed signs of impairment including slurred speech and odor of liquor on his breath. No comment can be made as to the sobriety of Greg as he was never contacted face to face on the first day of this investigation. Police were not considering alcohol related charges in this occurrence. [sic throughout]

[110] In an interview with the Commission, approximately 18 months after the incident, Constable Poyzer stated that he could not remember what was in his notes but that he believed he did have knowledge that Trevor had consumed alcohol. However, he did not recall what signs Trevor may have shown of it at the time.

[111] Constable Poyzer's later statements are puzzling, given that there was no mention of him observing signs of alcohol consumption in his original notes or the details of his reports. The only reference to alcohol consumption is contained under Trevor's name in the section of the general occurrence report listing the involved persons. It does not specify whether the "consumed alcohol" and "intoxication" references are in relation to the allegations made by Mr. Matters, or observations made by the members, as no details are provided. Constable Poyzer's later statements are also inconsistent with the notes and statements of the off-duty member who first came upon Trevor, and that of Constable Dickinson. Having carefully reviewed the audio recording of the statement given by Trevor shortly after his first interaction with the two investigating members, I am not satisfied that Trevor's speech was slurred. Trevor stated during the Commission's investigation that he had three or four drinks over the entire period, which is estimated to be between four and five hours. There is no reliable independent evidence to suggest otherwise.

[112] Throughout the various inquiries and investigations of this matter, Constable Poyzer has commented on why he would not have pursued charges related to alcohol consumption against Trevor. Specifically, he noted issues with losing continuity of the driver and arguments that the defence could make in court to challenge the charges. Regardless of whether or not Constable Poyzer was exercising his discretion not to pursue an investigation into impaired driving, noting any observations he had about Trevor was relevant to the charges sought against Mr. Matters. While I am not satisfied on a balance of probabilities (based on the discrepancies in the record) that

Trevor was intoxicated at the time of the incident, Constable Poyzer's assertions after the fact that Trevor displayed signs of intoxication show at the very least a failure to include key details both in his notebook and his subsequent reports, including the draft Report to Crown Counsel. Ultimately, it calls into question his later statements to that effect.

FINDING: Constable Poyzer should have included in his notes and reports any observations he made with respect to signs of intoxication when he encountered Trevor, and not doing so calls into question his later statements.

e) Allegations of bias

[113] Concerns have been raised by Mr. Matters' family about the competency of the investigation and specifically whether there was any bias that led investigators to improperly focus on Mr. Matters rather than Trevor. It is clear from a review of the investigation that the focus became and remained on Mr. Matters.

[114] Mr. Matters' family referred to examples of Trevor not being checked for impaired driving, and Trevor's personal dealings with various members of the police, including the fact that Trevor had Constable Dickinson's personal telephone number and called him during the incident. General concern was expressed at the Coroner's inquest about the RCMP's focus on Mr. Matters throughout the incident and investigation despite the involvement of Trevor and offences they believed he had committed, including impaired driving and trespass. In my view, and for the reasons that follow, there was no evidence of bias on the part of the investigating members despite the above-noted deficiencies in the investigation.

[115] When asked at the Coroner's inquest why the investigation ended up focusing on Mr. Matters, Constable Poyzer stated that when he spoke with Mr. Matters, the latter confirmed that he ran Trevor Matters off the road. In his view, this was very dangerous, especially since Mr. Matters was not even sure that it was his brother at the time he started the chase. It constituted an assault with a weapon, which is a serious crime, and even more so if it is against a random person. Mr. Matters chose that course of action rather than calling the police.

[116] There is no doubt that Mr. Matters had a history with the police in Prince George and that the members involved throughout the investigation were generally aware of that history, some having been directly involved. The question for the Commission is how much that history influenced the members and whether it was reasonable and appropriate in the circumstances.

[117] The RCMP's IOR considered the issue and concluded that the Report to Crown Counsel advanced "four criminal charges based on one side of the story" and that "further efforts needed to be made by investigators to determine the facts relating to the incident between the two brothers, as there were no independent witnesses." The IOR also found "a degree of preconceived opinions formed by investigators," but which was human nature given Mr. Matters' previous actions and the amount of information

available to them. The IOR questioned whether the Crown would have ultimately approved the charges. That being said, that is not the standard against which member conduct is measured when determining whether or not a member has grounds to make an arrest. There is also generally an opportunity for investigating members to continue their investigation following an arrest. An arrest is based in part on a police officer having reasonable grounds to believe that a criminal offence has been committed, which is a lower standard than that required for a criminal conviction. An arrest is often made prior to the conclusion of an investigation for the reasons set out in subsection 495(2) of the *Criminal Code*, such as to prevent the continuation or repetition of the offence or the commission of another offence. Consequently, criminal investigations routinely continue following a suspect's arrest.

[118] In my view, the initial focus of the investigation was on Mr. Matters not because of his history, but rather because of his admitted role in the incident. His admitted actions were of serious concern and gave members reasonable grounds to believe that he had committed an offence, which is discussed in detail later in this report. Mr. Matters' history with the police had more of an influence on how the members chose to approach and interact with him (i.e. in their risk assessment) than with the consideration or weight given to the evidence. I am not convinced on a balance of probabilities that his history played any role in the issues I have identified above with the collection and processing of the physical evidence, including the issue of alcohol consumption.

FINDING: The initial focus of the investigation was on Mr. Matters not because of his history, but rather because of his admitted role in the incident and the seriousness of his actions. There is no evidence that the RCMP investigation focused on Mr. Matters as a result of bias, or for any other improper motive.

f) Supervision of investigation

[119] As the Acting Operations Officer, Staff Sergeant Anderson had a responsibility to supervise the work of general duty members, including constables Poyzer and Dickinson. When he became involved in developing strategies, negotiations and interviews, he superseded the work of other direct supervisors in the chain of command. The responsibility and quality assurance regarding the work on this investigation thus became his responsibility.

[120] As an example, Constable Poyzer stated to the Commission's investigator that prior to this incident, he had never prepared an Information to Obtain for a Feeney warrant—a warrant generally required to arrest a subject in their home. He was also preparing it to obtain a warrant to access Mr. Matters' vehicle. He stated that it turned into more and more as time went on and the information had to be continually updated. It was Staff Sergeant Anderson who was assisting him with it, and who he expected would give him "hints" and "tips" on what to include. At one point late in the negotiations it was decided that Staff Sergeant Anderson would be handing off negotiations to Corporal Garcia, as he needed to work on the Feeney warrant.

[121] During its internal review of this matter, the RCMP found:

However, I do find that as the investigation progressed, S/Sgt. Anderson took on too many tasks. In addition to being the Acting Operations Officer, he was also the lead investigator who interviewed the Matters brothers, directed investigators, determined the threat level posed by Greg, identified the arrest strategy for Greg, interviewed Lorraine Matters, acted as primary negotiator and was liaison with Supt. Stubbs and the Critical Incident Response Triangle.

[122] At the very least, it would have been preferable had another member been responsible for ensuring the quality of the investigation and assisting/supervising Constable Poyzer with respect to the warrant applications and follow-up with witnesses. In my view, Staff Sergeant Anderson, despite his best efforts, was unable to properly supervise and assess the investigation due to the number of roles he had taken on, and it would have been more reasonable for that role to have been delegated to an appropriate supervisor.

FINDING: Staff Sergeant Anderson assumed responsibility for too many roles and should have delegated direct supervision of the criminal investigation and preparation of the warrants to another member.

Grounds to arrest Mr. Matters

[123] When evaluating a member's investigation and decision to make an arrest and pursue charges,³ it is important to keep in mind that his or her role is not to determine a suspect's guilt or innocence—they do not act as judge and jury. The goal of an investigation is to determine whether or not there are reasonable grounds to believe that an offence has been committed. The Supreme Court of Canada stated the following in consideration of the police power to arrest under section 495 of the *Criminal Code*:

In summary then, the Criminal Code requires that an arresting officer must subjectively have reasonable and probable grounds on which to base the arrest. Those grounds must, in addition, be justifiable from an objective point of view. That is to say, a reasonable person placed in the position of the officer must be able to conclude that there were indeed reasonable and probable grounds for the arrest. On the other hand, the police need not demonstrate anything more than reasonable and probable grounds. Specifically, they are not required to establish a *prima facie* case for conviction before making the arrest.⁴

³ In British Columbia, the laying of charges requires Crown approval.

⁴ *R v Storrey* (1990), 53 CCC (3d) 316 (SCC), p. 324.

[124] The decision to make an arrest and pursue charges involves the exercise of discretion. In complaints concerning police actions involving exercise of discretion, the question is not whether another person would have exercised their discretion differently. It is the nature of discretion that different people will exercise their discretion differently in similar circumstances. The issue is whether the discretion can be said to have been exercised reasonably and for a proper purpose. When looking at whether or not the decision to arrest Mr. Matters for the alleged offences was reasonable, we must evaluate the decision at each stage of the process and based on what was known (or should have been known) to the members at that time.

[125] The initial decision to make an arrest was made at the conclusion of the preliminary investigation in the early hours following the incident on September 9, 2012, when Constable Poyzer created his pass-on request. Despite the deficiencies in the investigation, and in light of the information received and reviewed at that point in the investigation, I conclude that the decision to arrest was reasonable based on the following factors:

- Trevor's vehicle was located in the ditch, and this fact is not in dispute. Mr. Matters' vehicle was nearby but not in the ditch.
- Trevor stated to the police that his brother had punched him in the face several times, and his injuries were consistent with that account. Constable Dickinson noted in the recording while taking Trevor's statement that he was still shaking following the incident.
- It was evident from Constable Pelletier's account that Trevor had been inside his vehicle during the time of his injuries, and that is not challenged by any of the evidence that later came to light.
- Constable Pelletier's account indicates that Mr. Matters continued to act in an aggressive manner following the vehicle incident, knocking the flashlight out of his hand and yelling during their interactions.
- Mr. Matters stated to Constable Pelletier (and to others later) that Trevor was doing donuts in his driveway and that he had pursued him in his vehicle. Mr. Matters stated to the RCMP dispatcher that he "gave chase" and caught Trevor down the road, which was on its face aggressive and concerning behaviour.
- The investigating officer, Constable Poyzer, spoke to Mr. Matters by telephone shortly after the incident. His notes indicate that Mr. Matters stated that he made contact with his brother's vehicle using his truck. Constable Poyzer noted: "When asked why he pursued the vehicle, Gregory said that it was the only way to get justice as it would take police too long to come out." Mr. Matters stated to him that "he would take matters into his own hands and it would not be pretty."
- There was no peace bond in effect against Trevor. However, Constable Poyzer established that there was a peace bond against Mr. Matters. (Later investigation revealed that while there had been a previous peace bond against Trevor, it had been expunged prior to the incident.)
- In Constable Poyzer's second telephone call with Mr. Matters, he made various threats against Trevor (if the police did not deal with him) and the police,

including threats to “shoot them dead.” His demeanour went back and forth from calm to agitated to yelling and back to calm, while making these statements.

- At the point of the initial decision to arrest (when Constable Poyzer created the “pass-on” to the next shift), Trevor’s statement indicated that Mr. Matters had hit him twice with his vehicle and sent him into the ditch; Mr. Matters had already admitted at that point that he made contact with Trevor’s vehicle.
- Constable Pelletier recalled damage to the front of Mr. Matters’ truck, and in particular that the passenger side signal light had part of the lens hanging down. That damage was consistent with Trevor Matters’ account immediately following the incident.

[126] The decision to arrest was made with respect to the following charges, as noted in Constable Poyzer’s “pass-on” request: 1) dangerous driving; 2) assault with a weapon; 3) assault; and 4) breach of a peace bond. In my view, despite the deficiencies in the investigation, there were reasonable grounds for Constable Poyzer to believe that Mr. Matters had committed each of these offences based on the above-noted factors. Ultimately, the member was faced with a subject who admitted to taking justice into his own hands, pursuing someone in a vehicle (giving chase) because they were on his property, running that person off the road, and physically hitting that person in the face, causing bleeding and swelling. (I note that Mr. Matters later admitted to Staff Sergeant Anderson to possibly hitting Trevor with his elbow, but that does not appear to account for the extent of the injuries to Trevor’s face.) Mr. Matters also indicated that he was prepared to pursue “justice” against Trevor himself if the police did not. There was a peace bond in effect against Mr. Matters, but none with respect to Trevor. In my view, Constable Poyzer’s belief that the offences had been committed by Mr. Matters was both subjectively and objectively reasonable. I also find that the decision to arrest Mr. Matters at this stage was a reasonable exercise of discretion and that there was no improper motive.

[127] Following the members’ attendance at the Matters residence as a result of the “Pass-On” from Constable Poyzer, more evidence and observations were collected: Mr. Matters’ handwritten statement; a copy of the peace bond provided by him (which was the peace bond against him, not Trevor); and observations made by Constable Sharpe of Mr. Matters’ vehicle. The key elements of that evidence and observations are as follows:

- Constable Sharpe made telephone contact; Mr. Matters ultimately would not attend the detachment but agreed to provide a written statement and copy of his active peace bond if members attended his residence.
- Constable Sharpe observed damage along the driver’s side, beginning at the front headlight and running along the side to the driver’s door. The front bumper had a dent in the middle and the licence plate was missing.
- Mr. Matters’ statement again confirms that he made a decision to pursue the vehicle that had entered his yard, as he “felt a crime was just committed and no police were near-by to contact.”
- Mr. Matters stated that he passed the vehicle and “slowed down to make the vehicle stop.”

- Mr. Matters stated that in an attempt to end his pursuit, he made contact (“more pushing than hitting”) and the other vehicle went into the ditch.
- Mr. Matters stated that he fought to get the keys from Trevor.

[128] More information was gathered throughout Staff Sergeant Anderson’s involvement, including his conversations with both Mr. Matters and his mother, Lorraine Matters, and his meeting with Trevor at the detachment. Photographs were also taken by the RCMP of the scene of the incident and Trevor’s vehicle. No photographs were obtained of the vehicle driven by Mr. Matters, and a warrant was being sought in that regard at the time the shooting occurred.

[129] In my view, while the deficiencies in the investigation are of concern to the Commission as previously noted in this report, they did not significantly affect the grounds for the arrest. Mr. Matters’ own admissions and the physical evidence supported the charges sought. The records also indicated that he remained in an agitated state and posed a continued threat to Trevor if the police did not arrest Trevor, which they had no intention to do. Consequently, I find that at all relevant stages RCMP members had reasonable grounds to believe that Mr. Matters had committed the alleged offences and that he was arrestable without a warrant pursuant to subsection 495(2) of the *Criminal Code*.

[130] The Matters family has suggested that the members’ stated recollections of the threats alleged to have been made by Mr. Matters are false. However, I find that the members’ statements are consistent with one another, are consistent with their notebook entries made contemporaneously to the events, and are consistent with Mr. Matters’ demeanour in the recorded voicemail left for Staff Sergeant Anderson during the negotiations. They are also consistent with Mr. Matters’ history of making similar threats against other parties, as documented in a number of RCMP files.

<p>FINDING: At all relevant times RCMP members had reasonable grounds to believe that Mr. Matters had committed the alleged offences and that he was arrestable without a warrant pursuant to subsection 495(2) of the <i>Criminal Code</i>.</p>

Conduct of RCMP members prior to the activation of the ERT

a) Initial attempt to arrest

[131] Staff Sergeant Anderson stated to the IIO that he had determined that there were grounds to arrest Mr. Matters for assault with a vehicle, assault and dangerous driving earlier on and was aware of his background, including his military past and his dislike of police. The initial plan was to bring Mr. Matters into the detachment, i.e. on their ground, to make sure he did not have access to weapons and to try to neutralize that potential danger. However, Mr. Matters would not attend the detachment and arrangements were made for members to attend the residence. Despite the members’ attempts to get between Mr. Matters and the residence, Mr. Matters was able to back into his doorway. The attending members determined that it was not safe to arrest him at that time.

[132] In my view, the approach taken by Staff Sergeant Anderson and the attending members was reasonable in the circumstances. Mr. Matters had a clearly established and expressed mistrust for police. RCMP records indicate that he had also previously resisted arrest. The events that precipitated the arrest—even if one considers only the statements made by Mr. Matters to the 911 operator and Constable Poyzer—were acts of aggression and violence. Members took reasonable steps to make an arrest in the safest manner possible and reasonably believed that a physical confrontation was likely if they forced the issue at or near the door to the residence.

FINDINGS:

- 1. Members made reasonable attempts to have Mr. Matters attend the Prince George RCMP Detachment for the purpose of making the arrest and obtaining a statement.**
- 2. Upon attending the residence, members reasonably determined that a physical confrontation was likely if they attempted to arrest Mr. Matters at that time, and their decision to delay the arrest was reasonable.**

b) Negotiations by Staff Sergeant Anderson

[133] As will be discussed later in this report, only some of the conversations between Staff Sergeant Anderson and Mr. Matters were recorded, and only Staff Sergeant Anderson's side of the conversation was recorded. However, it is clear from those recordings that the general content of the conversations and his demeanour are consistent with his notes (which were generally made while the conversations were occurring) and his statements to the IIO investigator and at the Coroner's inquest. His accounts were also corroborated by statements from other members who were present during a number of the telephone conversations. As such, I find his notes and statements to be reliable and credible.

[134] It is important to note that RCMP policy provides that members are not qualified or expected to diagnose mental illness. It also provides that clear communication has proven effective in de-escalating situations involving persons who may have a mental illness, and that involving a close friend or family member may be appropriate after a careful risk assessment.⁵ By his own account, Staff Sergeant Anderson learned during his initial conversation with Lorraine Matters that Mr. Matters suffered from PTSD and was receiving treatment for that condition. Staff Sergeant Anderson stated that he was very cognizant of Mr. Matters' mistrust of police. To that end, it is clear from the record that he made significant efforts to gain Mr. Matters' trust throughout the negotiations and spoke to Mr. Matters in a calm and professional manner.

[135] Staff Sergeant Anderson spoke to Mr. Matters about treating him with compassion and professionalism and wanting to bring him in to get his side of the story. Staff Sergeant Anderson stated that he did not want to be dishonest with Mr. Matters about the intention to arrest him, as it would cause a loss of trust for the future, which could have substantial ramifications for the police. Staff Sergeant Anderson told

⁵ RCMP *Operational Manual*, chap. 19.7. "Mentally Ill Persons/Prisoners", s.1.1., 1.3. and 1.4.

Mr. Matters that he wanted him to stay calm, to not get agitated, and provided assurances that together they could work through this. Staff Sergeant Anderson tried to explain the arrest and charge process and the need to get his side of the story. Staff Sergeant Anderson told Mr. Matters that he would be treated with respect and that he had nothing to fear from them if he would go outside the residence to meet the members. Those were the general themes and statements that stayed consistent throughout their many conversations.

[136] Superintendent Stubbs made the following comment about Staff Sergeant Anderson's negotiation efforts:

And I have a lot of faith in his ability to talk to people properly, and I know he tried a number of things. At one point, you know, I remember coming into his office and, you know, he said, he was talking to Mr. Matters and said live to him on the phone, I just overheard it for a second, and he said, "Mr. Matters, I've been around for a long time," he said, "and I'm an old town cop." because he doesn't trust police, Mr. Matters. He said, "Look, you know, I am a straight shooter, old time cop, you know, no games, no fooling around. I will get in the car, I will drive out there, you can jump in my car, I will make sure nothing happens to you and it will drive you back to the office, you know." Like you know, I heard him say that, you know, and I knew he was trying everything he could to try to resolve this matter without the use of force. [*sic* throughout]

[137] Staff Sergeant Anderson stated that the core of Mr. Matters' issue was his brother's apparent violation of a peace bond. However, Constable Dickinson was told by Trevor that the peace bond had been expunged and he did not know whether Mr. Matters was aware of that. That information was included in Constable Dickinson's summary of Trevor's statement. In addition, the RCMP's file on the matter against Mr. Matters that resulted in the reciprocal peace bond contains a note to the effect that the court unit received a fax from the Court Registry on August 28, 2012, that stated that on August 20, 2012, the peace bond that was issued with respect to Trevor was "vacated *ab initio*" (i.e. that it is without any legal validity) and that all record of those proceedings relating to it be expunged. The note indicates that the court document was forwarded to CPIC, which explains why there was no longer any information in that system regarding the peace bond against Trevor.

[138] Relaying the fact that the peace bond against Trevor had been expunged could have been important in terms of Mr. Matters' reaction to how the RCMP was dealing with Trevor. It was a central issue to Mr. Matters' sense of injustice with respect to the incident and the RCMP's intent to arrest him. At the very least, the information was provided by Trevor, and confirmation was available in the RCMP's own files on the relevant court matter. However, it is not evident that any member attempted to confirm this information, other than to verify that there was no such peace bond in the CPIC database.

[139] Overall, I am satisfied that Staff Sergeant Anderson's negotiations with Mr. Matters prior to the involvement of the emergency response team were reasonable and appropriate in the circumstances. However, negotiations may have been furthered by communicating to Mr. Matters more clearly the status of the peace bond he insisted was in place against his brother.

FINDINGS:

- 1. Staff Sergeant Anderson made significant efforts to gain Mr. Matters' trust throughout the negotiations and spoke to Mr. Matters in a calm and professional manner.**
- 2. Staff Sergeant Anderson's negotiations with Mr. Matters prior to the involvement of the emergency response team were reasonable and appropriate in the circumstances.**
- 3. Negotiations with Mr. Matters may have been furthered by clearer communication with him regarding the status of the peace bond against Trevor.**

c) Follow-up with Trevor Matters

[140] Staff Sergeant Anderson understood from Mr. Matters that his real issue centred around wanting to see Trevor charged as a result of the incident. In response to Mr. Matters' demand that Trevor be arrested, and to gather intelligence for the NDERT, Staff Sergeant Anderson arranged to have Trevor attend the detachment. He met with Trevor briefly and recalled:

At, I've got 15:05 hours, Trevor Matters attends the detachment. Two purposes to that. I want Trevor to give us a diagram of the house, a sketch of the house, and also of the property, ask him about the grandparents' property, what the configuration of that is. Which he tells me -- I say, "There is information that he's on the backside of your mom's property," and he didn't think that's probably right because it is just marshland back there. He said, "He's probably at my grandparents' old farmstead there where there's an abandoned house that hadn't been lived in in 25 years and outbuildings. He says, "That's where he's probably at."

So he did draw that, and that was done with Constable Dickinson. I let him do that. I also talked to Trevor about this peace bond. Trevor said that there was no peace bond in effect, which we couldn't find either. He said that was -- I believe what he said was -- I am not sure, I can't say for sure if it was Greg that initiated that in the past, attempted to get one on him, but that was thrown out of court and there was no peace bond on Trevor. Trevor said, "I am a very peaceful guy," that "I don't want to have any confrontation with my brother," that "I've never been in a fight before," and that, "I am scared at this point."

I tell him that the information was that he hit Greg. He says that absolutely is not true. You know, to have a look at his vehicle and Greg's vehicle and match that up. I said, "What did you go to the house for at 3 o'clock in the morning? Like make me understand that part of it. I don't understand that."

And he said, "I don't know. Things have been rough lately, I wanted to talk to my mom." I said, "Were you drinking?" You know, "What compels you, at that time, to go see your mother?" And he said -- he told me he was not drinking, and he just need to say something to his mom and that's why he went over there. Out of the content of that conversation with Trevor I found nothing where I could, as I use the term, hang my hat on, charging him with any criminal offence. There was nothing there that I could do with that that would, of course, go to try to appease Greg. [sic throughout]

[141] At that point in time, there was no peace bond in effect against Trevor and nothing to charge him with in respect of one. Any issues related to alcohol consumption had not been noted or pursued during the initial investigation, and there was no new evidence on which to base any such charge. Any vehicle-related offences that could have been pursued against Trevor would have been relatively minor and resulted in a ticket rather than an arrest. In my view, it would have been inappropriate for Staff Sergeant Anderson to come up with a charge that they otherwise would not have decided to pursue essentially in exchange for getting Mr. Matters to attend the detachment, submit to an arrest, and provide a recorded statement. Staff Sergeant Anderson's conduct in the circumstances was reasonable.

FINDING: Staff Sergeant Anderson acted reasonably in meeting with Trevor and deciding that there were no appropriate charges to pursue in the circumstances.

d) Containment

[142] General duty members held primary responsibility for containment efforts at the Matters properties, as directed by Staff Sergeant Anderson. Resources were put in place to monitor Mr. Matters' movement should he leave his mother's property after efforts to arrest him there were unsuccessful. The size and geography of the property made it difficult to contain. However, Staff Sergeant Anderson ensured that there were police vehicles present, and arrangements were made to speak with the neighbours about the firearms that were in their possession and to Trevor about safety planning. Additional resources were requested and used, including the Police Dog Service, so that the property could be better contained. When it appeared that Mr. Matters may not turn himself in at the detachment, Staff Sergeant Anderson requested that additional units assist with containment.

[143] Continued monitoring allowed members to observe when Mr. Matters left his residence in a silver Subaru and drove through the field and onto the property he shared with Trevor. As it turned out, Mr. Matters had driven the Subaru across the open fields and parked it in a laneway running through a wooded area to the east of the abandoned buildings at the grandparents' homestead. Although the Subaru was visible in an aerial shot, it was practically impossible to spot by officers on the ground. In aerial photographs, taken after the incident, it appears that further travel along the laneway was blocked by a fallen tree.

[144] The RCMP's IOR report noted that "the Prince George Detachment members and supervisors exercised a great deal of caution and used a sensible approach to managing this situation from a General Duty containment perspective with the resources available." At the Coroner's inquest, Staff Sergeant Anderson suggested that he may have waited too long while he continued his efforts to have Lorraine Matters bring her son into the detachment, given that he is not an ERT negotiator and the property could not be properly contained with the resources at hand. However, in my view, Staff Sergeant Anderson took a measured approach throughout the incident with respect to containing Mr. Matters at the property and made reasonable decisions based on continual risk assessments and available resources.

FINDING: Staff Sergeant Anderson took a measured and reasonable approach to containment at the Matters property given the challenges created by the size and topography of the property and the availability of resources.

Activation and deployment of the NDERT

[145] According to RCMP policy, any decision to deploy the ERT is generally the purview of a trained Critical Incident Commander. In this case, that decision was taken by Superintendent Stubbs. Only an Incident Commander can deploy an ERT and authorize use of force.⁶ The onus and responsibilities placed on an Incident Commander at a critical incident are onerous and wide-reaching. To meet these demands, the RCMP selects, trains and mentors Incident Commanders in order to provide them with the knowledge, skills and expertise necessary.

[146] On September 10, 2012, Superintendent Stubbs had been appropriately trained and certified and knew his responsibilities under RCMP policy. In the 28 months since his graduation from the Critical Incident Commanders' Course, Superintendent Stubbs had performed the duties of an Incident Commander in 20 operations. As Incident Commander he knew the capabilities of the NDERT. Through his training and experience, Superintendent Stubbs was qualified to execute the onerous duties and responsibilities of Incident Commander.

FINDING: Superintendent Stubbs was trained and qualified as a Critical Incident Commander at the time of the incident.

[147] Staff Sergeant Anderson consulted with Superintendent Stubbs to determine whether or not the NDERT should be brought in to deal with the ongoing situation. He described his conversation with Superintendent Stubbs as follows:

So at this time, after this call, again I am updating Superintendant Stubbs. He and I had a meeting, I relayed that information that I've gone through with you to him. We talked about the possibility at this point in time -- it is not my call that would be up to Superintendant Stubbs about activation of ERT, the emergency response team. And part of that discussion that Superintendant Stubbs and I had

⁶ RCMP *Tactical Operations Manual*, chap. 2. "General", s. 3.4., as amended 2011-12-13.

was, you know, is this a situation where we should just leave it, you know, leave it and walk away and see what happens.

I told Superintendant Stubbs that I had grave concerns about doing that. I said, in my mind, after speaking with Greg and his volatility and with what I knew about what allegedly happened the night before, I was very concerned about just leaving him and seeking a warrant later and basically coming back another day and completely backing off.

We had, in my opinion, an obligation to ensure public safety here, and that was a huge, huge concern for me after spending a lot of time talking both with Lorraine and with Greg.

[148] Superintendent Stubbs explained at the Coroner's inquest that on September 9, 2012, when he was initially briefed by Staff Sergeant Anderson, there were hopes for Mr. Matters turning himself in, so use of the NDERT was not considered necessary at that time. On September 10, 2012, the deadlines for surrender came and went. Just after 1 p.m., Superintendent Stubbs went to Staff Sergeant Anderson's office to discuss the next steps. Some of the factors they considered were Mr. Matters' threats that if the police does not deal with Trevor, he will; that Mr. Matters has threatened to shoot persons coming onto the property; that they had been relying on Lorraine Matters to deliver Mr. Matters to the detachment but he had since stated that his mother did not speak for him; the history between the brothers of some violence; and Mr. Matters' general history of threats and arrest, and the assessment done by the RCMP's behavioural sciences group. In his view, the charges were serious and concerning, and both Constable Poyzer and Staff Sergeant Anderson told him that the charges were "good."

[149] Superintendent Stubbs explained the discussions which led to the decision to activate the NDERT to IIO investigators as follows:

SUPT. STUBBS: So, in this case, I -- you know, again, I ask the question out loud to Brad, as well to myself is, "Can we back off? Can we just let this go?" And whether we try again tomorrow, whether we let him cool off or calm down, you know, Wednesday, Thursday, whatever the case might be. So, the discussion we had of course, centered around some of the comments that he has made, specifically, that if we don't deal with Trevor, he will. And in discussing that point, he has proven that he is not just a talker. I mean, the incident that occurred at three in the morning on the Sunday, I mean, he went after a vehicle, which was his brother, ran him off the road, and then approached the driver, is what the file reads, and punched him, and afterwards, you know, Trevor said, "Gregory, it is your brother," and he kept punching him.

C. RIVARD: Okay.

SUPT. STUBBS: So he has exhibited behavior already that is violent towards his brother.

C. RIVARD: Sure.

SUPT. STUBBS: So, when he says, "If you don't deal with my brother, I am going to," that is concerning. It is hard to back off.

C. RIVARD: Okay.

SUPT. STUBBS: He knows that, you know, as per Staff [Sergeant] Anderson's conversations with him, that we are going to arrest him, so he knows we are involved, and he knows that there are some consequences for his actions coming. He has made comments about shooting the police, he has made comments if anyone comes on his property. So he is at this agitated state, so I think to myself, of course, when you are debating whether ERT should be deployed or not, and I just think of some what-if, logical -- or plausible, sorry, scenarios. You know, a B.C. Hydro guy wants to go on his property to read the meter. He has got 160 acres, someone is hiking on one of the trails, and he thinks maybe that is police. Or he thinks, you know --

C. RIVARD: Okay.

SUPT. STUBBS: I thought about this.

C. RIVARD: Sure.

SUPT. STUBBS: What is he going to do to those people, right? We are at a point now where we have to protect the public. We have a duty to protect the public, we have a duty to protect Trevor Matters as well.

C. RIVARD: Okay.

SUPT. STUBBS: So, that is the, you know, sort of the rationale in terms of trying to deal with him. You know, the extraordinary efforts made by Brad to try to get him out, clearly wasn't working. We had given it -- you know, give or take we had been trying for over 24 hours, not just Brad, but some of the other members were there, and it just wasn't working.

C. RIVARD: Okay.

SUPT. STUBBS: So we have to try something else, and ERT was it.

So, at approximately 1405 we made the decision, I made the decision, that we'll activate ERT.

[150] In his written response to questions posed during the Commission's investigation, Superintendent Stubbs added:

Public Safety is paramount in any decision to deploy ERT. There have been numerous situations where I'm contacted with a request to deploy ERT and I decline to activate the team. These are situations where the incident might be serious enough, but we can mitigate the risk by keeping the victim and the public safe. This is a key point. Can we keep the victim and the public safe? Is the victim going to cooperate and stay at a safe location until we can deal with the suspect? When I don't activate ERT, the strategy usually involves waiting for the suspect to sober up/calm down and dealing with him/her at a later time/date. I look at this option in every ERT deployment. Mr. Matters was no exception in regards to this assessment. Issues of Mr. Matters' history, mental health, propensity for violence, behavioral science reports are all important. However, the problematic issue that we could not overcome is the protection of Trevor Matters, the general public that might attend his property, (ex: BC Hydro, Purolator) and the safety of members. This stemming from the threats that he made that he would deal with Trevor if the police didn't, he'd shoot anyone or police officer who came on his property. I could not defend any injury/death inflicted by Mr. Matters if we had backed off his property. If a general duty member attempted to arrest Mr. Matters and he had attacked the Constable with a hatchet and injury or death to the member resulted, I would have been heavily criticized given the threats that he had made. As I testified to during the Inquest, if Mr. Matters hadn't made these threats, there could have been an opening not

to activate ERT and wait a few days. However, his threats forced us to assure that the public, Trevor Matters and our members would not be victimized by any violence directed to them by Mr. Matters. Given the violence that Greg inflicted on Trevor Matters by running him off the road and assaulting him, I had to take his threats as credible. As I testified to at the inquest — we use the acronym of AIM to assess threat, (Ability, Intent, Motive/Means). Greg Matters fit the criteria in every area.

To this day, I believe that the threats Mr. Matters made were legitimate and real. This is supported via his actions with the hatchet and the way he confronted the members. As well, an email that Trevor Matters sent to a Constable in our office where he expresses his gratitude for the actions of our members. A quote from his email, "I truly believe that the RCMP saved my life. Not necessarily that night with what happened but in the near future. Jody believes this as well." (Jody is his wife).

Often, there is a perception that when ERT is activated or involved in an incident that police are over reacting and bringing in "the army." One has to keep in mind that ERT are simply regular members of the RCMP that have more specialized training and better equipment. In situations like this, their role is to assist general duty members with a high risk incident and to safely arrest an individual. It is not an over-reaction to manage a high risk incident in a safer manner with the best resources/equipment that are available. [sic throughout]

[151] The same rationale is reflected in the notebook entries made by Superintendent Stubbs.

[152] I note that the information that Mr. Matters had threatened to shoot anyone who came into his yard apparently carried some weight in the decision-making of Staff Sergeant Anderson and particularly Superintendent Stubbs. According to Superintendent Stubbs, he believed that Mr. Matters had said that, "*he'd shoot anyone or police officer who came on his property.*" He stated to IIO investigators that he was concerned that a hydro employee, or a hiker, may enter onto the property, and Mr. Matters might think it is the police. Consequently, he was concerned for the safety of the public and for Trevor. They had been trying to negotiate a surrender for over 24 hours and it just was not working. They had to try something else, and he believed the ERT was it.

[153] Superintendent Stubbs stated at the Coroner's inquest that he was aware of Mr. Matters' previous arrests; that he was not aware that Mr. Matters' PTSD had been triggered in part by encounters with police; and that he was not aware of the forensic assessment completed by Dr. Morgan in 2010 (which was not accessible by the RCMP). Superintendent Stubbs also stated that he was not aware of Mr. Matters' allegation of excessive use of force against RCMP members from an earlier arrest. Superintendent Stubbs stated that as Incident Commander, he receives basic summaries but not all of the fine details, and there is no time to read it all. He stated that some people have a lot of history and it is not possible to read it all before taking action. Superintendent Stubbs added that it is hard enough to get an ERT up and running; but in general, the more information the better. Superintendent Stubbs was aware that

Mr. Matters did not trust police. There was an ongoing effort to get him to come in with his mother, but that was unsuccessful. He noted that it is not uncommon for suspects to not like the police and not want them on their property.

[154] “E” Division RCMP policy⁷ states, in part, that ERT members may be used (either as a team or individually) as support for the following high-risk operations:

- high-risk arrests, searches and vehicle take-downs;
- high-risk witness/suspect protection; and
- support for PDS teams on high-risk tracks and searches.

[155] National RCMP policy⁸ states that ERT may be activated to provide tactical armed support to:

- apprehend or neutralize armed/barricaded persons with or without hostages;
- assist in the arrest of suspects or mentally deranged persons;
- assist with high-risk vehicle take-downs or arrests;
- conduct rural surveillance where compromise could result in violence towards police, or when specialized equipment and training are required due to environmental conditions.

[156] ERT members are used in such situations because they have specialized training and equipment. The point above highlights their specialized training and equipment and its usefulness for rural settings and when needed due to environmental conditions, all of which were important considerations in this case. Superintendent Stubbs was briefed to a level that he felt satisfied his requirements and took the decision to activate the NDERT. In my view, that decision was reasonable and consistent with the above-noted policy.

[157] As noted by Superintendent Stubbs, some believe that the use of ERT is often an overreaction by the police. It has been asserted that the deployment of ERTs unnecessarily and automatically escalates an incident. While that perception is understandable, the reality is that very few ERT deployments result in death or injury.⁹ Mr. Matters’ family expressed specific concern about several shooting deaths that had occurred as a result of the involvement of the NDERT prior to that of Mr. Matters. The Commission is aware of those cases and will be issuing an independent report on the NDERT shooting of Mr. Valeri George in Buick Creek, British Columbia, on September 30, 2009.

FINDING: Superintendent Stubbs’ decision to activate and deploy the NDERT was reasonably based and consistent with RCMP policy.

⁷ RCMP “E” Division *Tactical Operations Manual*, chap. 2. “Emergency Response Team”, s. 14.1.

⁸ RCMP *Tactical Operations Manual*, chap. 2. “General”, s. 3.1.

⁹ See, for example, the footnote on page 13 of the IIO’s report on this matter, dated April 29, 2013.

NDERT briefing and risk assessment

[158] RCMP policy provides that the deployment of an ERT must be fully justified and defensible based on a timely, thorough and detailed risk assessment.¹⁰ Among the responsibilities of the Incident Commander is ensuring that liaison is established and intelligence is shared with support units.¹¹ RCMP policy also specifies that appropriate briefings be conducted. Mr. Matters' family expressed concern about whether the information the police used to assess him was accurate and up to date.

[159] In this case, Superintendent Stubbs assigned members to gather pertinent information and arranged to hold a briefing for NDERT members and support staff at the Prince George detachment. Corporal Todd Wilson prepared the intelligence package to disseminate at the briefing, with assistance from Constable Dickinson. Concurrently, Constable Poyzer was actively preparing the Informations to Obtain a Search Warrant and a Feeney warrant.

[160] A set of documents was assembled and made available to the NDERT and other members during the briefing. The report was 18 pages in length and was comprised, in part, of:

1. A physical description and biographical information of Mr. Matters;
2. A brief summary of Mr. Matters' prior contact with the Prince George RCMP;
3. A Threat Assessment Report from 2010, prepared by the RCMP Behavioural Sciences Group in Surrey;
4. Google maps of the Matters property area;
5. A hand-drawn diagram of what appears to be the layout of the Matters property, with the specific outbuildings labeled;
6. A hand-drawn diagram of the interior main floor and basement floor plan of the Matters residence;
7. Two exterior photographs of the driveway and gate area of the Matters property;
8. An undated photograph of Mr. Matters, with the handwritten caption "still looks the same";
9. A two-page PRIME report for Mr. Matters.

[161] Going into the briefing, Superintendent Stubbs felt that he was keenly aware of the situation that they were facing. Mr. Matters had spoken about everything from surrendering to shooting someone. During the meeting, Constable Poyzer briefed the other members on the findings of his investigation and on what Mr. Matters had said to him. Superintendent Stubbs described the briefing as follows:

SUPT. STUBBS: So we started our briefing at 1613hrs.

IIO INVESTIGATOR: Okay.

SUPT. STUBBS: Again, Constable Poyzer was there and provided the background of the situation and, you know, some of the comments that he had made in terms of people come on his property, and doesn't like police, and you

¹⁰ RCMP "E" Division *Tactical Operations Manual*, chap. 2. "General", s. 3.

¹¹ RCMP *Tactical Operations Manual*, chap. 1.1. "Incident Commanders", s. 5.1.3.

know, has issues with his brother, longstanding issues with his brother and whatnot. If any police officer points a gun at them he will shoot them dead. He's volatile, but we have had communication with him. And of course that he, at this point, was not in the residence. I provided -- there -- we dealt with him in 2010. There was a behavioural -- the Behavioural Sciences Unit prepared a report on him.

IIO INVESTIGATOR: Okay.

SUPT. STUBBS: Sort of a risk assessment and the conclusion of that -- I have that here as well, too --

IIO INVESTIGATOR: Okay.

SUPT. STUBBS: -- as part of my notes. But at the conclusion of that, without reading it out, basically was that he's a high risk to act violent towards members.

IIO INVESTIGATOR: Okay.

SUPT. STUBBS: There's that risk.

IIO INVESTIGATOR: Sure.

SUPT. STUBBS: We had to be very cognizant of that. So. And basically we don't know where he is. Then Brad spoke, and you know, just basically gave kind of a brief summary of his dealings with him. But Matters asked if he was going to be arrested and said he was going to go out and get his gun. He got very heated and agitated, that he wants Trevor arrested. And Matters is saying that he was on the backside of the tree line camping with a book and his dog.

IIO INVESTIGATOR: Okay.

SUPT. STUBBS: He said -- he was telling us that he didn't have a firearm. However, at the same time, he was saying if we came onto his property, he was going to shoot us, so.

IIO INVESTIGATOR: Okay.

SUPT. STUBBS: Of course we treated him as armed.

IIO INVESTIGATOR: Definitely.

SUPT. STUBBS: We had to assume that given everything. [*sic* throughout]

[162] The NDERT briefing included the 2010 threat assessment report that had been prepared in relation to an incident where Mr. Matters had authored an email uttering threats against the then Interim Chairperson of the Commission. Those threats included killing anyone who presented themselves as a target of opportunity and the RCMP. Mr. Matters was subsequently convicted and received an 18-month suspended sentence and a 5-year firearms prohibition.

[163] The same member subsequently produced a threat assessment for Mr. Matters in 2011, although it was less formal and contained in an email exchange on the relevant RCMP file. The correspondence indicated that the author has reviewed the material from the November 2010 incident and suggests an "approach through a third party" to give Mr. Matters a face-saving option. Those options included working through Mr. Matters' mother, which had worked in February 2011 in relation to a failure to comply with a probation order. That assessment or guidance was not included in the NDERT briefing package, but ideally should have also formed part of the package. That being said, it did not appear to affect the actions of the police, as the suggestions were in line with the actions that were already taken by the members. Most notably, it is clear

that Staff Sergeant Anderson had made numerous attempts to work through Ms. Matters, to no avail.

[164] While the briefing package itself did not include any information about Mr. Matters' having PTSD, the scribe's notes of the briefing indicate that Staff Sergeant Anderson mentioned that Mr. Matters' mother had confirmed that he was "ramped up and agitated," and that they should speak to his psychiatrist due to the PTSD issue. Consequently, I am satisfied that the issue was discussed during the briefing. Efforts were made by members to speak with Dr. Passey and are detailed later in this report.

[165] Superintendent Stubbs further stated that during the course of the briefing, they discussed the authority of the arrest and what they call the mission or goal, which was to arrest Mr. Matters safely. In my view, the NDERT briefing package and discussion was reasonably thorough and accurate.

FINDING: The NDERT briefing was reasonably thorough and accurate.
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Availability of NDERT personnel

[166] The NDERT is a part-time ERT, which means that members of the team have full-time positions within the RCMP separate and apart from their participation with the ERT. As of the date of this incident, all positions on the team were on a voluntary, part-time basis. Since then, the position of Team Leader was made full-time and is currently occupied by then Team Leader Corporal Ryan Arnold. I note that part-time team members are subject to the same qualification and training requirements as full-time team members, and RCMP policy provides that an ERT activation supersedes their other duties.¹²

[167] At approximately 2 p.m. on September 10, when Superintendent Stubbs authorized the activation of the NDERT, there were several members who were unavailable for deployment. As Corporal Arnold later explained:

On Sept. 10, 2012 the Prince George team had 10 trained ERT operators. When the call out happened all members were notified. The members who were available attended the call. I was aware that there were 2 members who were not available for deployment. Due to unforeseen circumstances there were an additional 3 members who were unavailable. When I received notification of the call out and the subsequent response that only 5 members were available I immediately requested the North Coast ERT team (based out of Terrace) be activated to augment our team. [sic throughout]

[168] Superintendent Stubbs requested that the North Coast ERT be deployed, as the NDERT had only one sniper/observer, who was Corporal Arnold, the Team Leader. The North Coast ERT was mobilized shortly thereafter but arrived after the fatal shooting had occurred. Of the six North Coast ERT members that responded, three were trained as snipers/observers and would have been able to deploy in that capacity.

¹² RCMP *Tactical Operations Manual*, chap. 2. "General", s. 3.2.

[169] As noted in the RCMP's IOR report, "It is common practice in northern locations where insufficient tactical resources are available, that resources are summoned from other locations to meet operational requirements." Superintendent Stubbs saw that the NDERT was short on available members and appropriately, and in a timely manner, requested backup from the nearest available ERT. While distance was an issue for the timely receipt of those resources, Superintendent Stubbs took appropriate action to ensure that all available resources were deployed for the incident.

FINDING: Superintendent Stubbs took appropriate action to ensure that all available ERT personnel were deployed to the incident.

RCMP members' entry onto private property

[170] As noted above, I found that the members had reasonable grounds to believe that Mr. Matters had committed a number of criminal offences and that a warrantless arrest was justified under section 495 of the *Criminal Code*. However, concern has been expressed by Mr. Matters' family about the grounds for the warrantless police entry onto private property to effect the arrest. I have concluded for the reasons set out below that when the members entered the Matters' private property, they reasonably believed that there was an urgent need to do so to prevent imminent bodily harm or death and were justified in doing so.

[171] It is important to bear in mind that while the members entered onto private property to effect the arrest of Mr. Matters, they did not enter a dwelling-house. Consequently, no warrant was available for such an arrest. In addition, there is a lower expectation of privacy that exists on private property but outside the home. The Supreme Court of Canada has confirmed this notion of a privacy hierarchy.¹³

[172] Understandably, Mr. Matters' family expressed concern about the RCMP's response in circumstances where they believed Mr. Matters did not pose any immediate danger to anyone, was not in the possession of firearms, and simply sought solace on his property "with his dog and a book." This view was expressed repeatedly by the family's legal counsel throughout the Coroner's inquest. However, the views of loved ones and of the public often do not reflect the realities that police officers are faced with. As noted by the Ontario Court of Appeal:

Often, and this case is a good example, the atmosphere at the scene of an arrest is a volatile one and the police must expect the unexpected. The price paid if inadequate measures are taken to secure the scene of an arrest can be very high indeed. Just as it is wrong to engage in ex post facto justifications of police conduct, it is equally wrong to ignore the realities of the situations in which police officers must make these decisions.

¹³ See *R v Tessling*, [2004] 3 SCR 432, at para 22: "The original notion of territorial privacy ("the house of everyone is to him as his castle and fortress") developed into a more nuanced hierarchy protecting privacy in the home, being the place where our most intimate and private activities are most likely to take place . . . in diluted measure, in the perimeter space around the home . . . in commercial space . . . in private cars . . . and even, at the bottom of the spectrum, a prison . . ."

In my opinion, one cannot ask the police to place themselves in potentially dangerous situations in order to effect an arrest without, at the same time, acknowledging their authority to take reasonable steps to protect themselves from the dangers to which they are exposed. If the police cannot act to protect themselves and others when making an arrest, they will not make arrests where any danger exists and law enforcement will be significantly compromised. The frustration of the effective enforcement of the criminal law is the hallmark of the exceptional circumstances identified in Feeney.¹⁴

[173] While the case before the Ontario Court of Appeal involved possible danger to those at the scene, the same principles can be applied to the protection of any persons in relation to an arrest, from civilians affected if the person is not taken into custody quickly to the police officers themselves. The courts have acknowledged that decisions should be objectively assessed taking into consideration the dynamics within which they acted, including their experience.¹⁵

[174] When questioned about the reasons for entering the properties, Corporal Warwick asserted authority to enter to make an arrest pursuant to section 495 of the *Criminal Code*. At the time of the initial entry, he and Constable Grafton believed Mr. Matters to be in the immediate vicinity and that there was an opportunity to gain a tactical advantage in the situation, to locate and arrest him. For safety reasons, there was a desire to locate and arrest him away from his residence. When they determined that they could not do so, they backed out of the area to await the arrival of additional ERT personnel. Corporal Warwick believed that Mr. Matters:

[r]epresented a very serious and lethal threat to the community. He had stated that he would kill anyone who came onto his property, and his immediate whereabouts had not been verified. No persons in the area were safe from Greg MATTERS until he was in custody. His actions since the beginning of this incident proved that he was violent, unpredictable, and capable of inflicting harm even upon family members. Exigent circumstances dictated that there were grounds to enter the property and any place therein without warrant in order to arrest Greg MATTERS.

...

Although his general location was known, no police officers could see or monitor his activities.

MATTERS was not fully contained at the property. There was still a significant chance that he could escape.

[175] I note that, as discussed earlier in this report, the threats were more specific to Trevor and anyone who he *perceived to be threatening* him, but these threats were of equal concern and risk. Overall, I find that he reasonably believed that Mr. Matters posed a real and significant threat.

¹⁴ *R v Golub*, [1997] OJ No. 3097 (Ont CA) (per Doherty, J.A.), paras 44–45.

¹⁵ *R v N.N.M.*, [2007] OJ No. 3022 (SCJ), paras 204–206.

[176] As the incident progressed, Corporal Warwick reported that they received information that Mr. Matters had agreed to surrender and that he was going to walk down the driveway. NDERT members drove to the driveway where they believed he would be walking down. They stopped just inside the gate and took up positions to view along the driveway, but Mr. Matters was not visible. Constable Merriman then told them that Corporal Arnold's instructions were to drive up towards the farmhouse to facilitate the surrender and take Mr. Matters into custody, so they did so.

[177] Superintendent Stubbs stated that the primary reason to have NDERT members enter was to facilitate the surrender of Mr. Matters. The first time they were able to confirm his location, he confronted the members with the hatchet. He noted that if they had a positive sighting of Mr. Matters in the homestead, they would have taken steps to contain that building. Superintendent Stubbs stated that he believed there were exigent circumstances that allowed them to enter onto the property without a warrant.

[178] The British Columbia Supreme Court has confirmed that exigent circumstances may include the effects of an officer's general experience.¹⁶ The circumstances must necessitate immediate action, must be based on a subjective belief on the part of the police, and must objectively be supportable.¹⁷ Consideration may be given to the location and topography of a property, its size, and the ability of police to conduct effective surveillance on it.¹⁸

[179] The police were confronted with the following circumstances. Following the alleged criminal conduct, Mr. Matters did the following: threatened to shoot Trevor if he saw him again; threatened to shoot anyone entering onto his property and who he perceived to be threatening him; and threatened that if the police did not deal with his brother, he would deal with him and it "would not be pretty." Mr. Matters also allegedly stated that if anyone, including the police, pointed a gun at him, he would shoot them dead.

[180] Trevor may have been at a safe location, but Mr. Matters was not contained—he seemingly had numerous avenues of escape. Mr. Matters knew the property and the police did not. Containment was an ongoing issue that was affected by the size and topography of the property and a lack of resources. In my view, RCMP members reasonably believed that Mr. Matters was still agitated to the point of posing a danger to others. It was clear that Mr. Matters felt an injustice in terms of the police involvement in the incident and he had established that he was willing to take justice into his own hands and stated an intent to take care of Trevor if the police did not. There was no way to know what Mr. Matters would do to anyone he perceived as getting in his way of obtaining justice against his brother. Mr. Matters stated to the police during the incident that he was going to get a gun, although he subsequently stated that he did not have one. RCMP members could not reasonably rely on his or his family's assurances that he did not have a firearm. In my view, RCMP members reasonably believed that there

¹⁶ *R v Chuhaniuk*, [2008] BCJ No. 1279 (SC), para 70.

¹⁷ *Ibid.*, para 74.

¹⁸ *Ibid.*, paras 83–84.

were exigent circumstances, i.e. that immediate action was necessary, both on a subjective and objective basis.

[181] It is important to note that after the initial entry when Corporal Warwick believed that Mr. Matters was in close proximity to him, the intent of entry was to first locate Mr. Matters so that more specific operational plans could be developed, and subsequently to safely receive Mr. Matters when he stated his intent to surrender. The purpose of entry was not to force a confrontation with Mr. Matters.

[182] I am also satisfied that the police entry was in compliance with the duties and powers of the police at common law as set out in the English Court of Criminal Appeal judgment in *R v Waterfield*, [1964] QB 16. The Court stated that if the police officer's conduct is prima facie an unlawful interference with a person's liberty or property,

. . . it is then relevant to consider whether (a) such conduct falls within the general scope of any duty imposed by statute or recognized at common law and (b) whether such conduct, albeit within the general scope of such a duty, involved an unjustifiable use of powers associated with the duty.

[183] The *Waterfield* test, as it has come to be known, has been applied on numerous occasions by the Supreme Court of Canada and other Canadian courts.¹⁹

[184] At common law, the principal duties of police officers are “the preservation of the peace, the prevention of crime, and the protection of life and property.”²⁰ The common law duties to preserve the peace and prevent crime are preserved in federal legislation. Paragraph 18(a) of the RCMP Act declares that the duties of RCMP members who are peace officers include the duty to perform all duties that are assigned to peace officers in relation to the preservation of the peace, the prevention of crime and of offences against the laws of Canada and the laws in force in any province in which they may be employed, and the apprehension of criminals and offenders and others who may be lawfully taken into custody.

[185] The *Waterfield* test can support only lawful police conduct. The duty to preserve the peace and to protect life and property does not give the police all the powers they would wish to have in order to carry it out effectively. The extent of common law powers is limited by the minimal intrusion required by the “reasonably necessary” test. This involves assessing and balancing the importance of the reason for the intrusion and the need for it, with the nature and extent of the intrusion. In other words, were the actions of the police reasonably responsive and tailored to the circumstances known to the police?²¹

¹⁹ See, for example, *R v Clayton*, [2007] 2 SCR 725.

²⁰ *Dedman v The Queen*, [1985] 2 SCR 2 at paras 11 and 32; *R v Mann*, [2004] 3 SCR 59 at para 26; *R v Clayton*, [2007] 2 SCR 725 at para 69; *R v Kang-Brown*, [2008] 1 SCR 456 at para 151.

²¹ *R v Clayton*, [2007] 2 SCR 725.

[186] The police had tried unsuccessfully to negotiate with Mr. Matters to voluntarily attend the RCMP detachment. They had enlisted the aid of his mother and they had undertaken an ongoing dialogue with Mr. Matters, all to no avail. Mr. Matters' whereabouts were not known and escape was a real possibility. The RCMP had advised Mr. Matters a number of times that he was going to be arrested. Despite coming close to surrendering, he never did. While waiting him out was an option, it was not one without significant risk, which will be discussed later in this report. In my view, the warrantless entry by the police was reasonably necessary based on all of the exigent circumstances outlined above. No other less intrusive means were available to defuse the volatile situation and eliminate the threat posed by Mr. Matters.

FINDING: RCMP members had reasonable grounds to enter onto the Matters properties without a warrant.

Work done by the NDERT Crisis Negotiator Team

[187] As discussed earlier in this report, the negotiations with Mr. Matters were conducted by Staff Sergeant Anderson. He remained the primary negotiator—maintaining direct communication with Mr. Matters—upon the deployment of the NDERT. The family of Mr. Matters has expressed concerns about whether that member was properly trained in negotiation and whether he conducted himself in the most appropriate manner throughout. The Commission must also consider whether or not it was reasonable for the NDERT Crisis Negotiator Team (CNT) to leave Staff Sergeant Anderson in that role as primary negotiator, and whether those members conducted themselves in the appropriate manner throughout the negotiations.

[188] RCMP policy states that deployment of a CNT must be considered for an ERT deployment.²² In this case, a decision was made to deploy such a team with the NDERT. The objective of a CNT in such an incident is to negotiate the safe surrender of a subject without death or injury to anyone.²³ The team consisted of Corporal Garcia, Corporal Wilson, and Corporal Darren Dodge.

[189] In her notes, Corporal Garcia recorded that she was instructed by the Incident Commander to assume the role as primary negotiator, which she was well-trained and experienced to do. She was aware that Staff Sergeant Anderson had established a rapport with Mr. Matters and was going to have Staff Sergeant Anderson eventually introduce her to Mr. Matters, and then she would take over. The transition was to occur at the command post, which was being set up. Negotiations had ultimately ended before the transition could take place. Communications issues relating to the CNT remaining at the detachment, a different location than the command post, are addressed later in this report.

²² RCMP "E" Division *Tactical Operations Manual*, chap. 2. "Emergency Response Team", s. 3.

²³ RCMP *Tactical Operations Manual*, chap. 3.1. "Crisis Negotiation Responsibilities", s. 1.2.

[190] Corporals Garcia, Wilson and Dodge and Staff Sergeant Anderson discussed themes for the ongoing negotiations with Mr. Matters, which was in line with the conversations Staff Sergeant Anderson had already been having with him. Corporals Wilson and Garcia remained at the Prince George Detachment to coach Staff Sergeant Anderson and to obtain information on Mr. Matters that may assist with the negotiations. Corporal Dodge was assigned to the command post. When Mr. Matters' mother was brought to the detachment, Corporal Garcia was asked to speak with her, to see if she was willing to cooperate with them. She indicated that her job at that time was to calm her down and gain as much information as she could from her about Mr. Matters.

[191] Staff Sergeant Anderson had built a rapport with Mr. Matters that the CNT chose to attempt to support rather than take over. In my view, that decision was reasonable. Mr. Matters was already agitated and did not trust the police. Recordings of his conversations indicate that he maintained a calm demeanour throughout, as he had done prior to the involvement of the NDERT. With respect to Staff Sergeant Anderson's capabilities, Corporal Garcia stated that she knew him to always be calm. She believed him to be competent to do the task. She indicated that there were some members she would never allow to take on that role, but he was not one of them. Staff Sergeant Anderson's role was to be focused on the telephone. At that point, she was secondary and was to sit beside him taking notes, including documenting the call times, and noting as much of the conversation as possible. The third person in the room—Corporal Wilson—was responsible for relaying the information up to the Incident Commander. And that is what occurred. It is clear from the record that their coaching was reasonable and appropriate.

[192] Corporal Wilson also became involved with attempting to obtain information relating to the location of Mr. Matters from his cellular data. Corporal Wilson contacted Telus Security, which provided an approximate GPS coordinate of the telephone that was being used by Mr. Matters. He also attempted to restrict the calls that could reach Mr. Matters' telephone but was informed by Telus Security that they were unable to do so.

[193] Corporal Garcia's dealings with Mr. Matters' psychiatrist, Dr. Passey, are discussed in the following section of this report.

FINDING: Staff Sergeant Anderson continued to negotiate with Mr. Matters in an appropriate and professional manner under the supervision of the CNT.

FINDING: CNT members reasonably determined that it was appropriate for Staff Sergeant Anderson to continue negotiations with Mr. Matters given the rapport he had built and their understanding of his abilities.

FINDING: CNT members conducted themselves reasonably throughout the negotiations and information-gathering process.

Third-party intermediaries

[194] Mr. Matters' family has expressed concerns about the alleged failure of the RCMP to use the people closest to him throughout the incident to talk him off the property and/or bring him to the detachment. Their concern relates primarily to the RCMP's decision not to engage Mr. Matters' mother, neighbour and family friend, or psychiatrist at various points throughout the incident. Such persons are known as third-party intermediaries (TPIs), or non-law enforcement individuals who may be used to assist during police encounters with persons in crisis. TPIs can include family members, friends, neighbours, mental health professionals and co-workers.

[195] A review of the literature in this area indicates that, since the origin of crisis/hostage negotiation teams in the early 1980s, police trainers and managers, particularly in the United States, have generally discouraged the use of third-party intermediaries.²⁴ However, this position has been evolving as more positive outcomes are being documented involving TPIs. The choice of which type of TPI to select and whether to engage one in the first place will depend on the situation, as every event is unique. Police negotiators must carefully weigh the advantages and disadvantages of using a TPI and determine whether or not their use will benefit the operation.²⁵

[196] Identifying and selecting TPIs is not a simple process; they must be thoroughly investigated and interviewed. Corporal Garcia stated to the Commission that the RCMP's process includes the completion of an extensive questionnaire. In addition, members have to satisfy themselves that TPIs are comfortable following their direction; members have little, if any, control over what they are going to say. It is typically scripted and put onto a tape recorder and played over the telephone. It is a process that takes time.

[197] Some of the challenges that the police are faced with when using TPIs include:

- The ethical positions and/or professional obligations of some TPIs (e.g. mental health professionals) may not necessarily be consistent with those of law enforcement. As an example, police negotiators may have no difficulty with setting a subject up for a tactical resolution to an incident.
- TPIs are not normally accustomed to responding to violent incidents.
- TPIs are not usually familiar with police policies, procedures, or the law.
- The loss of control by police can be a problem when a TPI is introduced into the event.
- The subject's reaction to the TPI is unpredictable.
- TPIs may not necessarily have the same goals or motivations as police.

²⁴ Lanceley, Frederick J. (2003). "On-Scene Guide for Crisis Negotiators." Second Edition. Boca Raton, Florida: CRC Press.

²⁵ Romano, Stephen J. (1998a). "Third-Party Intermediaries and Crisis Negotiations." *FBI Law Enforcement Bulletin*. Pp. 20–24.

- With respect to family members as TPIs, too often, it is assumed that a good family relationship exists.²⁶

[198] The use of mental health professionals as TPIs can add additional challenges in light of their ethical positions and/or professional obligations. For example, police negotiators try to be truthful but, during a tactical manoeuvre, they may have to be deceptive. They may also have to withhold information from the subject. They may use false assurances and minimize the seriousness of the situation.²⁷

[199] Some of the main drawbacks to using TPIs, whether or not they are mental health professionals, include a lack of training in crisis/police negotiation skills; they may respond inappropriately to the stress of the incident, they may make matters worse by bringing unknown biases or relationships into the situation, and they may serve as an audience for a subject's homicide or suicide.²⁸ Both Corporal Garcia and Superintendent Stubbs indicated that they have experienced both positive and negative outcomes in situations where TPIs have been used.

[200] Ultimately, the negotiation of barricaded person situations remains the responsibility of the police, which have highly experienced and trained police negotiators. At the same time, however, it is recognized that these types of critical incidents sometimes require both flexibility and creativity from negotiators in order to bring about a successful resolution to an event. Therefore, the use of TPIs should not be dismissed out of hand.

[201] It is natural to second guess the actions of the police where the end result is the tragic death of a loved one, and to speculate how the person's death could have been avoided had someone close to the deceased been permitted to speak with them. Corporal Garcia stated at the Coroner's inquest that while the use of TPIs can have a positive outcome, it is high-risk. Even with time allowing for proper vetting and preparation, the involvement of TPIs in a critical incident can go horribly wrong. In any event, as I have set out below, the events leading to the confrontation with Mr. Matters that resulted in his death moved too quickly to allow for the involvement of a TPI during the negotiations once Mr. Matters' mother had been removed from the property. However, I understand that following an internal review of this incident, the RCMP is reviewing the practice of using TPIs, as well as developing a list of qualified mental health professionals that would be able to respond to critical incidents anywhere in the province.²⁹

²⁶ Lanceley, Frederick J. (2003). "On-Scene Guide for Crisis Negotiators." Second Edition. Boca Raton, Florida: CRC Press.

²⁷ Dr. Park Dietz (cited in Strentz, 2012: 7) Strentz, Thomas (2012). "Psychological Aspects of Crisis Negotiation." Second edition. eBook version. Boca Raton, Florida: CRC Press/Taylor & Francis Group.

²⁸ Romano (1998a).

²⁹ As per correspondence from A/Commr. Norm Lipinski, "E" Division Criminal Operations Officer – Core Policing to the Commission, dated September 8, 2014.

a) Lorraine Matters

[202] Lorraine Matters was identified early on by Staff Sergeant Anderson as a person who may be able to facilitate the peaceful surrender of Mr. Matters. It began with his first telephone call to the Matters residence in the evening of September 9, and continued until just hours before the fatal encounter between NDERT members and Mr. Matters. By early afternoon on September 10, 2012, Staff Sergeant Anderson had determined that Ms. Matters had become more and more argumentative with respect to the actions of the members and their desire to arrest her son. Mr. Matters also stated to Staff Sergeant Anderson that his mother did not speak for him and that the timelines she had given were “not going to happen.”

[203] In past dealings with Mr. Matters, Lorraine Matters had successfully brought Mr. Matters to the detachment to surrender to the police. Staff Sergeant Anderson had dealt with Lorraine Matters and believed from the beginning that she would be able to assist with their goal of peacefully arresting Mr. Matters. However, as time progressed it became clear that Lorraine Matters may not be the solution, as she did not agree with certain police actions, including the decision to arrest her son. She became increasingly argumentative with Staff Sergeant Anderson and it also became clear through Mr. Matters’ statements that she did not speak for him. It was reasonable for members to believe that Ms. Matters may not be helpful at that point in time in negotiating Mr. Matters’ surrender.

FINDING: Staff Sergeant Anderson made significant efforts to facilitate Mr. Matters’ peaceful surrender through his mother, Lorraine Matters.

FINDING: At the time of the decision to deploy the NDERT, members reasonably believed that Lorraine Matters may no longer be helpful in their efforts to negotiate Mr. Matters’ surrender.

b) Valerie Pinko

[204] Valerie Pinko, a family friend and neighbour, spoke with Mr. Matters a short time before he was fatally shot. Mr. Matters had reportedly agreed, during that conversation, to allow her to bring him into the Prince George RCMP detachment to surrender. On her way to get him, she was stopped at one of the RCMP’s checkpoints and prevented by members from continuing on to the driveway of the Matters property. Understandably, Mr. Matters’ family questions why Ms. Pinko was not permitted to enter the property to pick up Mr. Matters, as she had promised him, and take him into the detachment. On that issue, Staff Sergeant Anderson stated to investigators:

Bottom line is he wasn’t going to get in that vehicle with someone else. He would have come to the end of that road and would have been apprehended at that point in time. We weren’t going to let him, for pretty obvious reasons in my mind anyway, take off in another vehicle with a civilian.

[205] At the Coroner's inquest, Staff Sergeant Anderson stated that he would not have let Ms. Pinko into the perimeter. If he were to use her to speak to Mr. Matters, it may have been done via telephone, but not within the perimeter. That opportunity never arose as the confrontation between Mr. Matters and NDERT members occurred minutes later. While Staff Sergeant Anderson had expected Mr. Matters to be able to see her as he walked down the driveway (which was not the case and is discussed later in this report), he also stated that he does not know if it would have made a difference. In any event, Mr. Matters spoke about his intention to surrender and there was no desire to stop him from doing so at that time.

[206] In my view, the police have legitimate concerns about allowing civilians to get within close proximity to a subject whom they reasonably believe to be a threat to an individual, the general public, and to the police. Members did not see Mr. Matters until the time of the confrontation, they felt that he was unpredictable, and they were unaware if he possessed any weapons, which he ultimately did. While additional time may have permitted members to consider whether they could have used Ms. Pinko in any other capacity, such as suggested by Staff Sergeant Anderson, that time was not available.

FINDING: RCMP members did not act unreasonably when they prevented Ms. Pinko from entering the Matters property to pick up Mr. Matters.
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c) Dr. Passey

[207] Up until approximately 12:30 p.m. on September 10, RCMP members reasonably believed that Lorraine Matters was the key to negotiating Mr. Matters' safe surrender. That is when Mr. Matters stated to Staff Sergeant Anderson that his mother did not speak for him and her timelines "would not be happening." Shortly thereafter, additional police units were sent to the area to monitor the perimeter of the Matters property as best as possible. While Lorraine Matters had told Staff Sergeant Anderson that Mr. Matters was under the care of a psychiatrist, it appeared up until that time that the situation could be resolved through his negotiations with Lorraine Matters and Mr. Matters alone. Staff Sergeant Anderson continued to have telephone contact with both of them in the hour and a half prior to the NDERT activation.

[208] Once the NDERT was activated, a briefing was held. That occurred at approximately 4:13 p.m. Notes from the briefing include a notation that they should speak to his psychiatrist due to the PTSD issue. Superintendent Stubbs explained at the Coroner's inquest that the first request regarding Dr. Passey was to get more information. They were not yet at a stage to determine whether he could be used as a TPI.

[209] The scribe noted that the Incident Commander requested at 5:48 p.m. that Corporal Garcia try to make contact with Mr. Matters' psychiatrist. I note that prior to this time, Corporal Garcia had been speaking with Lorraine Matters to gather information about her son, including information about the weekly Skype sessions he had with Dr. Passey, who was located in Vancouver. She reported the details of her initial

conversation with Lorraine Matters to Superintendent Stubbs at 5:15 p.m., according to her notes. She went back to speaking with Lorraine Matters following that exchange.

[210] According to entries in the Negotiator's Log, at 5:55 p.m. Corporal Garcia began making phone calls in an attempt to locate and contact Dr. Passey. She made many efforts to reach him, including calls to various hospitals and to the Vancouver Police Department requesting their assistance in locating him. (I note that she also attempted to consult with the local on-call psychiatrist, who indicated that he only dealt with stable PTSDs, not someone in Mr. Matters' current situation.) Finally, at 6:42 p.m., as a result of her phone calls, Corporal Garcia had a conversation with Dr. Passey.

[211] Unfortunately, at 6:56 p.m., the phone connection was lost and the conversation with Dr. Passey was cut off. However, as soon as that happened, Corporal Garcia passed along the information she had already gathered to Staff Sergeant Anderson and Corporal Wilson. When contact with Dr. Passey was re-established, Mr. Matters was apparently calm and contemplating surrender. Minutes later he was shot and killed.

[212] Corporal Garcia was asked about her conversation with Dr. Passey and stated the following:

Okay. So, he goes such a history, complicated history. It goes back to the military. And then he says it actually goes back to childhood. If Greg has said enough is enough in regards to Trevor and police, if he feels that he's being threatened on his own property he will do what is necessary to defend himself or end things. Dr. Passey believed him if he says that. He goes, I believe him. When badly triggered he's capable of acting in an aggressive manner and then he carried on to say he's been involved in his care since January 2012. He said to me, try to tone it down and make it rational. Possible themes. I asked him, so what are possible themes we can use to help de-escalate? He says, his issues are a sense of injustice, the whole system is against him. He has a delusional thought pattern. I explained to him that police are aware about issues with his brother from prior court cases and disposed charges. Explained we are aware that the brother should not have been there. We need to get his side of the story so he is not held responsible. He has had some good experiences with police officers who are willing to listen, that we are not just there to arrest him, that police want to sort this out, that Greg is not the only one held responsible. And then the phone cut off, my cell phone cut off.

[213] She further indicated that she passed on the information to Staff Sergeant Anderson, who said that Mr. Matters was much calmer. Corporal Wilson passed that information on to the Incident Commander. Those conversations are detailed in Corporal Garcia's Negotiator's Log. Superintendent Stubbs recalled the following with respect to the information he received as a result of Corporal Garcia's conversations with Dr. Passey:

In regards to the advice from Dr. Passey: He said a number of things to Cpl. Garcia. One statement that was relayed to me just prior to the shooting was, "if Mr. Matters said he was going to do something, he probably would do it". This was Dr. Passey's response in regards to Mr. Matters wish for a confrontation with

members. I recall linking this comment by Dr. Passey to the threats made by Mr. Matters towards Trevor Matters, the general public and to members. With that in mind, I concluded that Trevor Matters, the public and our members were not safe. [sic throughout]

[214] Corporal Garcia passed along the advice by Dr. Passey, along with her own instructions—keeping it rational and toned down; listening as much as possible; speaking in a calm voice; telling him that they know that Trevor should not be on the property and has to be held responsible for being there; telling him that they need his side of the story so that it all makes sense. Staff Sergeant Anderson’s communications were consistent with those themes.

[215] I note that Staff Sergeant Anderson chose tactically to be careful about making false statements to Mr. Matters, as he needed to ensure not to break Mr. Matters’ trust for the future. To that end, he did not believe it appropriate to lie to Mr. Matters about any intention to arrest Trevor. That had been his approach throughout and reflects the different interests and tactics between the police and mental health professionals. Staff Sergeant Anderson had to consider the rapport he had built with Mr. Matters and thought that gaining and retaining his trust was important. He also stated at the Coroner’s inquest that he believed Mr. Matters would have known he was lying to him, which could have caused serious issues for the future. Consequently, I find that the information received by Dr. Passey was communicated and considered by the members in a reasonable and appropriate manner.

[216] Ultimately, little time passed between the last telephone conversation with Dr. Passey (when it appeared that Mr. Matters intended to surrender) and the fatal confrontation between Mr. Matters and the NDERT. There was no opportunity to consider or facilitate the use of Dr. Passey as a TPI at that time.

FINDING: Corporal Garcia made extensive and reasonable efforts to locate and speak with Dr. Passey.

FINDING: Corporal Garcia passed along the information and suggestions she learned from Dr. Passey in a timely and detailed manner.

FINDING: The CNT reasonably considered and employed the suggestions put forward by Dr. Passey.

FINDING: There was insufficient time during the incident to consider or evaluate the use of Dr. Passey as a TPI given the events that unfolded shortly after he was contacted.

[217] Following Mr. Matters' tragic death, it is easy to speculate that Dr. Passey (or Lorraine Matters, or any number of family friends) could have talked Mr. Matters into surrendering to the police. However, such speculation is unreasonable. The use of a mental health professional, even one who has developed a relationship with the subject, is no guarantee of a successful negotiation. There are real life examples of where such attempts have not been successful, including those referred to by Corporal Garcia and Superintendent Stubbs at the Coroner's inquest, as discussed above. It should be noted that Mr. Matters also once referred to his previous therapist in Fredericton as "wonderful" and had reportedly developed a good rapport with her, until she suggested he needed to find a therapist closer to him after his move back to Prince George; this resulted in Mr. Matters sending her e-mails containing disturbing messages and death threats against her.

[218] As noted previously, Mr. Matters' behaviour was unpredictable and irrational. While the seriousness of his threats and behaviour has been spoken of as "all talk" at times by those closest to him, records establish that Mr. Matters did have some history of violence. The police do not have the option of picking and choosing which threats of harm they take seriously, and they engaged those persons closest to Mr. Matters in a reasonable manner.

FINDING: The RCMP members involved in the incident engaged those persons closest to Mr. Matters in a reasonable manner.
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Events leading up to the confrontation between the NDERT and Mr. Matters

[219] Not long after the NDERT was deployed, it appeared through the ongoing discussions with Staff Sergeant Anderson that Mr. Matters was preparing to surrender to the RCMP. Negotiations continued. Staff Sergeant Anderson recalled:

. . . at about 17:24 hours I made a call to Greg. And again we start talking about him coming out. I said, "I have been trying to get ahold of you because I had Trevor in here that, you know, we talked about things and you need to come in – your side of the bargain basically. Stayed away from, you know, that I didn't believe and there was nothing there with regards to substantiating and arresting, charging Trevor. But he, being Greg, just his level of volatility was the most that I had heard of him in the hours that I had been talking to him. He told me he was ready to die. He was going to give the police a reason to kill him, and that he was going to grab a knife so the police would have to shoot him. I said, "There is no necessity for this, Greg, I mean just come out. This can be handled. This isn't that big of a deal at this point. Let's not make this any worse than it is." And he -- I talked to him again for several minutes, I did -- was able to talk him down again. He was telling me things, that, you know, he needed more time to think.

When this was happening with regards to the ready to die and all the rest of it, of course I've got these other members in my office, that information is being conveyed out to the scene as that's taking place. So as we're talking, same thing, so we're talking about him coming out peacefully. He hung up the phone with me at about 17:35, terminated the call. [sic throughout]

[220] At 5:35 p.m. Staff Sergeant Anderson advised the Incident Commander that Mr. Matters was "ready to die." A notation to that effect was included in the scribe's notes. Corporal Arnold and the NDERT were advised that Mr. Matters had made that remark to Staff Sergeant Anderson. As Corporal Arnold explained:

They were never able to confirm whether or not he had a firearm, but he always referenced shooting people. And that -- I'm not sure if it was during the briefing or shortly after the briefing, but he advised that he was prepared to die and that he was going to get a knife or something and force our hand, basically.

[221] Those statements are confirmed in the recording of Staff Sergeant Anderson, who repeated the details of that conversation with Mr. Matters at the time it was occurring to the CNT members present in the room with him.

[222] Corporal Warwick stated that he received the following information from Constable Poyzer by text message:

- 17:24hrs-message received that MATTERS' "phone just had a ping in the cluster of out buildings that where we suspected that he was." I interpreted the message to mean that MATTERS was in the immediate vicinity of the farmhouse near where Cst. GRAFTON had previously tracked him.
- 17:26hrs-"On line with greg now"
- 17:38hrs-"He says he is prepared to die"
- 17:38hrs-"He will give the cause to shoot him by grabbing a knife"
- 17:39hrs-"Very agitated and hung up"

[223] Corporal Arnold believed that Corporal Warwick was already in a position to cut off Mr. Matters if he left the grandparents' homestead to return to the mother's residence. Corporal Arnold advised Superintendent Stubbs of Corporal Warwick's location.

[224] At 6:45 p.m., Mr. Matters called the detachment and asked to speak with Staff Sergeant Anderson. Staff Sergeant Anderson recalled:

He told me, Greg did, that he had called somebody, a neighbour, that he was going to have the neighbour come to the house where he was at. And I asked, "Okay, where are you"? and I said --actually I said, "Are you at your grandparents' place?" I didn't dump that open question on him, I said, "Are you at your grandparents' place?" And he said, yes, he was. So he said he had called the neighbour and I don't know why, if he did do that, why that called didn't come through to me based on what I had said about the diversion of the phone. It didn't work for whatever reason. So he said the neighbour was coming to get him, to pick him up and that he was going to turn himself in. [sic throughout]

[225] At the same time, Corporal Garcia was on the telephone with Dr. Passey. By 6:48 p.m., Constable Merriman had located Corporal Warwick and was obtaining an update from him and Constable Grafton. Corporal Warwick and Constable Grafton had been in the vicinity of Trevor's recreational property in an attempt to spot Mr. Matters at the grandparents' homestead. Because of the topography of the terrain, Trevor's property provided an overlook on the homestead.

[226] Staff Sergeant Anderson further stated that during the telephone call with Mr. Matters, he was initially calm but began to react to the helicopter's presence overhead of the farm. He requested that the helicopter leave the property and land, which was arranged, and the conversation with Mr. Matters continued as follows:

So I said, you know, "Where's the neighbour? He should be coming -- coming any minute here."

And she lived in the area, whatever. So I said, "Start walking down...." He said, "I'm going to start walking out." I says, "Great, perfect." I said, "Again for the whole issue of peaceful here, Greg, I want you to take your jacket off and make sure that you don't have anything in your hands, that you walk very slowly out towards the road there." Bottom line is he wasn't going to get in that vehicle with someone else. He would have come to the end of that road and would have been apprehended at that point in time. We weren't going to let him, for pretty obvious reasons in my mind anyway, take off in another vehicle with a civilian.

So I said, "Just keep walking, Greg," and I am talking to him very calmly. He and I are conversing, "Yeah, I will come in, I'll talk, no problem." And he starts walking, he says -- I said, "How far are you?" And I haven't been out there but I guess it's quite a lengthy driveway apparently, and he said, "Oh, I am about three-quarters of the way down the driveway." And at this point I didn't know exactly where our members were at, and I am conveying this to the members in my office and they are telling them what's going on. I said, "He's walking out. You know, right now he's calm. His hands are up." And so he's telling me, and there's nothing in his hands and he is walking out.

[227] That update was sent to the command post. At 6:53 p.m., while Staff Sergeant Anderson was still on the telephone speaking with Mr. Matters, Corporal Arnold called Constable Merriman on the radio to check on NDERT's position. The team was not where the Team Leader had thought they were and they were not in a position to intercept Mr. Matters. At that point in time, the NDERT vehicles were parked along Alpine Drive, approximately two kilometres from the laneway to the grandparents' homestead. NDERT members quickly returned to their vehicles and began to drive around to the laneway on Pinko Road.

[228] During his interview with IIO investigators, Corporal Arnold spoke about the location of the team when Mr. Matters was in the laneway intending to surrender, and had this to say:

It wasn't very long after that that I got advised by the negotiators that he was prepared to surrender, and that he was -- he'd walked out of wherever he was with his hands in the air and that he was coming to surrender. So, I advised the ERT members that were on the ground to intercept him and to take him into custody. But what ended up happening was the guys had left the end of Pinko Road where they thought he was kind of hiding in the bushes and put themselves between this abandoned farmhouse where we believed Mr. Matters was hiding and the brother's property, because that's who he'd had the most conflict with. So they figured if he was going to do anything he's going to try and get at his brother again, so -- I'm assuming that's why they made that decision, but they -- they were on the other side. So when he was trying to surrender, or saying he was going to surrender. No one -- we were never able to confirm if he -- what his intentions were, but he was saying he was going to surrender
[sic throughout]

[229] At 6:55 p.m., Corporal Arnold provided another update to the NDERT indicating that Mr. Matters was coming down the laneway at that moment. While the NDERT members went back to their vehicles to start the drive around to Pinko Road, Staff Sergeant Anderson remained on the telephone with Mr. Matters. Staff Sergeant Anderson recounted:

Looks like things are going very well. And then he say, "Are you going to let me get in the vehicle and leave?" And I just said, "Greg just keep walking," and I avoided answering his question. I said, "Just go out and see." You know, "Shouldn't she be here?" And I started talking about her a little bit, like, "Well, how long ago did you call her?" "A few minutes ago. She should be there." "Okay, well, just keep walking out there, and you know, we will see where things are at there."

So, again, he takes off his coat, leaves it at, I presume, this house, and starts walking out there. He is three-quarters of the way, so he says, down the driveway and the members still don't see him. Now at that time I said the helicopter had landed, but the helicopter hadn't landed then when he was walking up, because he said to me, "The helicopter is moving, but," he says, "until that helicopter is gone I am going back to the house."

I said, "Greg, don't go back to the house. Just keep walking, you're doing good. You are doing the right thing here. I promise you that helicopter, it's on its way out. It will be away, no problem." And he says, "Yeah," and he was calm, and he said, "No, that's okay. I am going back to the house, I don't see her," his ride there, and -- "at the road, and I am going back because I am cold anyway, I'm going to get my coat."

So he starts walking back despite me asking him to move forward. He unfortunately goes back towards his jacket, towards the house. [sic throughout]

[230] As Staff Sergeant Anderson was speaking with Mr. Matters, Corporals Garcia and Wilson were supporting him. During this time, Staff Sergeant Anderson had concerns that his communications with Mr. Matters could cease if his cell phone battery ran out.

[231] NDERT members made their way up the driveway and ultimately confronted Mr. Matters. The details of that confrontation are discussed later in this report. However, concerns have been raised about whether or not NDERT members should have considered backing off rather than entering the property at this time, letting Mr. Matters cool down, and coming back at a later time. It should be noted that the purpose of NDERT members entering the property was twofold: a) to get “eyes on” Mr. Matters in order to facilitate the making of an arrest plan; and b) to be in a position should Mr. Matters be willing to surrender, as he had already expressed a willingness to do.

[232] As noted earlier in this report, the Matters properties were expansive and topographically challenging; consequently, they could not be sufficiently contained with the available resources. A second NDERT team had been deployed, but time and distance affected their ability to get to the scene at the time these events were unfolding. In my view, RCMP members reasonably believed that there was no option of backing off at this stage of the incident.

FINDING: It was reasonable for members not to “back off” as Staff Sergeant Anderson was negotiating with Mr. Matters to surrender and they had yet to confirm Mr. Matters’ location.

Equipment available to the NDERT

[233] The NDERT members were primarily clothed in their camouflage uniforms and were armed with their sidearms and Colt M16 rifles. In addition, Constable Reddeman was carrying a CEW and Constable Bryson Hipkin carried a shotgun, along with bean bag rounds and breaching rounds.

[234] RCMP policy requires the NDERT Team Leader and Incident Commander to consider less-lethal weapons in option planning and to ensure that options are present during a deployment.³⁰ Superintendent Stubbs stated during the Commission’s investigation: “As part of an ERT deployment, the question of less lethal weapons is always posed and documented. There is usually a combination of CEW, pepper spray, bean bag shotgun, ARWEN shotgun (discussed later in this report), [police dog service] etc.” Unfortunately, of the four NDERT members who were deployed on September 10, 2012, none were qualified on the use of a bean bag shotgun or ARWEN weapon. The NDERT does not have an ARWEN gun. According to Team Leader Corporal Arnold, the NDERT capability with less-lethal weapons was limited to “one member trained and qualified with the CEW” and all other members “trained and qualified in the use of OC spray and defensive baton.” (I note that Constable Merriman indicated that he is also

³⁰ RCMP *Tactical Operations Manual*, chap. 2.3., “Operation Requirements”, s. 4.1., as amended 2011-10-13.

trained on the CEW.) With respect to the decision to deploy with a bean bag shotgun, Corporal Arnold explained to the Commission:

I spoke briefly with Cst. HIPKIN about their deployment and asked him if he would be prepared to deploy sock rounds if the opportunity presented itself. I advised him that it was ultimately his decision to deploy them based on his risk assessment. Both he and I were prepared to risk manage their use in the absence of formal training. I advised him that I was prepared deal with any subsequent investigation related to their use. [sic throughout]

[235] Corporal Arnold confirmed that he consulted with Superintendent Stubbs, who agreed that they would risk manage the use of the bean bag shotgun in the absence of formal training. Following this incident, the NDERT completed training for its use.

[236] I understand that following an internal review of this incident, the RCMP is reviewing the part-time ERT to determine the best service delivery option, with consideration being given to training, equipment and command. I also understand that the RCMP is expanding its “Less Lethal Program,” which includes more extended range impact weapons being assigned to ERT members.³¹ The ARWEN weapon is a less-lethal weapon that fires 37 mm non-lethal rounds. It has a longer range than the bean bag shot gun, which means it can be used when members are at a safer distance from a subject. In my view, the RCMP should consider acquiring an ARWEN weapon for the NDERT and certifying its members in its use.

FINDING: Corporal Arnold and Superintendent Stubbs complied with policy requiring them to consider and ensure the presence of less-lethal weapons.

FINDING: Corporal Arnold and Superintendent Stubbs’ decision to deploy members with a bean bag shotgun was reasonable in the circumstances.

FINDING: NDERT members received training on the bean bag shotgun following this incident.

RECOMMENDATION: That the RCMP consider acquiring an ARWEN gun for use by the NDERT, and ensure that those members receive appropriate training.

³¹ As per correspondence from A/Commr. Norm Lipinski, “E” Division Criminal Operations Officer – Core Policing to the Commission, dated September 8, 2014.

[237] One of the primary issues during this incident was the members' inability to determine Mr. Matters' exact location on the property. To that end, members arranged for the use of an RCMP helicopter. Concerns have been raised about the appropriateness of its use when it had the potential to aggravate Mr. Matters' mental condition. Superintendent Stubbs stated that the helicopter was a practical option, given that Mr. Matters had left his residence and given the size of the property. In his view, the helicopter was the most efficient way to attempt to locate Mr. Matters and his vehicle. In this particular situation the use of the helicopter did not achieve the desired result. Its presence "spooked" Mr. Matters and was one of the reasons he returned to the homestead. Superintendent Stubbs stated to the Commission:

In regards to aggravating Mr. Matters — I didn't consider the use of the helicopter might aggravate him. To try and guess what might aggravate a suspect is endless. Some don't like the yellow stripe on our pants, others are set off with the sight of red and blue lights. Unless they express their frustration with a particular point, you can't anticipate their reaction. Once Mr. Matters expressed his aggravation with the presence of the helicopter, I reacted by grounding it near the command post.

[238] In my view, it was reasonable for Superintendent Stubbs to consider all options available to aid in the locating of Mr. Matters given the ongoing safety concerns for all involved and the difficulties in containing the property. It was always known by members that Mr. Matters did not approve of the police presence at his property and could be aggravated by any indications of their presence. However, Superintendent Stubbs reasonably determined that the benefit of locating Mr. Matters to try to prevent him from leaving the property unnoticed outweighed any risk of aggravating Mr. Matters. Unfortunately, Mr. Matters became aware of the helicopter at the same time he was purporting to surrender. When it was determined that the helicopter was aggravating Mr. Matters and disrupting the negotiations, members took immediate steps to address the issue and arranged for the helicopter to land (off the Matters property).

[239] Superintendent Stubbs also stated that drone technology (referred to by the RCMP as "unmanned aerial vehicles") is currently being tested in the RCMP for use as an observation platform. This technology has a direct application in situations such as this, as it could provide a more covert opportunity to locate the subject.

FINDING: Superintendent Stubbs' decision to use the police helicopter to attempt to locate Mr. Matters was reasonable in the circumstances.

FINDING: RCMP members took immediate and reasonable action to remove the helicopter when it appeared to disrupt their negotiation of a surrender with Mr. Matters.

RECOMMENDATION: That the RCMP consider making unmanned aerial vehicles available to all ERTs for deployment where a person in crisis, or their vehicle, must be located on a large rural property.

[240] While radio transmissions were recorded, there was no other or fulsome record of what transpired between Mr. Matters and NDERT members. As with many recent cases where individuals have died following an encounter with the police, the issue of body-worn cameras has been raised. The Commission made the following observation with respect to the use of such technology by the RCMP in its 2011 report following the death of Mr. Robert Dziekanski:

Policing agencies throughout the world are experimenting with video technology to assist them in their policing activities. In July and August of this year the Victoria Police Department conducted a pilot project using body-worn video devices (head cams) to record police interactions with the public. Anecdotal accounts of this project speak to its success. In the United Kingdom a trial project using these devices was commenced in 2006. The number of agencies in the United Kingdom integrating this technology continues to grow.

In the circumstances of this case, there would have been a clear benefit to video footage capturing the events from the members' perspectives. Although the Commission had the benefit of a non-police generated video, there is no doubt that a system that would allow all "to see and hear the event unfold through the eyes and ears of the officer at the scene,"³² would be the best of all possible options. In addition to providing the best evidence, from an examination of early United Kingdom experiences, it may have a crime reduction effect, improve arrest and conviction rates, reduce overall police workload and be a useful tool to provide members with feedback as to their interaction with the public thereby improving the civility of the police.

While these benefits must be balanced against privacy rights, costs and increased infrastructure demands, I believe that the time has arrived to give these devices additional consideration within the Canadian policing context.

[241] The July 2014 report prepared for the Toronto Police Service by The Honourable Frank Iacobucci recommended that members of that service use body-worn cameras when they may encounter people in crisis.³³ The report notes that protocols need to be developed to address use and retention, discretion to disable recording, discipline, and balancing interests (privacy/discretion/accountability). It also identifies other concerns raised by the use of body cameras, including increasing anxiety levels of people in crisis by the presence of a camera, disclosure issues, and cost.

³² [*Guidance for the Police Use of Body-Worn Video Devices*](#), Home Office (Police and Crime Standards Directorate), July 2007, at p. 5.

³³ See Recommendation 72, http://www.torontopolice.on.ca/publications/files/reports/police_encounters_with_people_in_crisis_2014.pdf

[242] When asked at the Coroner's inquest his opinion about the use of body-worn recording equipment at ERT deployments, Superintendent Stubbs indicated that he was supportive of their use and acknowledged that it can be beneficial when reviewing these incidents. He also indicated that the RCMP is currently looking at their use. However, he noted the numerous issues that have to be considered, including privacy, storage and disclosure, and stated that further study is required by the RCMP.

[243] The RCMP has been researching body-worn recording equipment for a number of years and has conducted pilot tests in a number of areas across Canada. The issue of body-worn recording equipment is an important one that raises significant and complex legal and practical issues. That is emphasized in the June 2015 report issued by another major Canadian police force,³⁴ which is one of the most recent and comprehensive reports on body-worn video, based on a pilot project that spanned 2011 to 2014. One of the two principal recommendations stated in that report was that the police service wait before investing further in body-worn video, and monitor ongoing Canadian initiatives by the RCMP and other police services.³⁵ I recommend that the RCMP prioritize its research and determine how and when this technology can best be used to enhance public safety and police accountability, particularly during ERT deployments.

RECOMMENDATION: That the RCMP prioritize its research of body-worn recording equipment and determine how and when it can be best used, particularly during ERT deployments.

[244] Photographs were taken of Corporal Warwick's M16 shortly after the shooting occurred. The phrase "Live Free or Die" is marked on both sides of the weapon's forestock. Similar markings can be seen on the right side forestock of the Colt M16 carried by another NDERT member on September 10, 2012. Concerns were raised at the Coroner's inquest by counsel for the Matters family about the markings and whether or not those markings had been added by the members.

[245] "Live Free or Die" is perhaps best known as the official motto of New Hampshire. It is also a motto associated to the anti-gun control lobby in the United States. The motto has proven to be controversial in the United States. In a now famous decision in *Wooley v Maynard* in New Hampshire State Supreme Court, the court recognized that the motto may be offensive to some when it wrote, "Whatever else may be said about the motto 'Live Free or Die,' it expresses philosophical and political ideas."³⁶

³⁴ Edmonton Police Service

³⁵ Edmonton Police Service, *Body Worn Video: Considering the Evidence*, Final Report of the Edmonton Police Service Body Worn Video Pilot Project, June 2015, p.5.

³⁶ *Wooley v Maynard*, 430 U.S. 705 (1977), appealed to the U.S. Supreme Court. The Court held that New Hampshire could not constitutionally require citizens to display the state motto when the state motto was offensive to their moral convictions.

[246] Corporal Warwick was asked about the markings on his rifle. He provided written answers to the questions as follows:

Q: On Sept 9th, 2012 you indicate in your statement that you had a police issue M16 rifle with you. Did that rifle contain a marking which read: "Live Free or Die"?

A: Yes.

Q: Who made that marking on the rifle?

A: The inscription on the rifle was made by the manufacturer of the front rail/handguard, LaRue Tactical. It is a marketing slogan which I understand is inscribed on many products produced and sold by LaRue Tactical.

I did not put the marking on the rifle, and it was there when it was issued to me.

Q: Does that same marking exist on all M16 rifles used by the ND ERT team?

[247] A: I'm not aware if the marking exists on all of the ND ERT M16 rifles. I do know that it is on several other rifles used by the team. I am satisfied that the appearance of the phrase "Live Free or Die" on the rifles was because it was an inscription placed on the products of LaRue Tactical, the supplier of the forestocks used on the ERT rifles and was not the result of any action taken by the members involved in this incident.

FINDING: The inscription on the rifles used by ERT members is a marking made by the manufacturer of the product to which it was affixed and not the result of any action taken by the members involved in this incident.

Confrontation between the NDERT and Mr. Matters

[248] Corporal Arnold stated to investigators that he had been informed that Mr. Matters had returned to the abandoned property and he felt that they had lost the opportunity to have Mr. Matters surrender, if he had in fact intended to do so. He understood from the negotiator that Mr. Matters had returned to the grandparents' homestead. He instructed NDERT members to advance down the driveway and get to a position of concealment. Those movements and statements are consistent with the recordings of the NDERT radio transmissions. NDERT members confirmed via radio that they had driven up the road (driveway), exited their vehicle and began walking to try to get eyes on the homestead/Mr. Matters. Corporal Arnold next heard that Mr. Matters was agitated, animated and screaming/yelling. The radio transmissions indicate that Corporal Arnold asked the NDERT members to let him know when they get up to the residence with some concealment so that they could formulate an arrest plan.

[249] Constable Merriman recalled that NDERT members were instructed to establish some sort of containment and that they had been given authority by Superintendent Stubbs to engage Mr. Matters without further authority from him. Constables Merriman, Hipkin and Reddeman drove from the command post to meet with Corporal Warwick. Following clarification of their position with Corporal Arnold, they drove to the driveway of the grandparents' former property and saw Valerie Pinko's vehicle stopped near a marked police car on the side of the road. By the time they reached the start of the

driveway, NDERT members were told that Mr. Matters had gone back to the grandparents' homestead, as the helicopter had apparently spooked him. Constable Merriman recalled Corporal Arnold instructing the team to advance down the driveway to a position where they could see the house and be in a position to "receive" Mr. Matters. Constable Merriman understood that Mr. Matters still intended to surrender at that point. NDERT members drove their vehicles to a position where they could be seen by Mr. Matters.

[250] By all members' accounts, the four broke into pairs and advanced within approximately 150 metres of the homestead, concealed by the bushes and treeline. At that point, they could hear a dog barking and a male voice. Constable Hipkin relayed by radio that he could see Mr. Matters near a brown structure and that he was walking down the driveway, toward NDERT members. Constable Merriman's view was obscured by trees. Constable Hipkin reported his observations by radio to the team members and the command post. The members saw Mr. Matters with a cell phone to his ear. He was speaking in a loud and agitated voice. He appeared angry.

[251] Constable Hipkin stated that he informed the command post of his intent to give the police challenge and said that his reason for doing so was that Mr. Matters was almost flush with the NDERT members and he thought Mr. Matters was "too close for comfort." He stated that he shouted, "Greg this is the police. You are under arrest. Show me your hands." At that point, when Mr. Matters was perpendicular to them, Constable Merriman and Corporal Warwick came out from the treeline and within his view. Constable Merriman yelled to Mr. Matters, "police stop" and heard others yelling similar commands.

[252] Constable Merriman noticed that Mr. Matters had a hatchet in his hand, although he did not recall which hand. Mr. Matters was holding the hatchet up and "flapping" his arms. He described Mr. Matters as agitated, having "wild eyes, hunched shoulders" and yelling. He yelled to Mr. Matters to put down the hatchet and that they were there to help him. Mr. Matters yelled at them to get off his property. Other members issued similar commands for him to drop the hatchet. Constable Hipkin stated that he could not hear what Mr. Matters was saying, but that he was angry and yelling. Members' statements that Mr. Matters had a hatchet were recorded over the radio. Members can also be heard saying, "Greg, we're here to help you, just throw – put down the hatchet." The following picture was taken of the hatchet found at the scene by IIO investigators:



[253] Constable Merriman stated that Mr. Matters stopped, looked in his direction, then started to walk back toward the homestead. He stopped again and started walking toward Constable Merriman and was within five to ten metres of him and Corporal Warwick, who was to his immediate left. Constable Merriman yelled for Constable Reddeman to “get up here with that Taser.” Mr. Matters again turned toward the homestead. Constable Merriman and Corporal Warwick were sidestepping and trying to get ahead of him in an effort to keep him from returning to the building and to maintain a dialogue with him. Constable Merriman yelled to him, “Stop Greg, you’re going to get Tasered.” He saw to his left that Constable Reddeman was approaching Mr. Matters from behind and ultimately deployed the CEW. He heard the sound of it deploying and a snapping sound, and saw sparking between the probes. He estimated that Constable Reddeman was within five metres of Mr. Matters. He looked back to see the positions of constables Reddeman and Hipkin and then saw that Mr. Matters had turned to face Constable Reddeman. He heard the shots fired by Corporal Warwick within seconds of the deployment of the CEW. He noted that he and Corporal Warwick had been providing lethal overwatch³⁷ for the CEW deployment. Mr. Matters fell on his side and dropped the hatchet.

³⁷ Lethal overwatch is a tactical technique normally used in the field when dealing with an individual who is not restrained. This means that at least one other member should have a gun ready to shoot in case the CEW misfires or is ineffective and the threat is not neutralized.

[254] Constable Hipkin reported that Constable Reddeman was between him and Mr. Matters and he saw Constable Reddeman deploy the CEW. He recalled Mr. Matters advancing on Constable Reddeman with the hatchet raised above his head at the time, and that it appeared that he was about to bring it down on Constable Reddeman's head. He stated that if he had a clear shot, he would have fired because he feared death or grievous bodily harm to Constable Reddeman—"the most he had ever felt in his life." After the CEW deployment, Mr. Matters continued to advance on Constable Reddeman with the hatchet raised above his head and then heard two shots fired by Corporal Warwick, which stopped him. Members immediately handcuffed Mr. Matters, then rolled him onto his back, at which time members observed him not to be moving and began CPR.

[255] Concerns have been raised that NDERT members unnecessarily put themselves in the position of using force against Mr. Matters when they chose not to permit Mr. Matters to retreat to the grandparents' homestead. The RCMP's IOR report expressed concern that the CNT and NDERT had not yet discussed the how and when of Mr. Matters exiting the homestead and engaging with him. The report stated that there could have been a discussion about what NDERT members would do if Mr. Matters returned to the homestead after seeing them. "By allowing Greg to return to the house and knowing North Coast ERT was enroute, a more enhanced containment and tactical plan could have been developed." They reported that that was always a possibility, and "the fall back plan would have been to contain and continue with negotiations."

[256] The Commission put the question of backing off to NDERT members. Their responses were as follows:

Constable Hipkin:

Mr Matters was at a point on the driveway that if he continued any farther he would be out of containment of the ERT members and able to escape into a tree line or another property that may have had members of the public present. I had already told Mr Matters that he was under arrest at that point.

...

Mr Matters was at a point on the driveway that if he continued any farther he would be out of containment of the ERT members and able to escape into a tree line or another property that may have had members of the public present. I was there to safely arrest Mr Matters and once he had been told he was under arrest he did not follow my or my teammates commands. If we had backed off Mr matters could have left the property or gone into a residence.

Constable Reddeman:

In general terms, "backing off" is always an option I consider. In this case, other weapons may have been inside the home. Officers did not know what may be in the home. In this case, backing off would not have been safe.

Constable Merriman:

At the time of the confrontation I did not feel comfortable with Matters returning to the interior of his property, because there was no inner containment, and outer containment was very spread out. There was no clear indication what Matters would do. Would he return to the brown cottage? Would he flee in his car? Would he flee into the forest? Would he go to his brother's residence nearby? Would he retrieve another weapon? Had there been effective inner containment, I would have considered the option to "back off" sooner.

...

I expected to get into an observation post before any encounter with Matters. I was surprised when Matters exited the brown cottage with his dog, and hoped that as long as ERT members remained out of sight that Matters would return to the cottage without incident; however, Matters came down the driveway to the point where our position was compromised, which forced the confrontation.

...

The situation unfolded so quickly that I did not have time to consider backing off, and was focused on sweeping ahead of Matters to prevent Matters' return to the homestead. [sic throughout]

[257] The Commission must evaluate the members' conduct based on what they reasonably believed at the time the events were occurring, with the information that was available to them and given all of the circumstances they were faced with. I accept that the members reasonably believed that their best and safest opportunity to effect the arrest of Mr. Matters was during their first encounter with him and that there was significant risk to permitting him to retreat to the nearby building. They did not have the benefit of containment of the property. He may have escaped into the treeline or bush. They did not know what Mr. Matters would do if he returned to the homestead, or what weapons he may have access to inside. (He had already produced one weapon.) It was getting later in the evening and darkness would be approaching, which would have put them at a tactical disadvantage. In my view, it was reasonable for the NDERT members not to "back off" once they encountered and confronted Mr. Matters.

[258] With respect to containment and location issues, and as discussed earlier in this report, there were no sniper/observer-trained NDERT members available to covertly enter the property to locate and observe Mr. Matters and report back to the remaining members of the team. That was the result of human resource issues, and the deployment of the North Coast ERT occurred partly for that reason. Constable Merriman offered the following comment with respect to the effect of that resource shortage:

Observation/sniper group(s) should be deployed INDEPENDENT of the immediate action group, which is typically responsible for the apprehension of the suspect. This separation would have enabled the observation/sniper group(s) to infiltrate the property in any number of different ways other than up the driveway where there was a high risk of compromise. In turn, the immediate action group could have advanced up the driveway stopping well short of the homestead and setting up a point of organisation where they could receive Matters according to a surrender plan and/or standard operating procedure.

In this case, it was the added role of observation that necessitated the immediate action group's movement so far up the driveway and ultimately into a compromised position when Matters came down the driveway, before the members could reach a covert observation post. The reason why the immediate action group was also tasked with an observation role was due to the limited number of ERT members available at the time and Matters' posturing to surrender.

[259] I recommend that the RCMP consider how to better ensure that the NDERT is deployed with sufficient and appropriately trained personnel to facilitate all planning options. Had a sniper/observer been available to covertly enter the property to get within close proximity to the homestead, members may have been able to facilitate a safer arrest or surrender.

FINDING: It was reasonable for NDERT members not to "back off" once they confronted Mr. Matters.

RECOMMENDATION: That the RCMP consider how to better ensure that NDERT is deployed with sufficient and appropriately trained personnel to facilitate all planning options.

RCMP members' use of force

[260] A public complaint allegation of excessive force is part of the quasi-judicial process, which weighs evidence on a balance of probabilities. The Commission is empowered to make findings and recommendations with respect to allegations of excessive force. The Commission is not empowered to determine whether an RCMP member committed the *Criminal Code* offence of assault; that is a matter for the courts. A criminal investigation was conducted by the IIO, which concluded that no criminal offence had been committed by the members.

[261] In executing their duties, police officers are authorized by the *Criminal Code* to use as much force as necessary.³⁸ However, an officer must be acting on reasonable grounds. In determining whether the amount of force used by the officer was necessary, one must look at the circumstances as they existed at the time the force was used. The courts have been clear that the officer cannot be expected to measure the force used with exactitude.³⁹

³⁸ See section 25 of the *Criminal Code*.

³⁹ See, for example, *R v Bottrell*, [1981] BCJ No. 855 (BCCA) at para 16; and *R v Nasogaluak*, [2007] AJ No. 1217 (Alta CA) at para 22.

[262] The RCMP's Incident Management/Intervention Model (IM/IM),⁴⁰ which is used to train and guide members in the use of force, promotes risk assessment and depicts various levels of resistance behaviours and reasonable intervention options. The guide promotes the use of verbal interventions wherever possible, both to defuse potentially volatile situations and to promote professional, polite and respectful attitudes to all. These guidelines are based on situational factors when determining whether to use force and what amount of force is necessary in the circumstances. The underlying principles of the RCMP's IM/IM are:

1. The primary duty of a peace officer is to preserve and protect life.
2. The primary objective of any intervention is public safety.
3. Peace officer safety is essential to public safety.
4. The IM/IM is consistent with federal statutes and common law authorities and in no way replaces or augments the law.
5. The intervention must always be applied in the context of a careful assessment of risk, taking into account the likelihood and extent of loss of life, injury, and damage to property as a result of the intervention.
6. Risk assessment is a continuous process and risk management must evolve as situations change.

[263] It is incumbent upon the member to perform a risk assessment, first determining which of the five behaviour classifications (cooperative, non-cooperative, resistant, combative and potential to cause grievous bodily harm or death⁴¹) the subject's actions fall into. Consideration must also be given to the situational factors specific to each incident. These include weather conditions, subject size in relation to the member, presence of weapons, number of subjects and of police officers, the perceived abilities of the subject (which may include past knowledge of the subject), as well as other incident-specific considerations.

[264] The IM/IM sets out various response or intervention options specific to the member's determination of subject behaviour in conjunction with the assessment of the situational factors. Intervention options include member presence, verbal intervention, empty hand control (soft and hard), intermediate devices, impact weapons, lethal force and tactical repositioning. As diagrammed, in recognition of the dynamic nature of these incidents, the IM/IM is not a linear structure such that one response necessarily leads to another. Rather, the IM/IM is intended to train RCMP members with respect to the need to constantly assess the risk and potential for harm and to respond at an appropriate level

⁴⁰ The RCMP's IM/IM training policy is stated in its *Operational Manual*, chap. 17.1. "Incident Management Intervention Model", s. 4.1.: "The IMIM will be taught to RCMP cadets at Depot Division" and s. 4.3.: "Regular members and persons who have RCMP peace officer status will be re-certified annually on the IMIM." See **Appendix E** for a graphical depiction.

⁴¹ For an explanation of the categories of resistance, see **Appendix F**.

[265] Verbal interventions and tactical repositioning occur regardless of the level of risk to assist the member in maintaining control of the situation, de-escalating any confrontation and ensuring maximal safety for all concerned. Throughout the management of an incident, a member should be alert to threat cues such as body tension, tone of voice, body position and facial expression to ready them to use an appropriate response option. These threat cues may indicate the potential for a suspect to display more or less resistant behaviours described under the categories of resistance that would justify the use of different response options.

[266] A member must be able to explain the intervention methods he or she chooses to manage an incident, taking into account all of the circumstances, including perceptions, situational factors and subject behaviour. In considering the intervention options, the Commission must also consider the fact that to ensure public safety, police officers cannot be asked to intervene in dangerous situations, yet be denied the authority to take protective measures to their safety when reasonable, especially when there is a danger due to the presence of weapons and of a fluid and unpredictable threat.

[267] According to the *Tactical Operations Manual*, only an Incident Commander can deploy an ERT and authorize a use of force.⁴² As explained by Superintendent Stubbs during his interview with IIO investigators, as the Incident Commander he gave the NDERT authority to set up for deployment and told them they had authority to arrest under section 25 of the *Criminal Code* in regard to use of force. The following is an overview of the circumstances resulting in the use of force as recounted by the members present (as there were no other witnesses), including Corporal Warwick's explanation of why he used lethal force.

[268] I note that concerns were raised by Mr. Matters' family about whether or not it had been established that Mr. Matters even had a hatchet when the confrontation with ERT members occurred. That issue was addressed by the criminal investigation conducted by the IIO, which found that the statements of the members present during the incident were consistent and appeared truthful, and that a hatchet was located near Mr. Matters' body. Investigators determined that fingerprints could not be obtained from the handle of the hatchet because the material was not a suitable surface for fingerprints. The IIO's Supplemental Report went on to explain why DNA evidence did not offer any further assistance in determining whether or not Mr. Matters possessed the hatchet.

[269] The Commission's investigation, which also considered the criminal investigation and the evidence given at the Coroner's inquest, revealed the following: a spontaneous statement made by an ERT member was recorded as the incident unfolded, which indicated that Mr. Matters had produced a hatchet at the time of the statement and was instructed to put it down; a hatchet was located at the scene near the body of Mr. Matters; and all witness accounts indicated that Mr. Matters produced a hatchet during the encounter. There was no evidence to suggest that Mr. Matters was not the one to produce the hatchet, which ultimately led to the fatal shooting discussed below.

⁴² RCMP *Tactical Operations Manual*, chap. 2 "General", s. 3.4., as amended 2011-12-13.

a) CEW

[270] Under the *Criminal Code*, the CEW is a prohibited firearm and can only be used by law enforcement officers. The Commission has been steadfast in its position that when used appropriately, the CEW can be an effective tool for the RCMP. The Commission has also maintained that the CEW causes intense pain, it may exacerbate underlying medical conditions, and it has been used in situations where its use is neither justifiable nor in accordance with RCMP policy. At the time of the incident, RCMP policy provided that:

[A] CEW must only be used in accordance with CEW training, the principles of the Incident Management/Intervention Model (IM/IM) and when a subject is causing bodily harm, or the member believes on reasonable grounds, that the subject will imminently cause bodily harm as determined by the member's assessment of the totality of the circumstances.⁴³

[271] On September 10, one member of the NDERT was carrying a CEW, namely Constable Reddeman. In this case, Constable Reddeman determined that the CEW would be an appropriate intervention method to keep everyone at a safe distance in the circumstances and to facilitate the arrest of Mr. Matters. For the use of the CEW to have been reasonable and consistent with policy, as with all cases of use of force, the deployment of the CEW must have been in accordance with the principles of the IM/IM. The IM/IM conveys the concept of proportionality between a person's behaviour and the police response when considering all the circumstances. A high-risk situation, such as where a person is considered on reasonable grounds to be armed and dangerous, will indicate that a high-risk arrest is likely and that intermediary to lethal impact weapons, such as the CEW, may be drawn.

[272] When members are faced with situations posing the risk of death or grievous bodily harm, they are trained that the CEW is only appropriate⁴⁴ if another member can provide lethal overwatch. This means that at least one other member should have a gun ready to shoot in case the CEW misfires or is ineffective and the threat is not neutralized.

[273] Constable Merriman was the second in command to Team Leader Corporal Arnold and believed that the CEW was an option at the time of the incident. He wrote in his statement to the Commission:

I ordered Cst Reddeman to "get up here with that Taser", because I feared that Matters could turn on Cpl Warwick and I at any moment as we paralleled Matters up the driveway. That fear was soon realised when Matters walked off the driveway towards Cpl Warwick and I, and I had to warn Matters that he would get "Tasered". [*sic throughout*]

⁴³ RCMP *Operational Manual*, chap. 17.7. "Conducted Energy Weapon", s. 3.1.1.

⁴⁴ There are times, for example when an officer is facing a suspect armed with a firearm, when the use of a CEW is not appropriate.

[274] Constable Reddeman stated that when he first saw Mr. Matters, it was after he was issued the police challenge by other members, as a tree had been blocking his line of sight. The police challenge was yelled multiple times, but Mr. Matters had a hatchet in his hand and raised in the air. Members were yelling at him to drop the weapon, and Constable Reddeman yelled it a few times as well. Members also told Mr. Matters that they were there to help him. Constable Reddeman heard Constable Merriman tell him to prepare the CEW—to “get it ready” and “we need it.” He observed that Mr. Matters was approximately six feet tall and over two hundred pounds. He looked angry, “absolutely outraged.” He could see the anger in his eyes, in his face and his body. He had come off the driveway and was moving toward Corporal Warwick and Constable Merriman. Constable Reddeman stated that he took the CEW out, activated it, and advanced to within 12 to 15 feet of Mr. Matters. During his approach, Mr. Matters turned toward him and “reared” up the hatchet, which was a bladed edge with sharp points on either side. Constable Reddeman deployed his CEW, heard the pop sound that it makes, and saw at least one probe make contact with Mr. Matters, who was wearing a puffy jacket. The CEW appeared to have no effect. Constable Reddeman was still in motion and attempted to come to a stop as quickly as he could. Then he heard shots fired.

[275] Constable Reddeman stated that he was confident in the CEW and had not experienced any malfunction before. He had done his usual pre-patrol checks on it and it was functioning properly. The cartridges were new. He stated that usually when the CEW is deployed, you see the person tense up and fall down due to its effects and they will be incapacitated enough that the members can safely move in, remove the weapon, and handcuff the person. That did not happen in this case because the CEW appeared to have no effect.

[276] The RCMP’s national operational policy relating to the use of the CEW states:

Where tactically feasible, members will issue a verbal warning so the subject is aware that a CEW is about to be deployed.⁴⁵

[277] As noted above, Constable Merriman called for the CEW and stated to Mr. Matters that he would be “tasered” if he did not stop. It is evident that Mr. Matters did not stop his approach with the hatchet, resulting in Constable Reddeman’s deployment of the CEW.

[278] Mr. Matters’ family expressed concern to the Commission that Constable Reddeman deployed the CEW when he was not instructed to do so. I understand that this concern was posed in response to Constable Merriman’s statement at the Coroner’s inquest that he did not, in fact, instruct Constable Reddeman to deploy the CEW but rather instructed him to essentially get in a position to deploy it. In such situations, RCMP members are not prevented from deploying a use of force option in response to a perceived threat when they do not receive specific instruction to do so from a senior officer or someone otherwise in charge at the scene.

⁴⁵ RCMP *Operational Manual*, chap. 17.7. “Conducted Energy Weapon”, s. 3.1.4.

[279] Under the circumstances, including that the members were faced with an armed subject who had made significant threats, had previously resisted arrest, was not acting rationally and had failed to comply with police commands, RCMP policy permitted the use of a significant amount of force. However, members exercised their discretion in an attempt to ensure the least amount of harm to Mr. Matters, thereby exposing themselves to personal risk. Constable Reddeman reasonably believed that deploying the CEW would facilitate the safe arrest of Mr. Matters, who was armed with a hatchet and posed a threat to members.

[280] As part of their investigation, the IIO seized the CEW that had been carried and deployed against Mr. Matters by Constable Reddeman. The weapon was a CEW approved for use by the RCMP and was standard issue to members. One of the darts was found at the scene lying on the ground between the feet of Mr. Matters. A second dart was found during the post-mortem examination attached to the clothing of Mr. Matters.

[281] The IIO investigation determined that the CEW appeared to be working correctly on September 10, 2012. The internal clock of the CEW was found to be approximately six minutes fast, a finding not unusual for that weapon. A download of data from the weapon was conducted by a qualified examiner. Once the internal clock was corrected, the examiner was able to determine that the weapon had been activated at 19:11:54 Pacific Time on September 10, 2012. That timing is consistent with the ERT Radio Log and the statements obtained from NDERT members at the scene. The activation lasted four seconds. Further testing could not determine conclusively whether an electrical current had passed through the conductors and/or darts.

[282] I note that not all members of the NDERT are trained on the CEW. That can be problematic for part-time NDERTs in terms of ensuring that deployments occur with the availability of as many use of force options as possible. CEWs are an important component of the less-lethal weaponry systems authorized for use by ERT. I recommend that all part-time ERT members receive CEW training to ensure that ERT deploys with the range of less-lethal options appropriate to the situation.

FINDING: Constable Reddeman reasonably believed that deploying the CEW would facilitate the safe arrest of Mr. Matters, who was armed with a hatchet and posed a threat to members.

FINDING: Constable Merriman issued a warning to Mr. Matters to stop or the CEW would be deployed.

RECOMMENDATION: That all ERT part-time members receive CEW training to ensure that ERT deploys with the range of less-lethal options appropriate to the situation.

b) Bean bag shotgun (sock rounds)

[283] RCMP policy provides that the sock round is used to distract individuals who pose a threat and “when other less lethal methods of intervention are unsuccessful or inappropriate,” but that it should not be considered as an option when lethal force is required.⁴⁶ Corporal Arnold described the use of bean bag shotguns by the NDERT as follows:

Bean Bag Shot guns in RCMP terms are called Extended Range Impact Weapons (ERIW). ERIW training falls outside of the core skills training for ERT. As per the Tactical Operations manual (TOM), it is up to the Critical Incident Commander and the TL to determine the Less Lethal Options to be used on an ERT operation. No previous TL or Incident Commander had recognized a need for an ERIW system for the Prince George Team so the training was not sought. Based in the situational factors and rural setting, this was the first operation that I had been a part of that the use of a bean bag shotgun was considered as a potential less lethal option. I consulted with Supt. Stubbs and he agreed for us to risk manage the use of the ERIW in the absence of formal training. In the aftermath of this call, our team organized the ERIW training for both North District teams and completed the training in October 2012. The National Tactical Training Section is responsible for the design that training. There are accredited ERIW instructors dispersed around the country who are capable of delivering the training. [sic throughout]

[284] As noted earlier in this report, Corporal Arnold spoke to Constable Hipkin about whether he would be prepared to deploy the weapon without having formalized training, and Constable Hipkin said that he would. Constable Hipkin stated to the Commission that he “believed that the bean bag round would disrupt or possibly stop a subject who was posing a threat of immediate bodily harm to myself or other people.” It is clear from the record that other NDERT members did not appear to be of the same mind with respect to the less-lethal option, due to a lack of experience and training, and a lack of communication about it being a potential use of force option that day.

[285] Constable Merriman, who was serving as the NDERT second in command, stated:

At the time of the event, I was not trained in the use of the [Less Lethal Shot Gun (LLSG)], and had no knowledge of its effectiveness; therefore I could not trust that it would be effective. Since the Matters’ event, I have been trained in the use of the LLSG. Like any weapon/tool that I use in my capacity as an ERT operator, the LLSG is subject to mechanical failure and is not one hundred percent effective, especially in the case of “goal-oriented” persons under the influence of drug or alcohol, or suffering from mental disturbance who may be desensitized to bean bag rounds. [sic throughout]

⁴⁶ RCMP *Operational Manual*, chap. 17.5. “Less Lethal Use of Force”, s. 5.1.1. and 5.1.2.

[286] Constable Reddeman stated that he had not seen a bean bag round used and that it could not be deployed in time, as it needs to be loaded and reloaded, and there was not enough time.

[287] Corporal Warwick stated during the IIO investigation that he did not consider the bean bag rounds to be an appropriate less-lethal use of force option. In response to questions from the Commission, he stated that there had not been any discussion with the team regarding the appropriateness of its use in his presence. That was also confirmed by Corporal Arnold. However, Corporal Warwick subsequently stated to the Commission:

Having the benefit of hindsight and having discussed the decision to deploy a shotgun with beanbag rounds, I believe that it was a good idea to have it available on this occasion. If I had been involved in a discussion at the time and was aware of the reasoning why it was decided to have it available, I would have agreed at the time. The way that this incident unfolded, the beanbag rounds were not an appropriate use of force option. If it had unfolded differently, they may have been useful. For that reason, I believe that it was reasonable to have it available on this deployment. [sic throughout]

[288] Constable Hipkin explained to the Commission that he did not load his shotgun with any rounds at the start of the call because he did not know whether he would need breaching rounds or sock rounds and it would take twice as long to load if the wrong type were loaded first. He stated during the IIO investigation that as Mr. Matters was walking towards members with the hatchet raised, he put his M16 firearm away and pulled out the shotgun and began to load the bean bag rounds. By the time he had finished, Constable Reddeman was between him and Mr. Matters and he was not able to fire the weapon. Then he saw and heard Constable Reddeman deploy the CEW. He explained to the Commission:

It was a fluid situation and everyone was moving. I approached the other people from my location, Cst Reddeman approached Mr Matters and Mr Matters approached Reddeman with the hatchet. All three of us were moving and with that my arcs were cut off. It is a combination of all three peoples movements. [sic throughout]

[289] There has been much speculation about whether lethal force could have been avoided had a use of force option other than the CEW been first deployed, such as the bean bag shotgun. However, there is no way of knowing whether it would have been effective or otherwise changed the course of events, and I have found that the use of the CEW was reasonable in the circumstances.

[290] In any deployment, ERT members should all be aware of what use of force options are carried by their teammates as well as an understanding about what effect each option can have. That did not occur in this case. However, I am satisfied that Constable Hipkin did not reasonably have an opportunity to deploy the bean bag shotgun as the events unfolded. While members are trained to stay out of each other's arcs of fire, I am satisfied that that is not always possible in a dynamic situation such as

this one. There is no indication that members acted unreasonably in their attempts to deal with the threat posed by Mr. Matters with the hatchet. I find it unnecessary to make a recommendation with respect to training NDERT members regarding the capabilities and use of the bean bag shotgun, as I understand that they have already completed that training.

FINDING: Constable Hipkin did not have a reasonable opportunity to deploy the bean bag shotgun as events unfolded.

c) Lethal force

[291] Section 25 of the *Criminal Code* authorizes a police officer who is acting in the administration or enforcement of the law to use as much force as is necessary for that purpose. It further states that a person is not justified in using force that is intended or is likely to cause death or grievous bodily harm unless the person believes on reasonable grounds that it is necessary for the self-preservation of the person or the preservation of anyone under that person's protection from death or grievous bodily harm.

[292] Subsection 34(2) of the *Criminal Code* authorizes any person who is unlawfully assaulted⁴⁷ to use force that causes death or grievous bodily harm in self-defence to repel the assault. To rely on this protection, the person must have a reasonable apprehension of death or grievous bodily harm and must also believe that he cannot otherwise preserve himself from death or grievous bodily harm. The RCMP's use of force guidelines reiterate the legal requirement that lethal force be used only "when preventing death, or the threat of death, or grievous bodily harm to peace officers and the public and when no lesser means is appropriate."⁴⁸

[293] Corporal Warwick recounted the circumstances surrounding his use of lethal force as follows:

- MATTERS' stepping off the travelled driveway, down a couple of feet and into the grass where Cst. REDDEMAN was positioned, was a very clear escalation in the threat he presented. While he had previously been moving along the driveway parallel to the police officers, he had not closed the distance between our respective positions. Now that distance was being quickly closed and MATTERS confronted Cst. REDDEMAN directly. He clearly was not surrendering, and was no longer maintaining or attempting to increase the distance between himself and the police officers. Instead, he began to close the distance between himself and the police officers in an offensive and aggressive manner of attack. I was certain at that point that MATTERS' only intent when he turned to confront Cst. REDDEMAN was to wound or kill a police officer.
- Cst. REDDEMAN had lowered his rifle so that it was hanging on its sling. He was holding his CEW with both hands and did not have a firearm in his hand.

⁴⁷ Assault includes when a person "attempts or threatens by an act or a gesture, to apply force to another person, if he has, or causes that other person to believe on reasonable grounds that he has, present ability to effect his purpose" (see paragraph 265(1)(b) of the *Criminal Code*).

⁴⁸ RCMP *Operational Manual*, chapter 17.1. "Incident Management Intervention Model", s. 1.3.

- MATTERS did not look at me after focussing on Cst. REDDEMAN. He did not appear to look at or acknowledge my firearm or the firearms of the other police officers.
- I aimed my rifle at MATTERS and continued yelling at him to "Stop," and to "Drop your weapon."
- Cst. REDDEMAN deployed his Conducted Energy Weapon (CEW), and I saw the probes move across my line of vision from left to right towards MATTERS. The probes seemed to be travelling very slowly, and I could see the wires attached moving with the probes. MATTERS was wearing a sweater or some form of loose, heavy clothing and I was aware that when used at maximum distance the probes could easily miss, spread too far or not penetrate.
- I was not able to see if the probes properly contacted MATTERS, but could plainly see that MATTERS continued moving towards Cst. REDDEMAN after the CEW was fully deployed.
- Although the CEW had fully deployed, MATTERS' stride and stance did not change. As well, he still held the hatchet raised and poised to swing. It was clear to me that the CEW had been ineffective at stopping MATTERS.
- Cst. REDDEMAN just stood there, holding the discharged CEW, as MATTERS came at him with the raised hatchet. The weapon was held to strike and MATTERS kept closing the distance with Cst. REDDEMAN. MATTERS was now within 5m of Cst. REDDEMAN and Cst. REDDEMAN was still not moving. I knew that MATTERS would cover that distance in only a couple of seconds and that if something was not done to stop MATTERS' advance, Cst. REDDEMAN would be wounded or dead.
- Due to the weapon in MATTERS' possession, the only appropriate intervention tool available to me was my police firearm. In this case, after CEW deployment, Cst. REDDEMAN was now, effectively unarmed. In this situation, Cst. REDDEMAN had placed his safety in the hands of the other team members in taking the chance to stop MATTERS with the CEW and the CEW was ineffective. There was no hesitation in MATTERS' advance with the hatchet raised and I was left with no option if I was to prevent MATTERS from wounding or killing Cst. REDDEMAN.
- I switched off the safety of my rifle, aimed at MATTERS' center of mass, and fired two rounds.
- MATTERS fell to the ground and dropped the hatchet. The location where he fell was approximately 12-14 feet from Cst. REDDEMAN. [sic throughout]

[294] Constable Reddeman stated that when he first saw Mr. Matters, he had the hatchet raised. Mr. Matters was not listening to their commands to drop the weapon. Mr. Matters appeared agitated and looking all over the place. Constable Reddeman sprinted up toward the other members when Mr. Matters left the road and started going towards them (Corporal Warwick and Constable Merriman). It got to the point that he realized that if Mr. Matters picked up and came towards him, he was going to strike him with the hatchet. His CEW failed and he had to try to figure out what to do. Constable Reddeman stated during the investigation that after the CEW failed, he felt that he was too close to Mr. Matters and that the hatchet was going to strike him. Then he heard the two shots.

[295] The criminal investigation found, based on the physical evidence at the scene, that Mr. Matters was facing Constable Reddeman when shots were fired by Corporal Warwick. The investigation identified pieces from the CEW, which are cast off when it is deployed, close to the location of where Mr. Matters fell. Other physical evidence, such as the shell casings, corroborated the members' accounts of their general locations at the time of the shooting. I am satisfied that the findings of the criminal investigation with respect to the bullet trajectories and the position of the hatchet held by Mr. Matters just prior to the shooting are consistent with the accounts given by the members. I am also satisfied that any differences in their accounts (which are minor) can largely be attributed to the different focus and vantage points of each member and the effects of a high-stress situation. Overall, I find the members' accounts to be credible and reliable.

[296] Constable Hipkin stated the following with respect to his perception of the threat posed by Mr. Matters:

Mr. Matters made me feel that he was going to kill Cst Reddeman. He came at him with a hatchet raised above his head there is only one reason to do this to another person. I feared grievous bodily harm or death by Mr Matters actions and would have responded with lethal force if I was able to. [sic throughout]

[297] I am satisfied that Mr. Matters was armed with a hatchet, which was raised, and closing on Constable Reddeman. I find that Corporal Warwick had a reasonable fear of death or grievous bodily harm to Constable Reddeman and reasonably believed that he could not otherwise preserve Constable Reddeman from that harm. The threat level was sufficiently high that to expect an RCMP member to exhaust any or all other alternatives to lethal force at that point in time would be unreasonable. Accordingly, I am satisfied that Corporal Warwick was authorized to use lethal force to stop Mr. Matters from continuing toward Constable Reddeman with the hatchet.

FINDING: Corporal Warwick's use of lethal force against the threat posed by Mr. Matters was reasonable in the circumstances and in accordance with RCMP policy and training.

d) Police service dog

[298] Mr. Matters' family expressed concern about why the police service dog was not used if Mr. Matters did, in fact, have a hatchet in his hand. It has been suggested that it could have prevented the use of lethal force.

[299] Police service dogs (PSDs) are valuable assets to policing. They are invaluable as trackers, in locating evidence, and in detecting contraband and explosives. They are also weapons, and are capable of inflicting serious injury within a short period of time. The Commission has emphasized that the use of police dogs for criminal apprehension will only be justified when the suspect may reasonably be perceived as a threat to the members involved or other people, and when a lesser means of intervention is not readily available.

[300] RCMP ERT policy⁴⁹ provides that Police Dog Service teams are to attend an ERT deployment, if possible, and that the use of a PSD is determined through consultation with the handler, the ERT Team Leader and/or the Incident Commander. It states that the police dog service team will take final direction from the ERT Team Leader, the Incident Commander, or his delegate. However, RCMP general policy states, in part, that “the member in charge of an operation must rely on the discretion of the dog handler as to how, when and where a dog will be used or withdrawn.”⁵⁰ These policies are generally consistent with the overriding policy that members must be permitted to react to the circumstances they are faced with and make their own decision with respect to the perceived threat and the level of force that is required.

[301] As stated by Corporal Warwick to the Commission during its investigation:

Police Officers, specifically ERT Members, are trained in a variety of less-lethal options and are prepared to deploy the appropriate option at any time. However, their responses are guided by the principles of the Incident Management Intervention Model. In this instance, as in any instance, it would not have been appropriate to plan the deployment of any particular use of force option. I and the other officers present were prepared to utilize force if necessary; but we could only react based on the actions/behavior/threats presented by Greg MATTERS at the time and select/deploy the appropriate intervention option based on those actions/behavior/threats. [*sic* throughout]

[302] I note that in this case, Corporal Warwick was both part of the Police Dog Service, as well as a fully trained member of the NDERT. Ultimately, while the Incident Commander was responsible for authorizing operational plans and directing and evaluating ERT resources and options,⁵¹ it was up to Corporal Warwick to determine how and when he would use the PSD during the attempted apprehension of Mr. Matters.

[303] Team Leader Corporal Arnold testified at the Coroner’s inquest that it is up to the dog handler to make the call with respect to apprehension and that he understood that there would be a low percentage of success in the use of a PSD to apprehend a subject with an edged weapon (i.e. hatchet) due to the fact that the dog will simply grab onto the part of the body that is the closest, not the arm with the weapon. There would also be the added concern that once a dog is injured, members will have lost a tool that is typically used if the subject flees. (I note that while a second PSD was used for tracking purposes during this incident, it was not part of the NDERT and was not in the immediate vicinity at the time of the confrontation with Mr. Matters.) Corporal Arnold stated that he did not believe that the PSD would be an appropriate response in that situation and that the PSDs are not trained that way.

[304] According to his statement, shortly after encountering Mr. Matters and having not observed anything in his hands at that time, Corporal Warwick determined that his PSD

⁴⁹ See RCMP *Tactical Operations Manual*, chap. 2.4. “Specialized Support”, s. 2.

⁵⁰ RCMP *Operational Manual*, chap. 33.1. “Police Service Dogs and Specialty Service Dogs”, s. 1.2.

⁵¹ RCMP *Tactical Operations Manual*, chap. 2.1. “Organization and Selection”, s.1.6.

would be the best intervention option to subdue Mr. Matters. He noted that as he was in the process of commanding his police dog to apprehend Mr. Matters, he saw Mr. Matters reach into his sweater and pull out a hatchet. Corporal Warwick then commanded his PSD to heel, as he determined that the PSD was no longer an appropriate use of force option. Corporal Warwick explained that no PSD, including his, is trained or is effective in disarming persons with a weapon. Corporal Warwick did not believe it likely that his PSD would be able to effectively disarm Mr. Matters or incapacitate him. He did not believe that use of his PSD in that capacity at that time would result in any resolution to the situation but instead, could escalate the situation further. Corporal Warwick also believed that the presence of Mr. Matters' own dog in the immediate vicinity would be a distraction to his PSD and could slow or prevent the dog's engaging Mr. Matters. He was also concerned that Mr. Matters' dog could become aggressive and attack the PSD (particularly if Mr. Matters was bitten), causing further distraction and reducing his effectiveness. Corporal Warwick did not believe that a PSD is an appropriate intervention option when faced with a weapon such as a hatchet.

[305] The use of PSDs in situations involving subjects with edged weapons was a prominent issue at the Coroner's inquest. It was proposed that PSDs could and should be used to disarm subjects, and that it could have provided a different result. Corporal Warwick further explained his assessment that the PSD was not an appropriate intervention option immediately after Mr. Matters produced the hatchet. He stated that at the time, Mr. Matters was walking quickly and with a purpose. There was no indication that he was going to surrender. Constable Reddeman approached from behind to use the CEW. Mr. Matters turned toward Constable Reddeman and brought the hatchet up, moving towards Constable Reddeman. Constable Reddeman deployed the CEW but Mr. Matters did not stop. It was clear that the CEW did not work and Mr. Matters was going to strike Constable Reddeman with the hatchet. Mr. Matters was almost sideways to him at the time. It unfolded quickly and there was no time for Constable Reddeman to get out of the way. Tactical repositioning was not feasible at that time. If the PSD was deployed at that time and failed to disarm or interrupt Mr. Matters for the reasons cited by Corporal Warwick, Corporal Warwick reasonably believed that Constable Reddeman was faced with grievous bodily harm or death. Consequently, use of the PSD at that moment was not an appropriate use of force option.

FINDING: Corporal Warwick reasonably determined that his police service dog was not an appropriate tool for disarming Mr. Matters, or attempting to apprehend him once he produced the hatchet.

RECOMMENDATION: That the RCMP explore whether or not police service dogs can be successfully trained to disarm subjects.

e) Handcuffing

[306] Constable Reddeman stated that as soon as he heard shots fired and saw Mr. Matters fall to the ground, he and Constable Merriman immediately moved in to remove the weapon and apply handcuffs. The purpose was to make sure nothing else happened. Constable Reddeman confirmed that he applied the handcuffs.

[307] RCMP policy states that, keeping in mind the circumstances and a person's behaviour, a police officer may restrain a violent person using RCMP-approved restraints,⁵² such as handcuffs. While it may seem offensive to some for the police to apply handcuffs to a person who has just been shot and incapacitated, it is important to keep in mind that, in this case, as the situation was unfolding, members did not know how Mr. Matters had been affected by the wounds caused by the shots and whether or not he still had the ability to use his weapon while on the ground. The immediate action of handcuffing a person (and ensuring that the weapon is out of reach) is part of the necessary training that takes over to ensure that the person no longer poses a threat. As addressed later in this report, once that was done, Mr. Matters' injuries were promptly assessed and medical attention provided.

[308] I note that at the Coroner's inquest, the paramedic stated that Mr. Matters was handcuffed in the back when they came upon the scene but there was no reason to remove the handcuffs, as they were not interfering with his medical treatment.

FINDING: Constable Reddeman's handcuffing of Mr. Matters immediately following the shooting was reasonable in the circumstances and in accordance with policy and his training.

Communications

[309] The BCCLA alleged in its complaint that poor communication placed Mr. Matters at risk and may have contributed to his death. There were a number of challenges faced by the NDERT that resulted in sometimes mistaken or untimely communications, as discussed below. However, I am not convinced that the outcome would have been significantly different had those issues not arisen.

[310] The primary issue relates to the separation between the Incident Commander and NDERT Team Leader, who were at the command post, and CNT and Staff Sergeant Anderson, who remained at the detachment. Ideally, all parties would have been located at the command post to ensure timely and accurate communications and coordination. Corporal Garcia stated to the Commission that prior to acquiring "Big Blue" (the RCMP vehicle specially equipped for ERT operations), the negotiations team was often operating away from the command post, resulting in delayed information to the Incident Commander.

⁵² RCMP *Operational Manual*, chap. 17.6. "Restraining Devices", s. 2.1.

[311] Ideally, everything happens at the command post so that information transfer is immediate. While Corporal Garcia noted that Corporal Wilson was on the telephone with the command post passing on the information so there was little delay in this case, it did appear to have some effect on the coordination between negotiations and planning for the surrender/arrest. The RCMP's IOR report acknowledged that "[t]he decision to remain at the detachment and not move forward to the Command Post had some effect on the outcome of this incident, as the police direction for Greg to leave the house was not coordinated with the ERT members deploying to the property. They were not prepared to receive him at the point he was told to leave the residence."

[312] I agree that the efforts of the negotiators were not effectively coordinated with NDERT members. NDERT members were not in a position to receive Mr. Matters as Staff Sergeant Anderson was directing him down the driveway. However, I recognize that those efforts were negatively impacted by the time required to get the command post set up and operational, and the time and coordination required to effectively relocate the CNT. The situation was also complicated by the size of the property, the unknown location of Mr. Matters, and the shortage of available NDERT members. It was reasonable for Staff Sergeant Anderson to continue to negotiate a surrender and not to delay Mr. Matters' purported attempt to do so. It was an opportunity that, while not ultimately successful, would have otherwise been lost.

[313] The delay in moving the CNT to the command post also resulted in the absence of complete audio recordings of the ongoing negotiations with Mr. Matters. As Staff Sergeant Anderson declined to be interviewed by the Commission, it is unclear whether he considered the availability of audio recording equipment or monitored telephone lines to provide an indisputable record of the negotiations with Mr. Matters and his mother. Once the NDERT was deployed and the CNT engaged, recordings were made of the negotiations; however, those recordings captured only one side of the conversation, that of Staff Sergeant Anderson. Corporal Garcia indicated that there was a portable recording device located at North District headquarters, but that the equipment was not the best and not used in this case. Advances in technology have made digital recording devices smaller and more affordable. Modern technology should be made available in each detachment so that conversations in situations such as this can be recorded, and preferably both sides of it.

[314] There were also communication issues amongst the NDERT members on the ground and their Team Leader, Corporal Arnold. When the members were first directed to get in position to "receive" Mr. Matters when he was apparently attempting to surrender and walking down the driveway, the NDERT members were not where Corporal Arnold believed them to be. Given the size of the property, that created a time delay, during which Mr. Matters became agitated by other events (the helicopter and broken lock to the gate) and retreated to the homestead.

[315] Subsequently, Corporal Arnold instructed members to compress down the driveway and attempt to get eyes on the homestead. The radio transmissions confirm that he instructed them to drive to a point down the driveway where their vehicles would be out of sight of the homestead and take up position in the treeline, where NDERT members could view the entry point to the building. He instructed them to flank the driveway to be in a position to intercept Mr. Matters walking down from the homestead. NDERT members stated during the investigation that where they stopped and exited, their vehicles would have been visible to anyone in the area of the homestead.

[316] Mr. Matters was aware of the RCMP presence at and around the property, as evidenced by his statement about the broken lock on the gate, his reaction to the helicopter presence, and his talk about a confrontation. It is not possible to predict whether events would have unfolded any differently had the vehicles not been in view of Mr. Matters. The members were in position to intercept him when they saw him on the driveway and saw this as an opportunity to effect an arrest away from the homestead, which presented other challenges.

[317] Additional communication issues arose when the four NDERT members showed themselves to Mr. Matters, having spotted him along the driveway, and began issuing the police challenge and other instructions to him. It is clear from the members' statements that multiple members were making similar statements and issuing instructions to Mr. Matters at the same time. It is advisable in any communications with a subject, whether there are mental health issues involved or not, that commands be clear and understandable. While we will never know what Mr. Matters heard or understood from those communications, commands being yelled by various members simultaneously or overlapping from multiple directions could have easily been confusing or lost. I recognize that the situation was dynamic and unfolded quickly. However, it would have been preferable to have had a coordinated approach between NDERT members with respect to communications with Mr. Matters so that his ability to hear and comprehend the instructions was optimized.

FINDING: While the efforts of the negotiators to facilitate a surrender were not fully coordinated with the NDERT, members acted reasonably in light of the adverse circumstances.

FINDING: Telephone negotiations with Mr. Matters were not fully audio recorded.

RECOMMENDATION: That the RCMP look into and make available at each detachment digital recording devices capable of recording telephone conversations.

FINDING: There were miscommunications between the NDERT members and the Team Leader, Corporal Arnold.

FINDING: NDERT members did not take a coordinated approach to communicating with Mr. Matters when the confrontation occurred.

Operational plan

[318] The RCMP's *Tactical Operations Manual* provides that unless exigent circumstances exist, the ERT Team Leader is responsible for ensuring that written operational plans are completed as soon as possible at a deployment and are approved and initialed by the Incident Commander before being carried out. Where exigent circumstances exist, the plan may be given verbally to the Incident Commander, but is to be followed by a written plan as soon as it is practicable.⁵³

[319] Superintendent Stubbs confirmed to the Commission that the operational plan was not completed in writing. He indicated that the plan was started but had not yet been finalized and approved because they had not yet determined Mr. Matters' location. The common operational plans—for surrender, escape and immediate action—are based on the location of the suspect. The first time they were able to confirm Mr. Matters' location, Mr. Matters confronted the members with the hatchet. Superintendent Stubbs further stated that Mr. Matters indicated that he was going to surrender, and that surrender would not have been delayed for the purpose of finalizing the operational plans. There are standard operating procedures for surrenders and high-risk arrests that guide ERT members.

[320] Superintendent Stubbs stated to IIO investigators that when Mr. Matters indicated that he was going to surrender, they believed that he was at or near the residence/homestead. He and Corporal Arnold discussed the surrender plan, which entailed Mr. Matters coming out of the residence, ERT members directing him to a certain area, instructing him to keep his hands up, have no jacket and nothing in his hands and get in the prone position. The plan was approved verbally. They later discovered that Mr. Matters was apparently walking down the driveway and talking about a confrontation, then ended his call with Staff Sergeant Anderson and started walking toward the NDERT members. Some of those interactions were heard over the radio.

[321] Team Leader Corporal Arnold stated to the Commission that not knowing Mr. Matters' exact location on the property hindered their ability to finalize an operational plan. He included in the draft plan the general concept/outline, as per the option plan booklet. It included NDERT members holding a position on the property and awaiting intelligence from the helicopter; failing that, tracking Mr. Matters from his last known location; if tracked to the residence, contain and call; if encountered away from a structure, initiate communications and facilitate a surrender or arrest; less-lethal (CEW, sock rounds) options with lethal overwatch; and standard operating procedure for a surrender or compromise.

⁵³ RCMP *Tactical Operations Manual*, chap. 2.1. "Organization and Selection", s.1.4.17.

[322] The record is clear that Mr. Matters' location on the property was never confirmed until he was spotted on the driveway and the confrontation occurred with NDERT members. The details of the plan that could be completed, such as the type of incident, the mission and aim ("to safely take Greg Matters into custody, and arrest him for assault with a weapon et. al"), and general concept (locate, establish surrender option, and facilitate negotiated surrender), were all completed. The escape, surrender and compromise plans contained standard procedures. Additional details were not added, which is consistent with Corporal Arnold's assertions that the plans could not be finalized until they knew the location of Mr. Matters.

[323] In my view, Superintendent Stubbs and Corporal Arnold were in compliance with RCMP policy, and exigent circumstances existed such that the operational plans could not be finalized pending verification of Mr. Matters' location. Ultimately, Mr. Matters' location was finalized moments before the confrontation with NDERT members and they consequently had to follow standard operating procedures for the arrest.

FINDING: Superintendent Stubbs and Corporal Arnold were in compliance with RCMP policy with respect to finalizing the written operational plan, as they did not know Mr. Matters' precise location until the confrontation with NDERT members occurred.

[324] The BCCLA complained to the Commission that the ERT generally places an emphasis on show of force and use of firearms, and limited emphasis on planning, forethought and preparation to protect the safety of the person they were attempting to arrest. In their view, that may have resulted in members using excessive force and failing to de-escalate, putting Mr. Matters at risk and contributing to his death. Mr. Matters' family has also expressed concern that the NDERT did not act in a manner appropriate for a person with known PTSD and a fear of police, guns and helicopters.

[325] The ERT operates in accordance with the RCMP's *Tactical Operations Manual*, which is designed to accomplish the policy goals of the RCMP to resolve violent incidents using a measured approach while ensuring that the rights of Canadians are respected. The policy states:

The RCMP is committed to resolving potentially violent incidents using an integrated, measured approach response in accordance with the RCMP Incident Management and Intervention Model and the *Criminal Code* while ensuring the rights of Canadians are respected.⁵⁴

[326] The RCMP's *Operational Manual* also provides members with guidance in their dealings with persons who may be experiencing a mental health crisis. When such situations arise, policy directs members to act in accordance with the IM/IM.⁵⁵

⁵⁴ RCMP *Tactical Operations Manual*, chap. 2. "General", s. 1.1., as amended 2011-12-13.

⁵⁵ RCMP Operations Manual, chap. 19.7. "Mentally Ill Persons/Prisoners, s. 1.2., as amended 2010-09-30.

[327] At the Coroner's inquest, members were questioned about whether more knowledge regarding Mr. Matters' psychiatric history and assessments would have been helpful. The general consensus was that the knowledge would have been useful but would not have resulted in different tactics in this case. Mr. Matters was making threats to shoot and that was the best information at that time. The threats were made numerous times and had to be taken seriously.

[328] Members also spoke about some of the training that they had taken in relation to interacting with persons suffering from mental illness and de-escalation, and whether that training, some of it taken subsequent to Mr. Matters' death, would have changed how they approached this incident. The general consensus was that while it was very useful training, it would not have changed their actions. In my view, that position is reasonable. Throughout this report I have generally found that the members' dealings with Mr. Matters were reasonable and that tremendous efforts were made to bring about a safe resolution, although that was not the end result. I note that the RCMP has informed the Commission that it continues to review its mental health training for members.⁵⁶

[329] While a person's mental state can give important insights into their behaviour and affect strategies related to negotiation and communications, police officers continue to have to assess the level of risk. That assessment includes whether the subject has the ability, intent, and means (commonly referred to by the RCMP as AIM) to carry out the threat they were making. In this case, members reasonably determined that Mr. Matters had the ability, intention and means. It is clear to me that members did not discount the mental health issues involved and attempted to negotiate a safe surrender to the best of their ability. NDERT planning was not overly focused on a show of force and use of firearms.

[330] Members were faced with the challenges of a large and unfamiliar rural property, a shortage of available members (both for containment and ERT specialized services), and the inability to confirm Mr. Matters' location. They were also faced with the safety concerns discussed in great detail throughout this report. Members often have to make split-second decisions to act or not act, where either choice may have serious consequences. In this case, members chose to engage Mr. Matters on the driveway prior to the sighting of a weapon and it led to a fatal conclusion. In my view, the use of lethal force was not the intended or probable consequence of that engagement. Rather, it was a response triggered by the production of a weapon by Mr. Matters and his subsequent actions, and one followed by the deployment of less-lethal force.

FINDING: The NDERT did not emphasize show of force and use of firearms over planning.
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⁵⁶ As per correspondence from A/Commr. Norm Lipinski, "E" Division Criminal Operations Officer - Core Policing to the Commission, dated September 8, 2014.

Medical treatment following the shooting

[331] The RCMP owes a duty of care to those in its custody, and its policies provide direction to members with respect to obtaining medical treatment for persons in its custody. RCMP policy states that members must seek immediate medical assistance and provide the necessary first aid when a person appears to be unconscious or has an injury or illness for which medical attention should be sought.⁵⁷ This can often be difficult when faced with a subject who just seconds earlier members determined posed such a threat that lethal force was used; however, that duty applies equally in such situations.

[332] The investigation revealed that immediately following the shooting, Constable Hipkin went into his role as the team medic, checking his airway and going into respirations. He stated that Mr. Matters was not breathing and did not have a pulse, so they began CPR. Constable Merriman assisted by beginning chest compressions. Constable Hipkin cut open Mr. Matters' shirt and noted that his wounds were bleeding, so he applied pressure.

[333] Just before the shooting occurred, paramedics with the BC Ambulance Service arrived at the command post, as had been requested by the Incident Commander. They were informed almost immediately that a CEW had been deployed and that shots had been fired. Corporal Arnold escorted the paramedics to the scene, where they observed ERT members doing chest compressions on a male lying on the ground. Emergency medical services were provided by the attendants, with the assistance of several ERT members. At 7:29 p.m., an emergency room physician instructed one of the ambulance attendants to discontinue with their efforts. I note that the paramedics did not express any concerns with the treatment provided by RCMP members to investigators. In their view, CPR was being done effectively by the members.

[334] In my view, members adequately discharged their duty of care following Mr. Matters' shooting by promptly providing medical attention, arranging for emergency medical services personnel to be on standby to assist in such a situation, and by providing support to the emergency services personnel when they took over control of Mr. Matters' medical care.

FINDING: RCMP members adequately discharged their duty of care in the obtaining and provision of medical attention to Mr. Matters following the shooting.
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RCMP involvement following the shooting

[335] Immediately following the shooting, Superintendent Stubbs stated that he instructed the members of the NDERT, as well as other witnesses to the events, not to speak to each other about the incident, but to provide support only. He had a separate conversation with Corporal Warwick to check on his well-being and to offer support.

⁵⁷ RCMP *Operational Manual*, chap. 19.2. "Assessing Responsiveness and Medical Assistance", s. 2.1.2. (formerly sections 2.2. and 2.3.).

Superintendent Stubbs stated that he did not speak to him about what had occurred. There is no indication in the record that any members discussed the incident prior to providing their statements to the IIO, and most stated at the Coroner's inquest that they had not done so prior to that proceeding.

[336] The IIO report confirms that they were notified of the member-involved shooting almost immediately and asserted jurisdiction over the matter. The record indicates that RCMP members from Forensic Identification Services and the Serious Crime Section attended the scene to photograph it and assist with security pending the arrival of IIO investigators. The NDERT members were relieved within less than an hour and instructed to return to the command post, where evidence was obtained from them.

FINDING: RCMP members promptly notified the IIO regarding the incident.

FINDING: Superintendent Stubbs provided reasonable direction to members regarding their obligations not to discuss the incident prior to speaking with IIO investigators.

FINDING: Superintendent Stubbs took reasonable steps to ensure that the scene and evidence was secured prior to the IIO's arrival.

Next-of-kin notification

[337] RCMP policy provides that arrangements should be made to, as soon as possible, notify the next of kin where there has been a death.⁵⁸ However, in this case Mr. Matters' family was not notified of his death for several hours. Superintendent Stubbs stated that there was a miscommunication between himself and the Chief Superintendent in charge of North District that led to a delay in notifying Lorraine Matters and Trevor Matters of Mr. Matters' death. Superintendent Stubbs understood his instructions to be to wait for the IIO to arrive and do the notifications; however, he later discovered that he was mistaken and that the IIO had asked that the RCMP do the notifications. He stated that he received the clarification and direction at approximately 9:35 p.m. Shortly thereafter, Corporal Garcia notified Lorraine Matters of her son's death at the detachment. Lorraine Matters wished to immediately speak to her daughter, Tracey, in Australia, so Corporal Garcia made the decision to contact Tracey by telephone to notify her, as reaching out to the local police in Australia could have taken hours. Corporal Garcia explained that she felt that Lorraine Matters needed to speak to her daughter quickly. Constable Dickinson and another member went to Trevor's home to notify him of the death.

[338] There is no doubt that there was an unfortunate delay in the next-of-kin notifications in this matter. However, it is clear that the delay was not intentional but rather the result of a miscommunication, which was acknowledged by Superintendent Stubbs.

⁵⁸ RCMP *Operational Manual*, chap. 41.3. "Human Deaths", s. 3.1.

FINDING: Mr. Matters' next of kin were not notified as soon as possible following his passing; however, appropriate arrangements were made for notification upon discovery of the miscommunication.

CONCLUSION

[339] Critical incidents such as the one that ultimately led to the shooting death of Mr. Matters place a tremendous amount of responsibility upon members of the RCMP. While critical incidents require prompt and efficient police interventions, many require patience, understanding and restraint prior to a safe resolution. In my view, RCMP members in this case made tremendous efforts to strike a balance between obtaining quick resolution to ensure the safety of all involved, and dealing as best they could with Mr. Matters' mental health issues and all that entailed. I hope that the recommendations contained in this report will assist the RCMP to make improvements to the ways it deals with such incidents.

[340] Pursuant to subsection 45.76(1) of the RCMP Act, I respectfully submit my Public Interest Investigation Report.

A handwritten signature in black ink, appearing to read 'Gibault', is centered above the name. The signature is fluid and cursive.

Mr. George Gibault
Vice-Chairperson

APPENDIX A – Chair-initiated Complaint and Public Interest Investigation, dated May 1, 2013

Chair-Initiated Public Complaint and Public Interest Investigation: Shooting Death of Gregory Matters in Prince George, British Columbia

File No.: 2013-1309

May 1, 2013

As Interim Chair of the Commission for Public Complaints Against the RCMP (Commission), I am initiating a complaint and public interest investigation into the conduct of those RCMP members involved in the interaction with Mr. Gregory Matters from the time of the family dispute which occurred on September 9, 2012, to Mr. Matters' death following a police-involved shooting on September 10, 2012.

On September 9, 2012, Mr. Matters and his brother engaged in a dispute outside the residence of an off-duty RCMP member. That member called 911, as did Mr. Matters. Two members attended. Over the course of that day, members of the Prince George RCMP Detachment had repeated contact with Mr. Matters, and a decision was reached to arrest Mr. Matters for dangerous driving, assault with a weapon, assault, and breach of a peace bond. While Mr. Matters agreed on several occasions to submit to an arrest, he ultimately changed his mind. The RCMP's Emergency Response Team (ERT) was deployed in order to effect the arrest, and attended his place of residence. Mr. Matters continued to negotiate his surrender with RCMP members by telephone while the ERT stood by, and neared his location on the property. When telephone negotiations ceased, Mr. Matters was approached more closely by the four-member ERT. Mr. Matters was in possession of a hatchet, which he did not release upon being directed to do so. Ultimately, Mr. Matters was shot twice in the chest by a member of the Emergency Response Team.

The Independent Investigations Office (IIO) of British Columbia was immediately notified and asserted jurisdiction over the incident, and conducted a criminal investigation. On May 1, 2013, the Chief Civilian Director of the IIO announced that he could not conclude that any member may have committed a criminal offence in this case.

I am initiating this complaint and public interest investigation with the full appreciation that the IIO has conducted a criminal investigation in respect of this incident and pronounced upon the lack of criminal culpability engaged by any involved member. However, the Commission's mandate is remedial in nature, and measures the conduct of RCMP members in the execution of their duties against applicable training, policies, procedures, guidelines and statutory requirements, as opposed to the criminal standard.

Accordingly, pursuant to subsections 45.37(1) and 45.43(1) of the Royal Canadian Mounted Police Act (RCMP Act), I am today initiating a complaint and public interest investigation into the conduct of all RCMP members or other persons appointed or employed under the authority of the RCMP Act involved in this incident, 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 9 and 10, 2012, from the moment of initial contact through to the subsequent shooting death of Mr. Matters, complied with all appropriate training, policies, procedures, guidelines and statutory requirements;
2. whether the RCMP national, divisional and detachment-level policies, procedures and guidelines relating to such incidents are adequate; and
3. whether the actions taken by the RCMP in response to the incident were taken in accordance with all applicable policies, procedures, guidelines and statutory requirements.

APPENDIX B – Complaint of the British Columbia Civil Liberties Association in relation to the shooting death of Gregory Matters, dated February 6, 2013



Protected when completed (under the Privacy Act) /
Protégé une fois complété (en vertu de la Loi sur la
protection des renseignements personnels)

FORMAL COMPLAINT – PLAINTE OFFICIELLE

NAME / NOM :	Matters - BCCLA
CPC FILE NO. / N° DE DOSSIER DE LA CPP :	2013-0358
CPC CROSS REF. NO. / N° DE RENVOI DE LA CPP :	

COMPLAINT DATE / DATE DE LA PLAINTE : DAY / JOUR MONTH / MOIS YEAR / ANNÉE 06 February 2013	COMPLAINT MADE / PLAINTE DÉPOSÉE : <input type="checkbox"/> BY TELEPHONE / PAR TÉLÉPHONE <input checked="" type="checkbox"/> BY LETTER OR FAX / PAR COURRIER OU PAR TÉLÉCOPIEUR <input type="checkbox"/> BY EMAIL / PAR COURRIEL <input type="checkbox"/> IN PERSON / EN PERSONNE	ATTACHMENTS ARE IDENTIFIED AS FOLLOWS / LES PIÈCES JOINTES SONT IDENTIFIÉES COMME SUIV : Six-page fax received by the Commission
PREPARED BY COMPLAINTS ANALYST / PRÉPARÉ PAR L'ANALYSTE DES PLAINTES : Donna Horton		

DATE COMPLAINT FORWARDED TO RCMP / DATE D'ACHÈVEMENT DE LA PLAINTE À LA GRC : DAY / JOUR MONTH / MOIS YEAR / ANNÉE 07 February 2013	DIVISION : E DETACHMENT / DÉTACHEMENT : Emergency Response Team – Prince George
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<p>THE SPECIFIC ALLEGATIONS OF MISCONDUCT ARE AS FOLLOWS / LES ALLÉGATIONS D'INCONDUITE SONT LES SUIVANTES :</p> <p>The BCCLA is complaining about the conduct of an unknown number of unidentified members of the Prince George, RCMP Emergency Response Team, following an incident on September 10th, 2012 which resulted in the death of Mr. Greg Matters:</p> <p>RCMP ERT members:</p> <ol style="list-style-type: none"> 1) were inappropriately deployed given that they were conducting an arrest related to a domestic disturbance on private property; 2) displayed poor communication which placed Mr. Matters at risk and may have contributed to his death; and 3) placed emphasis on show of force and use of firearms, and limited emphasis on planning, forethought and preparation to protect the safety of the person they were attempting to arrest which may have resulted in officers using excessive force and failing to de-escalate, putting Mr. Matters at risk and contributing to his death. <p>An unidentified member:</p> <ol style="list-style-type: none"> 4) unnecessarily pointed a gun at Lorraine Matters; 5) employed unjustified and excessive force against her; 6) made her position herself in a manner which he knew would cause her pain and injury; 7) accused Ms. Matters to be lying and refused to listen to her; and then 8) unjustifiably arrested her for assault which resulted in unlawful detention. <p>RCMP member "Justin":</p> <ol style="list-style-type: none"> 9) refused to allow Ms. Matthews to call a lawyer or her son. <p>Unidentified members:</p> <ol style="list-style-type: none"> 10) conducted an unlawful strip search of Ms. Matters; 11) kept her in handcuffs for over thirty minutes; 12) ignored her pleas for the RCMP to contact the doctor who had been treating her son; and

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CPC 9919 (06/09)

Commission for
Public Complaints Against the
Royal Canadian Mounted Police



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protection des renseignements personnels)

13) made an unwarranted comment about her son's ability to recognize her.

ADDITIONAL INFORMATION / RENSEIGNEMENTS SUPPLÉMENTAIRES : **None**

APPENDIX C – Summary of Findings and Recommendations

FINDINGS

FINDING: Constables Poyzer and Dickinson responded to the scene of the vehicle collision in a timely fashion.

FINDING: Constable Poyzer's stated priority at the time to locate and confirm the welfare of Trevor Matters was reasonable, and necessarily delayed his ability to secure the scene of the alleged criminal offence.

FINDING: Statements were taken from the involved parties and witnesses in a timely manner and were reasonably thorough in the circumstances.

FINDING: Basic investigative techniques relating to the securing and collection of physical evidence were not reasonably employed and left evidence vulnerable to contamination.

FINDING: Constable Poyzer did not reasonably consider and account for the discrepancies in the evidence as it was received.

FINDING: Constable Poyzer should have included in his notes and reports any observations he made with respect to signs of intoxication when he encountered Trevor, and not doing so calls into question his later statements.

FINDING: The initial focus of the investigation was on Mr. Matters not because of his history, but rather because of his admitted role in the incident and the seriousness of his actions. There is no evidence that the RCMP investigation focused on Mr. Matters as a result of bias, or for any other improper motive.

FINDING: Staff Sergeant Anderson assumed responsibility for too many roles and should have delegated direct supervision of the criminal investigation and preparation of the warrants to another member.

FINDING: At all relevant times RCMP members had reasonable grounds to believe that Mr. Matters had committed the alleged offences and that he was arrestable without a warrant pursuant to subsection 495(2) of the *Criminal Code*

FINDINGS:

1. Members made reasonable attempts to have Mr. Matters attend the Prince George RCMP Detachment for the purpose of making the arrest and obtaining a statement.
2. Upon attending the residence, members reasonably determined that a physical confrontation was likely if they attempted to arrest Mr. Matters at that time, and their decision to delay the arrest was reasonable.

FINDINGS:

- 1. Staff Sergeant Anderson made significant efforts to gain Mr. Matters' trust throughout the negotiations and spoke to Mr. Matters in a calm and professional manner.**
- 2. Staff Sergeant Anderson's negotiations with Mr. Matters prior to the involvement of the emergency response team were reasonable and appropriate in the circumstances.**
- 3. Negotiations with Mr. Matters may have been furthered by clearer communication with him regarding the status of the peace bond against Trevor.**

FINDING: Staff Sergeant Anderson acted reasonably in meeting with Trevor and deciding that there were no appropriate charges to pursue in the circumstances.

FINDING: Staff Sergeant Anderson took a measured and reasonable approach to containment at the Matters property given the challenges created by the size and topography of the property and the availability of resources.

FINDING: Superintendent Stubbs was trained and qualified as a Critical Incident Commander at the time of the incident.

FINDING: Superintendent Stubbs' decision to activate and deploy the NDERT was reasonably based and consistent with RCMP policy.

FINDING: The NDERT briefing was reasonably thorough and accurate.

FINDING: Superintendent Stubbs took appropriate action to ensure that all available ERT personnel were deployed to the incident.

FINDING: RCMP members had reasonable grounds to enter onto the Matters properties without a warrant.

FINDING: Staff Sergeant Anderson continued to negotiate with Mr. Matters in an appropriate and professional manner under the supervision of the CNT.

FINDING: CNT members reasonably determined that it was appropriate for Staff Sergeant Anderson to continue negotiations with Mr. Matters given the rapport he had built and their understanding of his abilities.

FINDING: CNT members conducted themselves reasonably throughout the negotiations and information-gathering process.

FINDING: Staff Sergeant Anderson made significant efforts to facilitate Mr. Matters' peaceful surrender through his mother, Lorraine Matters.

FINDING: At the time of the decision to deploy the NDERT, members reasonably believed that Lorraine Matters may no longer be helpful in their efforts to negotiate Mr. Matters' surrender.

FINDING: RCMP members did not act unreasonably when they prevented Ms. Pinko from entering the Matters property to pick up Mr. Matters.

FINDING: Corporal Garcia made extensive and reasonable efforts to locate and speak with Dr. Passey.

FINDING: Corporal Garcia passed along the information and suggestions she learned from Dr. Passey in a timely and detailed manner.

FINDING: The CNT reasonably considered and employed the suggestions put forward by Dr. Passey.

FINDING: There was insufficient time during the incident to consider or evaluate the use of Dr. Passey as a TPI given the events that unfolded shortly after he was contacted.

FINDING: The RCMP members involved in the incident engaged those persons closest to Mr. Matters in a reasonable manner.

FINDING: It was reasonable for members not to "back off" as Staff Sergeant Anderson was negotiating with Mr. Matters to surrender and they had yet to confirm Mr. Matters' location.

FINDING: Corporal Arnold and Superintendent Stubbs complied with policy requiring them to consider and ensure the presence of less-lethal weapons.

FINDING: Corporal Arnold and Superintendent Stubbs' decision to deploy members with a bean bag shotgun was reasonable in the circumstances.

FINDING: NDERT members received training on the bean bag shotgun following this incident.

FINDING: Superintendent Stubbs' decision to use the police helicopter to attempt to locate Mr. Matters was reasonable in the circumstances.

FINDING: RCMP members took immediate and reasonable action to remove the helicopter when it appeared to disrupt their negotiation of a surrender with Mr. Matters.

FINDING: The inscription on the rifles used by ERT members is a marking made by the manufacturer of the product to which it was affixed and not the result of any action taken by the members involved in this incident.

FINDING: It was reasonable for NDERT members not to “back off” once they confronted Mr. Matters.

FINDING: Constable Reddeman reasonably believed that deploying the CEW would facilitate the safe arrest of Mr. Matters, who was armed with a hatchet and posed a threat to members.

FINDING: Constable Merriman issued a warning to Mr. Matters to stop or the CEW would be deployed.

FINDING: Constable Hipkin did not have a reasonable opportunity to deploy the bean bag shotgun as events unfolded.

FINDING: Corporal Warwick’s use of lethal force against the threat posed by Mr. Matters was reasonable in the circumstances and in accordance with RCMP policy and training.

FINDING: Corporal Warwick reasonably determined that his police service dog was not an appropriate tool for disarming Mr. Matters, or attempting to apprehend him once he produced the hatchet.

FINDING: Constable Reddeman’s handcuffing of Mr. Matters immediately following the shooting was reasonable in the circumstances and in accordance with policy and his training.

FINDING: While the efforts of the negotiators to facilitate a surrender were not fully coordinated with the NDERT, members acted reasonably in light of the adverse circumstances.

FINDING: Telephone negotiations with Mr. Matters were not fully audio recorded.

FINDING: There were miscommunications between the NDERT members and the Team Leader, Corporal Arnold.

FINDING: NDERT members did not take a coordinated approach to communicating with Mr. Matters when the confrontation occurred.

FINDING: Superintendent Stubbs and Corporal Arnold were in compliance with RCMP policy with respect to finalizing the written operational plan, as they did not know Mr. Matters’ precise location until the confrontation with NDERT members occurred.

FINDING: The NDERT did not emphasize show of force and use of firearms over planning.

FINDING: RCMP members adequately discharged their duty of care in the obtaining and provision of medical attention to Mr. Matters following the shooting.

FINDING: RCMP members promptly notified the IIO regarding the incident.

FINDING: Superintendent Stubbs provided reasonable direction to members regarding their obligations not to discuss the incident prior to speaking with IIO investigators.

FINDING: Superintendent Stubbs took reasonable steps to ensure that the scene and evidence was secured prior to the IIO's arrival.

FINDING: Mr. Matters' next of kin were not notified as soon as possible following his passing; however, appropriate arrangements were made for notification upon discovery of the miscommunication.

RECOMMENDATIONS

RECOMMENDATION: That a supervisor review this report with Constable Poyzer and provide operational guidance with respect to the securing and collection of relevant evidence.

RECOMMENDATION: That a supervisor review the findings in this report with Constable Poyzer and provide operational guidance with respect to appropriately accounting for all evidence and dealing with discrepancies when preparing notes and reports.

RECOMMENDATION: That the RCMP consider acquiring an ARWEN gun for use by the NDERT, and ensure that those members receive appropriate training.

RECOMMENDATION: That the RCMP consider making unmanned aerial vehicles available to all ERTs for deployment where a person in crisis, or their vehicle, must be located on a large rural property.

RECOMMENDATION: That the RCMP prioritize its research of body-worn recording equipment and determine how and when it can be best used, particularly during ERT deployments.

RECOMMENDATION: That the RCMP consider how to better ensure that NDERT is deployed with sufficient and appropriately trained personnel to facilitate all planning options.

RECOMMENDATION: That all ERT part-time members receive CEW training to ensure that ERT deploys with the range of less-lethal options appropriate to the situation.

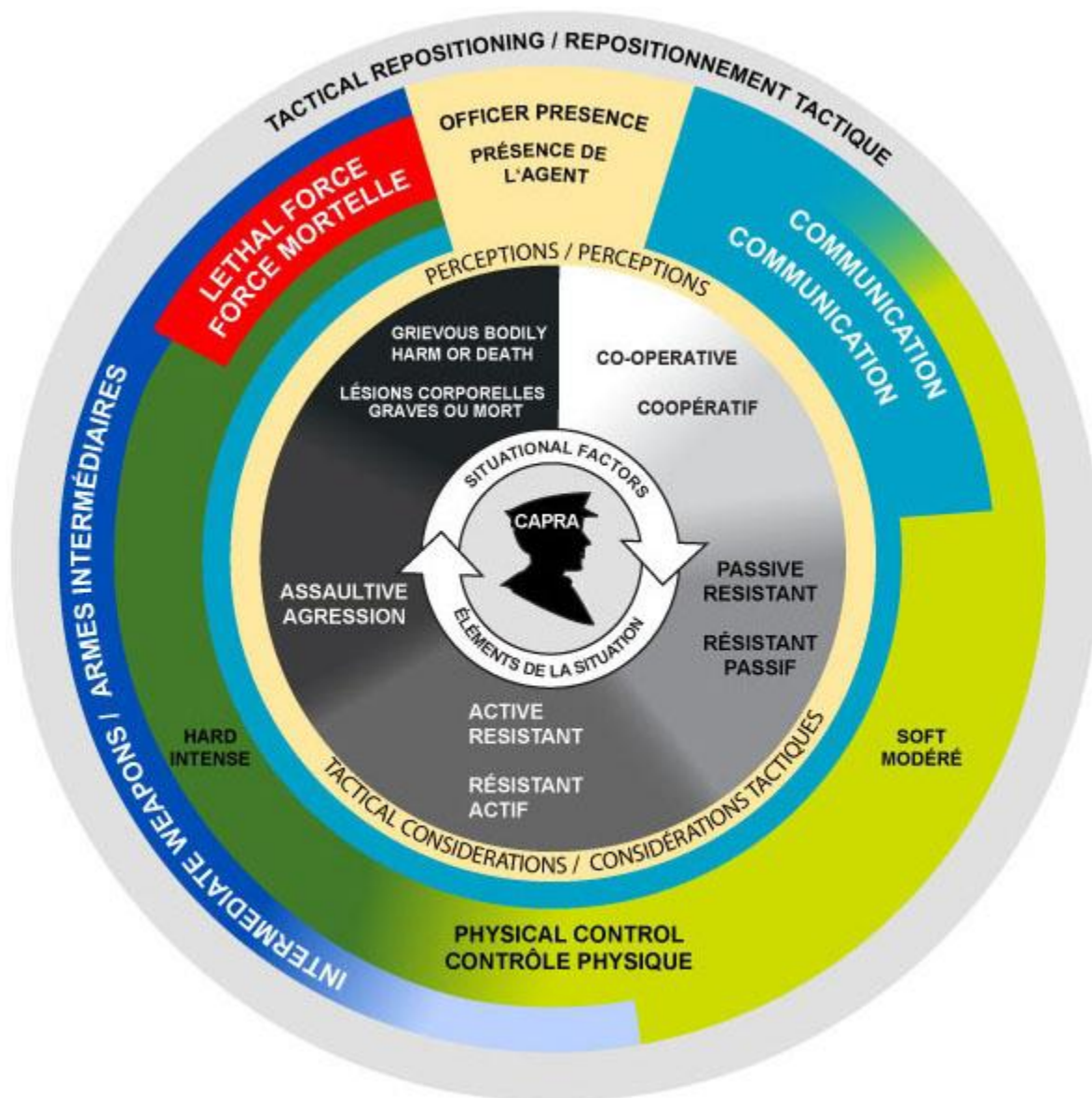
RECOMMENDATION: That the RCMP explore whether or not police service dogs can be successfully trained to disarm subjects.

RECOMMENDATION: That the RCMP look into and make available at each detachment digital recording devices capable of recording telephone conversations.

APPENDIX D – Primary RCMP Members Involved in the Events of September 9 and 10, 2012, up to and including the Shooting Death of Gregory Matters

Person	Role
Constable Steven Pelletier	Off-duty member who dealt with Mr. Matters and his brother on September 9, 2012.
Constable Nathan Poyzer	Primary investigator and first to respond to the scene of the motor vehicle incident between the brothers.
Constable Jason Dickinson	Provided backup to Constable Poyzer and assisted with the investigation.
Constable Kyle Sharpe	Made attempts to arrest Mr. Matters outside his residence on September 9, 2012.
Constable Jared Sweeney	Attended Mr. Matters' property with Constable Sharpe.
Staff Sergeant Brad Anderson	Acting Operations Officer, Prince George Detachment. Conducted telephone negotiations with Mr. Matters.
Superintendent Eric Stubbs	Officer in Charge, Prince George Detachment. Incident Commander.
Constable Josh Grafton	Police Dog Service member, assisted with perimeter security and broke the lock to the gate at the property to provide better access.
Corporal Colin Warwick	Police Dog Service member. Provided support to general duty members attempting to arrest Mr. Matters at his property on September 9, 2012. NDERT member and used lethal force, resulting in the death of Mr. Matters. Corporal Warwick also arrested Mr. Matters' mother, Lorraine.
Constable Bryson Hipkin	NDERT member and witness to the death of Mr. Matters. Carried the bean bag shotgun.
Constable Matthew Reddeman	NDERT member and witness to the death of Mr. Matters. Deployed the CEW against Mr. Matters.
Constable Brian Merriman	NDERT member and witness to the death of Mr. Matters.
Corporal Ryan Arnold	NDERT Team Leader
Corporal Claudette Garcia	Crisis Negotiation Team
Corporal Todd Wilson	Crisis Negotiation Team
Corporal Darren Dodge	Crisis Negotiation Team

APPENDIX E – RCMP Incident Management / Intervention Model



APPENDIX F – Categories of Resistance of Individuals

In the inner portion of the Incident Management/Intervention Model, potential levels of resistance of suspects are noted. The following defines the expected behaviours of individuals displaying each of the levels of resistance included.

Co-operative

The subject responds appropriately to the officer's presence, communication and control.

Passive Resistant

The subject refuses, with little or no physical action, to cooperate with the officer's lawful direction. This can assume the form of a verbal refusal or consciously contrived physical inactivity. For example, some subjects will go limp and become dead weight.

Active Resistant

The subject uses non-assaultive physical action to resist, or while resisting an officer's lawful direction. Examples would include pulling away to prevent or escape control, or overt movements such as walking away from an officer. Running away is another example of active resistance.

Assaultive

The subject attempts to apply, or applies force to any person; attempts or threatens by an act or gesture, to apply force to another person, if he/she has, or causes that other person to believe upon reasonable grounds that he/she has the present ability to effect his/her purpose. Examples include kicking and punching, but may also include aggressive body language that signals the intent to assault.

Grievous Bodily Harm or Death

The subject exhibits actions that the officer reasonably believes are intended to, or likely to cause grievous bodily harm or death to any person. Examples include assaults with a knife, stick or firearm, or actions that would result in serious injury to an officer or member of the public.

<http://www.rcmp-grc.gc.ca/ccaps-spcca/cew-ai/imim-migi-eng.htm#subject>