

Civilian Review and
Complaints Commission
for the RCMP



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

Chair-Initiated Complaint and
Public Interest Investigation into the
RCMP's Response to the 2013 Flood in
High River, Alberta

Interim Report
February 2015

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Executive Summary

Background

On June 20, 2013, unusual levels of rainfall resulted in the normally sedate Highwood River becoming a rampaging torrent that uprooted trees and submerged cars and homes in southern Alberta's Town of High River. The extent of the flood and the damage it caused were unprecedented.

Over the next seven days, countless acts of heroism and humanitarianism were witnessed from volunteers, firefighters and first responders, including 380 Canadian Forces personnel and hundreds of local, provincial and national Royal Canadian Mounted Police (RCMP) members, all working long hours to evacuate the town and search for, and rescue, hundreds of stranded residents. An estimated 600 people were rescued by helicopter and 200 were saved using boats, trucks and farm vehicles. However, as the crisis wore on, the conduct of RCMP members was questioned, as residents were informed that during the evacuation, their homes were forcibly entered, and in some cases windows were broken, doors were kicked in and firearms were taken.

Public Interest Investigation

By the first week of July, it was apparent that an external, independent examination of RCMP members' actions was required. Consequently, on July 5, 2013, the

Chair of the Commission for Public Complaints Against the RCMP (now the Civilian Review and Complaints Commission for the RCMP,¹ hereafter referred to as the "Commission") initiated a public interest investigation into the conduct of members of the RCMP during the evacuation of High River. The Commission's investigation set out to review the actions and decisions of RCMP members and focused on whether RCMP members complied with applicable laws, policies, procedures, training and guidelines with respect to the entry into private residences during the evacuation and the seizure of firearms from those residences. The Commission's investigation also reviewed whether the RCMP's internal policies, procedures and guidelines are adequate.

Following an extensive investigation involving the review of over 10,000 pages of documents, emails, notes and seizure logs; more than 1,000 images and 50 videos; RCMP operational and administrative policies; applicable laws and court decisions; and after interviewing dozens of individuals, the Commission has made 52 findings and 10 recommendations.

¹ As a result of the coming into force on November 28, 2014, of the *Enhancing Royal Canadian Mounted Police Accountability Act*, 2013, c 18, the Commission for Public Complaints Against the RCMP was replaced with the Civilian Review and Complaints Commission for the RCMP. To learn more about the new Commission, please visit the website at www.crc-cetp.gc.ca.

In summary, RCMP members were authorized as part of a declared state of emergency to enter High River buildings and with the exception of a relatively small number of homes, the force used to enter was necessary to comply with directions from emergency management officials. However, once inside the homes, RCMP members discovered firearms and contraband and, with insufficient supervision and guidance by senior RCMP members or any judicial oversight, performed warrantless searches and seizures of firearms from some of the evacuated homes. In addition, the lack of a public communication strategy resulted in the public's mistrust of the words and actions of RCMP members and set in motion a domino effect of challenges for the RCMP.

Context

The Commission would be remiss in failing to acknowledge that the emergency personnel, including RCMP members, did a remarkable job responding to this extraordinary natural disaster in the initial days.

However, when considering the community's reaction to the actions of the RCMP in the days that followed the flood, it is evident that there were failings from which lessons can be learned. The remedial focus of the Commission's mandate allows for the identification of any failings as an opportunity to enhance the RCMP's accountability, strengthen its relationship with the communities it

serves, and assist in reclaiming the trust of those residents who have had their confidence in the RCMP shaken.

State of Emergency

On the first day of the flood, the Town of High River declared a state of emergency pursuant to Alberta's *Emergency Management Act*² (EMA), and the Town's Emergency Operations Centre (EOC) prepared emergency plans requiring the RCMP's input and participation for 1) rescue and recovery, 2) security, 3) search, and 4) re-entry efforts. These four plans were prepared and their execution was ordered by local and provincial officials using emergency powers in the EMA. Pursuant to paragraph 19(1)(h), the EMA authorized RCMP members to enter any building without a warrant in the course of carrying out the EOC's emergency plans.

The EOC directed RCMP members to enter and search all town residences, including using force for the purpose of saving lives. Subsequently, the EOC issued additional orders and directions for RCMP members to enter (and re-enter) homes to facilitate pet rescues and health and safety inspections. In the process of carrying out these emergency plans, RCMP members entered 4,666 homes, and forced entries into more

² *Emergency Management Act*, RSA 2000, c E-6.8.

than 754 of those homes. The results of these searches were the discovery of approximately 38 people in need of help, the rescue of 700 pets, and the facilitation of provincial health and safety inspections, which deemed half of the homes inspected in High River as uninhabitable.

While authorized to enter homes by the EOC, RCMP members, acting on their own initiative, discovered or searched for firearms and contraband, resulting in the removal of 609 firearms from 105 homes, the seizure of marijuana plants from 5 homes, and prohibited weapons from 1 house.

Decision to Enter and Search Homes

The rapidity of the flood caught many by surprise. As residents quickly fled their homes, RCMP members began receiving reports that some residents were being swept away by flood waters, or were trapped in their homes and cars as large parts of the town were becoming impassable. By late morning on the first day of the flood, the EOC struggled with challenges of its own, as its location was flooded which hampered its ability to direct the emergency efforts. At the same time, the RCMP's dedicated communication system was inoperable, along with the majority of the town's voice and data services provided by landlines and cell towers. Those needing help were unable to connect with emergency services. In the late afternoon of that first day of

flooding, the EOC ordered the mandatory evacuation of the entire town of High River.

On the morning of the second day of the flood, the EOC met with the RCMP Incident Commander, Superintendent Frank Smart, who recommended a "systematic door-to-door search of every residence in the town." With communication lines down, the concern was that no area of town could be considered cleared, as there was no means of knowing if anyone was trapped in a home or incapacitated without physically checking inside. The outcome of the EOC meeting was clear: time was of the essence and protection of life was the priority. The Director of the EOC, Mr. Ross Shapka, confirmed that the aim of the first round of the house-to-house searches was to ensure "life safety." The EOC therefore made the decision to order the "search of all town residences to ensure that people had been evacuated."

Means and Methods Used to Enter and Search Homes

In the afternoon of the second day of the flood, as the preparation of the search plan was in the final stages, some RCMP members sought clarification on the measures to be used for their “door-to-door” efforts if nobody answered the door, particularly in neighbourhoods where the water level was lower. Superintendent Smart instructed RCMP members to use as much force as necessary (to enter every building), but as little as possible to mitigate damage.

To add to the already complex operating environment, along with the heavy burden to save lives, many of the team members had never been in High River. RCMP members were sent out in boats in search of flooded neighbourhoods they had never seen before, looking for submerged street signs.

In the worst-hit neighbourhoods, search teams had to contend with live wires, gas leaks or unstable ground before entering homes. Some homes were unlocked, others were accessible through open garage doors, while others required the breaking of windows and doors, and when made available on teams, a dozen locksmiths unlocked or drilled locks. In some cases, the teams were able to enter through damaged entrances caused by the intensity of the flood waters and large debris. The nature of the emergency response made speed a

priority at the expense of damage done to the exterior and interior of homes.

However, even though the RCMP members were directed to enter every residence, in the neighbourhoods located in the “high and dry” areas—approximately five percent of the town—it appears that the force used to enter sometimes caused extensive damage to homes that had not been affected by the flood.

Search and Seizure of Firearms

Although the EMA granted RCMP members the lawful authority for warrantless entries in furtherance of the EOC’s emergency plans, these statutory powers did not authorize searches and seizures of firearms and contraband. RCMP Deputy Commissioner Dale McGowan indicated that for such seizures, RCMP members were relying on the *Criminal Code*.

Section 489 of the *Criminal Code* authorizes warrantless seizures of unsecured firearms or contraband discovered in “plain view.” Furthermore, section 489.1 of the *Criminal Code* requires that all items seized be reported to a justice.

In a number of instances, RCMP members seized firearms that were properly secured or that were not in plain view. In these cases the firearms were not removed with lawful authority.

An alternate proposition advanced by the RCMP as a rationale for seizing the firearms was that members were also justified in seizing the unsecured firearms which they came across in plain view because they posed a threat to public safety. With the evacuation order in place, the RCMP was receiving reports of break-ins and thefts, and there were over 300 people who refused to evacuate, including one high-risk offender.

While RCMP members, acting on their own initiative and with little guidance, may have acted with public safety in mind, they nonetheless failed to comply with legal requirements concerning the seizure of firearms. Absent a warrant, RCMP members were obligated to report their seizures to a justice pursuant to section 489.1 of the *Criminal Code*. The judicial oversight component of seizures cannot be overstated in the context of police officers taking personal property from a home. Parliament has indicated its desire to regulate the warrantless seizure of personal property in a manner that ensures police accountability, transparency and judicial oversight. Had the RCMP reported their seizures to the court, it may have addressed many of the concerns and criticisms from residents, the media, and politicians.

Communications

The Commission's investigation revealed a number of failings related to communications, which had a

direct impact on public perceptions of RCMP performance during the crisis and undermined public confidence in the RCMP.

First and foremost, the RCMP leadership failed to adequately plan and resource external or public communications related to the High River flooding crisis. Overall, responsibility for communications lay with the High River EOC. But the RCMP's failure to plan and prepare for external communications during the emergency, and above all the insufficient importance attached by the RCMP to public communications, worked to the detriment of RCMP operations and the Force's reputation. This was a particular concern with respect to the forced entries into homes and the seizures of firearms.

RCMP ineffectiveness in external communications was the direct result of inadequate policies and procedures and insufficient training on existing public communications policies and procedures. This led to poor planning and under-resourcing, with consequent confusion about roles and responsibilities, and poor coordination of public communications internally and with partners. For example, there was a failure to explain to the public why houses in the evacuation area were being entered, in some cases more than once, and why unsecured firearms were seized. Failure to explain these actions allowed speculation to develop.

The Commission recommends that the leadership of the RCMP's Alberta Division (referred to as "K" Division) undertake a comprehensive review of its communications function to address the shortcomings exposed through the High River communications response, particularly in the areas of planning and resourcing. At the national level, the RCMP should develop a practical crisis communications handbook for use in emergency operations. The RCMP should also take measures to ensure that emergency management policies and procedures support the close integration of external communications and operations.

Emergency Response Policy

Given the lack of supervisory guidance surrounding the entries, searches and seizures, RCMP policies and procedures did not adequately present legal authorities for RCMP members to 1) enforce evacuation orders, including when it may be appropriate to arrest a person who fails to leave an evacuation area, and 2) enter homes and conduct searches and seizures when acting under provincial emergency management powers or pursuant to the common law powers of police.

The Commission recommends as a result that the RCMP review its emergency management policies at the national and divisional level, to ensure that they provide clear and comprehensive direction with respect to the legal authorities and

duties of its members in emergency situations, taking into consideration the specific authorities and duties set forth in provincial or territorial legislation.

More specifically, given the lack of supervisory guidance noted in the Commission's review of the circumstances surrounding the RCMP's seizure of firearms, the RCMP should create procedures or guidelines with respect to the seizure of firearms in disaster response situations like the High River flood.

Evacuation of RCMP Members

In addition, concerns arose regarding the failure of some RCMP members to evacuate. These members remained in their homes in the evacuation area in order to respond to the emergency. Allowing RCMP members to remain in their homes in an evacuation area risks creating the perception of favouritism toward RCMP members.

The Commission therefore recommends that RCMP policy or guidelines direct RCMP emergency responders whose homes are located in an evacuation zone to vacate their homes in accordance with evacuation orders.

Incident Command System

Implementation of the Incident Command System (ICS)³ protocols indicate that during the activation phase of an emergency, staffing requirements must be determined and the necessary personnel with specific skills must be assigned accordingly. The implementation of the protocols was negatively affected by a lack of training. Thus, the Commission found that the RCMP has not fully implemented ICS into its emergency preparedness framework.

The Commission therefore recommends that the RCMP develop a policy making ICS the standard for emergency management situations and requiring ICS training for key positions, including Detachment Commanders, at a level commensurate with their responsibilities in an emergency response situation.

Note-Keeping

This report has noted the poor note-keeping of members involved in the response to the High River flood, which hampered the Commission's investigation. For instance, note-taking by search teams lacked consistency and

sufficient detail. RCMP members also failed to maintain proper notebook entries during their escort of home inspection teams, in particular with respect to the use of force to gain entry into homes.

The Commission recommends that the RCMP develop national practice guidelines requiring the creation and use of neighbourhood inquiry sheets or similar documentation for emergency responders.

Conclusion

In the end, what should have been a story about heroic actions of countless front-line responders, including many RCMP members, turned out to be something far different for the RCMP.

The RCMP was evidently surprised and responded in a reactive manner to the anger of many High River residents over RCMP members having entered their homes and then seized firearms therefrom. Yet, the community's reaction was somewhat predictable, given that the sanctity of one's home from state interference is a deeply rooted legal principle. This principle was outlined eloquently by British statesman William Pitt in a speech to the House of Commons in 1763:

The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail, its roof may

³ The Incident Command System is a site-level emergency management system. In the case of High River, the RCMP, the town and the province were all utilizing that system. For a more detailed explanation see *infra* p.99.

shake; the wind may blow through it; the storms may enter, the rain may enter,—but the King of England cannot enter; all his forces dare not cross the threshold of the ruined tenement.⁴

Various factors identified in this report led to the negative outcome experienced by the RCMP, including a lack of leadership in terms of supervisory guidance and clear policy direction, as well as a failure to articulate and then communicate in a transparent and timely manner the reasons and legal justification for the RCMP's actions.

The RCMP will inevitably be involved in disaster response efforts in the future, performing the dual roles observed in High River of law enforcement agency and emergency responder. In order to maintain the public's confidence in the RCMP's ability to perform these roles, the Commission's report recommends various measures to be taken by the RCMP to ensure that its members: fully understand their legal authorities and duties in the particular context of responding to a natural disaster; effectively communicate the nature of their actions and the rationale behind them, both internally and to the public; and supervise their execution in a manner that demonstrates leadership and accountability.

⁴ Speech on the Excise Bill, House of Commons (March 1763), quoted in Lord Brougham, *Historical Sketches of Statesmen Who Flourished in the Time of George III* (1855), I, at 42; online: <<https://www.chroniclesmagazine.org/blogs/thomas-fleming/defending-the-family-castle-part-i/>>.

INTRODUCTION

The report is comprised of five parts:

- I. Scope of public interest investigation;
- II. Background;
- III. Chronology of events;
- IV. Analysis; and
- V. Conclusion

Part I outlines the Commission's mandate and the issues related to the RCMP's actions which are reviewed in this report.

Parts II and III offer a chronological summary of relevant events to provide the background necessary for a more detailed analysis of the RCMP's conduct in Part IV, along with recommendations to address any shortcomings by the RCMP during their response to the High River flood.

This report was prepared following an extensive investigation that reviewed:

- over 10,000 pages of documents, including situation reports;
- meeting minutes from the Town, district and divisional Emergency Operations Centre (EOC);
- RCMP members' notes; emails and electronic records; logs relating to items removed or seized from homes;
- relevant RCMP operational and administrative policies;

- applicable legislation and case law;
- over 1,000 photographs and approximately 50 videos.

Additionally, in December 2013 and January 2014, Commission staff met with 68 High River residents and conducted 56 interviews. In March 2014, 8 additional interviews were conducted by an expert hired by the Commission to review the RCMP's handling of external communications. In April and June 2014, key RCMP members and the Fire Chief for the Town of High River were interviewed.

The Commission also received a significant amount of information from the public, including documents released through other processes (such as requests for access to information) that found their way into the public realm, hundreds of emails and attachments and links to news articles, letters, statements and videos. The Commission also reviewed publicly sourced materials and research literature on the disaster response efforts of police organizations.

PART I: SCOPE OF PUBLIC INTEREST INVESTIGATION

Pursuant to the authority granted to the Commission by subsections 45.37(1) and 45.43(1) of the *Royal Canadian Mounted Police Act* in force prior to November 28, 2014⁵ (RCMP Act), the Commission commenced a Chair-initiated complaint (Appendix A) and public interest investigation into the conduct of RCMP members involved in entering private residences and removing firearms following flooding in High River to determine:

1. whether the RCMP members or other persons appointed or employed under the authority of the RCMP Act involved in entering private residences in High River complied with all appropriate training, policies, procedures, guidelines and statutory requirements;
2. whether the RCMP members or other persons appointed or employed under the authority of the RCMP Act involved in seizing firearms from private residences in High River complied with all appropriate

training, policies, procedures, guidelines and statutory requirements; and

3. whether the RCMP's national-, divisional- and detachment-level policies, procedures and guidelines relating to such incidents are adequate.

A summary of the Commission's 52 findings and 10 recommendations can be found in Appendix B.

The Commission is an independent agency of the federal government mandated to conduct objective examination of the evidence gathered during its investigation and, where appropriate, make recommendations to improve or correct conduct by RCMP members. The Commission is not mandated to review the actions of persons not employed by the RCMP, who may have played an important role in the emergency response. However, where warranted to better appreciate the operational context, the decisions and actions of non-RCMP officials are presented in this report.

The Commission's investigation focused on whether statutory and common law authorities authorized or justified the RCMP's entry (including forced entry) into private properties, the search of those properties, and the reasonableness of the conduct of RCMP members carrying out those searches. The Commission also analyzed the legal justification for, and reasonableness

⁵ The *Royal Canadian Mounted Police Act*, RSC 1985, c R-10, was amended on November 28, 2014, by the *Enhancing Royal Canadian Mounted Police Accountability Act*, 2013, c 18. The Commission Chairperson's authority to initiate a complaint is now found in s 45.59(1) and the Chairperson's authority to initiate a public interest investigation is found in s 45.66(1).

of, the removal of firearms and contraband (such as marijuana plants) in homes searched by the RCMP.

The Commission's review also expanded to include additional matters which are interconnected with the three overarching issues under review. The first concerns the effectiveness of the RCMP's external communications during the flood, including whether communication activities were adequately planned and properly resourced, whether roles and responsibilities were clearly defined, and whether the RCMP's policies and procedures with respect to external communications in emergency operations were adequate. The second concerns the failure by some RCMP members who resided in the High River evacuation zone to evacuate their homes at the same time as other residents. The third concerns the implementation of the Incident Command System during the flood, including the lack of training of Incident Commanders with respect to this system.

The Commission has considered all of the above issues, materials and insights provided therein. As contemplated by subsections 45.76(1) and 45.76(3) of the RCMP Act, the Commission's report is prepared *ad interim* and requires the RCMP Commissioner to review and respond before a final report is submitted to the Minister.

The Commission's investigation focused on whether statutory and common law authorities authorized or justified the RCMP's entry (including forced entry) into private property, the search of those properties, and the reasonableness of the conduct of RCMP members carrying out those searches. The Commission also analyzed the legal justification for, and reasonableness of, the removal of firearms and contraband (such as marijuana plants) in homes searched by the RCMP.

PART II: BACKGROUND

On the afternoon of June 19, 2013, Alberta's environment ministry issued a routine flood watch advisory for parts of southern Alberta, including the town of High River. Located in the Bow River Basin and east of the Canadian Rockies, High River has experienced a number of floods since the town was founded in 1901, including severe floods in 1995 and 2005. The town covers 14 square

as much as 345 millimetres⁶ of additional rainfall over the next 60 hours. The resulting flooding was the most destructive and expensive disaster in Canadian history, with losses estimated at \$6 billion.⁷

By 8:45 a.m. on June 20, the Highwood River (which normally flowed through the middle of the town at 30–70 cubic metres per second [cms])⁸ had become a rampaging torrent, uprooting trees



kilometres with a population of 13,000 residents in 5,200 homes. It has two access routes, Highway 2 and Highway 23, with the Highwood River winding through the middle of town.

In the two days prior to June 19, the semi-arid region around High River had absorbed 200 millimetres of rainfall (10 times the average summer rainfall for the area). A confluence of weather systems that formed overnight on June 19 led to

and submerging cars and homes. Rainfall coming down the slopes of the Rockies funneled into the Highwood River at a speed of 1,500–1,800 cms.⁹ Local authorities declared a state of emergency on

⁶ <<http://ec.gc.ca/meteo-weather/default.asp?lang=En&n=5BA5EAF-&offset=2&toc=show>>.

⁷ <<http://alberta.ca/release.cfm?xID=36724795CF05F-EC7F-45A1-FE939628D8A4204B>>.

⁸ <<http://www.alberta.ca/highwood-river-basin.cfm>>.

⁹ <<http://www.alberta.ca/highwood-river-basin.cfm>>.

June 20 at 7:04 a.m. Provincial authorities declared a state of emergency for the region on June 27, which ended almost three months later on September 20.

As the flow of water intensified, causing flash floods and mudslides, the water levels rose to overflow the berms protecting the town, and the flood advisory for the town was raised to the highest level at 8:45 a.m., more than two hours after the flood waters had hit the town.

Over the next 48 hours, firefighters and first responders, including 380 Canadian Forces personnel, and hundreds of local, provincial and national RCMP members worked long hours to help evacuate the town and coordinate the air rescue of over 150 people on June 21. By the end of the emergency operation, an estimated 600 people were rescued by helicopter and 200 by boats, trucks and farm vehicles.

The Town of Canmore in the Southern Alberta District, and the City of Calgary (30 minutes north of High River) also activated emergency plans. In total, 32 locales declared a state of emergency in response to the flooding, stretching local and provincial emergency response resources.¹⁰ Over 100,000

people were displaced throughout the flooded region of southern Alberta.

The High River EOC issued a series of evacuation orders culminating with a mandatory evacuation of the entire town. The Town directed the RCMP and other first responders to communicate and implement the order and assist the evacuees. The High River EOC's emergency plans called for the RCMP to perform search and rescue operations, including a house-to-house search for people in need of assistance. As the evacuation order remained in place for more than a week (and in some parts of town, for several weeks), the RCMP's focus and resources shifted from urgent search and rescue efforts to primarily security and secondarily to a support role to other agencies, such as escorts for pet rescues. For safety and security reasons, the EOC also tasked the RCMP to accompany home inspection teams with the technical expertise to ensure that homes were free of electrical, gas or biohazard dangers and were structurally sound. The EOC re-entry plan mandated that these inspections had to be completed before residents would be permitted to return home. During the course of their duties members seized firearms found in homes.

¹⁰ A total of 28 emergency operations centres were activated. In addition to Calgary, High River and Canmore, nine other municipalities, including the City of Lethbridge; the towns of Black Diamond, Cochrane, Sundre and Turner Valley; the Municipality of Crowsnest Pass; Rocky View County; and the municipal districts of Bighorn No. 8, Pincher Creek No. 9 and Foothills No. 31

had declared states of emergency on June 20 due to flooding and some communities had evacuated residents.

As the EOC's evacuation order continued into a second week, the RCMP was criticized by residents, politicians and the media for forcibly entering homes, sometimes breaking windows and kicking in doors while searching 4,666 homes and for seizing firearms from 105 properties.



(SOURCE: RCMP)

Spokesperson Carl Vallée from the Prime Minister's Office made the following statement on June 28:

We expect that any firearms taken will be returned to their owners as soon as possible. We believe the RCMP should focus on more important tasks such as protecting lives and private property.¹¹

¹¹ Daniel Leblanc, "PMO rebukes RCMP for seizing guns in abandoned High River homes", *The Globe and Mail* (June 28, 2013), online: <www.theglobeandmail.com/news/politics/pmo-says-the-rcmp-should-have-better-things-to-do-than-seize-guns/article12882952/>.

On June 29, the tenth day of the flood, the anger of some residents was echoed by the *Calgary Sun*:

Let's start by assuming everything that was done wrong in High River came as a result of good intentions. An emergency of this magnitude calls for quick decisions, sleepless nights and dirty work. All of that is appreciated. That said, the entire handling of the situation in High River can best be described as a disaster

But the most distressing part of this debacle comes from the RCMP—who seem to continuously sully their once-stellar reputation with scandal after scandal. The latest foible comes in the midst of the single biggest disaster to hit our area. With the town under mandatory evacuation, RCMP went into people's homes. According to the force, they were in looking for seniors or disabled who may not have had a chance to leave. That is

admirable and by the scenes of waist-deep water, not an easy task. But once inside, police began confiscating guns. . . .¹²

By June 30, waters had begun to recede and the worst of the flooding was over. What should have been a story about the actions of countless front-line responders—including many RCMP members—had turned into something quite different for the RCMP.

By the first week of July, it had become clear that the public interest required the Commission to embark on a comprehensive examination of RCMP actions. The necessary notifications were made, and on July 5 the Commission announced that it was initiating a complaint and public interest investigation into the matter. On the same day, RCMP Commissioner Bob Paulson publicly pledged his full support and cooperation of the RCMP.

¹² Editorial. "RCMP response to flooding in High River was a disaster", *Calgary Sun* (June 29, 2013), online: < www.calgarysun.com/opinion/editorial/archives/2013/6/29>.

PART III: CHRONOLOGY OF EVENTS

Day 1 (June 20) – Morning

Day one was . . . fly-by-the-seat-of-your-pants, nothing like this has ever happened before.

—Sergeant Patricia Neely,
Media Relations Officer

At 2:45 a.m. on June 20, Alberta's environment ministry issued a flood watch. Within 10 minutes, the town's Fire Chief, Mr. Len Zebedee, contacted the river forecaster and learned of the impending water flow. At 4:30 a.m., the Director of High River's Emergency Management, Mr. Ross Shapka, ordered into operation the Town's EOC. The Town now had less than four hours' notice to respond to the impending threat, an unusually short time compared to prior floods.

At 6:11 a.m., Mr. Shapka alerted the High River RCMP Detachment and asked them to report to the EOC. All off-duty RCMP detachment members were called in to support the Town's emergency response. During these initial hours, the EOC was located at the Town's offices. According to one of the first RCMP members to arrive, the environment was hectic:

[I]t was very unorganized. It was chaotic. Not everybody, not all players

and all departments who needed to be there were there yet by the time that I got there. And I wasn't entirely sure what . . . I was supposed to be rolling out.

—Corporal Sharon Franks,
High River RCMP Detachment
Watch Commander

At 7:04 a.m., the Town declared a state of local emergency pursuant to the province's *Emergency Management Act* (EMA),¹³ thereby triggering support obligations by the Alberta Emergency Management Authority and the RCMP. The RCMP's support role included carrying out emergency plans as directed by the EOC, which exercised the Town's EMA authorities. In practical terms,



(SOURCE: Allen Gimblett, Dynamic Photography)

the Town's EOC was responsible for macro-level decisions such as evacuation orders, including how

¹³ *Emergency Management Act*, RSA 2000, c E-6.8.

long the order would be in force and for which parts of town.

Shortly after 7:30 a.m., Mr. Shapka called for the evacuation centre to be set up and issued the first of several evacuation orders. The rapidity of the flood caught many by surprise, and residents quickly abandoned their homes and possessions.

At 7:34 a.m., the RCMP began receiving reports that some residents were being swept away by flood waters or were trapped in their cars. At 8:35 a.m., the EOC received reports that areas of town were impassable, and Mr. Shapka directed the RCMP to begin evacuating streets in the northwest quadrant of town in coordination with Alberta Transportation.

At 9:13 a.m., the river could no longer be contained by its banks in the downtown area and began overflowing into the town's centre. By this time, RCMP members and emergency responders were fully deployed rescuing residents, many of whom were calling for assistance as they were trapped in their homes or cars. By 10:00 a.m., the RCMP was receiving a steady stream of calls for rescues, particularly related to elderly residents and children.

During this time, the Town's EOC struggled with challenges of its own. By approximately 10:30 a.m., the EOC location at the Town's offices was in danger of being flooded. The water had reached the parking lot

and within an hour was almost knee-deep. At 11:28 a.m., rising flood waters immersed the basement of the Town's offices. The flow rate, three times that of the flood of 2008, was making bridges and highways unsafe. Mr. Shapka ordered the EOC



SOURCE: highriverflood2013/Wordpress

to relocate to the Fire Hall, farther away from the river.¹⁴ All of the RCMP vehicles were in use as RCMP members reported to different areas of the town warning residents and delivering stranded citizens to areas of safety.

By approximately 11:30 a.m., RCMP cars were no longer able to navigate the rising waters, which would at its peak cover 95 percent of the town. By late morning the RCMP had lost its dedicated

¹⁴ Even the Fire Chief, the second in command at the EOC, was not aware of the relocation of the EOC to the Fire Hall until people started showing up at about 11:00 a.m. He recalled that many of the people were soaking wet and had lost hardware that they were transporting from the Town offices when their vehicles stalled due to the rising waters.

communication system. The majority of the town's residents also lost voice and data services provided by landlines and cell towers. Those needing help were unable to connect with emergency services.

Day 1 (June 20) – Afternoon

By noon, individual volunteers began to assist overwhelmed emergency personnel with rescue efforts. One construction company provided large quarry trucks and other heavy machinery. First responders and volunteers also secured two farm combines and recruited drivers from a local dealership. Eventually, however, the rising waters disabled the engines of the construction and farm vehicles.

Shortly after 1:00 p.m., ground rescue efforts were further hampered by fast moving waters. The use of boats was becoming increasingly dangerous in the murky waters, full of

fast-moving debris and submerged cars, with powerful cross currents at main intersections.

The notes taken by the EOC scribe reveal that, at 1:49 p.m. on Day 1, Mr. Shapka made what appears to be the first reference to “door-to-door” search and rescue efforts. The EOC was considering authorizing emergency personnel to enter homes and buildings as part of its emergency response plan. EOC notes refer to a “plan for the military to go door-to-door” to “save as many people as we can.” As the EOC rolled out its emergency plan, RCMP members and other personnel, including firefighters, military personnel, employees from the Alberta Emergency Management Authority and other provincial departments, electricity and gas company employees, were finding their way to the EOC.



(SOURCE: Allen Gimblett, Dynamic Photography)

As noted, the EOC was forced to change location three times on Day 1. Some EOC staff were forced to abandon their vehicles en route to the new locations and left behind many of the resources required to direct and command an effective emergency response, including maps, computers, and telecommunications devices.

By mid-afternoon, the EOC was operating without telephone, radio and Internet communications and was relegated to passing on information by word of mouth. Satellite phones and the services of amateur radio operators became available only later in the day. Telephone communications for High River were temporarily established in the town of Nanton (approximately 30 kilometres south of High River).

At 3:53 p.m., the EOC ordered mandatory evacuation for the entire town of High River.

Day 1 (June 20) – Evening

By evening, the Town had two elements of the emergency plan in place: rescue and security. During the evening, RCMP patrols were set up to provide a security perimeter and safeguard against looting within the evacuation zone. RCMP rescuers continued rescue operations.

With the flood waters claiming more ground, the RCMP started coordinating rescues by air. Early in the evening, the first of three Canadian Forces helicopters arrived

to assist with the RCMP search and rescue efforts.

At 9:23 p.m., as the water continued to rise to within two blocks of its location in the Fire Hall, the EOC made the decision to move to a third location, a fire hall in the nearby town of Nanton. With highways closed and bridges and roads washed out or unsafe, the move took a lot of time. By 10:30 p.m., the decision was made to return the EOC to the Fire Hall in High River as a temporary measure. These constant moves hampered the emergency response.

The situation on Day 1 is aptly described by one RCMP member:

[The RCMP] is trying to direct folks to where they need to go to get resources that they need. And by now we've almost lost half the force in the water because it's so fierce. I hear bubbles in one of the radios at one point. I can't reach anybody. I don't know where anybody is. And I hear one officer stuck on an island by herself. The bridge is washed out. So she's there. No one can get to her. There's no boats [sic] to get to her.

We can't get enough boats. The boats aren't strong enough. The debris in the water is knocking the boats over. Homes are now starting to float. Boats are everywhere. It's beyond mayhem.

—Corporal Franks



(SOURCE: Allen Gimblett, Dynamic Photography)

Day 2 (June 21) – Morning

As Day 2 began, in addition to ongoing rescue efforts, the EOC was attempting to cope with failing infrastructure, including electricity, water and sewer services, spotty communication systems, blocked roads and washed out bridges. First responders also had to contend with unstable ground, house fires, gas leaks, and live electrical wires, including three explosions resulting from power outages and downed power lines. Throughout, the list of missing persons continued to grow (31 at the start of Day 2) and hundreds of residents still needed rescue and evacuation.

Shortly after 6:00 a.m., a meeting was held in the EOC at the High River Fire Hall. Acting RCMP incident (site) commander Superintendent Frank Smart attended on behalf of the RCMP. Echoing Mr. Shapka's comment of the day before and in consideration of the hazardous conditions experienced by RCMP members, Superintendent Smart suggested a "systematic door-to-door search of every residence in the town." With communication lines down, Superintendent Smart stressed that no area of town could be considered cleared, as there was no means of knowing if anyone was trapped in a flooded basement or incapacitated without physically checking inside homes. Superintendent Smart recommended direct intervention to assist anyone unable to help themselves.

The outcome of the EOC meeting was clear: time was of the essence and protection of life was the priority. At approximately 6:30 a.m., as the directing authority of the EOC at the time, Mr. Zebedee authorized the preparation of a search plan involving door-to-door searches. "[T]he EOC ordered a search of all town residences to ensure that people had been evacuated."¹⁵

As of 9:00 a.m., marine rescue operations (coordinated and conducted primarily by firefighters) and air rescue operations (coordinated by the RCMP and conducted by Canadian Forces and private pilots) were in full swing. Three Canadian Forces helicopters were operational as were a number of private helicopters. By 4:03 p.m., 150 residents were rescued from rooftops. An estimated total of 600 residents were eventually rescued by air (with the last air rescue of trapped civilians taking place as late as July 5). The helicopters proved indispensable as rescuers on the ground continued to dodge hidden hazards such as live wires, gas leaks, large debris and sinkholes.

In addition to coordinating rescue operations, RCMP members also searched for the missing and dead. At 10:30 a.m. they were called in to recover a missing person presumed

¹⁵ *Town of High River After Action Report June 2013 Flood*, at 8, online: Town of High River, <http://www.highriver.ca/images/Protective_Services/2014/AfterActionReport_07-28_web.pdf>.

drowned. At 11:15 a.m. the RCMP recovered the first body. The second body was located nearby around noon.¹⁶ A third body was discovered later the following day. The RCMP feared that the number of bodies could mount into the double digits.¹⁷ Many reports were still coming in of people being swept into the torrent. In the face of continuing infrastructure and communication challenges, the search for the missing was time-consuming and labour-intensive.

Day 2 (June 21) – Afternoon

Pursuant to EOC directions, the RCMP prepared the search plan. At 2:39 p.m., RCMP members sought clarification on the measures to be used for their “door-to-door” efforts if nobody answered the door, particularly in neighbourhoods where the water level was lower. Superintendent Smart instructed RCMP members to use as much force as necessary (to enter the buildings), but as little as possible to mitigate damage. This instruction was communicated by Staff Sergeant Scott Fuller and Sergeant Rob Marsollier, both of whom were supervisors of the Special Tactical

Operations (STO) unit,¹⁸ to the various teams during pre-search briefings.

During their briefing, RCMP members received the following directions:

- Search every house.
- Record house number and whether empty or occupied.
- Entry required to ensure life.
- For occupied homes document who is in the home, who is missing and the names of the next of kin.
- Searched homes to be marked with tape.
- Don't go through deep water.
- Secure homes upon leaving.
- On loud hailer identify police.

Further complicating the operating environment, many of the team members had never before been in High River. With most of the EOC's maps and materials lost on Day 1 of the flood, RCMP members used makeshift maps (in some cases obtained from a local pizza shop) to search unfamiliar flooded neighbourhoods by boat, looking through the water for street signs.

When the badly hit neighbourhoods were searched, the teams used

¹⁶ The Southern Alberta District Major Crime Unit (MCU) out of Calgary was called in to investigate the sudden deaths and to locate missing persons. The MCU is a specialized investigation group which supervises, investigates and assists with cases of homicides, attempted murders, suspicious deaths, or any other serious or sensitive occurrence.

¹⁷ In anticipation of many more fatalities the RCMP brought in a cold storage truck to act as a temporary morgue.

¹⁸ The Special Tactical Operations unit is comprised of RCMP members who volunteer from detachments across the province and likewise may be required to respond throughout the province. They receive special training and are called into action for a wide range of reasons —natural disaster evacuations and security, major crimes support, as well as support and security for major international events.

various means to deal with risks and enter homes. Some homes were unlocked or accessible through open garage doors, while entry to others required breaking windows and doors. When available, locksmiths unlocked or drilled locks. In some cases, teams were able to enter easily through entrances already damaged by the flood waters and large debris.

While the house-to-house search and rescue operations continued, the RCMP members involved in external communications were not initially aware of the details of the “door-to-door” strategy, or the use of forced entry.

Day 2 (June 21) – Evening

While continuing the search for residents in need of help, some RCMP members on the search teams noticed unsecured firearms in the homes being searched. The first unsecured firearms were located at 6:39 p.m. when 50 firearms were

found in a room on the second floor of a residence. Based on the Commission’s review of the RCMP’s notes and communications, prior to this discovery the RCMP had not considered any plan of action or allocation of resources to secure any firearms discovered during searches.

Once firearms were discovered in a home, RCMP members either seized them or, in some cases, identified their location and follow-up teams returned to seize and catalogue the firearms, before storing them in a secure bay at the RCMP detachment in High River. Superintendent Smart designated Staff Sergeant Fuller as the lead to carry out the search plan. Staff Sergeant Fuller did not view the removal of the firearms as offence-related and therefore his teams did not investigate or consider charges with respect to any unsecured firearms. Later in the evening on Day 2, Staff Sergeant Fuller reported the firearms discoveries to Superintendent Smart and indicated that they were being treated as “found property.” Superintendent Smart was satisfied with this information and the RCMP members in the field continued the removal of unsecured firearms on that basis.

As night began and rescue operations turned into recovery operations, the RCMP redirected and prioritized resources in line with the EOC security plan. RCMP members were stationed at access points around the town to



(SOURCE: Town of High River - After Action Report, June 2013)

prevent people from entering. Throughout the evening on Day 2, the RCMP received reports about break-ins, including at a grocery store and pharmacy. Staff Sergeant Fuller also received reliable information that a group of youths known to have criminal backgrounds and carrying empty duffel bags had been seen attempting to circumvent the security lines. The potential for looting and criminal activity heightened RCMP concern about unsecured firearms in the evacuation zone.

Day 3 (June 22) – Morning

By Day 3, with much of the town still considered unsafe by the EOC, some residents were growing restless in temporary evacuation centres. During previous flood evacuations in High River, residents had been able to return to their homes by this time.

With the evacuation order still in place, RCMP search teams were still finding residents who did not wish to leave voluntarily and a small number of residents who needed help. RCMP members discovered elderly residents who needed assistance leaving their homes. In different parts of town, a gas utility truck and an ambulance drove into sinkholes. Other rescuers also required medical attention due to hazards encountered in the evacuation zone.

During the divisional EOC morning meeting in Edmonton, issues from the previous two days were tabled for

discussion by the RCMP divisional emergency operations team. Reference was made to RCMP members damaging the doors of homes, particularly in areas that were minimally affected by the flood. Meanwhile in High River, as new RCMP members arrived to supplement the search teams, they continued to seek clarification on the need for entering homes not affected by the flood. Superintendent Smart indicated that all homes were to be entered.

On the morning of Day 3, both Mr. Shapka and Superintendent Smart conveyed their desire that the RCMP should continue house-to-house searches. They reiterated instructions to carry out the searches causing the least amount of damage necessary to enter. However, in many cases search teams were left to their own devices to implement the directions for conducting house-to-house searches. Members had limited tools to force entry and resorted to crowbars, sledge hammers or kicking in doors. Many of these entries caused significant damage to doors and windows of homes. Once inside, the search teams dragged in mud and debris as they searched through kitchens, living rooms and bedrooms for people in need of rescue. Once doors and windows were broken open or kicked in, teams had no practical means to secure the homes.

Staff Sergeant Fuller reported that:

“ [t]he only way to secure it at that point in time is to set up a tighter security perimeter around the community.”

Day 3 (June 22) – Afternoon

By 4:00 p.m., two locksmiths were brought in to mitigate the damage being done by the RCMP entering and searching homes. By the end of the rescue and recovery stage of the operation, a dozen or more locksmiths had been engaged.

As homes were searched on Day 3, more firearms were discovered. Local RCMP detachment members were contacted to seize them, then secure and store the firearms at the RCMP detachment. The compiling of notes and maintaining chain of custody normally associated with property seizures were not followed with respect to the removal of firearms. During this time, the Town EOC was not made aware of the

removal of firearms from homes. Mr. Zebedee stated that when the Town EOC became aware that firearms had been found in the homes, there was concern that, with the number of people remaining in the evacuation zone, breaking and entering into homes and the theft of firearms could “cause further problems down the road with those firearms being used for criminal purposes.” Among the 326 people still in the evacuation zone were several known criminals, including one high-risk offender. The RCMP was aware of these factors.

Day 4 (June 23)

On Day 4, the flood waters began to stabilize.

Mayor Emile Blokland issued a letter for the RCMP to deliver to residents wishing to return to, or still inside, the evacuation zone. The Mayor’s letter described the complete loss of the town’s critical infrastructure and sought the co-operation of residents in evacuating the town. The letter read as follows:

Dear Resident:

The Town of High River is presently under a local state of emergency. As part of this, a MANDATORY evacuation order has been put in place. Although parts of the community were not directly affected by flood water, the town’s entire critical infrastructure has been compromised.



At this time, the Town's sewage and waste water systems are not functioning. We only have very limited fresh water capacity and a boil water advisory is in effect.

There is no food, medicine, gas, or electricity. Any fire or medical services response is extremely limited. Travelling in the community and around the High River region is dangerous.

Your continued presence is undermining the Town's ability to react to this emergency.

While you may think that you are secure and are doing the right thing, your actions may result in a delay in allowing your neighbours, who respected the evacuation order, to return to their homes.

This is a difficult situation for all of us and we are all in this together. It's important for you to evacuate the Town so that our emergency response people can make all our homes safe.

We appeal and urge you to do the right thing.

While the state of emergency and the evacuation order remained in force, many residents were frustrated that they could not return, especially those who lived in the roughly five percent of the town not flooded. In addition, many of their homes had been forcibly entered and damaged during this time, which some perceived as wanton RCMP destruction.

Adding to the evacuees' frustration, 326 people who disobeyed the EOC evacuation order were not forced by the RCMP to leave their homes. On the other hand, RCMP members were seen diligently enforcing the EOC order by preventing people from returning to their homes. Some residents were caught attempting to re-enter the town and in one case, the RCMP arrested an individual who brandished a knife when challenged by RCMP members. Residents saw the RCMP's enforcement of the evacuation order as inequitable. This perception was exacerbated when residents who disobeyed the evacuation order and communicated with those outside the evacuation zone stated that they were undertaking remedial work to their properties, and that they had witnessed RCMP teams entering homes and removing firearms. Frustration mounted at RCMP checkpoints around the town perimeter where residents directed their anger about the evacuation order at RCMP members.

Some residents were anxious about abandoned pets. The EOC turned its attention to this matter on Day 4 and requested that the RCMP assist authorized personnel to enter the evacuation zone to care for and rescue pets. By this time, pet rescue personnel had received hundreds of calls for assistance. Prior to Day 4, pet rescues were undertaken on an ad hoc basis by volunteers, which involved non-emergency personnel travelling unannounced into hazardous areas of the town. On

behalf of the EOC, Mr. Shapka ordered that, for safety reasons, these rescues could no longer take place without RCMP escort.

Two RCMP members were initially assigned to the “pet rescue” teams, which became part of the EOC search plan. Later, up to eight RCMP members were assigned. By the end of the operation, an estimated 700 pets had been rescued and 90 percent were reunited with their owners. An unknown number of pets perished.

By the end of Day 4, more residents were beginning to disobey the EOC evacuation order by entering the evacuation zone to tend to their properties or retrieve pets.

Day 5 (June 24)

By late afternoon on Day 5, RCMP-led teams completed the house-to-house searches, ending their involvement in the search phase of the rescue operation. By that time, the RCMP had searched more than 4,600 homes and facilitated the rescue of approximately 38 people as a result of the house-to-house searches.¹⁹

Once the house-to-house search phase was completed, on behalf of the EOC, Mr. Shapka requested that the RCMP escort engineers and health inspectors to conduct health



and safety inspections. These looked for possible biological and chemical hazards and at the structural integrity of buildings. The EOC required inspection for these threats before permitting residents to return home.

¹⁹ This number appears to be an estimate. There was no uniform tracking system and on other occasions it has been reported as 28 people rescued.

A rating system was used to designate whether homes were fit to inhabit, with the following results:

Code	Description	Number of Homes
Green	No impact, habitable	1,552
Yellow	Minor impact, requires minor clean-up; possible minor repairs	538
Orange	Damaged, requires extensive repairs or renovations; not immediately habitable	2,171
Red	Severely damaged, beyond economical repair; Uninhabitable	619

Reflecting the devastation wrought by the flood, over half the homes were assessed as uninhabitable by provincial authorities.

Day 6 (June 25)

By Day 6, the RCMP had checked a total of 4,666 buildings, using forced entry in 754 cases. RCMP resources were now focused on maintaining security in the town and assisting with recovery and re-entry into the evacuation zone. During this time, some residents learned that local RCMP members and firefighters, among other first responders, were re-entering the evacuation zones to tend to their own properties and that some of these homes had also been spared from search and forcible entry. On this date Superintendent Smart ordered RCMP members to comply with the evacuation order and vacate their homes.

Day 7 (June 26) and beyond

By Day 7, as telecommunications were coming back online, social media widely disseminated information that RCMP members were kicking in doors and taking residents' firearms. Traditional media also turned its attention to RCMP actions. Resident comments found their way onto a Facebook page calling for residents to take back the town and storm the barricades. RCMP received reports of a plan to overrun one of its checkpoints.

As High River residents were expressing their anger, residents of neighbouring towns were returning to their communities to begin the clean-up. High River residents became increasingly frustrated at the lack of communication

concerning a timeline to return to their communities. The EOC continued to operate under the premise that the town's evacuation zone remained unsafe, as some homes remained accessible only to RCMP divers and a variety of hazards existed within the town, such as E. coli bacteria in the water, sinkholes, the compromised structural integrity of homes as well as possible threats from unresolved gas leaks and live electrical wires. But RCMP members at town checkpoints received little information to pass on to residents, creating additional friction between residents and the RCMP.

By Day 8 of the evacuation order, media reports picked up on what had become the "gun grab" news story:

[The RCMP] seized a "substantial amount" of firearms from homes in the evacuated town of High River. . . . That news didn't sit well with a crowd of frustrated residents who had planned to breach a police checkpoint northwest of the town as an evacuation order stretched into its eighth day.²⁰

²⁰ Trevor Howell, *Calgary Herald* (June 28, 2013), online: <<http://www.calgaryherald.com/news/alberta/Hell+Re>

The RCMP attempted to respond to the intense media interest, but procedures for returning the firearms had not yet been completed and RCMP communicators had little relevant information to offer. In fact, RCMP operational commanders insisted on keeping some of the basic information out of the public domain.

By Day 10, when electricity had been restored to almost 95 percent of homes, the EOC lifted the evacuation order for parts of the town. By that time the RCMP had created a process to return firearms to their owners. The process involved a flexible policy that took into account the challenges of providing proper identification, documentation and transportation of restricted firearms.

By October, the RCMP had prepared a report which outlined certain firearms statistics. It reported that 609 firearms had been removed and tagged pursuant to the RCMP entries. In addition, 452 firearms had been returned, 107 had been voluntarily turned in for destruction, and the balance remained unclaimed with the detachment.

As of December 2014, the RCMP had retained only 18 firearms. Two of these had been found in a park and nobody had come forward to acknowledge ownership. The remaining 16 were being held for

safekeeping at the request of the firearms' owners.

Only one individual was charged under the *Criminal Code*²¹ for drug and prohibited weapons violations.

sidents+angry+RCMP+seize+guns+from+High+River+homes+with+video/8588851/story.html>.

²¹ *Criminal Code*, RSC 1985, c C-46.

PART IV: ANALYSIS

Before commencing the analysis of the issues raised in the Chair-initiated complaint, it is important to note that this report is limited to making findings into the conduct of the RCMP and its members. While the involvement of other individuals or agencies is commented upon in this report, this is done for contextual reasons only and not to evaluate the propriety of their decisions or actions.

Additionally, the volume of documents and materials submitted concerning the RCMP's entries and searches of thousands of homes in High River does not allow for a granular review of each entry, search and seizure. Rather, these actions will be assessed globally. The exception to this approach will be the review of some specific cases which highlight key conduct issues.

A. THE ENTRY OF PRIVATE RESIDENCES DURING THE EVACUATION

The first issue for the Commission to review involves the entries of private residences within the evacuation zone. Access was sometimes facilitated by the use of force, which at times resulted in significant damage. Critical to the Commission's assessment will be the determination of whether the entries of homes conformed to the stated legal authorities, including whether the methods used to effect entry

were reasonable in the circumstances.

This analysis focuses on the legal authorities underlying the RCMP's response. Analysis of the training, policies, procedures and guidelines relating to the entry of homes will be performed in section C of this part.

Police Duties and Powers

In Canada, police are conferred with powers to enable them to carry out their lawful duties. Some powers are specifically set out in legislation while others are determined by the courts. These court-recognized powers are known as common law powers and are limited in scope.

The Supreme Court of Canada has not yet considered the extent of the police authority to enter private residences, without a warrant, during a natural disaster. However, the Court did consider the legality of warrantless entry into a home in response to a 911 telephone call, a similarly urgent situation. In that case, the Court determined that:

The accepted test for evaluating the common law powers and duties of the police was set out in *Waterfield* If police conduct constitutes a *prima facie* interference with a person's liberty or property, the court must consider two questions: First, does the conduct fall

within the general scope of any duty imposed by statute or recognized at common law; and second, does the conduct, albeit within the general scope of such a duty, involve an unjustifiable use of powers associated with the duty.²²

This test has come to be known in subsequent decisions as the *Waterfield* or ancillary powers doctrine. In answering the first question of the *Waterfield* test, the Court considered both common law and statutory duties. Ultimately, the Court focused on the police duty to protect life and property. It was decided that responding to a disconnected 911 call clearly engaged the duty to protect life.

When considering the second part of the *Waterfield* test, the Supreme Court considered whether there was a reasonable alternative to warrantless entry. In that case, the Court determined there was not and therefore upheld the warrantless entry in light of the urgent circumstances. In the end, the Court instructed that “[e]ach case will be considered in its own context, keeping in mind all of the surrounding circumstances.”²³

²² *R v Godoy*, [1999] 1 SCR 311, at para 12 [*Godoy*], referring to *R v Waterfield*, [1963] 3 All ER 659 (CCA) [*Waterfield*].

²³ *Ibid.*, at para 22.

Does the conduct fall within the general scope of any duty imposed by statute or recognized at common law?

The fact that RCMP members entered private residences during the flood response is not in dispute. The manner with which the members accomplished this task will be discussed later in this analysis. First, it is necessary to examine the reasons upon which these actions were based. During the course of the Commission’s investigation, RCMP members cited two reasons to justify their entry into private residences during the flood response: the Alberta *Emergency Management Act*²⁴ (EMA), and their common law duty to protect life. Each of these will be assessed in turn.

Subsection 1(f) of the EMA defines an emergency as “an event that requires prompt co-ordination of action or special regulation of persons or property to protect the safety, health or welfare of people or to limit damage to property” The facts set forth in Part III of this report establish that an emergency existed within the town of High River beginning on June 20 and for many days thereafter.

The coordination of the emergency response in High River was based first and foremost on the regime set forth in the EMA. Pursuant to the EMA, two types of emergencies may be

²⁴ *Emergency Management Act*, RSA 2000, c E-6.8.

declared: a provincial state of emergency²⁵ or a state of local emergency²⁶ where an emergency is believed to exist.

During such time as a state of local emergency is operative, which in this case was declared on June 20, the local authority, the Town of High River Council, is responsible for the direction and control of the emergency response.²⁷ Pursuant to subsections 11.2(1) and (2) of the EMA, the Town's emergency management agency is designated as the agent for exercising the Town's emergency powers while the director of that agency is responsible for directing and coordinating the Town's emergency response.²⁸

²⁵ EMA, s 18(1): "The Lieutenant Governor in Council may, at any time when the Lieutenant Governor in Council is satisfied that an emergency exists or may exist, make an order for a declaration of a state of emergency relating to all or any part of Alberta."

²⁶ EMA, s 21(1): "A local authority may, at any time when it is satisfied that an emergency exists or may exist in its municipality, by resolution or, in the case of the Minister responsible for the Municipal Government Act, the Minister responsible for the Special Areas Act or a park superintendent of a national park, by order, make a declaration of a state of local emergency relating to all or any part of the municipality."

²⁷ See the powers of the local authority, EMA, s 24.

²⁸ EMA, s. 11.2(1): "A local authority shall maintain an emergency management agency to act as the agent of the local authority in exercising the local authority's powers and duties under this Act.

(2) There shall be a director of the emergency management agency, who shall

(a) prepare and co-ordinate emergency plans and programs for the municipality,

(b) act as director of emergency operations on behalf of the emergency management agency,

(c) co-ordinate all emergency services and other resources used in an emergency, and

(d) perform other duties as prescribed by the local authority."

At the relevant time, Mr. Shapka was the director of the Town's emergency management agency.²⁹ As such, he was responsible for the implementation of all emergency plans.

The powers which may be exercised during a state of emergency are prescribed in subsection 19(1) of the EMA, and include the following:

19(1) On the making of the declaration and for the duration of the state of emergency, the Minister may do all acts and take all necessary proceedings including the following:

(a) put into operation an emergency plan or program;

...

(d) authorize or require any qualified person to render aid of a type the person is qualified to provide;

(e) control or prohibit travel . . .

...

(g) cause the evacuation of persons . . .

(h) authorize the entry into any building or on any land, without warrant, by any person in the course of implementing an emergency plan or

²⁹ The *High River Emergency Management Plan – Governance Framework* sets out the relevant roles and responsibilities of the various key positions within the Town of High River.

program
[Emphasis added]

By virtue of the authority granted in paragraph 24(1)(b),³⁰ these powers are conferred upon the local authority during a declared state of local emergency.

The authorization for any person to enter any building without a warrant as part of an emergency plan pursuant to paragraph 19(1)(h) of the EMA is key to this analysis. For this warrantless entry provision in the EMA to authorize the entry into buildings by RCMP members during the flood response, there are three prerequisites: 1) a declared emergency in High River, 2) the preparation of an emergency plan which authorizes entry into buildings, and 3) that the RCMP was instructed to carry out such a plan.

Four emergency plans were prepared and acted upon during the emergency response. These included the rescue and recovery plan, the security plan, the search plan and the re-entry plan.

1. **The rescue and recovery plan** was the first plan put in force by Mr. Shapka and dealt with the land, water and air rescues which took

place over the first two days of the flood, as well as the continuing efforts to locate victims who may have succumbed to the flood waters. These latter efforts included the work of cadaver dogs and dive teams.

2. **The security plan** was implemented late on the first day and included the establishment of checkpoints to control entry into the town. This plan continued until the evacuation order was lifted and residents were permitted to return to their homes.

3. **The search plan** was implemented on the second day and contemplated both searches for people and, later, pets. The search for people was completed on June 24 and the pet rescue portion ended on July 2.

4. **The re-entry plan** providing for the return of residents to their homes commenced on the first day of the flood and included home inspections to ensure that private residences were safe for occupancy. This plan was comprehensive and dealt with the logistics of the return to town as well as repairs to the town's critical infrastructure.

These plans were modified from time to time, as circumstances warranted.

The Commission's investigation revealed that entries of homes were authorized pursuant to the search plan, initially for searches for people in distress and later for the retrieval of pets. Additionally, the re-entry plan

³⁰ EMA, s 24(1): "On the making of a declaration of a state of local emergency and for the duration of the state of local emergency, the local authority may do all acts and take all necessary proceedings including the following: . . . (b) exercise any power given to the Minister under section 19(1) in relation to the part of the municipality affected by the declaration"

authorized multi-specialty teams, including RCMP escorts, to enter homes to facilitate inspections to assess the electrical, gas, plumbing, and structural integrity of buildings and other health hazards, before permitting the return of occupants. These plans, implemented by Mr. Shapka pursuant to the authority vested in him by the EMA, amount to the statutory authority relied upon by the RCMP, as noted above.

The EMA delineates the powers of the Minister or local authority, as the case may be, during either a declared provincial state of emergency or state of local emergency. From the time of the declaration of the state of local emergency, the Town Council had the direct authority to coordinate the emergency response, while the RCMP occupied a support role. The direct control of the emergency response rested with the Director of the EOC. This situation continued after the province declared a state of emergency for the region on June 27. From a practical viewpoint this structure did not change since the emergency response continued to be managed out of the EOC once the province assumed control. The execution of the same four emergency plans, and the commensurate direction to the RCMP, continued unchanged. Most of the positions remained unchanged as well, since provincial agents were already involved in the emergency response, as Alberta Emergency Management Authority

personnel were embedded in the EOC.³¹

In determining whether the RCMP's role resulted in any duty which would have permitted the exercise of police powers, it is first necessary to consider the applicable provincial and federal legislation. In Alberta, the *Police Act*, RSA 2000, c P-17, section 38 outlines the authority, duties and jurisdiction of police officers. Members of the RCMP are "police officers" within the meaning of the Act. Similarly, section 18 of the RCMP Act sets out the duties of members. Both of these statutes articulate a general police duty to carry out their functions as peace officers.

Simultaneously, while taking part in the emergency response to the High River flood under the direction of the Town and Mr. Shapka, the members were acting pursuant to a duty derived from the EMA.

FINDING NO. 1: Pursuant to the Alberta *Emergency Management Act*, High River was under a state of local emergency on June 20 and later a provincial state of emergency on June 27.

³¹ For example, the EOC Operations Chief who recommended and planned the home inspections under the re-entry plan was the Director of Field and Recovery Operations, Alberta Emergency Management Authority, Mr. James Cornish.

FINDING NO. 2: Pursuant to the *Emergency Management Act*, the Emergency Operations Centre prepared and authorized the implementation of four emergency plans requiring rescue and recovery, security, search and re-entry of residences.

FINDING NO. 3: Pursuant to the *Emergency Management Act*, the Emergency Operations Centre authorized and instructed the RCMP's entry without warrant and search of every High River building as part of the Emergency Operations Centre's emergency plans.

FINDING NO. 4: RCMP members participating in the emergency response were acting as peace officers pursuant to the authorities and duties derived from the *Alberta Police Act* and the *RCMP Act*.

FINDING NO. 5: RCMP members participating in the emergency response were acting pursuant to a duty derived from the *Emergency Management Act*.

In addition to the statutory authorities and duties conferred on RCMP members by the *Police Act*, the *RCMP Act* and the *EMA*, the common law is also relevant in considering their actions as peace officers. The common law is made

up of legal precedents written by judges that are binding on police actions. Unlike legislation, however, the common law is not passed by the legislature but is developed over many years by custom and judicial precedent.

Under the common law, the courts have long demonstrated a respect for freedom from trespass on private property by police, and have strongly resisted state interference with the right to privacy inside the home. As a result, the general rule is that the police require a warrant to enter a home, to search private property or to seize any items resulting from a search. Absent legislative or common law authority or judicial authorization, any interference with private property by state authorities may be considered unreasonable.

Ian Scott and Joseph Martino explain the common law as it relates to search and seizure in a text written with law enforcement officials in mind. In chapter 3 of *Salhany's Police Manual of Arrest, Seizure and Interrogation*,³² they describe the common law's treatment of search and seizure as follows:

The right to search a person's home or premises is regarded as an extraordinary remedy that may be exercised only

³² Ian Scott & Joseph Martino, *Salhany's Police Manual of Arrest, Seizure and Interrogation*, 10th ed (Toronto: Carswell, 2011) at 123.

where there is a clear and unambiguous statutory provision permitting it. Unless the police are in possession of a warrant or other specific authority, they have no right to enter private premises and remain there against the occupant's wishes. If they do so, then the occupier is entitled to regard them as trespassers

On the other hand, the common law does recognize that the occupier of a dwelling gives an implied licence to any member of the public, including a peace officer, on legitimate business to come on to the property. That licence, however, ends at the doorstep of the dwelling

[Citations omitted]

Although this description is considered the general rule against warrantless police actions inside a home, there is also a recognized exception to this general rule. Police may undertake warrantless actions in urgent or emergency-like circumstances, which are often referred to by the courts as "exigent circumstances." Such circumstances encompass emergency situations where the authorities must act in circumstances where obtaining a warrant is not practicable.

The Alberta court in *R v Cardinal* 2001 ABPC 92 provides a helpful

overview of the "exigent circumstances" exception:

56 None of the exceptional circumstances recognized by common law that allowed the police officers to enter without a warrant were applicable. The police were not in hot pursuit Nor were they attempting to capture possible culprits who had entered the house and continuing an offence There was no suspicion that anyone had weapons or posed a danger to the safety of others The right to privacy does not trump the safety of other members of the household; the police can enter to protect the life and safety of occupants of the household Other examples where entry might be allowed without a warrant or permission are emergencies such as fire, or some other impending disaster where the right to entry might be implied. [Citations omitted]

As noted earlier in this section, the Supreme Court of Canada has found that the common law duty to protect life may justify a warrantless entry into a home.³³ In the case of the High River emergency, the facts outlined in Part III of this report

³³ *Godoy, supra*, note 22.

establish that the police were clearly engaged in the common law duty to protect life. The importance of that duty is undeniable. The British Columbia Court of Appeal has stated that “in matters involving the protection of life and physical safety, the police have no realistic choice but to err on the side of caution.”³⁴ Furthermore, in this context, the British Columbia Supreme Court has noted that “[t]he common law duty of a police officer to protect life and preserve public safety is a heavy one. The consequences of failing to act can be tragic.”³⁵ Indeed, just last year, a majority of the Supreme Court of Canada stated: “[T]he execution of the police duty to protect life and safety lies at the very core of the existence of the police as a social entity.”³⁶

The statements of the senior members on site reflected the focus on protecting life and an awareness of the potential tragic consequences of a failure to act. Superintendent Smart stated:

[O]ur concern was perhaps we had people trapped in the house that couldn't get out, whether they be elderly or incapacitated in some way. Obviously we'd had two deceased

at that point in time and I think that the mere fact that . . . our expectation quite honestly . . . was that we were expecting a lot more fatalities. . . . [W]e were expecting a lot more people's lives to be in danger if you will.

Inspector Tony Hamori, also an Incident Commander during the search phase, stated:

[W]hen I heard that we were going door to door searching every home I thought it was very reasonable, given the circumstances. And as I mentioned before, the thought of having left one person behind certainly in terms of my cementing our authority to do what we were doing, sealed it for me that any other circumstance was far less critical in terms of the criticism we would receive than having left that one person behind

The circumstances created by the flood, at least in the early stages, objectively support a finding that RCMP members responding to the

³⁴ *R v Larson*, 2011 BCCA 454, at para 26.

³⁵ *R v Borecky*, [2011] BCJ No 2202 (SC), at para 88.

³⁶ *R v MacDonald*, [2014] 1 SCR 37 at para 43.

flood were operating in conditions which brought the common law duty to protect life into play. The preceding quotes establish that the responding members were alive to that duty.

FINDING NO. 6: RCMP members participating in the emergency response were under a common law duty to protect life and preserve public safety.

Does the conduct, albeit within the general scope of a statutory or common law duty, involve an unjustifiable use of powers associated with the duty?

Having found that the first part of the *Waterfield* test was met (i.e. the conduct of the RCMP fell within the scope of a statutory duty under the EMA and the common law duty to protect life), it is necessary to assess whether the conduct, in this case the entry of homes by the police, amounted to a justifiable exercise of power. In order to do so, the circumstances facing the police and the goals their actions were meant to achieve—in other words the importance of their purpose—must be weighed.

During the flood response, RCMP members entered homes for a variety of reasons.

Initial Entries

1. To protect life;

Secondary Entries

2. To retrieve personal belongings for residents;
3. To escort pet rescue teams;
4. To escort home inspection teams; and
5. To seize unsecured firearms.

In determining the reasonableness of the entries and searches it is necessary to assess each of these entries independently. The period of each activity is also relevant, as the conditions and risks posed by the flood changed during the course of the response.

INITIAL ENTRIES

To protect life

a. Authorization to enter

The EOC scribe notes for June 21 reveal that shortly after 6:00 a.m. a planning meeting took place. Amongst others present were Mr. Zebedee, who at the time was in charge of the EOC, and Superintendent Smart, who was the RCMP Incident Commander. The EOC scribe notes record that Superintendent Smart advocated for a “systematic door-to-door search of every residence in the town.” At this meeting the RCMP maintained that it could not be determined with any degree of certainty that any area of town had been searched and deemed to be clear. During the

rescue operation, rescue personnel had reacted to people they found in need of assistance and had knocked on some doors and called out to find people in distress. They had not, however, entered any homes to search for people. The EOC scribe notes record that Mr. Zebedee authorized the preparation of the search plan during this meeting which contemplated entries of homes for this purpose.

Superintendent Smart stated that he left the planning meeting with the belief that the Town had exercised its power under the EMA to direct entry of the homes. This is what he consistently told his subordinates thereafter. However, when questioned about the specifics of the meeting, Superintendent Smart stated that he could not recall any discussion at that meeting about forced entries into homes. Similarly, Mr. Zebedee had no such recollection.

Mr. Shapka was not interviewed during the course of this investigation. He was approached about providing a statement and agreed to do so. Unfortunately, after repeated attempts to schedule an interview, including both by telephone and in writing, the Commission was unable to speak with him. However, Mr. Shapka's comments are part of the public record in the form of a radio interview given on June 23, 2014.

During that interview, he was quite clear in stating that the searches were carried out at the direction of the EOC. He confirmed that the aim of the first round of searches was to ensure "life safety" and that the search was to be the number one priority. Based upon those plans, Mr. Shapka stated that he made the decision to order the search of homes to locate people and he stood by that decision. This is consistent with the notes of those present at the 5:00 p.m. EOC operations briefing.

Moreover, a report released by the Town of High River on July 8, 2014, following a review of the emergency response to the 2013 flood indicates that on June 21 at approximately 6:30 a.m., "the EOC ordered a search of all town residences to ensure that people had been evacuated."³⁷

The evidentiary record supports the finding that, on June 21, the RCMP commenced warrantless entries pursuant to the EOC's order. The order was a component of the EOC's emergency plan, specifically the search plan. The actions of the RCMP for this purpose were authorized by paragraph 19(1)(h) of

³⁷ *Town of High River After Action Report June 2013 Flood*, at 8, online: Town of High River, <http://www.highriver.ca/images/Protective_Services/2014/AfterActionReport_07-28_web.pdf>. This report's stated goal is to provide "lessons learned and recommendations for the improvement of [the Town's] Emergency Management Program," at 3. The report was prepared after interviews with Town employees and other participants.

the EMA, which allows for “the entry into any building or on any land, without warrant, by any person in the course of implementing an emergency plan or program.” Although the EMA and the emergency plans do not specifically provide for the means used to effect “entry,” it was implicit that forcible entry would be required in the context of the emergency circumstances. In fact, this was an issue that Mr. Shapka had turned his mind to, as he stated that the EOC had asked the RCMP “to do as little damage as possible going into the homes.”

Forcible entries by RCMP members were known to the EOC, and the EOC’s order to conduct the searches remained in place. The forcible entries were also referred to in the re-entry plan, which set out a compensation scheme for returning residents, given that some homes had sustained damage during “the initial searches to ensure everyone was out of the home and safe” The RCMP members were therefore complying with the EOC order to search each home, and it was reasonable to effect forced entries causing a minimum of damage necessary to carry out the emergency plan.

FINDING NO. 7: Forcible entry was implicitly permitted for the purpose of effecting the searches to protect life, to the extent that the minimum amount of damage necessary was caused.

FINDING NO. 8: While inadequate records were kept, it is reasonable to conclude that given their role in the emergency plans, RCMP members determined the means used to gain entry to the buildings.

b. Purpose of entry

Systematic entries commenced in the late afternoon of June 21 and concluded on June 24, approximately 72 hours later. During that time, 4,666 buildings were entered and searched. Of these, 754 were forcibly entered. The searches began with those areas of town most accessible to rescuers and progressed from there. During the search the waters receded from the portions of town closest to the river. However, some neighbourhoods particularly in the east of town remained under water for weeks.

These factors provide important context for applying the legal analysis of the issues. As stipulated by the Supreme Court of Canada, “the interference with liberty must be necessary for carrying out the police duty and it must be reasonable.”³⁸ Specifically, the Court adopted the following list of factors to be weighed when assessing whether the police conduct was justifiable:

[T]he duty being performed, the extent to which some interference with individual liberty is

³⁸ *Godoy, supra* note 22 at para 22.

necessitated in order to perform that duty, the importance of the performance of that duty to the public good, the liberty interfered with, and the nature and extent of the interference.³⁹

The Supreme Court of Canada has also warned that “in determining the boundaries of police powers, caution is required to ensure the proper balance between preventing excessive intrusions on an individual’s liberty and privacy, and enabling the police to do what is **reasonably necessary** to perform their duties in protecting the public.”⁴⁰ [Emphasis added]

From the time of the first mandatory evacuation order on the morning of June 20 to that afternoon when the entire town was ordered evacuated, there was an increasing fear for the safety of lives for the residents of High River and the emergency responders coming to their aid. The situation was worsening and the environment was still quite chaotic.

Many hidden and overt risks remained in play over the ensuing days. The factors considered for the continuation of the evacuation order were summed up in Mayor Blokland’s letter of June 23. That letter identified the complete loss of the town’s critical infrastructure;

water, sewage, electricity, gas and emergency response. It also identified the lack of food and medicine as well as the dangers associated with travel in town.

These same factors are relevant considerations to justify the entry of buildings by the police. All of the perils cited as reasons to evacuate potentially posed a threat to anyone who remained behind.

Some of the events which occurred in the days following the declaration of the evacuation order exemplified the risks existing within the evacuation zone and confronting residents who had been trapped by the flood.

As electrical crews worked to restore power in the town, one service reconnection occurred to a home in which a cooking appliance had been on when the outage hit. The appliance re-engaged and a fire ensued on June 21 which resulted in the fire department responding. That was one of two fires that day. On June 22 an Atco Gas truck and an ambulance drove into sinkholes. The ambulance had been responding to a medical emergency and was unable to proceed, which necessitated the dispatch of another unit. During the flood response, some rescuers fell into sinkholes, through porches or the floors of homes and required medical attention.

For days after the flood, the RCMP aided residents who requested assistance in leaving the town. These

³⁹ *Ibid.*, at para 18.

⁴⁰ *R v Clayton*, [2007] 2 SCR 725, at para 26 [*Clayton*].

conditions spoke to the gravity of the situation.

As stated above, the duty to protect life is one judicially described as “heavy” and warranting “error on the side of caution.” Indeed, three people died as a result of the flood.

As people were required to evacuate, but could not do so without assistance in some cases (e.g. the use of helicopters for rescue), systematic searches of houses were warranted to look for injured people or people who may have perished. Given the large number of buildings to be searched and the reasonable belief that some people may be unable to respond to rescuers at the door, forcible entry was used.

The commonly stated concern of the members interviewed was that they would have no way of knowing if people in need of assistance, but who might be trapped or incapacitated, were present in a home unless the home was searched. As stated by Inspector Hamori, he did not consider it to be a viable option to conduct door knocks only to find out later that someone had been left behind.

Although not determinative of the issue, the results of the searches, which are discussed below, are of some assistance in assessing the reasonableness of the perceived risks which were cited in the rationale justifying the forced entries. These

risks included the residual effects of the flood, which affected not only the people trapped in town but also those who were precluded from returning to their homes.

The full particulars of the police rescue of 38 people from their homes, including whether police were admitted entry to achieve those rescues, is not found in the written record. Poor record keeping made it difficult to determine the exact circumstances of these individual events. Search team scribes recorded little more than a citation that their team had “rescued” a certain number of people from its search zone. However, it is apparent from what records do exist that the overwhelming majority were people who had been unable or unwilling to evacuate the town and now required assistance to extricate themselves from their shared predicament.

RCMP records relating to “rescues” indicate that on June 24, nine people were rescued in dire circumstances. The record relating to two of those rescues reads as follows:

The two females were discovered when RCMP-led teams were conducting door to door searches. At the time of their discovery, both women indicated that their situations were becoming quite desperate and one of the women appeared to be very distraught. One of the residents was rescued by a team in a boat while the other resident was resident [sic] was located by a team in a light armoured vehicle.

The forced entries did not result in the discovery of any deceased persons, but reportedly aided two people who were at serious risk. The written record did not contain any reference to these rescues. Staff Sergeant Fuller stated that there had been several cases where individuals who might not have been able to extricate themselves from the area or communicate their need for assistance had been rescued. At the time of his interview, he was only able to recall the details of one such rescue. In that case, he stated that an elderly gentleman in a wheelchair was located in his home three days into the flood. Staff Sergeant Fuller stated that the man

had been without food, running water or sanitation for three days. This case was also referred to by firefighters. A similar case was also mentioned by first responders in which an elderly woman was found in need of assistance and unable to leave or call for help.

Although a breach of the sanctity of the home is a significant intrusion on the rights of property holders, the possibility of saving lives in ongoing dangerous circumstances may render this conduct reasonably necessary.

In the case at hand, the RCMP members were operating under the following conditions:

- a declared state of local emergency;
- a mandate given by the EOC to carry out searches of the entire town, searches which by their very nature called for speed;
- more than 300 people had refused to evacuate the town and could be in need of assistance;
- residents outside the town attempted, sometimes successfully, to circumvent the security checkpoints and re-enter the town, potentially placing themselves in peril.

Having consideration for the conditions facing the RCMP search teams, the entry of buildings to search for people was a reasonable and justifiable response to the crisis

facing the rescuers, who were under a duty to act to protect life.

FINDING NO. 9: Given the emergency circumstances which existed during the 72 hours of the searches to protect life, the entry of homes without a warrant by the RCMP was a justifiable use of police powers in furtherance of their common law duty to protect life.

c. The search protocol

As described above, the extent of common law powers is limited by the minimal intrusion required by the “reasonably necessary” test enunciated by the Supreme Court in *Clayton*.

Although having found that entry of dwelling houses was generally a valid exercise of police powers in this case, it is still necessary to consider certain aspects of those entries in order to further analyze the reasonableness of the police conduct. The damage caused by the forced entries, the securing of the residences upon exit and the buildings chosen are also relevant considerations.

i. Damage

Prior to the commencement of the building searches, the EOC requested that searches be carried out with the least amount of damage. Superintendent Smart provided similar instructions to Staff Sergeant Fuller, stating that searchers should use as much force as necessary to gain entry but the

least amount possible. During pre-search briefings Staff Sergeant Fuller and Sergeant Marsollier conveyed this to all members of the search teams, the RCMP component of which were comprised of STO unit members,

Staff Sergeant Fuller explained that the nature of the emergency response made speed a priority, which necessitated a certain level of force being used to effect entry into homes.

Our only concern was to get to every house as fast as humanly possible to make sure nobody had fallen down a stairway or was in distress or had a heart attack or something like that. And now with no phone service and no neighbours around there was no means of getting any rescue. So it was basically get into this house, get onto the next one.

During the briefings of the search teams, members were directed to try to enter through unsecured doors. Indeed, on the second day of searching it had been determined that garage doors with electric openers could be opened manually and often residents had left the inner garage doors unlocked, which

permitted easy access. In other instances entry was gained through windows.

In many cases the members were left to their own devices to gain entry. They had limited tools to force entry, often resorting to crow bars, sledge hammers or their feet. Many of these entries caused significant damage to homes. It should also be noted that many witnesses spoke at length of the damage caused inside their homes by the searchers as they proceeded through homes with mud-covered boots.

The eventual use of locksmiths to mitigate the damage which would result from otherwise forcing the doors or windows was a reasonable step by the RCMP to minimize adverse consequences to property owners. At the June 21, 9:00 p.m. EOC briefing there was a discussion about bringing in locksmiths. The first use of locksmiths was not until the afternoon of the next day; however, initially there were only two available. More were sought from neighbouring towns and from Calgary but were not enough to fully safeguard property, and they were not always successful in unlocking doors. Although a marked improvement, it was only a partial solution.

The damage caused by the forcible entries was one of the most controversial aspects of the emergency response. The devastating emotional impact of the damage to homes, as related in the

interviews with the townspeople, cannot be overstated. The damage caused by the forced entries into homes, especially where homes were otherwise untouched by the flood, angered townspeople. While the impact of the damage may not have been known to RCMP members at the time, this impact is a relevant consideration in the assessment of whether the force used was reasonable.

The severity of these actions must, however, be weighed against the purpose for which the powers were exercised. Given that the aim of the searches was to protect life and that it was reasonable to believe that building searches were the only way to accomplish this task, a reasonable use of force was justified.

To contextualize this, the judicial pronouncements on the need for police to err on the side of caution when the protection of life is at the core of their actions must be considered. These court cases grant some latitude to the police in the exercise of their powers, essentially broadening the scope of actions which were reasonably available to them, keeping in mind that speed was of the essence and lives and safety were reasonably believed to be in peril. Under these circumstances, having full regard to the serious impact caused to many of the residents of High River both by the actions of the police and as a result of the flood itself, the actions of the RCMP in forcing entry into homes was justified.

FINDING NO. 10: Given the emergency circumstances which existed at the time, the reasonable use of force to enter buildings to protect life was justified.

ii. Securing doors upon exit

When tasking Staff Sergeant Fuller with executing the search plan, Superintendent Smart directed him to secure all buildings upon departure where possible. However, this appears to only have been done for homes with free access or where the entry caused only very limited damage. Securing homes upon exit is standard practice when police forces gain entry to a home whether with warrant or without and is designed to safeguard the property of the building owner or resident.

When Staff Sergeant Fuller was asked about the fact that many homes were left unsecured, he responded that he did not think it was possible to secure them all. He stated: “[I]f you have kicked the door in there’s really no way to secure it after. The only way to secure it at this point in time is to set up a tighter security perimeter around the community.”

Staff Sergeant Fuller acknowledged that he did not take any steps to facilitate the securing of damaged homes, as he did not consider it to be practicable. From a logistics point of view he pointed out that the members did not have the equipment to secure the doors and this could have meant having to bring outside parties into the area

with equipment. This measure could have necessitated the procurement of more boats and transport personnel. In either case this would have slowed the search teams down from their primary goal of saving lives.

In some cases the securing of homes resulted in damage during subsequent entries. This issue is addressed during the review of the entries for home inspections, below.

FINDING NO. 11: It was reasonable for the RCMP members to secure buildings after completing their search.

FINDING NO. 12: The decision not to bring in equipment and extra resources to secure buildings which had been damaged by entry was reasonable in the circumstances.

iii. Entry of all buildings

There is one other aspect of the warrantless entries that took place in the initial days which directly affects the reasonableness of the exercise of police powers. Although an estimated 95 percent of the town was under water at the peak of the flood, there were homes in a small number of neighbourhoods not directly impacted by the flood that were nonetheless entered. In reviewing RCMP member notes, there were clearly reservations expressed in having to enter homes in neighbourhoods that were not

flooded. It does not appear from any of the information provided to the Commission that any of these homes were entered by the RCMP prior to the EOC specifically ordering that every house in High River be searched as part of the EOC's emergency plans. Notes reveal that during the development of the search plan, RCMP members sought clarification as to the measures they should use to search the homes that did not appear to have been affected by the flood. Confusion still existed after the searches commenced, with members continuing to question the need to enter homes that were apparently unaffected by flood water. Indeed, late on June 21 searches in these areas were suspended to permit clarification of the issue.

The decision to enter all homes was a decision made by the EOC. In that regard the RCMP members were appropriately following the direction of the EOC. However, it is noted that RCMP supervisors had considered the reasons underlying the decision. In Staff Sergeant Fuller's opinion, the decision to search every home made sense, since the stress caused by the flood could have resulted in all manner of medical conditions. Similar concerns were raised by others involved in directing the searches, including a number of comments about a large number of

senior citizens residing within the town.⁴¹

Chief Superintendent Kevin Harrison, the Officer in Charge of the RCMP's Southern Alberta District (SAD), provided a rationale for why it was necessary to look for people in all buildings. He stated that people who were in fear for their lives could reasonably be expected to seek refuge in any location that provided safety. If they managed to seek safety in an evacuated home for which the residents had registered as having evacuated, they might still be in need of assistance. According to him, this was the Town's major concern.

When asked to assess the different phases of the response plans he stated:

As far as the search plan goes, we were asked to execute the search plan and the reasoning at the time was sound and I think it's still sound: that there were still a number of people unaccounted for. By that time we had fatalities reported

When the need to conduct door to door searches was first discussed in the EOC, the concern raised by the RCMP was that they had no way of

⁴¹ At the time of the flood, senior citizens accounted for approximately 20% of the population.

knowing whether people were in need of assistance. Although residents had been asked to report to an evacuation centre, this proved to be of limited assistance.

Staff Sergeant Doug Wattie, who was the Non-Commissioned Officer in Charge of the Major Crime Unit, stated that when attempting to locate missing persons, the team would attempt to contact the evacuation centres for information from the lists of registered people, as this was the fastest way to determine if people had actually safely evacuated the area and would provide the most up-to-date information. He indicated that this was met with mixed success, as some staff members at the centres were reluctant to provide personal information.

Staff Sergeant Wattie indicated that information sharing did take place over the ensuing days but it was a slow process that often required members to attend the individual evacuation centres.⁴² Furthermore, the majority of residents never did report to the evacuation centres. These factors caused the RCMP to be concerned relying upon the information from the evacuation centres.

Notwithstanding that some homes appeared to be unaffected by the flood, it was appropriate for RCMP members to comply with the EOC order to forcibly enter homes that were not impacted by the flood. First, they were required during the declared state of local emergency to carry out the EOC emergency plans. Second, members turned their minds to the different circumstances in non-flooded areas and promptly alerted their supervisors. Ultimately, the goal of preserving life became the overarching consideration. These factors support the appropriateness of the entry of each home to verify the safety of people who may be in need of assistance.

FINDING NO. 13: Given the emergency circumstances which existed during the time of the initial entries to protect life, the entry of all buildings in furtherance of the EOC order was appropriate.

⁴² The EOC had a list of reported missing available each morning. This was provided to RCMP members including the search teams in case they came upon anyone on the list.

SECONDARY ENTRIES

To retrieve personal belongings for residents

In the early days of the flood response there were numerous requests by residents to permit them to retrieve their personal belongings. Many of these requests were to obtain medication, medical devices or passports. Sometimes the RCMP members escorted residents to their homes but on other occasions the members attended themselves. The RCMP Incident Commander suspended entries for this purpose on June 24 because of concerns relating to biohazards in the homes. At this point, the volume of requests for the retrieval of personal property was noted to be reducing significantly. These entries were then re-instated on June 28.

According to Chief Superintendent Harrison, in those cases where members entered homes to retrieve personal belongings, they did so after being provided keys. The Commission's investigation did not uncover any evidence to the contrary.

FINDING NO. 14: The RCMP conducted entries for the retrieval of personal property at the request and with the consent of residents.

To escort pet rescue teams

A numbers of entries of private residences were also conducted by

the RCMP during the escort of pet rescue teams.

Notwithstanding that members recorded the particulars of residences in which they found pets and often left food and water out for them during the initial entries, this was merely a collateral action and not the motivation behind those initial entries. The primary purpose of those initial entries as stated previously was to locate people in need of assistance, and the members lacked the time or resources to attempt pet rescues. However, records were kept by the search team scribes of addresses of homes in which pets were found, the types and numbers of pets found and whether food and water had been made available to them.

The entries specific to this section are those which were conducted pursuant to the modified search plan. On June 22, STO member notes first record that animal control should be contacted when animals are located. At the 4:00 p.m. briefing on June 22, the issue of pet rescues was raised at the EOC. During that meeting it was reported that between 400 to 500 requests had been received from residents seeking help to retrieve their pets. It was also noted that many pets had succumbed to the flood. At that time, pet rescues had been conducted by volunteers who had received keys and travelled into town to retrieve the animals. Mr. Shapka directed that the pet rescue teams could no longer

operate unless escorted by RCMP members.⁴³

On June 23 Mr. Shapka directed that pet teams be accompanied by two RCMP members. The RCMP suggested that another agency provide this escort duty. However, Chief Superintendent Harrison indicated that the EOC wanted the members present for two reasons. First, the members were tasked to ensure the safety of the pet rescuers, including assessing whether the homes which they wished to enter were safe enough to do so. Second, the RCMP escort was hoped to alleviate any stress from residents who remained in town and had concerns about the entries of homes. Additionally there are many references in the written record to the increasing frustration and anger of evacuees. Often times this anger was directly attributed to residents' fears about their pets. On this date, one man was arrested for attempting to sneak into town to retrieve his dog. When confronted by RCMP members he drew a knife and threatened them with it.

The pet rescues prior to this time were conducted by volunteers based on individual requests by residents who provided keys to the pet rescuers. The rescuers also attempted to capture stray animals that they came upon while in town.

⁴³ During this time, the RCMP occasionally escorted homeowners to retrieve their pets when resources permitted and it did not interfere with the primary search teams.

Starting on June 23, the STO rescue teams were not only directed to keep a record of all pets which they came upon but were to proactively relay that information to the animal control contact number. The result was that pet rescues were happening almost concurrently with some of the initial searches for people.

A number of members reported scratches and bites from animals while working along the pet rescuers and it is clear that some assisted in the retrieval of the pets. What is not as clear is how these members facilitated entry to the homes. None of the notes provided made any reference to the means of entry to a house. Many of those entries were aided by keys provided to the pet rescue staff. Some were recorded as being made during or shortly after the primary search teams conducted the initial search. Others were clearly made into homes which had previously been breached and were left unsecured. There are no written notes to support that any entries were forced. Inspector Jim Stewart, who was an Incident Commander during part of the timeframe of the pet rescue operation, indicated that he regularly spoke with members assigned to escort duty and does not recall members indicating that force was used to enter a residence. Furthermore, he reported that if such a conversation had taken place it would have been recorded by his scribe, which it was not.

FINDING NO. 15: RCMP members were present during entries for the purpose of rescuing pets mainly at the request and with the consent of residents.

FINDING NO. 16: RCMP members entered homes to escort pet rescue personnel and ensure their safety.

To escort home inspection teams

a. Authorization to enter

RCMP members also entered homes in an escort capacity during the home inspection phase of the re-entry plan, one of the four emergency plans approved by the EOC pursuant to the EMA.

Southern Alberta District situation reports noted that there were two reasons why the RCMP was requested by the EOC to escort the home inspection teams. First, there was a desire to demonstrate to residents that the “entries to the homes were supervised by the RCMP.” This was to alleviate any concerns that residents may have had with respect to permitting unsupervised access to volunteers, tradesmen and other people for whom the EOC could not vouch. Second was a concern for safety of the inspectors. This request was attributed to Mr. Jim Cornish, Director of Field and Recovery Operations for the Alberta Emergency Management Agency. During the emergency response Mr. Cornish

acted as the EOC Operations Chief. The situation report noted that the RCMP indicated that there were insufficient resources to provide the support requested.

The various scribe notes from the EOC also reveal that the RCMP was resistant to participating in the home inspections. Notwithstanding this reluctance, Mr. Shapka maintained that it was necessary for RCMP members to be part of the home inspection teams. The decision was made at the divisional level to send additional personnel to assist with the home inspections which commenced on June 24 as part of the re-entry plan approved by Mr. Shapka.

Given the direction of the Director of the EOC, the entry of homes without a warrant by the RCMP to escort home inspection teams was authorized by the EMA. This statutory authority was required for the RCMP to enter homes since, unlike the entries to protect life discussed earlier, the common law would not have authorized the warrantless entry of the RCMP into homes for the sole purpose of facilitating home inspections.

FINDING NO. 17: The Emergency Operations Centre authorized the inspection of buildings in the town of High River as part of the emergency plan.

FINDING NO. 18: Pursuant to the *Emergency Management Act*, the Emergency Operations Centre authorized and instructed the RCMP's entry of High River buildings without warrant to escort home inspection teams as part of the emergency plan.

FINDING NO. 19: The Emergency Operations Centre did not direct how buildings were to be entered but did assign the RCMP to supervise the entries.

b. Purpose of entry

The inspection teams were comprised of specialists to assess the electrical, gas, plumbing, structural integrity and health hazards of the homes. EOC scribe notes and minutes indicate that these inspections were a priority for the EOC, as they were deemed essential to the re-entry of residents into the town. The nature of the inspections required the inspectors to view the home from inside, thus necessitating entry to the home.

The re-entry plan's objective was "[t]o enable the return of residents to their homes in a safe and orderly fashion with a view to supporting further recovery and long term restoration activities." The re-entry was predicated upon certain specified criteria being met, including the "completed inspection and classification of homes to determine habitability." Inspection

reports were prepared for each inspected property, and where homes were classified as red (uninhabitable) or orange (not immediately habitable) the resident was so informed. In those instances where basements had to be pumped out, the Town arranged for this to be completed and re-inspected the homes thereafter. In fact, home inspections were sometimes repeated a number of times and separate entries were sometimes conducted for health inspections. This could mean that some homes were entered three or four times as part of the EOC's home inspection process pursuant to the re-entry plan.

Throughout the re-entry phase, the home inspections remained a priority. As designated areas of the town were inspected, residents were permitted to return on a graduated basis. The last inspections were completed on July 14 after water had been pumped out of the low-lying areas and homes became accessible.

c. The inspection protocol

As with the analysis of the entries to protect life, it is necessary to determine whether the powers exercised by the police to enter homes to escort home inspection teams constitute the minimal intrusion required by the “reasonably necessary” test. Once again the damage caused by the forced entries and the buildings chosen are relevant considerations.

i. Damage

There is no written record articulating how the entries were to be effected or what should be recorded in relation to the entries. It is not merely that the EOC scribe notes are silent in this regard, so too are the notes of the members who accompanied the home inspection teams.

The scribe notes from the EOC recorded that efforts to bring in locksmiths during the first few days of the home inspections were successful in ensuring that each team contained at least one locksmith. Just as during the entries to protect life, the retention of locksmiths was reported to have played a role in limiting the damage caused during the entry of homes. This statement implies that damage was done to some homes. The notes also revealed that on the first day of searches, plans were made to have the three home inspection teams work by following behind the teams conducting the initial searches to protect life so as to minimize double

entries. Although this was done it should be noted that the home inspections took much longer to accomplish than the searches to protect life, and therefore the search and rescue teams quickly moved ahead of the home inspection teams.

The Commission commented earlier on the reasonableness of securing doors after the initial entries. An unintended consequence of this action was that in some cases homes had to be unlocked or entry gained by breaching the home during these secondary entries. This could reasonably explain why homes which were not damaged during the initial search would have been damaged during the home inspections. It is not possible to determine how many homes were forcibly entered during this phase of the operation, as members failed to keep proper notes. During the initial searches to protect life, the team scribes were directed to record specific information, including the number of homes damaged, which was 754.

Following the flood, detachment members investigated more than 1,900 complaints of property damage. Some of that damage was attributable to other causes, such as the flood or suspected break-ins. Nevertheless, there are a significant number of homes which appeared to have been forcibly entered, but for which there was no accounting in the RCMP records. Again, because of the lack of records, it is

impossible to determine how many times the damage was the result of the home inspection teams' forced entry after the initial searches to protect life.

It is therefore reasonable to conclude that, in some instances, RCMP members forced entry into buildings while conducting escort duties of the home inspection teams.

FINDING NO. 20: RCMP members failed to maintain proper notebook entries during their escort of home inspection teams, in particular with respect to the use of force to gain entry into buildings.

FINDING NO. 21: Pursuant to the direction of the Emergency Operations Centre that the RCMP supervise the entries of the home inspections, the use of force to enter buildings was authorized by the *Emergency Management Act*.

ii. The selection of buildings entered

The home inspections were almost as numerous as the searches to protect life. The need for the EOC to establish the safety of residents' homes was reviewed above as an important part of the re-entry plan. However, there were temporal and purposive differences which should have impacted how the searches were conducted. From a timing perspective, the home inspections did not need to be conducted with the same exigency as the searches

to protect life. These searches took more than three weeks, not three days, and during the latter stages the EOC was beginning to gain control of the situation. Furthermore, the goal of the inspections involved a mid-term remediation effort for the "re-entry" of residents, as opposed to the heightened goal of potentially locating someone who was in immediate need of emergency assistance. Accordingly, more time was available to apply strategies which could have further minimized damage caused by forced entries. There is no record by RCMP members that they turned their minds to what level of force should be used when they exercised their powers to enter homes.

During these inspections, the teams gave some consideration to whether all homes needed to be entered for the purpose of home inspections. The EOC scribe notes reveal that search teams were not entering every home in dry areas, as they did not deem this to be necessary. Discussions at the EOC indicate that the electrical team insisted on entry to all buildings. Their reasoning was that electrical breakers should be shut off before power was restored to avoid the fires which had earlier taken place during activation of portions of the power grid.

It is also apparent from witness accounts that forced entries did occur in dry areas. It is not possible to reconstruct the manner with which individual entries occurred, but several witness accounts referred to

residents abandoning their homes after the initial search teams had passed only to find their homes forcibly entered thereafter, sometimes with significant damage.

FINDING NO. 22: RCMP members' entries of buildings unaffected by the flood to facilitate home inspections were directed by the EOC, and the RCMP's forcible entries were authorized by the emergency plan only insofar as minimal damage was caused.

FINDING NO. 23: In a number of cases, RCMP members' forcible entries to facilitate home inspections caused significant damage and were not reasonable in circumstances where buildings were unaffected by the flood.

To seize unsecured firearms

In a number of cases, when unsecured firearms were observed by RCMP members in buildings entered for the purpose of protecting life, the members were not in a position to remove the firearms. The priority was to search every house as quickly as possible for the primary purpose of saving lives. When it was not practical to remove the firearms when initially discovered, members at the detachment were provided with the addresses and locations of the unsecured firearms so they could seize them. For those secondary entries, the members were

re-entering the home absent any specific authority under the EMA.

There is no information to indicate that RCMP members turned their attention to whether the secondary entry into a building for the specific purpose of seizing firearms was authorized by statute or the common law.

Although the initial entries were authorized by the EOC pursuant to its emergency plans, the secondary entries for the specific purpose of seizing firearms were not authorized by the EMA. In normal circumstances, RCMP members would have been required to obtain a warrant for the secondary entry. The RCMP referred to public safety considerations as the justification for its actions, but failed to articulate the legal grounds (such as the statutory or common law authority) upon which it relied to enter buildings a second time without a warrant, for the sole purpose of seizing unsecured firearms observed during the first entry.

The issue of the general authority to seize the firearms will be discussed in the following part.

FINDING NO. 24: The secondary entries for the specific purpose of seizing unsecured firearms were not authorized by the *Emergency Management Act*.

B. THE SEIZURE OF FIREARMS FROM PRIVATE RESIDENCES DURING THE EVACUATION

THE DECISION TO SEIZE FIREARMS

There has been much speculation as to who ordered the seizure of firearms and pursuant to what authority. In this section, the Commission will review the first of these two issues. The issue of the legal authority to seize the firearms will be discussed in the next section.

The first firearms seizures occurred in the late afternoon of June 21. During the following days, members who were searching homes for people came across multiple locations in which they found firearms in plain view. Initial reports indicated that the firearms were illegally stored. There was a general consensus among the police interviewed that the firearms were moved by their owners from areas susceptible to flooding where they may have been safely stored, such as basements, and relocated to areas of the home considered to be safe from flooding, such as mantelpieces, couches, beds and closets in higher levels of homes where they were not safely stored.

As indicated earlier in this report, search team members were not keeping proper notes relating to their actions. The effect of this was clear with respect to the firearms seizures, as not only were there later difficulties in following the chain of custody, including identifying the

members who effected the seizure, but there was insufficient detail to formally report on them. However, it is clear from reviewing the general notes of the team scribes and the subsequent records created by detachment personnel that early on a pattern emerged with respect to seizures. STO search team members who came upon firearms which were not properly stored responded in two ways. If the area was accessible to detachment members,⁴⁴ the STO team would alert the detachment as to the address and location of the firearms. The detachment would send members to take possession of the firearms. In the majority of cases, where firearms were taken from homes in heavily flooded areas, the STO members would carry the firearms in their boats until they met with detachment personnel. They would then turn them over to the detachment personnel.

Town authorities and records demonstrate that the EOC command was not initially aware of the seizures and, when later notified, viewed the seizures as a policing matter. They attributed sole responsibility for the seizures to the RCMP but expressed support for the safety aspects underlying the decision.

Mr. Zebedee stated that he believed the decision to seize the firearms was

⁴⁴ This was a situation which occurred more frequently as days passed and waters receded.

made unilaterally by the RCMP. He also stated that, when he became aware that firearms were found in the homes:

[T]here was a concern that with the number of people who did not evacuate—would not evacuate from the community—to have these homes open or firearms sitting out in the open, would there be some theft of those firearms if people, somebody did enter homes and see those guns. And could that cause further problems down the road with those firearms being used for criminal purposes.

[*sic* throughout]

Like others who were interviewed on this issue, Chief Superintendent Harrison maintained that search team members who located firearms in a residence which appeared not to be safely stored acted of their own volition.

Well, **there is no order to seize the guns**. They find something that is illegal and, you know, some of them are more fully in tune of what the firearms

laws actually are but, you know, they see unsecured firearms, **nobody had to tell them**. Like, it's against the law. And that's not why we seized them, because it was never a seize them with a view that we were going to charge anybody ever, but yet they were there illegally stored, they had the right to seize them [T]he risk that we run leaving them in the homes when they're not properly secured was significant. And **our members didn't have to be told to seize them**. [*sic* throughout, emphasis added]

Staff Sergeant Fuller supported this view. He indicated that the first seizures were made by members of the search team and flowed as a natural course from the members realizing their legal duties. He acknowledged being informed of the seizures and agreeing with them. He, too, maintained that there was never any intent to charge firearms owners with unsafe storage but that the seizures were justified at law and for public safety reasons.

The first recorded firearms seizure was noted at 6:39 p.m. on June 21 and involved 50 firearms discovered

underneath a child's crib and standing throughout the bedroom. This was reported to the STO command at 6:45 p.m., and detachment members were dispatched to secure the firearms. Staff Sergeant Fuller was in charge of the searches when the first firearms were found and he described the rationale for the seizures as follows:

It was obvious that what had happened was people were taking guns out of their basements and just lying [*sic*] them on their upper levels. They weren't trigger locked, they weren't dismantled, just a completely intact firearm. So the direction was given, call it into the detachment, let the detachment members deal with the insecure firearms and move on. And our standard line at the time was we were going to treat them almost as found property, process them as a found property, tag them, and then when the people were able to come back to their homes all they have to do is come to the detachment, identify them, and the guns would be turned back over, that

there wasn't... There wasn't any expectation of prosecution, because there wasn't any criminal intent, by us. We just... We recognized it for what it was. We just knew we couldn't leave the guns there.

He explained that his major concern was that the firearms were easily accessible, not only to the large number of people left behind in the town but also to people who were breaching the security zone. In his opinion, there simply were not enough members to maintain closed access.

In the end, the RCMP reported that a total of 609 firearms were seized from 105 locations during the course of the operation. Additionally, 107 firearms were turned in by residents for safekeeping or destruction.⁴⁵

The notes of the searching members lack the interrogatories with respect to firearms seizures that were present when they sought clarification of their search authorities and duties. Similarly, STO command notes merely record the first reports of seizures and appear to treat them as actions taken in the normal course. The absence of any supervisory direction

⁴⁵ In both cases the RCMP acknowledged that the numbers were approximations largely because of the lack of tracking instruments in the first instance and because the firearms often passed through a number of hands by the time they were stored.

to seize firearms within the written record is consistent with the RCMP's proposition that members formulated that response of their own accord. Indeed there is no evidence before me which would contradict that assertion.

FINDING NO. 25: The seizure of firearms was not initially planned.

FINDING NO. 26: When unsecured firearms were located, individual members of the search teams made the decision to seize them.

FINDING NO. 27: Upon being notified of the seizures, the Special Tactical Operations command approved the action.

LEGAL AUTHORITY TO SEIZE FIREARMS

As recognized in the RCMP's *Operational Manual*, all searches and seizures must be clearly authorized by law, either by statute or common law, or with express consent.⁴⁶ As such, this section will examine whether RCMP members had the legal authority, whether conferred by statute or the common law, to seize firearms in buildings entered pursuant to emergency plans.

⁴⁶ RCMP *Operational Manual*, c. 21.1. "Authority to Search".

Statutory authority to seize firearms

Deputy Commissioner Dale McGowan provided the following rationale for the RCMP's seizure of firearms in High River in a letter to the Alberta Property Rights Advocate dated August 16, 2013:

While we were engaged in these residential searches for stranded occupants we came across situations where firearms had been left unsecured inside the home. Legally we could not ignore these situations and under provisions of the Criminal Code of Canada we seized the weapons and secure [sic] them until such time as they could be returned to their owner. We recognize people were forced to leave with little or no notice and as such may well not have had time to secure their firearms, so we are not interested in pursuing those types of charges. It is also important to note, however, that at that time the entire town site was not secure with over 300 residents remaining and

disregarding evacuation orders and continued excursions beyond roadblocks. Beyond that, there were daily instances of people noted to be attempting to breach security perimeters around the evacuated areas.

This response raises two separate lines of authority for the firearms seizures; the purported unsafe storage, in contravention of legislation, and the public safety concern of leaving the firearms unsecured. Each of those alleged sources of authority will be discussed in turn.

The first line of authority referenced by Deputy Commissioner McGowan relates to the unlawful storage of the firearms.

The *Storage, Display, Transportation and Handling of Firearms by Individuals Regulations* (SOR/98-209) enacted under the *Firearms Act*⁴⁷ contains *inter alia* the lawful storage requirements for firearms. The relevant provisions for non-restricted firearms and restricted firearms, which apply throughout this analysis, follow:

5. (1) An individual may store a non-restricted firearm only if

(a) it is unloaded;

(b) it is

(i) rendered inoperable by means of a secure locking device,

(ii) rendered inoperable by the removal of the bolt or bolt-carrier, or

(iii) stored in a container, receptacle or room that is kept securely locked and that is constructed so that it cannot readily be broken open or into; and

(c) it is not readily accessible to ammunition, unless the ammunition is stored, together with or separately from the firearm, in a container or receptacle that is kept securely locked and that is constructed so that it cannot readily be broken open or into.

6. An individual may store a restricted firearm only if

(a) it is unloaded;

(b) it is

(i) rendered inoperable by means of a secure locking device and stored in a container, receptacle or room that is kept securely locked and that is constructed so that it cannot readily be broken open or into, or

(ii) stored in a vault, safe or room that has been specifically constructed or modified for the secure storage of restricted

⁴⁷ SC 1995, c 39.

firearms and that is kept securely locked; and

(c) it is not readily accessible to ammunition, unless the ammunition is stored, together with or separately from the firearm, in

(i) a container or receptacle that is kept securely locked and that is constructed so that it cannot readily be broken open or into, or

(ii) a vault, safe or room that has been specifically constructed or modified for the secure storage of restricted firearms and that is kept securely locked.

It is an offence under subsection 86(2) of the *Criminal Code* to store a firearm in contravention of the regulations noted above.

Subsection 489(2) of the *Criminal Code* provides:

Every peace officer, and every public officer who has been appointed or designated to administer or enforce any federal or provincial law and whose duties include the enforcement of this or any other Act of Parliament, who is lawfully present in a place pursuant to a warrant or otherwise in the execution of duties may, without a warrant, seize any thing that the officer believes on reasonable grounds

...

(b) has been used in the commission of an offence against this or any other Act of Parliament

Appellate courts are divided on whether this provision merely codifies the common law “plain view” doctrine. The majority of such courts view this provision as a stand-alone basis for seizure, unencumbered by the stricter requirements of the plain view doctrine.⁴⁸ It should be stressed that this is a seizure power and not a search power.

In the earlier discussion of the RCMP members’ authority to enter buildings, the Commission found that the RCMP members entered those buildings under the authority of the EMA or with the consent of the occupant.⁴⁹ The members were therefore “lawfully present in a place . . . in the execution of duties” within the meaning of subsection 489(2) of the *Criminal Code*.

Paragraph 489(2)(b) of the *Criminal Code* provides authorization for the seizure of items which have been used in the commission of an offence. There is no stated requirement that it be linked to prosecution of the offence. As such, the RCMP members had statutory authority to seize firearms which were not stored in compliance with

⁴⁸ *R v Frieberg (TL)*, 2013 MBCA 40 at para 65.

⁴⁹ With respect to the initial entries to protect life, the Commission also found that they were a justifiable use of police powers in furtherance of their common law duty to protect life (see finding no. 9).

the regulations even though they did not intend to charge any of the firearms' owners.

FINDING NO. 28: RCMP members were authorized to seize unsecured firearms pursuant to section 489 of the *Criminal Code*.

As mentioned previously, the RCMP reported that a total of 609 firearms were seized from 105 locations. Among those seizures, the Commission identified a number of occasions where the firearms had in fact been stored in accordance with the regulations relating to the safe storage of firearms. These firearms had been properly secured by either affixing trigger locks or by removing their firing mechanism. Three such incidents were reported by residents, two incidents were identified in members' notes, and one incident was noted in the RCMP's firearms return process.⁵⁰

The seizure of these secured firearms was not authorized by the *Criminal Code*, since the firearms were stored in accordance with the *Storage, Display, Transportation and Handling of Firearms by Individuals Regulations*.

In some cases seizures may have been inadvertent. For instance, in a seizure of several firearms, only a few of these firearms had been properly secured. In other cases, the safe

storage was accomplished by removing the firing pin, which rendered the firearm inoperable, but would not be readily apparent to an observer.

On the other end of the spectrum were the two cases reported by members mentioned above. One member seized two firearms knowing that they were properly secured. The other member made a larger seizure in which two of the firearms were reported to have trigger locks.

FINDING NO. 29: In a number of cases the RCMP seized firearms which were lawfully secured.

FINDING NO. 30: RCMP members were not authorized by the *Criminal Code* to seize secured firearms.

During the course of the investigation, there was public speculation that legally stored firearms were also seized when gun safes were breached by RCMP members. There was no information revealed in the course of this investigation which supports the claim that gun safes were breached by the RCMP. Further, none of the residents interviewed reported that their gun safes had been breached.

FINDING NO. 31: There is no information to support the claim that RCMP members breached any gun safes.

⁵⁰ It is unclear whether any of these reports are duplicative.

The review of notebook entries revealed that in some cases members seized unsecured firearms and left secured firearms. In other cases, members recorded moving firearms after using force to enter a home. The records reveal that members sometimes moved them away from the entryway of a home to more remote locations in the home, sometimes they hid the firearms, and on another occasion firearms were locked in a secure room. The notebook entries did not indicate whether these firearms were or were not properly secured.

The varied approaches taken by the members with respect to the handling of firearms demonstrate a lack of structure and coordination. In the previous section, the supervising members spoke of the spontaneity of the seizures and the lack of planning. Chief Superintendent Harrison stated: "Our members didn't have to be told to seize [the firearms]." Staff Sergeant Fuller believed that the seizures commenced because the members conducting the initial searches reacted naturally. Superintendent Smart described the decision-making process as "organic." The supervisory approach seems to have been hands-off, relying on the individual judgement of each member to independently arrive at a conclusion.

While it is understandable that the initial seizures were a result of the assessments of individual members, clear policy and supervisory

direction could have alleviated public concerns about RCMP members acting arbitrarily. The relevant material sets out that a rudimentary seizure procedure was established but little more. Notwithstanding the emergency situation under which the members were operating, as the days progressed consideration should have been given to creating uniform guidelines. These warrantless seizures, although lawful in most cases, amounted to a significant interference with the liberties of the firearms' owners and were applied in an inconsistent manner.

FINDING NO. 32: RCMP supervisors failed to provide sufficient guidance to members involved in the seizure of firearms.

Common law authority to seize firearms

In addition to the statutory authority reviewed above, the RCMP has also claimed that its members were acting under common law; specifically, the “plain view doctrine,” to effect the seizure of firearms. In certain circumstances this doctrine confers a seizure authority upon the police. There are three elements to the doctrine:

- the police must be lawfully present in the premises;
- the item must have been discovered inadvertently; and
- it must be immediately apparent that the item is associated with criminal activity.⁵¹

In the case of *R v Knee*, Alberta Provincial Court Judge Fradsham concluded that the doctrine applies after an entry in response to a 911 call:

The concept of “a reasonable expectation of privacy” is not unduly trammelled by the plain view doctrine because only that which is openly visible to a visitor is subject to seizure. An officer is [*sic*] response to a 911 call is already lawfully within the

premises; it is not unduly intrusive to allow him or her to react to what is plainly visible. It would be artificial to do otherwise.⁵²

The circumstances in which the members found themselves during the flood response were similar to those in the *Knee* case in that it was an authorized intrusion into the homes for emergency purposes. Pursuant to the Commission’s analysis of the RCMP entry into private residences, RCMP members were lawfully in the homes except for when these entries were for the sole purpose of seizing firearms.

Pursuant to the plain view doctrine, there is no requirement that the item be subsequently used as evidence in a prosecution. However, in almost all of the court cases, that was the intention. In this case the RCMP indicated that there was never any intent to lay charges relating to the unsafe storage of firearms. Cases such as this are sometimes referred to as “no case seizures,” where the police have no intention of using the seized items as evidence in prosecution. No case seizures have been permitted by the courts. As an example, in *R v Paterson*,⁵³ the Court found that a warrantless no case seizure of drugs under subsection 11(7) of the *Controlled*

⁵¹ The parameters of the plain view doctrine are set out in the RCMP’s *Operational Manual*, c. 21.1. “Authority to Search”, s. 3.

⁵² *R v Knee*, 2001 ABPC 23 [*Knee*]. Also see *R v Smith*, 1998 ABCA 418. In that case, involving entry precipitated by a 911 call, the court approved of the three elements of the plain view doctrine.

⁵³ *R v Paterson*, 2012 BCSC 2138 [*Paterson*].

*Drugs and Substances Act*⁵⁴ was lawful given the exigent circumstances that existed, notwithstanding that the drugs were not intended to be used as evidence. The Court concluded unequivocally that:

[C]riminal law powers of search and seizure are not restricted to items or things that may be used in evidence and it is a valid criminal law objective to remove or seize controlled substances even where a criminal prosecution is not contemplated.⁵⁵

The Court found that the criminal law extends beyond prosecuting criminals and includes the protection of public safety:

Criminal law is not limited in its purpose to the investigation and prosecution of criminal offences, though this may be its most obvious manifestation. The power of Parliament extends to legislation that is designed to prevent crime and to protect public safety, and it may further these objects by indirect means.⁵⁶

The Court accepted the Crown's proposition that "the ability to seize illicit drugs in order to remove them from circulation thereby preventing

their misuse is an important and justifiable law enforcement objective."⁵⁷

No case seizures arise from the court-recognized discretionary powers of the police in relation to the laying of charges. Typically, the court cases involve small quantities of drugs which the police felt were not worth laying charges. In this case the rationale for the exercise of this discretion is somewhat different:

- there was a state of emergency and the police arguably had more pressing things to attend to; and/or
- with regard to the unsecured firearms, the police suspected the owners only unlocked their firearms to protect them from the flood and therefore the police exercised their discretion not to lay charges given the apparent lack of intent to commit an offence.

Furthermore, in some cases public safety has been cited by the courts as additional support for a plain view seizure, but only where the three elements listed above are already satisfied (i.e. lawful presence, inadvertent discovery and obvious criminal link). One last element, which has been referred to in a number of court cases involving

⁵⁴ SC 1996, c 19.

⁵⁵ *Paterson*, *supra* note 53, at para 54.

⁵⁶ *Ibid.*, at para 50.

⁵⁷ *Ibid.*, at para 51.

plain view seizure, is that the member making the seizure is acting in “good faith.” The facts in the case of the High River seizures support the view that the members who seized unsecured firearms were acting in good faith.

Accordingly, the members had lawful authority at common law to seize the unsecured firearms.

FINDING NO. 33: RCMP members were reasonably justified in seizing unsecured firearms pursuant to the common law plain view doctrine.

Public safety seizures

An alternate proposition advanced by the RCMP as a rationale for seizing the firearms was that members were also justified in seizing the unsecured firearms which they came across in plain view because they posed a threat to public safety. This is the second line of authority for the firearms seizures referenced in Deputy Commissioner McGowan’s August 16, 2013, letter to the Alberta Property Rights Advocate. In order to assess the reasonableness of this proposition, it is necessary to assess the nature of the threat to public safety posed by the unsecured firearms.

The RCMP’s assertion that the unsecured firearms constituted a threat to public safety was based upon a concern that the firearms could find their way into the hands of criminals. He noted that in addition to the firearms being

unsafely stored, the conditions created by the flood and the emergency response—reported looting and break-ins, many people inside the evacuation zone, many breached homes, easy accessibility to the homes, etc.—enhanced the police concern.

As indicated in the chronology of events found in Part III, on the evening of Day 2 of the flood, the RCMP received reports about break-ins, including at a grocery store and pharmacy. The RCMP also received reliable information that a group of youths known to have criminal backgrounds and carrying empty duffel bags were seen attempting to circumvent the security lines. Furthermore, there were over 300 people who had refused to comply with the evacuation order, including one high-risk offender.

It was appropriate for the RCMP to consider the risk of looting in its response to the High River flood. In an article titled “The Myth of a Disaster Myth: Potential Looting Should be Part of Disaster Plans,” Kelly Frailing writes that “[i]t is crucial that disaster response planners [and law enforcement] anticipate looting in the wake of natural disasters and design their responses accordingly.”⁵⁸ Citing several recent examples from both developed and

⁵⁸ Frailing, Kelly (2007). “The Myth of a Disaster Myth: Potential Looting Should Be Part of Disaster Plans.” *Natural Hazards Observer*. Volume XXXI, Number 4, March 2007: 3-4.

developing countries from around the world, Stuart P. Green asserts that “it now seems practically inevitable that, whenever terrible disaster strikes, looting will follow.”⁵⁹

Given the emergency circumstances which existed at the time and the potential accessibility of the firearms within homes, the RCMP’s belief that the unsecured firearms posed a threat to public safety was not unreasonable.

The second question to be asked is whether the public safety risk justified the seizure. Unfortunately, the case law is of limited assistance in answering this question. The overwhelming majority of reported legal cases focusing on seizures arise when charges have been laid. Those cases which deal with emergency scenarios are infrequent. However, there are references to public safety in a number of cases.

The closest case on point is the previously cited *Paterson* decision.⁶⁰ This case emphasizes the importance of public safety considerations in the context of existing legislation. This expansive interpretation has not been tested by subsequent courts, but the underlying framework of a seizure for public safety purposes as countenanced by the facts of this case mimics that of the plain view

doctrine. The first two elements remain unchanged:

- the police must be lawfully present in the premises; and
- the item must have been discovered inadvertently.

The third prerequisite would have to be modified:

- it must be immediately apparent that the item poses a threat to public safety.

This is arguably a reasonable and common sense approach. However, at present there is no clear guidance from the courts on this issue and, accordingly, it is not possible to make a definitive finding in this regard. A determination of this point will not be possible until the courts have been called upon to rule on the issue or until legislation is passed.

⁵⁹ Green, Stuart P. (2007). “Looting, Law, and Lawlessness.” *Tulane Law Review*. Volume 81, Number 4, March 2007: 1129-1174.

⁶⁰ *Paterson*, *supra* note 53.

Authority to seize in the context of secondary entries not authorized by the EOC

The authority of those members who entered homes for the specific purpose of seizing unsecured firearms which had been identified during an earlier entry of a home by search team or escort members is unclear. The very lawfulness of their secondary entry is unclear, since neither the EMA nor the emergency plans adopted under the authority of the EMA authorized the RCMP to enter buildings for the specific purpose of retrieving unsecured firearms (see the discussion of this issue in Part I, above).

In addition to the lack of statutory authority on this issue, the facts themselves are ill-defined. In that regard, the poor note-taking commented on earlier is again an issue. The relevant circumstances are either not reported or poorly described.

For example, the contemporaneity of police actions is often unascertainable. The time that a member located an unsecured firearm during the initial entry is recorded in only a few instances. The time of the seizure during the secondary entry is often unknown, as is the identity of the member who seized the firearm.

In those cases in which firearms were seized by boat, the members who found the unsecured firearms also seized them. In the seizures by teams

on foot, the situation is far less clear as to which seizures were conducted by searchers and which by detachment members who attended after being given the addresses of the homes and locations of the unsecured firearms by the former. Even in those cases it is not clear on which occasions the members entered the home, whether the original member had remained behind, and whether the home was open to entry. All of these would be relevant to an assessment of the members' conduct.

For all these reasons, the Commission cannot reconstruct the circumstances of each case. Even if this were possible, the Commission has little guidance from either statutes or the courts to aid in assessing the propriety of the conduct of those members who entered homes solely for the purpose of seizing firearms. The law is unclear as to whether a public safety concern may have allowed entry in such circumstances.

The material before the Commission does not contain any information to support that the RCMP considered applying for a warrant or were operating on the understanding that it was impracticable to obtain a warrant.

This is yet another area where the failure of the RCMP to communicate its actions effectively, or submit a report to a justice following a seizure as required (*infra* p. 81), led to public speculation with respect to their motives.

As discussed at page 63, the entries for the specific purpose of seizing unsecured firearms identified during an earlier entry were not authorized under the EMA. To the extent that some of these entries might not have been authorized by the EMA or the common law, any related seizures would likewise be unauthorized.

FINDING NO. 34: Where a secondary entry into a building was not authorized under the *Emergency Management Act* or the common law, the seizure of unsecured firearms was also unauthorized.

Seizures of ammunition

In some cases RCMP members reported seizing ammunition. The descriptions contained in their notebook entries are fewer than for the firearms seizures and there are few instances where the actual type and quantity of ammunition was recorded. Similarly, the rationale for these seizures was not well articulated by the seizing members. The treatment appears to be one in which the RCMP dealt with the firearms and ammunition globally.

As in the case of firearms, the *Criminal Code* creates an offence for the unsafe storage of ammunition.

Subsection 86(1) of the *Criminal Code* provides as follows:

86. (1) Every person commits an offence

who, without lawful excuse, uses, carries, handles, ships, transports or stores a firearm, a prohibited weapon, a restricted weapon, a prohibited device or any ammunition or prohibited ammunition in a careless manner or without reasonable precautions for the safety of other persons.

Unlike subsection 86(2), which links the unlawful storage of firearms to regulations made pursuant to the *Firearms Act*,⁶¹ the unlawful storage of ammunition in subsection 86(1) is linked to carelessness or a lack of regard to the safety of others. However, in assessing these factors the courts have taken the *Storage, Display, Transportation and Handling of Firearms by Individuals Regulations* into consideration.

In *R v Rousel*, [2014] AJ No. 376, the Alberta Court of Queen's Bench found the accused guilty of carelessly storing ammunition pursuant to subsection 86(1). The court specifically noted that the ammunition and firearms were stored together in an unlocked container. In so finding the court cited the standards in firearms storage regulations.⁶²

⁶¹ *Supra*, p. 64.

⁶² Also see *R v Johnson*, 2011 ONSC 6053 (CanLII), where the court held that ammunition was carelessly stored under subsection 86(1) and noted that the regulations

In the present cases, where RCMP members recorded seizing ammunition, the ammunition seized appeared to have been in proximity to unsecured firearms and in plain view, which would support the members' determinations that the storage amounted to an offence under the *Criminal Code*. As was the case with firearms, the ammunition stored illegally was subject to seizure both pursuant to subsection 489(2) of the *Criminal Code* and the plain view doctrine, as it was evidence of the commission of an offence under subsection 86(1).

However, the note-keeping on this issue was particularly wanting and as such it is not possible to determine if all seized ammunition was unlawfully stored and, thus, properly seized.

FINDING NO. 35: In some cases, RCMP members were authorized to seize carelessly stored ammunition pursuant to subsection 489(2) of the *Criminal Code* and the plain view doctrine.

FINDING NO. 36: There is insufficient evidence to conclude that every ammunition seizure was authorized by law.

relating to firearms storage prohibited storage of ammunition "in a place that is readily accessible to the firearm."

SEIZURES OF ITEMS NOT IN PLAIN VIEW

In its review of the validity of the home entries, the Commission found that members were authorized to enter homes for varied reasons, as stated earlier in the report. Each entry addressed a specific purpose and in some cases permitted searching for people. It would not have been appropriate for the RCMP members to have searched locations where people would not reasonably have been found, such as cupboards or drawers. Nor did they have any legal authority to conduct a warrantless search for firearms.

In the normal course members make detailed notes when conducting searches and seizures. These notes are normally an essential part of the evidentiary record in criminal proceedings. This practice was not followed in this case, as teams of searchers usually had only one person recording notes which were generally far too sparse to be of assistance in clarifying this issue. While this may have been a natural consequence of the urgency with which the members needed to proceed, it limited the value of the written record for what turned out to be a very contentious set of actions.

During the investigation, several witnesses came forward to report that their firearms had been hidden, yet had been confiscated by the police. Eleven witnesses raised concerns about the RCMP specifically searching for firearms.

These include the following types of activities:

- searches of closets;
- a search of a cupboard;
- a flipped mattress;⁶³
- searches of boxes or trunks;
- searches under clothing or linens; and
- searches of drawers.

Two such reports are demonstrative of this issue. In the first, the firearms owner reported that he had safeguarded his firearms in an upstairs closet. The long guns were stored standing and visible when the closet was open. The handguns were hidden under towels and linen. Yet both sets of guns were seized by police. In the second case, the firearms owner indicated that his firearm had been placed under a sleeping bag in his garage.

The RCMP had only the limited authority to search for the protection of life. While opening the door to a closet may arguably be a reasonable measure to accomplish that goal (for example, on the assumption that a child might have sought refuge in a closet), lifting linens and the like is clearly beyond the scope of the search authorized by virtue of either the plain view doctrine or the operation of subsection 489(2) of the *Criminal Code*.

⁶³ There were reports from the pet rescue teams that mattresses were flipped in order to retrieve cats which were hiding under beds.

The reports of the aforementioned witnesses that their firearms were hidden and not in plain view, the fact that the firearms ended up in the custody of the RCMP, and the lack of a written record to explain the details of the seizure support the proposition that on these occasions the RCMP searches exceeded the authorized scope.

Although no firearms were reported seized from boxes, trunks or drawers, the reports that these locations were searched would also support the premise that the searches exceeded their scope. It is not reasonable to expect a search of these areas to result in the detection of people in need of assistance or of pets. Insofar as RCMP members engaged in these activities they exceeded the prescribed scope of their search functions.

More detailed records exist in relation to the five occasions in which marijuana was discovered and seized. The first two such seizures took place on June 24. Both of these cases arose when search and rescue teams came upon what they described as grow operations during the final day of the searches to protect life. On both occasions out-of-town members who were providing relief at the detachment were called in to seize the grow operation equipment, marijuana and unsecured firearms.

In the first instance, the records do not give rise to any concern with respect to how the search was

conducted, specifically that it went beyond the areas which had been searched by the STO team while looking for people in need of assistance. A member of the STO team had remained behind to aid the members. The grow operation⁶⁴ was dismantled and the seized items were returned to the detachment where Sergeant Dan Powers, then Acting Detachment Commander and Operations Non-Commissioned Officer for the High River Detachment, directed that it was to be treated as a “no case seizure,” that is to say that no charges were to be laid.

The second case that day provides the clearest example of an overly broad approach to the searches. Once again the detachment was called to assist with the seizure of marijuana and unsecured firearms. The responding members were again escorted by an STO member and were led to a room where they seized unsecured firearms and marijuana, which was later catalogued as weighing 789 grams. However, they did not stop there. Purportedly because firearms parts and ammunition had been found in the home, the members conducted an intrusive search. They located three sets of brass knuckles in a “bedroom cabinet.” These items were seized as prohibited weapons.

⁶⁴ The grow operation could be described as small, consisting of only five plants and jars of harvested marijuana.

The members located a small black safe in a bedroom closet. They also found a set of keys in the same drawer in which they had found the brass knuckles. They used these to open the safe, which contained more than \$10,000. This money was also seized. They then continued a visual inspection of the house and located two magazines which appeared to have been altered to permit loading more cartridges than permitted by law. These were seized, as their possession was prohibited in their altered capacity.⁶⁵

The searches of the cabinets and safe were a clear departure from the original purpose of the warrantless search for people and were unreasonable.

The three remaining marijuana-related seizures all appear to have arisen as a result of the home inspection teams contacting the detachment. However, the RCMP members failed to accurately record which areas of the homes had been visited during the home inspections. Without such details, at least on one occasion, the RCMP members appeared to have searched beyond the limited area that had been identified by the home inspection team. This amounts to one other instance in which it appears that the detachment members expanded the search from its

⁶⁵ These seizures were later followed by charges of possession of a controlled substance for the purpose of trafficking, possession of property obtained by crime and possession of a prohibited weapon.

original purpose. The detachment members were called in to seize items and were not empowered to search independently.

There is sufficient evidence to conclude that in several cases the searches were not restricted to the stated goal of protecting life. While the searches were intended to locate people in need of assistance, it is apparent that in several cases the searches expanded beyond this legitimate purpose and became an unauthorized search for firearms or contraband. Those cases identified involved the initial discovery of unsecured firearms or contraband in plain view. This was followed by an expanded search in areas in which there was no possibility of finding people in need of assistance, effectively a search for firearms or contraband. The RCMP acknowledged that no warrants were obtained to permit an expanded search and, accordingly, the Commission finds that these expanded searches for firearms or contraband were unreasonable.

Similar to the lack of guidance noted above with respect to the seizure of firearms, there is no record that RCMP supervisors turned their minds to providing guidance to the members with respect to their legal authorities to search and seize items. The notations of members involved in seizures, especially of marijuana, demonstrate a marked lack of appreciation for the constraints on their powers to search.

FINDING NO. 37: In several cases the searches exceeded their authorized scope by expanding from a search for people or pets to a search for firearms or contraband.

FINDING NO. 38: RCMP supervisors failed to provide sufficient guidance to members in relation to the scope of their authorities to search buildings.

FIREARMS REPORTING AND RETURN

As is the case with entries to private residences, the seizure of an individual's property has serious implications when assessed against that person's liberty interests. For this reason, Parliament has enacted legislation which specifically requires the police to report the seizures to the court and to return the property seized as soon as practicable to the owner if it is not needed in the court process. Since the enactment of the *Canadian Charter of Rights and Freedoms*,⁶⁶ post-seizure judicial supervision has become a central component of search and seizure law in Canada.

Reporting of firearms seizures

Paragraph 489.1(1)(a) of the *Criminal Code* requires the police to report to a justice after they seize something (where there is no dispute

⁶⁶ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [Charter].

as to who is lawfully entitled to it and provided the item is no longer required by the police). This provision applies equally to seizures pursuant to a search warrant and warrantless seizures, whether authorized by statute or the common law.⁶⁷ The requirement is that the item be returned to the person lawfully entitled to it and a report be made to a justice “as soon as is practicable,” in other words, “without unreasonable delay.”⁶⁸

Therefore, in the ordinary course, any seizure by the police requires an ensuing report to a justice. Sections 489.1 of the *Criminal Code* helps to ensure that seized property is ultimately returned to its owner or that continued detention of seized property is justified.

In *R v Backhouse*, Mr. Justice Rosenberg, writing for the Ontario Court of Appeal, noted that section 489.1 of the *Criminal Code* reflects Charter values and principles, and favours judicial supervision.⁶⁹ This provision is part of a scheme that includes section 490 of the *Criminal Code* “and that is designed to regulate state activity that interferes with privacy interests.”⁷⁰

RCMP members did not report any of the firearms seizures to a justice

pursuant to paragraph 489.1(1)(a) of the *Criminal Code*. No rationale was provided by the RCMP for the failure to comply with this important legal obligation. Moreover, there is no record of any consideration being given to this obligation. The fulfillment of this requirement would have benefited the public and the RCMP alike by affording an independent review of those singular actions in a more timely fashion than this comprehensive review. It would also have served to provide judicial guidance on the practices which should be undertaken the next time a similar situation occurs.

The judicial oversight component of warrantless seizures cannot be overstated in the context of police officers taking personal property from a home. Parliament has indicated its desire to regulate the warrantless seizure of personal property in a manner that ensures police accountability, transparency and judicial oversight. Had the RCMP reported their seizures to the court, it may have addressed many of the concerns and criticisms from residents, the media, and politicians.

FINDING NO. 39: RCMP members failed to report to a justice to show that they had reasonable grounds to undertake warrantless seizures pursuant to paragraph 489.1(1)(a) of the *Criminal Code*.

⁶⁷ See *R v Backhouse*, [2005] OJ No. 754 (CA [Backhouse]).

⁶⁸ *R v Butters* 2014 ONCJ 228; *R v Kift* 2014 ONCJ 454).

⁶⁹ *Backhouse*, *supra* note 67 at para 110.

⁷⁰ *Ibid.*

FINDING NO. 40: The RCMP failed to provide adequate supervision with respect to the duties of members pursuant to paragraph 489.1(1)(a) of the *Criminal Code*.

Return of firearms

The second aspect of legislative direction on seizures is the requirement to return seized items. There is a much clearer written record of how this was achieved for the firearms in comparison to the reporting of those seizures. In the case of the firearms return, Staff Sergeant Kevin Morton prepared a written plan, and records of each return were logged.

Paragraph 489.1(1)(a) of the *Criminal Code* requires that a seized item be returned to the person lawfully entitled to it where there is no dispute as to entitlement, as long as the police no longer need to retain the item.

The seized firearms were turned over to detachment personnel. They were delivered in the bottom of boats or the trunks of cars. The chain of custody was poorly recorded and the lack of computers and Internet access hampered the cataloguing process. When Staff Sergeant Morton temporarily assumed command of the High River Detachment on June 24, he began a more structured approach to the storage and cataloguing.

Staff Sergeant Morton stated in his interview with a Commission investigator that, shortly after arriving in High River, he became concerned about the firearms “being hauled around like cordwood.” He noted that the storage of the extensive number of firearms involved piling them in groups on the floor, sometimes with only a “sticky note” to identify the address from which they were seized. After assessing the firearms situation at the detachment, in which a secure garage bay had been cordoned off exclusively for firearms storage, he obtained bicycle racks from a nearby school and obtained blankets. This enabled the piles of seized firearms which had been laid on the ground to be stacked in the racks. His primary aim was to “treat them respectfully and protect them.” The firearms were still grouped in units and a plan was devised to properly catalogue each unit.

He was also successful in obtaining members with advanced knowledge of firearms regulations to oversee the cataloguing⁷¹ and preparation of files which would facilitate their eventual return. Identifying the owners of restricted firearms was a relatively simple task, as owners are required to register restricted firearms through the Canadian Firearms Program.

⁷¹ Early cataloguing was accomplished by completing exhibit forms by hand, as the computers were not operational for electronic tracking.

A major challenge in the return process was attempting to identify the owners of non-restricted firearms, which constituted the majority of seizures. Initially, the RCMP's knowledge of a firearm was its description, serial number and the address from which it was seized. Staff Sergeant Morton stated that efforts were made to identify the owners by searching police databases, the Canadian Police Information Centre and the Police Reporting Occurrence System. These searches focussed on the firearms to see if there were any reports relating to them. The rationale for these searches was that they might identify the firearms owners and could also alert the members if the firearms were stolen. None were.

Save for the prohibited magazines in the case noted above, all of the firearms were either restricted or non-restricted, which meant that they could be legally possessed with the proper permits. Staff Sergeant Morton indicated that these factors, ownership and licensing, needed to be addressed prior to returning a firearm to its owner.

With respect to the police database searches described by Staff Sergeant Morton, the Commission finds that it was reasonable for the RCMP to verify that a firearm had not been stolen to ensure it was returned to its lawful owner.

Staff Sergeant Morton further stated that once the gun seizures became a public issue he experienced

pressure to return the firearms as quickly as possible. During his interview he stated that it was even suggested that the firearms be returned to the residents at their homes as people returned to them. He responded that this suggestion was unreasonable. First, he did not have the personnel to accomplish the task. Second, he had no way to determine who the firearms owners were or whether they were properly licensed.

Eventually Staff Sergeant Morton set up a system whereby the purported owners had to attend the detachment and generally identify their firearms and from where they had been seized. In addition, they had to produce proper identification, including a possession and acquisition licence and photo identification.

Owners without the required permits, which had often been lost in the flood, were aided by detachment members who would telephone the Canada Firearms Centre to confirm their documentation. In other cases efforts were made to expedite the application for permits by firearms owners. Owners were allowed to transport restricted weapons to their residences even without the required transportation permit.

Staff Sergeant Morton explained that there were three possible outcomes when an owner attempted to recover his or her firearms:

- The owner left with the firearms.
- The firearms were left at the detachment for safekeeping⁷² either until such time as the owner had secured a place to store them or until the owner received the proper permits.
- The owner requested the destruction of the firearms usually because they had been damaged in the flood.

All firearms were eventually returned to their owners except for those that remained unclaimed or whose owners requested their destruction, as well as two firearms found in a park whose owner could not be identified. As of December 19, 2014, the two firearms found in a park remained unclaimed. Additionally 16 firearms were still in the care of the High River RCMP Detachment at the request of the firearms' owners.

FINDING NO. 41: It was reasonable for the RCMP to query seized firearms on the Canadian Police Information Centre database.

FINDING NO. 42: Seized firearms were returned in as orderly and timely a manner as was possible in the circumstances.

⁷² It should be noted that the RCMP also received firearms for safekeeping from residents who could no longer store them because of the damage caused by the flood.

C. ADEQUACY OF RCMP POLICIES, PROCEDURES, GUIDELINES AND TRAINING

This public complaint investigation identified two types of policy issues. The first dealt with situations in which the RCMP did not have policies, procedures or guidelines in place. The second involved areas where policy existed but was not adequate to fulfill the objectives for which it had been created.

External communications is the first policy area to address when assessing deficiencies that detracted from the overall RCMP response. Communications issues had a direct impact on both the perceived and actual success of RCMP operations during the flooding in High River.

This section will also look at gaps in RCMP policies and procedures with respect to the legal powers of members to arrest citizens who fail to comply with legitimate evacuation orders, and to conduct entry, search and seizure in homes when acting under the EMA; lack of policy regarding the evacuation of RCMP members acting as emergency responders who reside in evacuation areas; and gaps in Incident Command System (ICS) training among RCMP members involved in responding to the emergency.

EXTERNAL COMMUNICATIONS IN EMERGENCY SITUATIONS

The Commission employed a public communications professional to review the RCMP's external (i.e. public) communications during the emergency response to the High River flood.

The Commission's review involved interviews of witnesses who played a key role in or had specialized knowledge of RCMP communications. This information was supplemented by emails, notes and plans relevant to the emergency communications during the flood response. The review of this information revealed the following factual elements relevant to the analysis of the RCMP's handling of external communications during the flood.

Background

Sergeant Patricia Neely, "K" Division Media Relations Officer, indicated that on the first day of the flood, the communications team tried to cobble together resources and scribble down an initial strategy that was described as "fly-by-the-seat-of-your-pants."

Sergeant Neely and Mary Schlosser ("K" Division Communications Strategist) made best efforts to identify employees who could assist with media relations from a list of individuals with media relations training in "K" Division. Unfortunately, this list was not up to date. Staff

Sergeant Brian Jones, an experienced Media Relations Officer from Saskatchewan, was able to join the communications team on Day 2. Inspector Garrett Woolsey was also assigned as the lead RCMP spokesperson for High River.

In addition to identifying Media Relations Officers and assigning them roles and responsibilities, some of the early actions taken after the onset of the flood included setting up a 24-hour media relations phone line (which became operational on Day 2 of the crisis), issuing media releases, and planning and executing media scrums. Some RCMP members executed a number of communications functions, many of which were defined within the ICS protocol.

By the end of Day 2, an ad hoc "plan" was outlined in an email by Inspector Woolsey. This plan required the appointment of a Media Relations Officer available for inquiries 24 hours a day. An overnight officer was tasked with media monitoring and preparing updates and releases to go out to the media first thing in the morning. Regular media availabilities were to be scheduled at noon and 4:00 p.m. in High River and Calgary to provide status updates on the progress of operations. Also, senior RCMP representatives were to present whenever possible along with relevant emergency management officials.

The RCMP experienced significant delays in recruiting communications support (such as photographers, videographers and social media experts), which made the first days following the flood challenging.

On Day 3, the EOC noted that concerns about damage done to homes by RCMP members could lead to media questions on that issue. However, it does not appear from the record that this question was followed up with the communications team.

Sergeant Neely indicated in her interview that “[i]n the first few days, quite frankly, we weren’t involved [in divisional EOC briefings] . . . I think they simply didn’t recognize the importance of communications being around the table.”

Day 3 also saw requests from the communications team for information about rescuing pets and what efforts were being undertaken. RCMP Media Relations Officers were receiving calls about pets and could not provide any relevant or timely information even though plans were in place and being acted upon to rescue pets from homes.

Around Day 4, challenges began to arise for RCMP communications efforts when telecommunications infrastructure was restored and social media quickly filled the void for information. The reports of RCMP actions concerning entering homes and causing damage were being disseminated quickly and a number

of residents proposed civil disobedience and storming back into town through checkpoints. These reports found their way to media outlets and eventually to politicians. By this time, the tone had been set and any communications efforts by the RCMP were now defensive and reactive.

Day 5 saw the release of the RCMP Media Relations Plan, which identified the potential for citizens to publicly voice dissatisfaction with police efforts. However, the document did not go any further to flesh out the specific issues that might generate public criticism (such as how to respond to residents’ questions about being prevented from returning to their homes), nor did it provide any guidance on key messaging to address the issues or on mechanisms to deliver those messages. Also of note, the strategy section of the Media Relations Plan identified the need to “track media calls in order to identify trends that require [National Headquarters] notification.” The document did not articulate how issues would be identified, tracked and proactively influenced over time; rather, it outlined the fastest way to get that information to RCMP National Headquarters.

It is around Day 7, when the story about firearms seizures in High River gained traction, that the communications team was asked to take on a more meaningful role. In the initial days of the flood, the communications team was not

provided with fresh or current content and was therefore ill-prepared to respond to journalists, particularly when following up on reports of RCMP members entering homes and removing firearms therefrom.

While there was recognition internally about the need to communicate the rationale for the seizures, the RCMP did not provide a complete response to public and media queries:

We are fielding same questions [about firearm return procedures] in follow-up interviews. Have said that process will be worked out in due course/asap with the help of RCMP firearms experts. A release on this topic as well as clarity around the legal authority to enter homes would be good.

—June 28 email from
Inspector Garrett Woolsey

A media release was issued around noon on June 28, providing the RCMP's rationale for the firearms seizures and a reassurance from Assistant Commissioner Marianne Ryan:

The last thing any gun owner wants is to have their guns fall into the wrong hands. Residents of

High River can be assured that firearms now in possession of the RCMP are in safe hands, and will be returned to them as soon as is practically possible. Gun owners will also be provided the option of having the RCMP keep the guns until they are able to store them safely.

On Day 9, there was intense media interest for what had become the High River "gun grab" story. While media outlets were seeking information about firearms seizures from High River homes, the RCMP was still working on an operational plan, which made it difficult to respond in a meaningful way without straining credibility. The procedures for firearm returns were not yet finalized, and operational commanders insisted on keeping some of the basic information out of the public domain.

The RCMP's relationship with the media was tested further when the "K" Division communications team was instructed by RCMP National Headquarters to forward journalist enquiries about the firearms issue to the Media Relations Unit at Headquarters. Sergeant Neely described the impact of this decision as follows:

As soon as it went to firearms, National takes over . . . and the media would call me massively frustrated. . . . because they couldn't get any kind of answer from National on anything . . . or they would get an answer that simply did not meet their needs in any way, shape or form.

On Day 11 (June 30), the RCMP released a "Police Officer Handout" that identified the member's roles and responsibilities, but offered little direction on how to provide relevant or material information to residents. RCMP members in the field were the main contact points and they were provided with limited guidance with respect to communication.

Analysis

The factual considerations described above reveal communications issues that may be divided into the following six themes:

1. Recognizing the importance of communications planning.

2. Recognizing the role of communications in the emergency operation.
3. Resourcing to meet communications needs.
4. Ensuring coordinated communications within the RCMP.
5. Coordinating communications with partners in the EOC.
6. Issues management.

Each theme will now be discussed in turn.

Recognizing the importance of communications planning

A comprehensive communications plan is essential to an organization's ability to effectively manage a crisis. The RCMP's Strategic Emergency Management Plan highlights the importance of clear communications, as follows:

Clear communications by appropriate authorities are a critical and continuous process before, during and after an emergency. Prior to an emergency, communication objectives focus on public education concerning emergency management to enhance awareness of hazards, risks and vulnerabilities; strengthen prevention, mitigation and preparedness measures; and provide information on all aspects of emergency management. Public alerting communicates warning

messages that a disaster is imminent.

Communications during and directly after an emergency explains and guides immediate response actions to minimize impacts and protect safety. These communications are instructive on the requirements for short, medium and long-term recovery.

To be effective, crisis communications should be proactive, which means disseminating relevant information within a context that supports the organization's mandate and promotes the merits of its decisions (i.e. garners support and confidence from the very people they are attempting to serve). A reactive approach often results in an issue or incident being framed by interests that may be unsupportive or working in direct opposition.

In order to assess the effectiveness of the RCMP's communications planning it is first necessary to review the pre-operative communications planning instruments. This will be followed by a review of the communications planning which took place during the emergency response.

The primary national RCMP document was its Strategic Emergency Management Plan that identifies the importance of planning at what it calls the Preparedness

Phase, which "entails developing and maintaining effective emergency management policies, procedures and plans, and exercising them to validate and practice them." It suggests that preparedness may include:

- Plans and Procedures. Develop and maintain risk-based all hazard civil response and continuity of operations plans that are internally coordinated and externally integrated with partners;
- Readiness. Conduct training, drills and exercises in order to validate plans and practice employees and volunteers in their emergency roles to ensure readiness to respond;
- Emergency Public Information. In collaboration with partner agencies maintain consistent and constant contact with the public for emerging emergencies;
- Communications Strategy. On an ongoing basis ensure all employees are aware of their roles and responsibilities within emergency response plans and of their individual responsibilities to be ready to respond.

Divisional- and detachment-level emergency plans do little more than identify a media liaison role and identify the person responsible for

overseeing the communications function. According to “K” Division’s basic emergency operation plan, external/public communications functions are assigned to the Division Media Liaison, to be overseen by the divisional EOC. The High River detachment plan assigns those functions to the High River Media Liaison and the Command Post Manager. There is no indication in the plans of what those roles entail in emergency situations, how those roles should be coordinated between the different levels, or how the communications functions relate to the success of the operation itself.

RCMP policy and procedure documents should identify that the role of communications in an emergency operation is more than directing people what to do.

The plans in existence prior to the flood were not sufficiently robust or detailed to aid in the initial response.

The insufficient preparation at this stage carried over to the planning which took place during the emergency response and was noted by various members with communications responsibilities.

The RCMP’s first communications planning document for the High River flood—a basic media relations plan—was not approved until four days after the onset of flooding. This delay left media relations officers and other RCMP personnel with little direction on key messaging or approach during the most critical

period of the crisis. In addition, there was no communications plan for key external audiences other than media.

Due to the chaotic nature of an ongoing disaster, even a well-resourced communications team will be challenged by the scope and volume of tasks, compounded by pressing deadlines. Members of the RCMP communications team in southern Alberta recognized that trying to pull together resources and plan an initial approach while in the midst of a crisis was a flawed strategy.

Inspector Garrett Woolsey (Media Spokesperson) stated:

So in a crisis situation, we are knitting things together and trying to get resources that may or may not be available to us. And if you miss a piece, like the media strategy, well it can hurt you.

RCMP personnel did not have the benefit of well-thought out and detailed communications plans.

Recognizing the role of communications in the emergency operation

RCMP senior personnel interviewed by the Commission confirmed that the integration of communications and operations was irregular and, at times, overlooked. This resulted in delays in considering and approving strategic communications advice whenever it was offered.

The RCMP should build into its emergency response protocols a place for external communications and appropriately reflect the connection to its operational role. Timely and informative communications may yield many benefits:

- Build confidence and trust in the police service and engender greater cooperation from the public;
- Help to reduce speculation and misperception, removing barriers for front-line officers, such as the RCMP members who were faced with frustrated residents at the barricades;
- Generate greater public input, which can be beneficial when police are seeking information to support an operation;
- Mitigate tangential, time-consuming interventions from the media; and
- Provide subject matter expertise at a time when

onsite commanders are focused on operational priorities.

In the present case, RCMP members involved in the operational response failed to appreciate the significance of communications strategies in managing the crisis. The focus was, first and foremost, on saving lives, which is what was expected. Unfortunately, their lack of regard for communications had longer term ramifications.

FINDING NO. 43: Lead RCMP members failed to integrate a strong communications strategy into the emergency response.
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Resourcing to meet communications needs

Incident Command System (ICS) protocols indicate that during the activation phase of an emergency, staffing requirements must be determined and the necessary personnel (i.e. those with issues management and media relations skills) must be assigned to a public information section. However, during the High River crisis, there was no apparent plan in place to determine the number of people required to manage crisis communications, or to ensure that people with the appropriate skills were identified to provide support. In the absence of an existing crisis communications plan, it was difficult to find qualified media relations officers in the Division.

Email communications during the emergency illustrate the challenges which arose from a resourcing perspective. On June 25 an email was forwarded within "K" Division seeking any qualified media relations officers to provide relief in High River. The following day, the difficulties finding available media relations officers were noted in an internal email and permission was sought to reach out to other divisions for assistance.

Activating personnel within the first 24 hours of the crisis, drawing from an up-to-date list of qualified communications resources, would likely have had a significant impact on the effectiveness of the RCMP's

communications function, particularly if those resources had the benefit of an existing crisis communications plan.

It also appears that little support was provided by RCMP Headquarters in Ottawa. Standard operating procedures require the involvement of a crisis management team involving senior RCMP personnel, typically representing those in charge of Contract Policing, Criminal Operations, and Communications at national and divisional levels. However, the Commission's review did not find any formal, ongoing national-level communications presence at the Southern Alberta District's management table. In addition, while there was one clearly defined protocol directing "K" Division to provide RCMP National Headquarters with notification of any issue that could generate national media attention or could be raised in the House of Commons, there was no mention of reciprocal support from the national level to the division.

FINDING NO. 44: Divisional RCMP members with communications expertise were not available in sufficient numbers at the outset of the emergency.

FINDING NO. 45: National RCMP communications staff had limited involvement in the emergency response.

Ensuring coordinated communications within the RCMP

Confusion around roles and responsibilities at different levels in the RCMP, combined with an absence of strategic direction, created significant hurdles for the RCMP's external communications function during the first 72 hours of the crisis.

Inspector Woolsey, who was onsite in High River, stated that the public information officer is the primary communications coordinator under the ICS model. He suggested that the closest role to that would have been Sergeant Neely as the lead media relations officer working out of Calgary. However, he also indicated that some may have believed him to be the lead on external communications, given the internal confusion about the duties and responsibilities of that role.

While the RCMP has Issue Management and Crisis Communication Standard Operating Procedures, interviews with RCMP communications personnel and members of the District's management team provided no evidence that they were aware of such material being available to guide them at the early stages of the crisis. In any event, that document does not provide a clear protocol guiding communications during an emergency response.

In addition to confusion around roles and responsibilities, there was no recognition of the need of front-line members for timely and accurate messaging. Front-line members had the most interaction with frustrated residents, and often journalists. The ability of those members to listen, address concerns, communicate key messages, and provide relevant intelligence up the chain of command was vital to the successful management of the crisis.

In consequence, the RCMP was largely reactive and tactical during this crisis. Best practice models consistently reinforce the importance of being proactive and strategic. This is particularly important at the onset of a crisis when people inside the organization and members of the public are forming strong first impressions about the quality and effectiveness of the emergency response.

Coordinating communications with partners in the EOC

The province's emergency management legislation mandates responsibility for the operation, including communications support, to the authority declaring the state of local emergency, i.e. the Town of High River. In practical terms, therefore, Town officials were responsible for making operational decisions and informing the public about them.

Chief Superintendent Kevin Harrison stated:

[I]f there were communications emanating out of that situation, the primary responsibility for those communications was the local authority.

Members of the communications team confirmed the general understanding that RCMP members were in High River to aid the local authority.

That being said, the RCMP participated daily in the media availability sessions. Chief Superintendent Harrison indicated that while ideally all public communications needed to flow through the local authority, that had not been the case. He suggested that the RCMP could have pushed its partners harder to be more proactive with respect to messaging, although in the first few days, there was no capacity to do that.

RCMP resources were insufficient to support an ongoing presence in the EOC. This prevented the RCMP from contributing to key decisions regarding communications approach and messaging. According to Staff Sergeant Brian Jones:

We tried to communicate the facts. We tried to communicate the reasons for our actions within that structure. We didn't run off

and call our own briefings... We always worked within that Government of Alberta, Town of High River structure because that's why we were there. We didn't make the decision to extend the evacuation. We didn't make the decision to keep them on the other side of the barricades. But we wore it. We were the people at the barricades that [residents] were upset at.

The RCMP's 2012 Evacuation Operations *Best Practices* guide identifies as a best practice the development of an evacuation communications plan with partners to guide communications activities and messaging. It recognizes the need to inform the public and increase their understanding of what is to occur to help reduce or limit possible interference with police activities, to answer questions, and to allay fears. The document stresses the importance to the RCMP of coordinating communications with partners as a requirement for the successful execution of policing duties in an emergency response. Discussions with key partners should take place in advance of a crisis to ensure that the RCMP has a seat at the table. This is done not simply to avoid "wearing" the negative fallout from decisions made by other

authorities (as well as themselves), but rather to ensure that the RCMP is able to obtain and maintain the public support and confidence needed to successfully manage its operational response to a crisis.

Issues management

Deficiencies in the RCMP's communications approach directly affected the public response to RCMP enforcement of the extended evacuation orders, RCMP forced entries of homes, and the seizure of firearms from some of those homes.

On the positive side, when evacuees expressed concern about stranded pets, a decisive operational response combined with a timely media release helped to mitigate resident concerns. However, most of the external communications story is one of failure.

When residents evacuated the town of High River, many believed they would be going back in two or three days. Pets were left behind and people were unaccounted for; while over 300 residents did not leave the town. According to Chief Superintendent Harrison, people wanted to know when they could go back, the condition of their houses, how their loved ones were faring, etc. Information came from social media, but not from the RCMP. Chief Superintendent Harrison indicated that he did not think people understood just how dangerous it was in the town, even after the water receded, with sink holes, gas

leaks, etc., and that "the whole situation didn't get effectively conveyed."

Although the local authority ordered the extended evacuation, the RCMP enforced the order and required continuing cooperation from residents to leave and remain outside the town. Greater effort was needed to convey the extent of the emergency, such as by providing video or photographic depictions of conditions in the town and police efforts. However, "K" Division videographers were not deployed during the critical early stages of the flooding, but only after increasingly negative media coverage.

In another example, as early as June 21, divisional EOC minutes identified a potential issue regarding damage done by RCMP members when entering secure residences. The concern was based on an unknown number of calls received at the High River EOC and the Southern Alberta Operational Communications Centre. However, there is no indication that the RCMP attempted to explain their actions in response to these reports. In the absence of information from the RCMP, residents could only speculate about why RCMP members were breaking into and damaging homes. The RCMP was forced to react to angry accusations of extensive damage from already frustrated residents.

This was also the case with respect to the firearms seizures, which became

the story on June 27. The RCMP had been seizing firearms since June 21 but had not flagged this as a communications issue. Chief Superintendent Harrison indicated that seizing firearms sitting unsecured in a home was a “no brainer” from a policing perspective, and noted that some people in the community at that time still were not evacuating, including a high-risk offender. Regardless of how natural a process this may have seemed to the RCMP, these seizures still amounted to a significant intrusion on the liberties of residents of the town. It should have been readily apparent that this information needed to be conveyed to the public in a timely and transparent manner.

However, it was not until external forces broached the issue and set the tone of the debate that the RCMP finally responded. An email dated June 27 from Sergeant Neely refers to the first RCMP response:

We are currently drafting a release indicating that in the course of searching for humans, if a firearm was located AND was insecurely stored, it was seized for safekeeping only. The guns have been stored at High River detachment and will be returned to owners when proof of ownership supplied. No charges [for] unsafe storage will be

contemplated at this time. Any guns in lockers, secured in areas or where a human could not be (i.e. drawers, cupboards, small spaces) were not seized. There were no specific searches for guns, only seized [if] found incidentally to search and rescue mission.

This information had been known to RCMP incident command from the outset of the seizures. The failure to convey this information from the start resulted in the RCMP losing control of the issue as other voices filled the void. The RCMP’s approach amounted to an opportunity lost.

Commission interviews and document reviews indicate that communications personnel were not fully informed regarding the seizure of weapons from homes in High River. There is no evidence to suggest that operational communications personnel considered the implications of the firearms seizures from a strategic communications perspective. Many members interviewed indicated that the seizure of improperly stored firearms was considered a routine matter and it was not flagged as an issue from a communications perspective. This suggests that the RCMP might have benefited from a non-policing perspective provided by communications experts in order to identify potential issues.

A more successful approach was taken with residents at the reception centre, where issues were identified and communications solutions were sought. A video showing the breadth of damage to the town was shown to residents who did not understand why they could not return to their homes. It provided residents with face-to-face access to official representatives of the emergency response who were available to answer questions and address concerns. The same approach was used at the welcome centre that High River residents visited as they prepared to return to their homes.

Conversely, a June 25 RCMP email outlined key messages for a media availability that were more directive regarding police action as opposed to taking a more empathetic approach by explaining decisions or actions.

Summary

Despite the issues identified above, RCMP communications personnel were able to put some basic public communications elements in place. Early actions included identifying experienced regular members who could function as media relations officers; setting up a 24-hour media relations telephone line on Day 2 of the crisis; taking steps to develop a media relations plan (to the extent possible given the issues outlined above); issuing media releases, and planning and conducting media scrums. However, the absence of appropriate plans and protocols

limited their ability to gather and disseminate timely information about the rescue operation and the actions of members on the ground.

This crisis incident demonstrates the need for the RCMP to adequately resource the communications function at the detachment, district and divisional levels. Policies and procedures should be put in place to ensure a consistent and coordinated approach. Where appropriate, RCMP Headquarters should provide adequate support to communications personnel at the detachment, district and divisional levels. Having public communications plans, supports, and resources in place would have enabled the RCMP to identify potentially problematic issues, to influence how these issues evolved, and to mitigate the potential damage to operations and public trust, which was key to a successful outcome.

FINDING NO. 46: Overall, the RCMP's communications approach to the High River flooding crisis was ineffective and resulted in a negative impact on RCMP emergency operations and reputation.

FINDING NO. 47: The ineffectiveness of RCMP public communications during the High River flood was the direct result of:

- a) inadequate policies, procedures and plans relative to communications;
- b) insufficient training on existing public communications policies and procedures;
- c) poor planning;
- d) under-resourcing of the communications function;
- e) confusion about roles and responsibilities; and
- f) lack of coordination of public communications internally and with partners.

RECOMMENDATION NO. 1: "K" Division RCMP should conduct a comprehensive review of its communications function to address the shortcomings exposed during the High River crisis communications response, ensure proper alignment of communication and operational priorities, and address resourcing of the communications function in the Division.

RECOMMENDATION NO. 2: The RCMP should develop a national crisis communications handbook to identify the objectives, policies, and procedures to be followed during emergency operations.

RECOMMENDATION NO. 3: The RCMP should ensure that emergency management policies and procedures recognize and support the close integration of communications and operations.

RECOMMENDATION NO. 4: The RCMP should work with its key partners to ensure that coordinated communication is recognized as essential to a successful emergency response, and must form part of any future emergency response.

EMERGENCY RESPONSE POLICY

During the flooding at High River, it became clear that RCMP policies and procedures did not adequately address the legal powers of members to arrest people who fail to comply with lawful evacuation orders, nor did they provide clear direction with respect to the members' authorities and duties when entering buildings and performing searches and seizures in an emergency response context.

At the time of the flood the RCMP had emergency operating procedures in place at the national, divisional and detachment levels. These procedures included detailed strategic plans to aid the different units during critical response events. They amounted to broad-based guidance for organizational response. However, no policies, procedures or guidelines existed to assist site responders in their tactical responses, in particular when planning or conducting evacuations. In other words, individual members were largely left without operational policy guidance on how they should respond during an emergency.

The lack of policy clarifying legal authorities and duties in an emergency response situation was a critical issue during the flood. Such policy could have benefited members and residents alike by providing a detailed explanation of the members' powers and obligations under relevant statutes (e.g. *Criminal Code*, EMA) and the

common law with respect to: enforcing evacuation orders; entering buildings for various purposes such as searching for people in distress or escorting pet rescue or home inspection teams; and seizing items in those buildings where issues of public safety or criminal offences arise.

More specifically, given the lack of supervisory guidance noted above in our review of the circumstances surrounding the seizure of firearms by RCMP members, the RCMP should create procedures or guidelines with respect to the seizure of firearms, ammunition and contraband in disaster response situations like the High River flood.

The RCMP should also ensure that all divisions have policy that addresses the specific authorities and obligations set forth in provincial or territorial legislation pertaining to emergency management.

FINDING NO. 48: At the time of the flood, the RCMP lacked a comprehensive policy on emergency response management that outlined the legal authorities and duties of members in emergency situations with respect to:

- a) conducting evacuations and enforcing evacuation orders, including when it may be appropriate to arrest a person who fails to leave an evacuation area;
- b) entering buildings, including a distinction between entries effected pursuant to the common law powers of police and those pursuant to an authorization provided by a provincial or local authority under legislation such as the *Alberta Emergency Management Act*;
- c) searching buildings; and
- d) seizing items in buildings.

RECOMMENDATION NO. 5: The RCMP should review its emergency management policies at the national and divisional level to ensure that they provide clear and comprehensive direction with respect to the legal authorities and duties of its members in emergency situations, taking into consideration the specific authorities and duties set forth in provincial or territorial legislation.

RECOMMENDATION NO. 6: The RCMP should create procedures or guidelines with respect to the seizure of firearms, ammunition and contraband in disaster response situations like the High River flood.

EVACUATION OF RCMP MEMBERS

Concerns arose during this incident regarding the failure of some RCMP members to evacuate. Certain members remained in their homes in the evacuation area in order to respond to the emergency. The RCMP's failure to require these members to evacuate their homes at the same time as other residents contributed to the anger and resentment expressed by some evacuees who felt disadvantaged by complying with the evacuation order. The resentment was compounded by the fact that the RCMP had also failed to force other residents to evacuate. Evacuees were frustrated that they were unable to begin repairing their homes and recovering possessions when those who stayed behind were able to do so.

Sergeant Powers noted that some RCMP members were able to pump out their basements, while others continued to reside in the evacuation zone to sleep between shifts. This was noted by other residents who had been evacuated.

These arrangements came to the attention of Superintendent Smart, who ordered the members to vacate their residences while the evacuation order remained in effect. He also directed that members and firefighters were not to be allowed to return home to tend to their properties when other residents could not. Some of the tension at checkpoints undoubtedly

arose because evacuees felt they were being treated inequitably. Resentment was compounded when they learned that police officers' and firefighters' homes had been spared the damage of forced entries.

Evacuating all RCMP personnel would have set a positive example for the evacuees and avoided the inevitable perception that members were receiving preferential treatment. The police will not typically remove persons from their private property by force, and residents who refused to leave during this event were not forcibly removed. However, members' actions must be considered in the context of their duties and the obligations that flow from that, including their standing within the community. To that end, their conduct should not bring into question their decisions and actions as police officers in an emergency situation. It is also worth noting that their continued presence at their homes could also have resulted in their own need for rescue due to the flooding.

The RCMP should develop guidelines for members that respect their health and safety needs when responding to such emergencies within their own communities, with consideration given to how their conduct will affect the response of other residents. RCMP emergency responders should be directed to vacate their homes when located

within an evacuation zone and where possible.

RECOMMENDATION NO. 7: The RCMP should develop guidelines for members that respect their health and safety needs when responding to such emergencies within their own communities, with consideration given to how their conduct will affect the response of other residents.

RECOMMENDATION NO. 8: RCMP policy or guidelines should direct that, insofar as possible, RCMP emergency responders whose homes are located in an evacuation zone should vacate their homes in accordance with evacuation orders.

IMPLEMENTATION OF THE INCIDENT COMMAND SYSTEM

Implementation of the ICS was negatively affected by lack of or insufficient training in the system among RCMP members involved in responding to the emergency.

The ICS is a standardized site-level emergency management system designed to be expandable and flexible to meet the needs of single and multi-agency incidents, such as natural disasters, hazardous material incidents, planned events, or search and rescue missions. The ICS includes the various levels of support referred to throughout this report: the EOCs and Incident Commands. This overall response, which utilizes a common language and establishes a single,

unified command, facilitates the effective and efficient communication, coordination and collaboration of the various agencies involved in the incident.

With full responsibility and authority for their respective jurisdictional and legal roles, the responding agencies must work cooperatively and within this common structure. Therefore, all agencies must be aware of and follow the ICS for it to be effective. The ICS is built around five primary management functions: Command, Operations, Planning, Logistics, and Finance and Administration. In High River, the RCMP was primarily involved in operations; however, it was required to play a role in each of the five primary management functions to varying degrees.

In his interview with the Commission, Superintendent Smart explained that the nature of police work means that the RCMP primarily serves in an operational capacity during these types of emergency situations and rarely would they be in the command role. This was the case in High River, where the RCMP oversaw many operational duties, including the search and rescue and security operations. During this emergency situation, the RCMP answered primarily to the High River EOC.

Detachment Deployment to the EOC

The first issue which arose during the flood was the detachment response. While the High River EOC had performed successful emergency drills in which the detachment had participated, detachment personnel had no ICS training. That was true for both Corporal Franks, a Watch Commander who acted as the RCMP liaison with the EOC, and Sergeant Powers, who at the time of the flood was the Acting Detachment Commander. It is noted that despite this lack of training, the investigation did not reveal any deficiencies in how the members performed their tasks during the flood; on the contrary, it demonstrated that each worked diligently to perform the tasks at hand, at significant risk to themselves.

Sergeant Powers spoke highly of Corporal Franks' role and the "unbelievable job" she did. The record supports this assessment. That being said, the decision to use Corporal Franks as the original RCMP liaison with the EOC, and then leave her there once Sergeant Powers was on duty, was questionable.

Sergeant Powers had spent the last five years in senior positions in the High River detachment. He had been posted in the same general area for approximately 25 years, knew the area well and was familiar with High River floods and the responses thereto. On the other

hand, Corporal Franks had been in the area for a matter of months and had not experienced a similar event. Corporal Franks indicated that she had not performed front-line policing duties in approximately 12 years and said: "I had no experience whatsoever in terms of emergency managing . . . I was not a first responder. I had been out of the game a long time"

This situation was further impacted by Corporal Franks' inability to contact Sergeant Powers during the early stages of the flooding. Sergeant Powers acknowledged that he wished that he had been contacted about some of the decisions made by the EOC, as he had valuable input. However, there would have been no need to reach out to him for this information if he had been present at the EOC as the RCMP representative.

Sergeant Powers stated that he dealt with issues on the ground while Corporal Franks acted as the interface between the detachment and the EOC command, which was coordinating the various support agencies. He attributed his decision to conflict between himself and Mr. Shapka. Any such conflict should have been set aside during the emergency response. Sergeant Powers' duty was to attend to the big picture and manage the situation as best he could. By his own admission that entailed attending the EOC. While the decision to absent himself from the EOC and assume other responsibilities may not

have had a negative effect on the overall RCMP response, Corporal Franks' deployment there should not have happened for the stated reasons.

As noted above, neither member had ICS training, although Sergeant Powers was scheduled to do so. ICS training emphasizes the need for agencies to work cooperatively with one another.⁷³ Had Sergeant Powers been provided with this training, he would have been in a better position to respond to the crisis and perhaps to recognize the importance that his contributions and experience could have made at the EOC.

FINDING NO. 49: Sergeant Powers, the Acting Detachment Commander of the High River Detachment, should have acted as the RCMP representative at the High River Emergency Operations Centre.

Training of Incident Commanders

On June 21, senior RCMP personnel arrived and established the RCMP's Incident Command. Incident Commanders worked eight-hour shifts and members were switched out of these roles periodically to help keep them rested, in particular to avoid the cognitive impairment associated with fatigue.

Even at this level, not all members had received ICS training. In the case of Staff Sergeant Gord Sage, he stated that he had considerable experience in emergencies when the ICS had been employed. He described his past experiences in positive terms relative to his familiarity with the ICS but assessed the ICS implementation in High River in less favourable terms.

The ICS formed the core framework of emergency response during the flood. The EOC commanders were fully versed in its workings, yet the detachment personnel who played such a pivotal role at the outset of the flooding were not. Furthermore, not all of the senior RCMP officers sent to High River thereafter had ICS training.

By their very nature emergency situations require flexibility in response. It would not be appropriate to restrict responders by requiring them to have training if this were to result in inadequate staffing or response capabilities. Certainly in remote areas, one would not wish to preclude the nearest responders from assuming ICS roles merely because they did not have the training. Nevertheless, a regime could be established which would maximize the prospect of having trained members available to respond to a crisis. Policies which mandated training for detachment personnel and prospective Incident Commanders would be a positive step in this regard. At a minimum, all

⁷³ Emergency Management Division, *CMD110: Incident Command System Level 100* (Justice Institute of British Columbia, 2012) at 12.

Detachment Commanders should have some degree of ICS training.

It should be noted that “K” Division prepared a report following the Slave Lake fire of 2011.⁷⁴ Like the fire, the High River flood required a prolonged emergency response. In both cases this required bringing in outside support trained in ICS to rotate into emergency positions. The report commented as follows:

This underscored the need to ensure all RCMP members are trained to appropriate ICS levels to enable them to work in [*sic*] at all ICS levels and in unified command setting on similar incidents. It is recommended that all detachment personnel be trained to ICS 100 and 200, Detachment Commanders to ICS 300 and Officers should be trained to ICS 400.

From the facts above, it is readily apparent that this reasonable recommendation had not been implemented at the time of the flood.

FINDING NO. 50: The RCMP has not fully implemented the Incident Command System into its emergency preparedness framework.

RECOMMENDATION NO. 9: The RCMP should develop a policy requiring Incident Command System training for key positions, including Detachment Commanders, at a level commensurate with their responsibilities in an emergency response situation.

Note-Taking

Emergency note-taking

This report has remarked on the poor note-keeping of the members during the initial rescue operation and the searches to protect life. This can be explained by the difficulties posed by the environmental and operational conditions facing the members, especially at the outset of the emergency. However, as the work shifted from ad hoc rescue responses—which often made it impossible to spend the time or to physically record the details—to the organized search phase, more could have been done to ensure a proper record.

For the most part, details were recorded almost exclusively by a team scribe. This is a common practice under the ICS protocol. This approach has the benefit of relieving members of a burdensome

⁷⁴ RCMP “K” Division Response, Slave Lake Fire: Actions Taken, Emergency Management “K” Division, 2012-30-03, at 6.

function when their critical attention is required elsewhere. Unfortunately, the detail conveyed in the notes varied significantly and key information was not always recorded.

Staff Sergeant Fuller provided his assessment of the note-taking issue in the following manner:

We had a scribe to each team who were documenting everything. They were nowhere near as detailed as they could have been. They were relying more on the maps and just scrap pieces of paper to record their notes, or their notebooks. And for an operation like this if they're using a normal notebook which is, you know, a couple of inches wide good luck ever keeping notes.

Staff Sergeant Fuller went on to say that he had initiated a new protocol based on the practices of the Major Crime Unit when investigating missing children reports. For example, when an amber alert is issued investigators go door to door and record "everything about the house." They accomplish this by completing a neighbourhood inquiry sheet. Having such a document permits planning of relevant data sections which aid the note-taker in

focussing on key facts. File folders containing these sheets are now kept as standard equipment in STO vehicles.

These efforts are a positive step in improving emergency response note-taking and should be implemented nationally so as to improve the consistency and detail of notes made during emergency events.

FINDING NO. 51: Note-taking by search teams lacked consistency and sufficient detail.

RECOMMENDATION NO. 10: The RCMP should develop national practice guidelines requiring the creation and use of neighbourhood inquiry sheets or similar documentation for emergency responders.

General note-taking

In addition to note-taking during the emergency response, this report has frequently cited inadequate or non-existent note-taking as a hindrance to conducting this investigation. Note-taking by RCMP members has been a topic of interest from the earliest days of the Commission.

In its current iteration national RCMP policy articulates the purpose and benefits of proper note-taking:

1. Investigator's notes serve to refresh memory,

justify decisions made and record evidence. Well documented notebook entries lend credibility to testimony and can substantiate information years after the original entry was made. Inadequate and inaccurate entries in a notebook can compromise an investigation and subsequent prosecution.

1. 2. Members must make notes (written and/or electronic), at the first available opportunity, in order to articulate observations made and actions taken during the course of their duties.⁷⁵

It is the Commission's view that deficient note-taking was not merely a factor during the exigent circumstances which existed during the first days of the flood. The notes gathered during this investigation include those of members assigned escort duties for the pet rescues or home inspections. In several instances these amount to little more than a notation at the start of the shift, the task for the day and the time they went off shift.

FINDING NO. 52: There were several instances in which note-taking by members not engaged in the original emergency response lacked sufficient detail.

In some instances the notebook entries were recording events weeks after the flood hit at a time when the members were assisting other teams and not taking a lead. The exigencies which impacted the initial search teams were simply not in existence. These examples were devoid of the content which one would expect to find. Certainly RCMP policy speaks to substance of notes:

2. 1. Investigator's notes should thoroughly describe the details of the occurrence and answer: who, what, when, where, why, and how.

...

2. 3. Notes should be factual and descriptive enough to explain decisions made.⁷⁶

From a policy perspective, it would appear that the guidelines are sufficiently clear as to what and how members should record information. In an internal RCMP review of note-taking published in July 2014, titled *Audit of Investigator's Notes*,⁷⁷ the RCMP identified two key areas

⁷⁵ RCMP *Operational Manual*, c. 25.2. "Investigator's Notes, s. 1.1 and 1.2.

⁷⁶ *Ibid.*, s. 2.1 and 2.3.

⁷⁷ <<http://www.rcmp.gc.ca/aud-ver/reports-rapports/ain-vne-eng.htm>>

relevant to this review. Specifically, the RCMP found that “[n]otebooks did not always have all of the core components required by policy, and supervisory review of notebooks was not occurring as required.” These systemic failures may help to explain the poor note-taking practices uncovered in this investigation.

To address this issue, the RCMP has recommended that it “establish mechanisms to ensure that supervisory review has been completed and appropriately documented as per policy to address issues of non-compliance.” The Commission agrees with this recommendation. Given that the RCMP conducted this audit after the events in High River and the fact that the Force has indicated a desire to remedy the issue, the Commission sees no need to reiterate the recommendation. Rather, the Commission will be looking to review the actions taken by the RCMP to remediate this problem.

PART V: CONCLUSION

In the end, what should have been a story about heroic actions of countless front-line responders, including many RCMP members, turned out to be something far different for the RCMP.

The RCMP was evidently surprised and responded in a reactive manner to the anger of many High River residents over RCMP members having entered their homes and then seized firearms therefrom. Yet, the community's reaction was somewhat predictable, given that the sanctity of one's home from state interference is a deeply rooted legal principle. This principle was outlined eloquently by British statesman William Pitt in a speech to the House of Commons in 1763:

The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail, its roof may shake; the wind may blow through it; the storms may enter, the rain may enter,—but the King of England cannot enter; all his forces dare not cross the threshold of the ruined tenement.⁷⁸

Various factors identified in this report led to the negative outcome experienced by the RCMP, including a lack of leadership in terms of supervisory guidance and clear policy direction, as well as a failure to articulate and then communicate in a transparent and timely manner the reasons and legal justification for the RCMP's actions.

More specifically, with respect to the lack of leadership in terms of supervisory guidance, the Commission found that RCMP supervisors failed to provide sufficient guidance to members in relation to the seizure of firearms and the scope of the members' authorities to search homes. The RCMP also failed to provide adequate supervision with respect to the duty of members pursuant to paragraph 489.1(1)(a) of the *Criminal Code* to report to a justice to show that they had reasonable grounds to undertake warrantless searches and seizures.

⁷⁸ Speech on the Excise Bill, House of Commons (March 1763), quoted in Lord Brougham, *Historical Sketches of Statesmen Who Flourished in the Time of George III*

(1855), I, at 42; online: <<https://www.chroniclesmagazine.org/blogs/thomas-fleming/defending-the-family-castle-part-i/>>.

As for the lack of leadership in terms of clear policy direction, the Commission found that, at the time of the High River flood, the RCMP lacked a comprehensive policy on emergency response management that outlined the legal authorities and duties of members in emergency situations with respect to:

- a) conducting evacuations and enforcing evacuation orders, including when it may be appropriate to arrest a person who fails to leave an evacuation area;
- b) entering buildings, including a distinction between entries effected pursuant to the common law powers of police and those pursuant to an authorization provided by a provincial or local authority under legislation such as the *Alberta Emergency Management Act*;
- c) searching buildings; and
- d) seizing items in buildings.

The absence of procedures or guidelines with respect to the seizure of firearms in disaster response situations proved to be particularly problematic, as revealed by the controversy surrounding the RCMP's actions in High River.

A lack of leadership was also noted by the Commission in the failure by lead RCMP members to integrate a strong communications strategy into its emergency response. This resulted in a failure to provide timely and

transparent communications with respect to contentious actions such as the forced entries into homes and the seizure of firearms therefrom.

The Commission concluded that, overall, the RCMP's communications approach to the High River flooding crisis was ineffective and resulted in a negative impact on RCMP emergency operations and reputation. The ineffectiveness of RCMP communications was the direct result of:

- a) inadequate policies, procedures and plans relative to communications;
- b) insufficient training on existing public communications policies and procedures;
- c) poor planning;
- d) under-resourcing of the communications function;
- e) confusion about roles and responsibilities; and
- f) lack of coordination of public communications internally and with partners.

The Commission's report recommends that the RCMP take various measures to improve its response to challenging circumstances like the ones faced in High River, particularly through improvements to its policy infrastructure, communications function, and training. These measures would assist RCMP members in ascertaining their legal authorities and duties in the particular context of responding to a natural disaster, supervising their execution, and communicating the reasons and

legal justification for their actions in a timely, effective and transparent manner.

The Commission notably recommends that the RCMP review its emergency management policies at the national and divisional level, to ensure that they provide clear and comprehensive direction with respect to the legal authorities and duties of its members in emergency situations, taking into consideration the specific authorities and duties set forth in provincial or territorial legislation. Furthermore, the RCMP should develop a policy requiring Incident Command System training for key positions including Detachment Commanders, at a level commensurate with their responsibilities in an emergency response situation.

A number of the Commission's recommendations pertain to the RCMP's communications function, since a great part of the loss of confidence in the RCMP over its response to the High River flood arises from its difficulties in communicating effectively with the public during the crisis. Thus, the Commission recommends that "K" Division RCMP conduct a comprehensive review of its communications function to ensure proper alignment of communication and operational priorities, and address resourcing of the communications function in the Division. The Commission also recommends that the RCMP ensure that emergency management

policies and procedures recognize and support the close integration of communications and operations. The Commission further recommends that the RCMP develop a national crisis communications handbook to identify the objectives, policies, and procedures to be followed during emergency operations.

The RCMP will inevitably be involved in disaster response efforts in the future, performing the dual roles observed in High River of law enforcement agency and emergency responder. The implementation by the RCMP of the Commission's recommendations would contribute to maintaining the public's confidence in the RCMP's ability to perform these roles.

Having considered the complaint, I hereby submit my report in accordance with subsection 45.76(1) of the RCMP Act.



Ian McPhail, Q.C.

Chair

APPENDIX A

CHAIR-INITIATED PUBLIC COMPLAINT AND PUBLIC COMPLAINT INVESTIGATION

File No.: 2013-2013

RCMP SEIZURE OF FIREARMS IN HIGH RIVER, ALBERTA

July 5, 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 entering private residences and seizing firearms following flooding in High River, Alberta, in June and July 2013.

Media reports and the RCMP outlined actions taken by RCMP members in High River following the flooding of the area and the consequential evacuation of its residents. Specifically, public concerns arose following reports that members had entered private residences in the area and seized firearms found within those residences. The Prime Minister's Office equally and publicly expressed concern in respect of the seizures.

In light of the foregoing, 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 the activities in High River, Alberta, specifically:

1. whether the RCMP members or other persons appointed or employed under the authority of the RCMP Act involved in entering private residences in High River complied with all appropriate training, policies, procedures, guidelines and statutory requirements;
2. whether the RCMP members or other persons appointed or employed under the authority of the RCMP Act involved in seizing firearms from private residences in High River complied with all appropriate training, policies, procedures, guidelines and statutory requirements; and,
3. whether the RCMP national, divisional and detachment-level policies, procedures and guidelines relating to such incidents are adequate.

APPENDIX B

SUMMARY OF COMMISSION FINDINGS AND RECOMMENDATIONS

FINDING NO. 1: Pursuant to the *Alberta Emergency Management Act*, High River was under a state of local emergency on June 20 and later a provincial state of emergency on June 27.

FINDING NO. 2: Pursuant to the *Emergency Management Act*, the Emergency Operations Centre prepared and authorized the implementation of four emergency plans requiring rescue and recovery, security, search and re-entry of residences.

FINDING NO. 3: Pursuant to the *Emergency Management Act*, the Emergency Operations Centre authorized and instructed the RCMP's entry without warrant and search of every High River building as part of the Emergency Operations Centre's emergency plans.

FINDING NO. 4: RCMP members participating in the emergency response were acting as peace officers pursuant to the authorities and duties derived from the *Alberta Police Act* and the *RCMP Act*.

FINDING NO. 5: RCMP members participating in the emergency response were acting pursuant to a duty derived from the *Emergency Management Act*.

FINDING NO. 6: RCMP members participating in the emergency response were under a common law duty to protect life and preserve public safety.

FINDING NO. 7: Forcible entry was implicitly permitted for the purpose of effecting the searches to protect life, to the extent that the minimum amount of damage necessary was caused.

FINDING NO. 8: While inadequate records were kept, it is reasonable to conclude that given their role in the emergency plans, RCMP members determined the means used to gain entry to the buildings.

FINDING NO. 9: Given the emergency circumstances which existed during the 72 hours of the searches to protect life, the entry of homes without a warrant by the RCMP was a justifiable use of police powers in furtherance of their common law duty to protect life.

FINDING NO. 10: Given the emergency circumstances which existed at the time, the reasonable use of force to enter buildings to protect life was justified.

FINDING NO. 11: It was reasonable for the RCMP members to secure buildings after completing their search.

FINDING NO. 12: The decision not to bring in equipment and extra resources to secure buildings which had been damaged by entry was reasonable in the circumstances.

FINDING NO. 13: Given the emergency circumstances which existed during the time of the initial entries to protect life, the entry of all buildings in furtherance of the EOC order was appropriate.

FINDING NO. 14: The RCMP conducted entries for the retrieval of personal property at the request and with the consent of residents.

FINDING NO. 15: RCMP members were present during entries for the purpose of rescuing pets mainly at the request and with the consent of residents.

FINDING NO. 16: RCMP members entered homes to escort pet rescue personnel and ensure their safety.

FINDING NO. 17: The Emergency Operations Centre authorized the inspections of buildings in the town of High River as part of the emergency plan.

FINDING NO. 18: Pursuant to the *Emergency Management Act*, the Emergency Operations Centre authorized and instructed the RCMP's entry of High River buildings without warrant to escort home inspection teams as part of the emergency plan.

FINDING NO. 19: The Emergency Operations Centre did not direct how buildings were to be entered but did assign the RCMP to supervise the entries.

FINDING NO. 20: RCMP members failed to maintain proper notebook entries during their escort of home inspection teams, in particular with respect to the use of force to gain entry into buildings.

FINDING NO. 21: Pursuant to the direction of the Emergency Operations Centre that the RCMP supervise the entries of the home inspections, the use of force to enter buildings was authorized by the *Emergency Management Act*.

FINDING NO. 22: RCMP members' entries of buildings unaffected by the flood to facilitate home inspections were directed by the EOC, and the RCMP's forcible entries were authorized by the emergency plan only insofar as minimal damage was caused.

FINDING NO. 23: In a number of cases, RCMP members' forcible entries to facilitate home inspections caused significant damage and were not reasonable in circumstances where buildings were unaffected by the flood.

FINDING NO. 24: The secondary entries for the specific purpose of seizing unsecured firearms were not authorized by the *Emergency Management Act*.

FINDING NO. 25: The seizure of firearms was not initially planned.

FINDING NO. 26: When unsecured firearms were located, individual members of the search teams made the decision to seize them.

FINDING NO. 27: Upon being notified of the seizures, the Special Tactical Operations command approved the action.

FINDING NO. 28: RCMP members were authorized to seize unsecured firearms pursuant to section 489 of the *Criminal Code*.

FINDING NO. 29: In a number of cases the RCMP seized firearms which were lawfully secured.

FINDING NO. 30: RCMP members were not authorized by the *Criminal Code* to seize secured firearms.

FINDING NO. 31: There is no information to support the claim that RCMP members breached any gun safes.

FINDING NO. 32: RCMP supervisors failed to provide sufficient guidance to members involved in the seizure of firearms.

FINDING NO. 33: RCMP members were reasonably justified in seizing unsecured firearms pursuant to the common law plain view doctrine.

FINDING NO. 34: Where a secondary entry into a building was not authorized under the *Emergency Management Act* or the common law, the seizure of unsecured firearms was also unauthorized.

FINDING NO. 35: In some cases, RCMP members were authorized to seize carelessly stored ammunition pursuant to subsection 489(2) of the *Criminal Code* and the plain view doctrine.

FINDING NO. 36: There is insufficient evidence to conclude that every ammunition seizure was authorized by law.

FINDING NO. 37: In several cases the searches exceeded their authorized scope by expanding from a search for people or pets to a search for firearms or contraband.

FINDING NO. 38: RCMP supervisors failed to provide sufficient guidance to members in relation to the scope of their authorities to search buildings.

FINDING NO. 39: RCMP members failed to report to a justice to show that they had reasonable grounds to undertake warrantless seizures pursuant to paragraph 489.1(1)(a) of the *Criminal Code*.

FINDING NO. 40: The RCMP failed to provide adequate supervision with respect to the duties of members pursuant to paragraph 489.1(1)(a) of the *Criminal Code*.

FINDING NO. 41: It was reasonable for the RCMP to query seized firearms on the Canadian Police Information Centre database.

FINDING NO. 42: Seized firearms were returned in as orderly and timely a manner as was possible in the circumstances.

FINDING NO. 43: Lead RCMP members failed to integrate a strong communications strategy into the emergency response.

FINDING NO. 44: Divisional RCMP members with communications expertise were not available in sufficient numbers at the outset of the emergency.

FINDING NO. 45: National RCMP communications staff had limited involvement in the emergency response.

FINDING NO. 46: Overall, the RCMP's communications approach to the High River flooding crisis was ineffective and resulted in a negative impact on RCMP emergency operations and reputation.

FINDING NO. 47: The ineffectiveness of RCMP public communications during the High River flood was the direct result of:

- a) inadequate policies, procedures and plans relative to communications;
- b) insufficient training on existing public communications policies and procedures;
- c) poor planning;

- d) under-resourcing of the communications function;
- e) confusion about roles and responsibilities; and
- f) lack of coordination of public communications internally and with partners.

FINDING NO. 48: At the time of the flood, the RCMP lacked a comprehensive policy on emergency response management that outlined the legal authorities and duties of members in emergency situations with respect to:

- a) conducting evacuations and enforcing evacuation orders, including when it may be appropriate to arrest a person who fails to leave an evacuation area;
- b) entering buildings, including a distinction between entries effected pursuant to the common law powers of police and those pursuant to an authorization provided by a provincial or local authority under legislation such as the *Alberta Emergency Management Act*;
- c) searching buildings; and
- d) seizing items in buildings.

FINDING NO. 49: Sergeant Powers, the Acting Detachment Commander of the High River Detachment, should have acted as the RCMP representative at the High River Emergency Operations Centre.

FINDING NO. 50: The RCMP has not fully implemented the Incident Command System into its emergency preparedness framework.

FINDING NO. 51: Note-taking by search teams lacked consistency and sufficient detail.

FINDING NO. 52: There were several instances in which note-taking by members not engaged in the original emergency response lacked sufficient detail.

RECOMMENDATION NO. 1: "K" Division RCMP should conduct a comprehensive review of its communications function to address the shortcomings exposed during the High River crisis communications response, ensure proper alignment of communication and operational priorities, and address resourcing of the communications function in the Division.

RECOMMENDATION NO. 2: The RCMP should develop a national crisis communications handbook to identify the objectives, policies, and procedures to be followed during emergency operations.

RECOMMENDATION NO. 3: The RCMP should ensure that emergency management policies and procedures recognize and support the close integration of communications and operations.

RECOMMENDATION NO. 4: The RCMP should work with its key partners to ensure that coordinated communication is recognized as essential to a successful emergency response, and must form part of any future emergency response.

RECOMMENDATION NO. 5: The RCMP should review its emergency management policies at the national and divisional level to ensure that they provide clear and comprehensive direction with respect to the legal authorities and duties of its members in emergency situations, taking into consideration the specific authorities and duties set forth in provincial or territorial legislation.

RECOMMENDATION NO. 6: The RCMP should create procedures or guidelines with respect to the seizure of firearms, ammunition and contraband in disaster response situations like the High River flood.

RECOMMENDATION NO. 7: The RCMP should develop guidelines for members that respect their health and safety needs when responding to such emergencies within their own communities, with consideration given to how their conduct will affect the response of other residents.

RECOMMENDATION NO. 8: RCMP policy or guidelines should direct that, insofar as possible, RCMP emergency responders whose homes are located in an evacuation zone should vacate their homes in accordance with evacuation orders.

RECOMMENDATION NO. 9: The RCMP should develop a policy requiring Incident Command System training for key positions including Detachment Commanders, at a level commensurate with their responsibilities in an emergency response situation.

RECOMMENDATION NO. 10: The RCMP should develop national practice guidelines requiring the creation and use of neighbourhood inquiry sheets or similar documentation for emergency responders.

APPENDIX C

RCMP Members and Related Persons Involved in the High River Flood (positions and ranks noted are as at the time of the events)

High River RCMP Detachment

Person	Position	Role
Sergeant Dan Powers	Acting Detachment Commander and Operations NCO	Oversaw the initial detachment response to flooding
Staff Sergeant Kevin Morton	Acting Detachment Commander	Took command of High River Detachment on June 24.
Staff Sergeant Ian Shardlow	Detachment Commander	Assigned to High River Detachment on June 29 and became Detachment Commander on July 19
Corporal Sharon Franks	Watch Commander	Initial RCMP liaison between Town EOC and detachment

High River Incident Command

Person	Position	Role
Superintendent Frank Smart	Incident Commander	Senior officer who coordinated RCMP response with EOC
Inspector Tony Hamori	Incident Commander	Coordinated RCMP response with EOC
Staff Sergeant Gord Sage	Incident Commander	Coordinated RCMP response with EOC
Inspector Jim Stewart	Incident Commander	Coordinated RCMP response with EOC

Special Tactical Operations

Staff Sergeant Scott Fuller	STO Commander	Coordinated STO teams for search and rescue and town security
Sergeant Rob Marsollier	STO Commander	Coordinated STO teams for search and rescue and town security

Major Crimes Unit

Staff Sergeant Doug Wattie	Operational NCO for RCMP's Southern Alberta District Major Crime Unit	Investigated sudden deaths and missing persons
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RCMP, Southern Alberta District

Person	Position	Role
Chief Superintendent Kevin Harrison	Southern Alberta District Commanding Officer	Southern Alberta District EOC Director

"K" Division

Person	Position	Role
Deputy Commissioner Dale McGowan	Division Commanding Officer	Responded to public and political inquiries
Assistant Commissioner Marianne Ryan	Division Criminal Operations Officer and second in command	Oversaw divisional response

High River EOC

Person	Position	Role
Manager of Protective Services Ross Shapka	EOC Director	Coordinated efforts of the Emergency Operations Centre
High River Fire Chief Len Zebedee	EOC Deputy Director	Coordinated efforts of the Emergency Operations Centre and Fire Department

Communications

Person	Position	Role
Sergeant Patricia Neely	Media Relations Officer	Senior Media Relations Officer
Mary Schlosser	Communications Strategist	Communications Strategist
Inspector Garrett Woolsey		Media Spokesperson