

Protected "A"

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

**COMMISSION'S FINAL REPORT AFTER COMMISSIONER'S RESPONSE
REGARDING THE SHOOTING DEATH OF GREGORY MATTERS
IN PRINCE GEORGE, B.C.**

Royal Canadian Mounted Police Act
Subsection 45.76(3)

Complainant

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

File Nos.: PC-2013-1309 and
PC-2013-0358

COMMISSION'S FINAL REPORT AFTER COMMISSIONER'S RESPONSE

The Chairperson-Initiated Complaint and Public Interest Investigation

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

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

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

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

¹ As a result of the coming into force of the *Enhancing Royal Canadian Mounted Police Accountability Act* on November 28, 2014, the Commission for Public Complaints Against the Royal Canadian Mounted Police was replaced with the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police.

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

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

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

The Commission’s Review and Interim Report

[6] The Commission provided its Interim Report regarding this matter to the RCMP Commissioner and the Minister of Public Safety Canada on October 13, 2015 (**Schedule 1**). The Interim Report made 57 findings and 9 recommendations, which are detailed below in the section titled “The Commission’s Findings and Recommendations.”

The Commissioner’s Response

[7] Pursuant to subsection 45.76(2) of the RCMP Act, the RCMP Commissioner is required to provide a written response indicating any further action that has been or will be taken in light of the findings and recommendations contained in the Commission’s Interim Report. The RCMP Act does not stipulate a timeframe within which such response must be provided.

[8] On January 12, 2017, the Commission received the Commissioner’s Response, dated January 3, 2017 (**Schedule 2**).

[9] The Commissioner agreed with 53 of the Commission’s findings; agreed with 2 additional findings, in part, or for different reasons than the Commission; and disagreed with 2 findings. The Commissioner supported 3 recommendations; stated his general support for 2 recommendations but indicated action to be taken by him that does not fulfill the Commission’s recommendations; and disagreed with 4 recommendations.

[10] With respect to the Commission's finding that basic investigative techniques relating to the securing and collection of physical evidence were not reasonably employed and left evidence vulnerable to contamination, the Commissioner found that it applied only to one aspect. He agreed only that Constable Poyzer could have attempted to take pictures of the damage to Trevor Matters' vehicle, or at least to document the damage and the scene in writing. However, the Commissioner did not address the other issues raised in the Commission's report, such as the failure to secure the scene when reasonably possible; the delay in requesting that Forensic Identification Services ("FIS") attend the scene to take photographs or collect physical evidence; and the lack of instruction given to Trevor Matters with respect to the removal of his vehicle and the timing of that removal, as it was removed prior to the attendance of FIS.

[11] With respect to the Commission's recommendation in relation to the above-noted finding, the Commissioner indicated his "general" support, but stated only that he would direct that Constable Poyzer be provided with a copy of the Interim Report and the Commissioner's response "for his awareness." However, the Commission specifically recommended that a supervisor review the Commission's Interim Report with Constable Poyzer and provide operational guidance with respect to the securing and collection of relevant evidence. The Commissioner's lack of acknowledgement of the shortcomings in the preservation and collection of evidence, and his decision not to direct that operational guidance be given, fell short of the Commission's recommendation.

[12] The purpose of operational guidance is remedial in nature. It is corrective action used to educate, and not punish or discipline a member. As noted in the RCMP's *National Public Complaints Guidebook* ("Guidebook"), it is "the process of coaching/training/directing the subject employee, in a non-disciplinary fashion, toward the RCMP prescribed standard,"² and the specifics of the operational guidance are to be documented on the file. In the Commission's view, one of the primary benefits of operational guidance is that it is given by a supervisor who can provide greater clarity as to the role of the member and, in this case, emphasize the importance of securing and collecting relevant evidence and the protocols to be followed in such circumstances. Operational guidance allows for open dialogue between members and their superiors about the issue in question.

[13] The Commissioner also disagreed with the Commission's finding that Constable Poyzer did not reasonably consider and account for the discrepancies in the evidence as it was received. In particular, the Commissioner contested an example provided in the Commission's report with respect to physical damage to the vehicles as reported by Trevor Matters not being consistent with the physical evidence. However, there are a number of discrepancies as detailed throughout the Commission's report and that became known to Constable Poyzer during his preparation of the Report to Crown Counsel ("RTCC") and other reports.

² Version June 1, 2016, at p.68.

[14] The Commission noted in its Interim Report that the physical evidence was not fully consistent with the statements of either Mr. Matters or Trevor Matters. Neither party's initial accounts indicate that Trevor Matters' vehicle did a 360-degree turn, as pointed out by the Commissioner in his response, yet Constable Poyzer included the following in his draft RTCC: "From the markings on the road it appeared that the vehicle had done a 360 degree spin on the pavement before leaving the roadway into the ditch." While the Commissioner comments on there being no expert opinion on the collision scene, those observations do not appear consistent with the accounts of those involved. In addition, those observations were not qualified (i.e. there is no indication in the draft RTCC as to whether Constable Poyzer had expertise in making such observations). When Constable Poyzer mentioned later in the report that a member from FIS attended the scene to obtain photographs of the tire marks, no information was included to further clarify Constable Poyzer's earlier observations.

[15] As another example, the reported damage to the driver's side of Mr. Matters' vehicle (observed by Constable Sharpe) and that on the passenger side of Trevor Matters' vehicle (observed by Constable Poyzer), while consistent with each other, was not consistent with the account of Mr. Matters. Mr. Matters' written statement, which was not included in the draft RTCC, indicated that Trevor Matters moved to his right (where there was only mostly ditch) and passed him after striking his vehicle, which would have been on the passenger side of Mr. Matters' vehicle.

[16] In discussion of the Commission's recommendation with respect to operational guidance in relation to accounting for all evidence and dealing with discrepancies when preparing notes and reports, the Commissioner acknowledged that Constable Poyzer did not include a summary of Mr. Matters' written statement or any descriptive analysis of the physical evidence observed (notably the damage to the vehicles). Consequently, with respect to the "accounting for all evidence" aspect of the recommendation, the Commissioner indicated that he will direct that Constable Poyzer be provided with a copy of the Commission's Interim Report and the Commissioner's response, "for his awareness." Again, this falls short of the Commission's recommendation.

[17] The Commissioner agreed, but for a different reasoning, with the Commission's finding that Constable Poyzer should have included in his notes and reports any observations he made with respect to signs of intoxication when he encountered Trevor Matters, and that not doing so calls into question his later statements. The Commissioner stated that it was reasonable to believe that Trevor Matters was not intoxicated and that, therefore, Constable Poyzer would not be expected to make any annotation regarding alcohol consumption. However, the Commissioner found that it became problematic when Constable Poyzer later stated to the Independent Investigations Office ("IIO") and the Commission's investigator that Trevor Matters had consumed alcohol and showed signs of impairment, despite his lack of notes or report to that regard.

[18] The Commission found Constable Poyzer's later statements puzzling, given that there was no mention of him observing signs of alcohol consumption in his original

notes or the details of his various reports. While the Commission was not satisfied on a balance of probabilities that Trevor Matters was intoxicated at the time of the incident, Constable Poyzer's assertions after the fact suggest a failure to note key details. In any event, even if it were his later statements that were incorrect, he (and other members) should note the presence or even absence of signs of intoxication when investigating a vehicular incident to demonstrate that they have turned their minds to the issue, despite the Commissioner's position that members are not expected to do so.

[19] The Commissioner also disagreed with the Commission's finding that Staff Sergeant Anderson assumed responsibility for too many roles and should have delegated direct supervision of the criminal investigation and preparation of the warrants to another member. The Commissioner asserted that there is no indication that the quality of the investigation suffered, or that it had any bearing on the ultimate conclusion of this matter. The Commissioner further questioned the Commission's mandate to make such a finding, which he asserted relates generally to the inner functioning of the RCMP, as opposed to the members' compliance with training, policies, procedures, guidelines and statutory requirements. The Commissioner stated that there was no such breach offered in the Interim Report to support the finding against Staff Sergeant Anderson.

[20] The types of complaints that the Commission may review are prescribed by the RCMP Act. In particular, subsection 45.53(1) limits the scope of complaints against RCMP members to those "concerning the conduct, in the performance of any duty or function under [the RCMP Act] or the *Witness Protection Program Act*." The Commission routinely makes findings and recommendations relating to how a criminal investigation has been conducted and the resources assigned to it, and this finding is not different. While it may impact on management, it primarily relates to a policing function—the investigation of the incident, the support for and supervision of that incident (for instance, given Constable Poyzer's lack of experience with preparing an Information to Obtain and a Feeney warrant), the negotiation function, etc., and the resources assigned to those functions. The Commission's finding in no way usurps the Force's management function. The Commission's review did not address the issue from an employment perspective, but rather from a resourcing perspective, as the Commission does with respect to reasonableness and availability of equipment and use of force options.

[21] With respect to the Commission's remaining recommendations, the Commissioner did not support the Commission's recommendation that the RCMP prioritize its research of body-worn cameras, as the RCMP "has conducted extensive research" into the acquisition of body-worn video, which is employed on a limited basis for high-profile incidents, such as public order issues, but not for Emergency Response Team deployments. The Commissioner indicated that several issues have been identified with the body-worn video; however, there was no indication of what further steps the RCMP has been taking in this regard. The Commission acknowledges the efforts of the RCMP to date and encourages it to continue evaluating body-worn video options, and modifies its recommendation accordingly.

[22] The Commissioner further did not support the Commission's recommendation that the RCMP consider how to better ensure that the NDERT is deployed with sufficient and appropriately trained personnel to facilitate all planning options. However, the Commissioner noted that the number of trained members in the NDERT had nearly doubled in size since the time of the incident.

[23] The Commissioner did not support the Commission's recommendation that the RCMP explore whether police service dogs can be successfully trained to disarm subjects, which he stated remains at the discretion of the dog handler. He also noted that there have been occasions in the past where the deployment of a police service dog against someone armed with an edged weapon was ineffectual and resulted in the needless death of the animal, and that this can result in the suspect retaining their weapon and the loss of a tracking option. However, the Commission's Interim Report noted that the issue was prominent at the Coroner's inquest. A non-RCMP use of force expert suggested that other police forces do use police service dogs to disarm subjects, which was in conflict with Constable Warwick's assessment of their capabilities. Consequently, the Commission deems it advisable for the RCMP to seek out and assess the information available to determine whether its service dogs can or should be so trained.

[24] The Commissioner further did not support the Commission's recommendation that the RCMP look into and make available at each detachment digital recording devices capable of recording telephone conversations, instead indicating that portable digital recording devices are commonly available and allow the recording by speakerphone. The Commissioner noted that a Detachment Commander has the discretion to equip a detachment with specialized devices for recording telephone calls, and that all communication undertaken by the Crisis Negotiator Team ("CNT") is monitored and fully recorded. However, as noted at paragraph 313 of the Commission's Interim Report:

Once the NDERT was deployed and the CNT engaged, recordings were made of the negotiations; however, those recordings captured only one side of the conversation, that of Staff Sergeant Anderson. Corporal Garcia indicated that there was a portable recording device located at North District headquarters, but that the equipment was not the best and not used in this case. Advances in technology have made digital recording devices smaller and more affordable. Modern technology should be made available in each detachment so that conversations in situations such as this can be recorded, and preferably both sides of it.

In the Commission's view, more should be done by the RCMP to ensure that appropriate recording devices are available in each detachment.

The Commission's Findings and Recommendations

[25] In light of the foregoing, the Commission reiterates its findings and recommendations, with revised wording with respect to the recommendation pertaining to body-worn cameras. In this respect, the Commission acknowledges the work performed to date and recommends that the RCMP continue its efforts in evaluating body-worn recording equipment to determine how and when it can be best used.

Findings

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

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

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

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

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

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

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

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

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

FINDINGS:

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

FINDINGS:

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

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

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

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

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

FINDING: The NDERT briefing was reasonably thorough and accurate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Recommendations

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

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

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

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

RECOMMENDATION: That the RCMP continue its efforts in evaluating body-worn recording equipment to determine how and when it can be best used.

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

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

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

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

[26] Pursuant to subsection 45.76(3) of the RCMP Act, the Commission respectfully submits its Final Report and, accordingly, the Commission's mandate in this matter is ended.



-
Guy Bujold
Interim Vice-chairperson and
Acting Chairperson