

Civilian Review and  
Complaints Commission  
for the RCMP



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

# Chairperson-Initiated Complaint and Public Interest Investigation regarding Policing in Northern British Columbia

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## INTERIM REPORT

December 2015



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# EXECUTIVE SUMMARY

## Background

The RCMP provides policing services under contract to the province of British Columbia, serving as the provincial police force. It is the largest RCMP division, providing local police services to several large municipalities, as well as all municipalities with a population under 5,000 and unincorporated areas throughout the province, including many First Nations communities. The RCMP polices the northern part of the province, referred to as North District, out of 35 detachments, as well as satellite offices.

For a number of years, concerns have been raised by individuals and various human rights and civil liberties organizations about policing in northern British Columbia, including a 2011 report by the British Columbia Civil Liberties Association,<sup>1</sup> the 2012 report of the Missing Women Commission of Inquiry, led by the Honourable Wally T. Oppal,<sup>2</sup> and a 2013 report by Human Rights Watch.<sup>3</sup> These reports, as well as specific police-related incidents<sup>4</sup> in northern British Columbia, garnered significant media and public attention.

## Public Interest Investigation

Police accountability contributes to police legitimacy, underpinning public support for law enforcement. As such, the Interim Chairperson (now Chairperson) of the Civilian Review and Complaints Commission for the RCMP<sup>5</sup> (the Commission) considered the concerns expressed in these various reports and determined it was in the public interest to initiate a complaint and an investigation into the conduct of RCMP members involved in carrying out policing duties in northern British Columbia.

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<sup>1</sup> British Columbia Civil Liberties Association, *Small Town Justice: A report on the RCMP in Northern and Rural British Columbia* (Vancouver: British Columbia Civil Liberties Association, 2011) at 14.

<sup>2</sup> British Columbia, Missing Women Commission of Inquiry, *Forsaken - Report of the Missing Women Commission of Inquiry: Executive Summary*, Commissioner: The Honourable Wally T. Oppal (Victoria: Shared Services BC, 2012).

<sup>3</sup> Human Rights Watch, *Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada* (New York: Human Rights Watch, 2013).

<sup>4</sup> For example, in 2011, a use of force incident against an 11-year-old boy in Prince George and another use of force incident against a woman in Williams Lake, as well as two separate use of force incidents in Terrace in 2012.

<sup>5</sup> The *Enhancing Royal Canadian Mounted Police Accountability Act* came into force on November 28, 2014. Among the legislative reforms, the new Civilian Review and Complaints Commission for the RCMP (CRCC) replaced the existing Commission for Public Complaints Against the RCMP (CPC).

This public interest investigation focused exclusively on the RCMP's North District, as this is the region where many of the expressed concerns centered. The Commission examined RCMP member conduct relating to the policing of public intoxication; the incidence of cross-gender police searches; the handling of missing persons reports; the handling of domestic violence reports; the use of force; and the handling of files involving youth.<sup>6</sup>

In an effort to determine whether any systemic policing issues existed in northern British Columbia, the Commission conducted separate investigations for each of the designated areas, with the exception of youth files,<sup>7</sup> setting out to determine whether relevant RCMP policies, procedures and training are adequate. Moreover, an extensive file review of RCMP North District occurrence reports and use of force reports was conducted.

## WHO WE ARE

The Commission is an independent agency created by Parliament to ensure that public complaints made about the conduct of RCMP members are examined fairly and impartially.

The Commission is not part of the RCMP.

Commission reports make findings and recommendations aimed at correcting and preventing recurring policing problems. The Commission's goal is to promote excellence in policing through accountability.

## Investigation Results

The Commission's mandate, being remedial in nature, aims to identify any improvements that could be made, if appropriate, with the goal of satisfying the public's interest in enhancing and maintaining confidence in the national police force. As such, following an extensive investigation involving several investigators, numerous interviews, and the review of over 100,000 pages of documentation, the Commission made 45 findings and 31 recommendations:

- 10 recommendations regarding personal searches;
- 6 recommendations regarding public intoxication;
- 4 recommendations regarding use of force reporting;
- 5 recommendations regarding domestic violence; and
- 6 recommendations regarding missing persons.

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<sup>6</sup> See Civilian Review and Complaints Commission for the RCMP, *Chair-Initiated Complaint and Public Interest Investigation Regarding Policing in Northern British Columbia*, online: Civilian Review and Complaints Commission for the RCMP <<http://www.crc-cetp.gc.ca/en/chair-initiated-complaint-and-public-interest-investigation-regarding-policing-northern-british>> (for the Terms of Reference).

<sup>7</sup> The handling of youth files is addressed within the Commission's investigations of personal searches, public intoxication, use of force, and missing persons.

A complete list of the Commission's findings and recommendations can be found in **Appendix A**.

In summary, the Commission found deficiencies or lack of clarity in policies related to personal searches, policing of public intoxication, and missing persons. The Commission also found room for improvement in domestic violence and use of force reporting policies. Recommendations to strengthen and improve the policies were made, including but not limited to:

- amending national and divisional policies related to personal searches to provide more clarity, reflect current jurisprudence and improve transparency;
- amending national policy related to the arrest of young persons to include guidance to members on notification requirements when a youth is arrested and held in custody without charge;
- amending divisional policy which guides members on conditions for release in public intoxication cases, including consideration of alternatives to detention; and
- amending national policy on missing persons to include on operational files a full articulation of risk assessments, as well as documented observations and direction of supervisors.

In reviewing occurrence reports and use of force reports, the Commission also found issues with policy compliance, including many instances of inadequate articulation—a key component of police accountability. For example, nearly half of the missing persons reports reviewed by the Commission failed to show that the RCMP in the North District investigated cases promptly and thoroughly, as per policy. That is not to say that these cases were improperly investigated but that the Commission was unable to determine if policy was followed due to the lack of adequate notation on the occurrence reports.

In general, most of the Commission's recommendations are aimed at enhancing transparency and accountability through improved policies and procedures, enhanced supervisory review, better reporting, and improved training.

## **Community and RCMP Engagement**

As part of the established Terms of Reference, the Commission also undertook to engage community and RCMP members in northern British Columbia to allow residents and the police to be heard. Interested community representatives and RCMP members were asked to share their views and experiences in relation to the specific areas identified (public intoxication, personal searches, missing persons, domestic violence, use of force, and youth) as well as policing in general in the north of the province.

Given the many concerns expressed by human rights and civil liberties groups about police treatment of Aboriginal persons, a focus was placed on interviewing Aboriginal leaders. The Commission travelled to 21 communities in northern British Columbia, interviewing 64 community members (including some representatives of human rights and civil liberties organizations) and 32 RCMP members. Statements were made on a confidential basis, allowing participants to speak openly and with candor. The observations made reflected the experiences and/or perceptions of the individuals and are not necessarily the shared views of the communities, the RCMP or the Commission.

The engagement efforts provided individuals with an opportunity to raise specific concerns, if any, regarding RCMP member conduct, as well as to raise awareness of the role of the Commission and the public complaint process in general. Any individual complaints arising from this process would have been handled separately from the public interest investigation; however, no such complaints were made.

Given that much of the information gleaned from the community and RCMP member engagement was anecdotal and unsubstantiated, the Commission made no findings or recommendations based on the outcomes of community engagement. However, the results are important to note, as they represent the views and suggestions of some northern British Columbia residents, as well as RCMP members policing the region.

From the perspective of many community members interviewed by the Commission, the general perception of the RCMP in smaller or rural communities was positive. The Commission was told of the good relationship between RCMP members and the communities they police, particularly those with a dedicated First Nations policing member. The largely positive impression was often attributed to the efforts made by RCMP members in smaller communities to develop relationships with the residents and integrate into the community. The same was not said of the RCMP in larger, urban communities, where the perception was that RCMP members do not dedicate the necessary time to relationship-building. RCMP members also highlighted the importance of good community relations, and some suggested that an urban-based First Nations policing program or Aboriginal policing strategy was needed to provide a form of enhanced policing in the urban areas of northern British Columbia.

Community and RCMP members also commented on police leadership as a determining factor in the quality of relationships between the community and the RCMP. Detachment commanders were noted as taking the lead in forging community relationships in smaller communities. In larger communities, the leadership was viewed as setting the tone for member interaction with the public, leaving individual RCMP members to establish relationships.

In that regard, the Commission saw evidence of RCMP progress in putting suitable members in leadership positions in the North District, as demonstrated by the many positive comments from First Nations communities about local detachment commanders. In particular, the RCMP appears to have made an effort to assign culturally sensitive detachment commanders with significant experience dealing with First Nations communities to areas with high Aboriginal populations. However, the frequent turnover of RCMP members, including detachment commanders, was a common criticism of community members.

Another issue of note made by several community members, particularly in larger urban communities, was the perception of racism towards Aboriginal and First Nations persons by the RCMP—and by society more broadly. Certain individuals spoke of the distrust Aboriginals have for the police, citing the historical role of the RCMP in apprehending children to be sent to residential schools as a general factor.

Finally, some community representatives offered suggestions for improving RCMP policing in the region, including: providing members with cultural awareness training with a local focus; and committing additional police resources to the region, such as more officers and dedicated units (e.g. domestic violence).

### **North District public complaints**

As noted above, no public complaints were received as a result of the Commission's community engagement efforts as part of this public interest investigation. The Commission acknowledges that there may be some reluctance on the part of some community members to make a complaint. That said, a number of complaints were made during the period under review.

Based on information provided by the RCMP, 792 public complaints were received regarding detachments in British Columbia RCMP's North District, between January 1, 2008, and December 31, 2012. This compares to a total of 5,111 complaints for the Division and 10,949 complaints for the RCMP Force-wide. North District complaints represented 15.5% of all complaints in the Division for that time period.<sup>8</sup>

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<sup>8</sup> Statistics compiled from the Commission's public complaints database, which includes public complaints data received from the RCMP.



The main allegations raised in the North District complaints are shown in the table below and are compared to those for the RCMP in British Columbia and Force-wide:

**Table 1: Public Complaints Against RCMP in North District**

<b>Top Three Allegations</b>	<b>North District RCMP (number   %)</b>	<b>RCMP in British Columbia (number   %)</b>	<b>Force-Wide (number   %)</b>
<b>1</b>	Neglect of Duty <b>670   25.7%</b>	Neglect of Duty <b>5,153   32.0%</b>	Neglect of Duty <b>11,231   32.9%</b>
<b>2</b>	Improper Attitude <b>481   18.4%</b>	Improper Attitude <b>3,089   19.2%</b>	Improper Attitude <b>6,560   19.2%</b>
<b>3</b>	Improper Use of Force <b>422   16.2%</b>	Improper Use of Force <b>2,236   13.9%</b>	Improper Use of Force <b>4,194   12.3%</b>

In response to the 792 complaints in the North District, the RCMP:

- issued 418 (52.7%) letters of disposition;<sup>9</sup>
- terminated 14 complaints (1.8%); and
- informally resolved 360 (45.4%) complaints.<sup>10</sup>

A complainant who is not happy with the RCMP's response to his/her complaint (as noted in the Letter of Disposition) may refer the complaint to the Commission for review. Of the 418 complaints where letters of disposition were issued, the Commission received 38 requests for review.

During that time period, the Commission also conducted five Chair-initiated complaints and/or public interest investigations<sup>11</sup> in relation to incidents in the North District. For

<sup>9</sup> A Letter of Disposition is a report setting out: a summary of the complaint; the findings of the investigation; a summary of any action that has been or will be taken with respect to the disposition of the complaint; and the complainant's rights to refer the complaint to the Commission for review.

<sup>10</sup> For more information, see: [www.crcc-ccetp.gc.ca/en/complaint-and-review-process](http://www.crcc-ccetp.gc.ca/en/complaint-and-review-process).

<sup>11</sup> Subsection 45.59(1) of the *Royal Canadian Mounted Police Act* (RCMP Act) provides that if the Chairperson of the Commission is satisfied that there are reasonable grounds to investigate the conduct of a member of the RCMP, he/she may initiate a complaint in relation to that conduct. A Chair-initiated complaint is treated the same as a complaint from a member of the public. Further, section 45.66 of the RCMP Act allows the Commission to conduct an investigation or initiate a hearing to inquire into any complaint where the Chairperson of the

example, the Chairperson initiated a complaint and investigated the 2008 in-custody death of Ms. Cheryl Anne Bouey in Prince George; the 2009 shooting death of Mr. Valeri George in Fort St. John, as well as a 2011 incident involving the use of a conducted energy weapon (CEW) on a child in Prince George. A public interest investigation was also conducted into a 2011 use of force incident in Williams Lake involving a 17-year-old girl. The Chairperson also initiated a complaint and public interest investigation into the 2012 shooting death of Mr. Gregory Matters.<sup>12</sup>

## Conclusion

The public interest investigation set out to determine whether any systemic problems existed in the RCMP's policing of missing persons cases, publicly intoxicated persons, use of force, domestic violence and personal searches in northern British Columbia. The Commission placed a particular focus on transparency and accountability in reviewing operational policies and procedures, examining the role of supervisors, and reviewing documented articulation of member actions.

Although thousands of occurrence reports and numerous policies and procedures were reviewed in the course of the investigation, in addition to several interviews of RCMP members and other stakeholders, it did not result in findings of broad, systemic problems with RCMP actions in northern British Columbia in relation to the issues under examination.

The evidence did, however, point to policy and reporting weaknesses, compliance issues and the need for more robust training and supervision. In that regard, two issues consistently emerged from the public interest investigation: inadequate articulation of police actions on occurrence or use of force reports, and inconsistent supervisory review of case files. In addition, the Commission's personal search and use of force investigations identified important shortcomings in reporting practices that seriously impedes or limits independent review.

RCMP policy is clear on the importance of completeness and quality of file content, including member articulation, in occurrence records management systems (e.g. the Police Records Information Management Environment [PRIME], which is used in British Columbia). Members are accountable for the data on occurrences to which they are assigned, while supervisors and commanders are accountable for the completeness and accuracy of that data. However, the Commission found several instances of non-compliance with policies on articulation in the areas examined.

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Commission feels that it would be in the public interest to do so. This is called a public interest investigation or a public interest hearing. Public interest investigations are commonly instituted into Chair-initiated complaints.

<sup>12</sup> Information in relation to previous and ongoing Chair-initiated complaints and public interest investigations can be found on the Commission's website at: [www.crcc-ccetp.gc.ca](http://www.crcc-ccetp.gc.ca).

Supervisory review was another issue that emerged. Inadequate supervisor review was manifested in the high proportion of files that were not fully compliant with policy guidelines and/or the general absence of indications of supervisor comments or direction in files, such as those for missing persons. The importance of effective supervision was emphasized throughout the Commission's investigation.

Finally, the Commission faced challenges with systems and procedures that did not support or otherwise facilitate external review. For example, the Commission intended to conduct a file review to examine member compliance with RCMP personal search policies and procedures—including instances of strip searches. However, the Commission was informed that the RCMP records management system in British Columbia does not track or otherwise account for the frequency or type of searches conducted, nor does the system allow for a recording of searches by members of the opposite sex (i.e. cross-gender searches). While this information may be recorded in a member's notebook, the lack of systematic recording or tracking severely limited the Commission's ability to evaluate compliance or determine if a systemic issue existed in this regard. The Commission has previously reported on "...the importance of appropriate document management and storage, so as to facilitate later review."<sup>13</sup> However, it remains an ongoing problem, which is not insignificant, as it directly affects RCMP accountability. As such, several of the recommendations made in this report are aimed at enhancing RCMP transparency and accountability, which form the cornerstones of public trust in the police.

Although the Commission's community engagement reflected a certain level of satisfaction with the RCMP particularly in rural areas, there remained a perception by many community members that the RCMP is biased against Indigenous people. Despite the Commission being unable to substantiate that view through its policy and file review, the Commission acknowledges that the noted weaknesses in some policies and procedures may affect the overall transparency and accountability of the RCMP, which in turn can foster distrust and feed community perceptions that often reflect an individual's personal experiences.

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<sup>13</sup> Civilian Review and Complaints Commission for the RCMP, *Public Interest Investigation into RCMP Member Conduct Related to the 2010 G8 and G20 Summits*, online: Civilian Review and Complaints Commission for the RCMP <<https://www.crcc-ccetp.gc.ca/pdf/g8g20R-eng.pdf>>.

# CHAIR-INITIATED COMPLAINT AND PUBLIC INTEREST INVESTIGATION REGARDING POLICING IN NORTHERN BRITISH COLUMBIA

## INTRODUCTION

In keeping with the Commission's mandate, this investigation aims to identify any systemic policing issues in northern British Columbia. The results are set out in this report, comprising of five parts:

**Part I:** Scope of Public Interest Investigation

**Part II:** Context

**Part III:** Investigation

**Part IV:** Community and Member Engagement

**Part V:** Conclusion

The report was prepared following an extensive investigation by several investigators, who examined:

- relevant RCMP operational policies and procedures;
- relevant training documents from the RCMP Training Academy (Depot Division) Cadet Training Program, the RCMP's Pacific Region Training Centre, and the Field Coaching Program, as well as other training and information resources available to British Columbia RCMP members;
- over 4,000 police occurrence reports and 301 Subject Behaviour/Officer Response reports from the North District;
- applicable legislation and case law; and
- inquiry reports, reports from human rights and civil liberties organizations, policies and procedures from other police jurisdictions, coroners' inquests reports, academic research, and relevant policy and training documents from the Government of British Columbia.

As a means of evaluating policy compliance as well as the adequacy of training, the Commission undertook a file review of occurrence reports in relation to missing persons, public intoxication and domestic violence investigations, as well as use of force reports. The reports were reviewed in detail to determine whether any systemic issues existed and if the documents demonstrated that RCMP members had followed relevant policies and procedures. In most cases, the Commission evaluated the completeness of records, the quality of member articulation and investigative steps, and quality control indicators, such as evidence of supervisor review.

Supplementing the examination of policies, procedures, training and RCMP occurrence reports, the Commission interviewed 84 people, including RCMP members from:

- National Headquarters;
- British Columbia Headquarters;
- North District; and
- Pacific Region Training Centre.

Other subject matter experts, such as academics and employees of the Government of British Columbia, were also interviewed.

## PART I: SCOPE OF PUBLIC INTEREST INVESTIGATION

On May 15, 2013, in consideration of concerns raised by human rights and civil liberties organizations with respect to policing in northern British Columbia, the Interim Chairperson (now Chairperson) of the Civilian Review and Complaints Commission for the RCMP (the Commission) initiated a complaint and public interest investigation into the conduct of RCMP members involved in carrying out policing duties in northern British Columbia, pursuant to the authority granted to the Commission by subsections 45.37(1) and 45.43(1) of the *Royal Canadian Mounted Police Act* (RCMP Act)—in force prior to November 28, 2014.

The established Terms of Reference set out to examine and report on RCMP member conduct relating to the following specific areas:<sup>14</sup>

- the policing of public intoxication;
- the incidence of cross-gender police searches;
- the handling of missing persons reports;
- the handling of domestic violence reports;
- use of force; and
- the handling of files involving youth.

The Commission conducted separate investigations for each of these designated areas, with the exception of youth files.<sup>15</sup> Each investigation set out to determine whether relevant RCMP policies, procedures and training are adequate, and whether any systemic issues could be identified.

Policies and procedures related to public intoxication, personal searches, missing persons, domestic violence, and use of force were examined in detail and assessed on:

- consistency with law and current jurisprudence;
- clarity of guidance to members;
- consistency between national and divisional policies; and
- provisions made for accountability and quality control.

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<sup>14</sup> *Supra* note 6.

<sup>15</sup> *Supra* note 7.

The Commission is an independent agency of the Government of Canada mandated to conduct an objective examination of the evidence gathered during its investigation and, where appropriate, make recommendations to improve conduct by RCMP members. A summary of the Commission's 45 findings and 31 recommendations can be found in [Appendix A](#).

In support of the public interest investigation, interested community members and RCMP employees were interviewed in an effort to obtain information regarding the specific areas identified in the Terms of Reference, as well as policing in northern British Columbia more broadly. The interviews allowed individuals to raise specific concerns, if any, regarding RCMP conduct. The community and RCMP engagement further provided the opportunity to raise awareness of the role of the Commission and the public complaint process in general. Any specific individual complaints arising during the course of the investigation would have been handled as separate public complaints.<sup>16</sup> For more information about the public complaint process and complaints about the RCMP in the North District, please refer to [Appendix B](#).

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.

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<sup>16</sup> No public complaints were received as a result of the community engagement efforts.

## PART II: CONTEXT

### Concerns Alleged by Human Rights and Civil Liberties Organizations

In 2011, the British Columbia Civil Liberties Association issued a report on policing in northern British Columbia entitled *SMALL TOWN JUSTICE: A report on the RCMP in Northern and Rural British Columbia*. The report raised concerns about differential treatment of Indigenous people, inappropriate use of force, treatment of youth, retaliation for complaints, lack of accountability, understaffing and high staff turnover in RCMP detachments.<sup>17</sup>

Subsequently, the 2012 report of the Missing Women Commission of Inquiry, led by the Honourable Wally T. Oppal, detailed specific areas of police systemic failure, including failure to follow investigative and case management guidelines; ineffective inter-agency coordination; and poor accountability. The inquiry found systemic bias in the police with regard to the missing women, lack of leadership and oversight, inadequate policing policies and practices and so on.<sup>18</sup> The issues raised by the Commission of Inquiry were repeated in the Inter-American Commission on Human Rights report on *Missing and Murdered Indigenous Women in British Columbia, Canada* (2014).<sup>19</sup>

In its 2013 report entitled *Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada*,<sup>20</sup> Human Rights Watch alleged that police in northern British Columbia have been generally abusive with regard to policing Indigenous women and girls and have broadly failed to protect Indigenous women and girls. It also alleged a lack of confidence among this population in the ability and willingness of police to protect them, stemming from poor or non-existent police response to disappearances and murders, and inadequate police action in response to domestic violence and sexual assault. That report also made allegations regarding apparent shortcomings of oversight mechanisms designed to provide accountability for police misconduct.

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<sup>17</sup> British Columbia Civil Liberties Association, *Small Town Justice: A report on the RCMP in Northern and Rural British Columbia* (Vancouver: British Columbia Civil Liberties Association, 2011) at 14.

<sup>18</sup> British Columbia, Missing Women Commission of Inquiry, *Forsaken - Report of the Missing Women Commission of Inquiry: Executive Summary*, Commissioner: The Honourable Wally T. Oppal (Victoria: Shared Services BC, 2012).

<sup>19</sup> Inter-American Commission on Human Rights, *Missing and Murdered Indigenous Women in British Columbia, Canada* (Washington: Organization of American States, 2014).

<sup>20</sup> Human Rights Watch, *Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada* (New York: Human Rights Watch, 2013).



## Policing in British Columbia

Known administratively as "E" Division, the RCMP in British Columbia has over 9,500 employees and is the largest RCMP division in the country.

The Division is divided into four districts: Vancouver Island District; Lower Mainland District; South East District; and North District.

The Commission's public interest investigation focused exclusively on the North District, headquartered in Prince George. North District polices approximately 70 percent of the province's land area and includes 35 RCMP detachments, plus satellite support units, with 664 members and 75 public service employees.<sup>21</sup>

Policing the Aboriginal population and First Nations communities deserves specific attention in any discussion of policing in northern British Columbia. Aboriginal people represent 5.4% of British Columbia's total population and 17.5% of northern British Columbia's population.<sup>22</sup> The Aboriginal population, in urban centres and off and on reserves, forms a higher percentage of the total population in northern British Columbia than in the southern regions of the province. In the urban centres in the North District and in off-reserve rural areas, the RCMP provides police services to the Aboriginal population as part of the overall population. On the reserves, many communities are policed by officers assigned under the First Nations Community Policing Services.

In 2012, the First Nations Community Policing Services had an authorized strength of 108.5 RCMP officers who provided dedicated police services to 131 First Nations communities in British Columbia through 53 community tripartite agreements. These agreements are negotiated among First Nation or Inuit communities, provincial or territorial governments, and the federal government. Under a community tripartite agreement arrangement, the First Nation or Inuit community has dedicated officers from an existing police service, typically the RCMP.<sup>23</sup> The majority of detachments in the North District have one or more authorized positions for First Nations Policing officers.

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<sup>21</sup> Number of RCMP members and public service employees as of January 2014, "E" DIVISION EXECUTIVE REPORT – JANUARY 1, 2014 – actual number; RCMP in B.C., *North District*, online: Royal Canadian Mounted Police <<http://bc.rcmp-grc.gc.ca/ViewPage.action?siteNodeId=185&languageId=1&contentId=2190>>.

<sup>22</sup> See Statistics Canada, *Aboriginal Peoples in Canada: First Nations People, Métis and Inuit*, online: Stats Can <<http://www12.statcan.gc.ca/nhs-enm/2011/as-sa/99-011-x/2011001/tbl/tbl02-eng.cfm>>; BC Stats, *Aboriginal Profiles of British Columbia: 2006*, online: BC Stats <<http://www.bcstats.gov.bc.ca/StatisticsBySubject/AboriginalPeoples/CensusProfiles/2006Census.aspx>>.

<sup>23</sup> British Columbia, Ministry of Justice, *First Nations Policing*, online: Government of British Columbia <<http://www.pssg.gov.bc.ca/policeservices/firstnations/>>.

## PART III: INVESTIGATION

The following sections summarize the Commission's investigation into each of the areas designated in the Terms of Reference (personal searches, policing of public intoxication, use of force, domestic violence, and missing persons). Police interaction with women and youth are addressed within each investigation, where feasible.

### PERSONAL SEARCHES

#### Context

In Canada, police authority to search a person, incidental to a lawful arrest, derives from common law.<sup>24</sup> Different types and/or levels of personal searches require greater or lesser degrees of justification and raise different constitutional considerations. The more intrusive the search, the greater the degree of justification and constitutional protection required.<sup>25</sup>

A body search or “frisk” is a thorough search of a person's clothing at the time of an arrest.<sup>26</sup> During a body search, an RCMP member may ask a person to empty their pockets and subsequently proceed to “pat down” or “run” his/her hands along a person's outer clothing as a means of finding weapons or evidence.<sup>27</sup> Body searches incidental to arrest are conducted to ensure the safety of police and the public, to avoid the destruction of evidence, or to locate evidence connected to the offence for which the arrest was made.<sup>28</sup> A body search incidental to arrest may be conducted at the scene, prior to a subject being transported in a police vehicle, and may also take place prior to a subject being lodged in a cell. As such, a subject could undergo two body searches incidental to a lawful arrest (between the time of arrest and the subject's incarceration in cells).

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<sup>24</sup> *R v Golden*, [2001] 3 SCR 679, 2001 SCC 83 at para 23 [*Golden*].

<sup>25</sup> *R v Simmons*, [1988] 2 SCR 495 at para 28, Dickson CJ [*Simmons*]; *Golden*, *ibid* at para 88.

<sup>26</sup> The terms “personal search” and “body search” are not standard. Police services across Canada classify and name the various types and levels of personal searches independently. For the purposes of this investigation, the Commission will use the terms used by the RCMP. A “personal search” refers to any search of a person; a body search (or frisk), a strip search and an internal search are types of personal searches.

<sup>27</sup> RCMP Cadet Training Program, Police Defensive Tactics, Session 8 (version 8, April 1, 2012).

<sup>28</sup> *Cloutier v Langlois*, [1990] 1 SCR 158 [*Cloutier*]; *R v Caslake*, [1998] 1 SCR 51 [*Caslake*]; and reiterated in *R v Fearon*, 2014 SCC 77 [*Fearon*].

The police authority to conduct a body search incidental to a lawful arrest does not require the existence of reasonable or probable grounds.<sup>29</sup> In *Cloutier v Langlois*, the Supreme Court of Canada held that “[t]he minimal intrusion involved in [a frisk] search is necessary to ensure that criminal justice is properly administered.”<sup>30</sup> The authority to conduct a body search incidental to arrest is, however, discretionary—not a duty.

In *Cloutier*, the Supreme Court held that:

The police have some discretion in conducting the search. Where they are satisfied that the law can be effectively and safely applied without a search, the police may see fit not to conduct a search. They must be in a position to assess the circumstances of each case so as to determine whether a search meets the underlying objectives.<sup>31</sup>

In *Cloutier*, the Supreme Court established three principles regarding police authority to search incidental to arrest:

- a) the police have the authority to conduct a search—not a duty;
- b) the search must be for a valid objective in pursuit of the ends of criminal justice; and
- c) the search must not be conducted in an abusive manner.<sup>32</sup>

Within these legal parameters, body searches incidental to arrest, such as frisk searches, are lawful and appropriate.<sup>33</sup>

While body searches are a relatively routine policing practice upon arrest, strip searches are not. A strip search involves the removal of some or all of a person's clothing to allow a visual inspection of the person's private areas (i.e. the genitals, buttocks, breasts [in the case of a female]), or undergarments.<sup>34</sup> According to the Supreme Court of Canada, strip searches are inherently invasive and degrading and cannot be conducted as a matter of routine policy.<sup>35</sup>

In *R v Golden*, the Supreme Court ruled that:

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<sup>29</sup> *Cloutier*, *ibid* at para 59; *Fearon*, *ibid* at para 45.

<sup>30</sup> *Cloutier*, *supra* note 28.

<sup>31</sup> *Cloutier*, *supra* note 28 at para 60.

<sup>32</sup> *Ibid* at paras 60–62.

<sup>33</sup> *Ibid* at para 1ff.

<sup>34</sup> *Golden*, *supra* note 24 at para 47.

<sup>35</sup> *Ibid* at para 90.

In light of the serious infringement of privacy and personal dignity that is an inevitable consequence of a strip search, such searches are only constitutionally valid at common law where they are conducted as an incident to a lawful arrest for the purpose of discovering weapons in the detainee's possession or evidence related to the reason for the arrest. In addition, the police must establish reasonable and probable grounds justifying the strip search in addition to reasonable and probable grounds justifying the arrest. Where these preconditions to conducting a strip search incident to arrest are met, it is also necessary that the strip search be conducted in a manner that does not infringe s. 8 of the Charter.<sup>36</sup>

Common law rules require that when strip searches are carried out incidental to arrest, without prior judicial authorization (e.g. without a warrant), they should be conducted in a manner that interferes as little as possible with the privacy and dignity of the person being searched and that the proper balance is struck between the privacy interests of the person being searched and the interests of the police and the public to preserve relevant evidence and to ensure the safety of police officers, detained persons and the public.<sup>37</sup> In *Golden*, the Supreme Court set an important legal precedent for the police to decide when to conduct a strip search incidental to arrest to ensure compliance with the *Canadian Charter of Rights and Freedoms* (Charter).

The Supreme Court also states that a strip search involves “the removal or rearrangement of some or all of the clothing of a person so as to permit a visual inspection of a person's private areas, namely genitals, buttocks, breasts (in the case of a female), or undergarments [emphasis added],”<sup>38</sup> clearly taking the view that requiring a subject to strip down to their undergarments constitutes a strip search.

The Provincial Court of British Columbia (Youth Division) reiterated this position and added that the definition of a strip search included removal of the brassiere.<sup>39</sup>

Internal searches, also known as cavity searches, involve the physical inspection of body orifices. These searches are typically conducted by medical practitioners in a hospital setting. Internal searches are the most intrusive and are a much greater infringement on a person's integrity. As previously noted, common law rules stipulate that the more intrusive the search, the greater the degree of justification and

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<sup>36</sup> *Ibid* at para 99.

<sup>37</sup> *Ibid* at para 104.

<sup>38</sup> *Ibid* at para 47.

<sup>39</sup> *R v P.F.G.*, 2005 BCPC 187 [P.F.G.].

constitutional protection required. Thus, a body search would require less justification than a strip search, which would require less justification than an internal search.<sup>40</sup>

In a 2013 report, Human Rights Watch raised concerns about women and female youth being searched or strip-searched by male members of the RCMP. In particular, the Human Rights Watch report recommended that the RCMP “[e]liminate searches and monitoring of women and girls by male police officers in all but extraordinary circumstances and require documentation and supervisor and commander review of any such searches” and to prohibit strip searches by members of the opposite sex under any circumstances.<sup>41</sup> The report also refers to human rights standards that recommend that body searches by government authorities should only be conducted by persons of the same sex.<sup>42</sup>

The RCMP confirmed to the Commission that the gender breakdown of its members in the North District is 80% male and 20% female. As a result, 32.5% of North District detachments are staffed by male members only (as of October 1, 2014).<sup>43</sup>

## **RCMP Policy**

### [RCMP National Headquarters Operational Manual – Personal Search Policies](#)

In relation to personal searches, RCMP policies address three types of search: body search (i.e. frisk search); strip search; and internal search (i.e. body cavity search).

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<sup>40</sup> *Simmons, supra* note 25 at para 28; *Golden, supra* note 24 at para 88.

<sup>41</sup> Human Rights Watch, *Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada* (New York: Human Rights Watch, 2013) at 16.

<sup>42</sup> *Ibid* at 16; UN Human Rights Committee, General Comment 16, The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation (Art. 17), U.N. Doc. HRI/GEN/Rev. 9 (Vol. 1) (2008).

<sup>43</sup> Correspondence from RCMP “E” Division (October 27, 2014).

For the purposes of this investigation, the Commission examined:

- National Headquarters *Operational Manual* chapter 18.1. "Arrest and Detention," section 5., "Searches" (dated May 15, 2013);
- National Headquarters *Operational Manual* chapter 19.3. "Guarding Prisoners and Personal Effects" (dated August 21, 2013);
- National Headquarters *Operational Manual* chapter 21.1. "Authority to Search" (dated May 28, 2013); and
- National Headquarters *Operational Manual* chapter 21.2. "Personal Search" (dated February 13, 2013).

RCMP National Headquarters *Operational Manual* chapter 21.2. "Personal Search" specifically addresses personal searches. It defines and describes the types of personal searches: body search (i.e. frisk), strip search and internal search.

The national policy defines body search as "a thorough search of the clothing at the time of an arrest." It specifies that body searches "will be conducted in a manner that interferes as little as possible with the privacy and dignity of the person being searched and does not infringe on section 8, Canadian Charter of Rights and Freedoms."

The national policy defines a strip search as "a thorough search and examination of a person's clothing and visual inspection only of the body including the genital and anal areas, without physical contact." The policy also states that strip searches are not considered routine police practice, and provides direction on the legal requirements that must be met to conduct a strip search (i.e. "should only be conducted when there are reasonable grounds to believe the suspect is concealing evidence relating to a crime or items that may be used to cause injury, death or aid in escape").

In reviewing these policies, the Commission sought clarification from RCMP National Headquarters, the British Columbia RCMP Division and the RCMP Depot Division regarding the definitions of body and strip searches, and whether a search requiring a subject to strip down to his/her underwear would be considered a strip search or a body search. The RCMP National Headquarters and the RCMP in British Columbia both responded that in accordance with national policy, such a search would not amount to a strip search.<sup>44</sup> Depot Division, however, reported that from their perspective, requiring a subject to strip down to his/her undergarments was a strip search.<sup>45</sup>

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<sup>44</sup> Electronic correspondence from British Columbia RCMP Division (February 10, 2015) and correspondence from RCMP National Headquarters, Contract and Aboriginal Policing Directorate (March 2, 2015).

<sup>45</sup> Electronic correspondence from Depot Division (February 10, 2015).

Based on the above responses, it appears that the national policy definitions for body searches and strip searches are insufficiently clear to guide members regarding whether a personal search is a body search or a strip search. This leads to concerns surrounding the consistent application and articulation of reasonable grounds to conduct a search.

**Finding No. 1:** The RCMP National Headquarters *Operational Manual* definitions of “body search” and “strip search” are unclear and do not provide sufficient guidance for members to clearly differentiate between the two.

According to the Supreme Court, a strip search involves “the removal or rearrangement of some or all of the clothing of a person so as to permit a visual inspection of a person’s private areas, namely genitals, buttocks, breasts (in the case of a female), or undergarments [emphasis added].”<sup>46</sup> Thus, it appears that the RCMP National Headquarters *Operational Manual* definition of strip search is not consistent with this definition.

**Finding No. 2:** The definition of “strip search” provided by the RCMP’s national policy is not consistent with the definitions provided by current jurisprudence.

**Recommendation No. 1:** That the RCMP update its National Headquarters *Operational Manual* policy definitions for “body search” and “strip search” to eliminate ambiguity and ensure that the definitions are consistent with current jurisprudence.

The national policy requires that a strip search must:

... be authorized by a supervisor when one is available; be conducted by a member of the same gender; be conducted quickly and where possible, in a manner so that the detainee is not completely undressed at any time; be conducted in a manner that is not abusive; and must not be conducted by more members than necessary, to ensure the safety of the members/detainee [emphasis added].<sup>47</sup>

In this regard, during an interview with the Commission, RCMP members from National Headquarters, Contract and Aboriginal Policing Directorate, indicated that in most circumstances a supervisor is reachable, by telephone if not in person. They further

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<sup>46</sup> *Golden*, *supra* note 24 at para 47.

<sup>47</sup> RCMP National Headquarters *Operational Manual* chap 21.2. “Personal Search”, s 2. “Strip Search” (dated February 13, 2013).

noted that there should always be a watch commander or supervisor on-call, and in smaller detachments, if and when a supervisor is not available, a supervisor from a detachment close by may be relied upon. That being said, the RCMP confirmed that in exigent circumstances, a strip search could take place without obtaining a supervisor's approval.<sup>48</sup> Interviews with the British Columbia RCMP confirmed that this is the case in the Division.<sup>49</sup>

While obtaining the approval of a supervisor prior to conducting a strip search is a good means of ensuring internal oversight, in the Commission's view the addition of the caveat "when one is available" significantly diminishes the stringency of this provision.

**Finding No. 3:** The RCMP's national policy requirement that members obtain the approval of a supervisor for a strip search "when one is available" is insufficiently stringent to ensure that such approval will be sought in all but exigent circumstances.

Requiring mandatory supervisory approval prior to conducting a strip search, unless exigent circumstances exist (e.g. an immediate strip search be conducted for the preservation of evidence and/or for the safety and security of members, the detained person and/or the public), would not appear to impose an undue burden on RCMP members.

**Recommendation No. 2:** That the RCMP amend chapter 21.2. of its national policy regarding personal searches to ensure more robust supervisory oversight by explicitly requiring a supervisor's approval prior to conducting a strip search unless exigent circumstances exist.

The national policy also stipulates that a member conducting a strip search "must be prepared to demonstrate [in writing] exactly how each criteria of *R v Golden* was met [emphasis added]."<sup>50</sup> This requirement is much less rigorous than requiring a member to document these articulations in a report or in a notebook. The RCMP acknowledged to the Commission that while unclear, the policy is meant to direct members to articulate in writing how the criteria for a strip search are met.<sup>51</sup>

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<sup>48</sup> Commission meeting with RCMP National Headquarters, Contract and Aboriginal Policing Directorate officials (January 30, 2015).

<sup>49</sup> Commission meeting with British Columbia RCMP Division officials (March 3, 2015).

<sup>50</sup> RCMP National Headquarters *Operational Manual* chap 21.2. "Personal Search", s 2. "Strip Search" (dated February 13, 2013).

<sup>51</sup> Commission meeting with RCMP National Headquarters, Contract and Aboriginal Policing Directorate officials (January 30, 2015).



The national policy also includes a section on “Precautions,” which provides additional guidance and direction to members, including section 4.3. stating: “Do not search a person of the opposite gender unless immediate risk of injury or escape exists” and section 4.4. reiterating that “[i]n accordance with sec 2.4., conduct a strip search only on a person of the same gender, and in private.”

Based on the above, while sections 2.4. and 4.4. state that a strip search should “be conducted by a member of the same gender,” it is unclear whether section 4.3. only applies to body searches (frisks) or whether a member can conduct a strip search on a person of the opposite sex if immediate risk of injury or escape exists.

**Finding No. 4:** Sections 4.3. and 4.4. of RCMP National Headquarters *Operational Manual* chapter 21.2. lack clarity with respect to when strip searches by a member of the opposite sex are permitted.

In this regard, members of RCMP National Headquarters, Contract and Aboriginal Policing Directorate, and the British Columbia RCMP confirmed that a strip search of a subject of the opposite sex can take place in exigent circumstances.<sup>52</sup> It should also be noted that during interviews with the Commission's investigator, when asked about personal search policies and procedures, RCMP members from the British Columbia North District consistently responded that while opposite sex body searches are not uncommon, opposite-sex strip searches do not occur. Further, most of the members interviewed indicated that strip searches in general, including those of persons of the same sex, are extremely rare occurrences and/or do not occur. Members also stated that in the rare circumstances when strip searches of women occur, female guards and female RCMP members are generally available to conduct them.<sup>53</sup>

**Recommendation No. 3:** That the RCMP amend chapter 21.2. of its national policy regarding personal searches to clarify if and when a strip search of a person of the opposite sex is ever permitted. Further, the policy should articulate the circumstances or criteria that must be met prior to conducting or overseeing a strip search of a person of the opposite sex (i.e. if immediate risk of injury or escape exists and/or in exigent circumstances).

Chapter 21.2. of the RCMP National Headquarters *Operational Manual* also addresses internal searches. Section 3. of chapter 21.2. defines an internal search as a search of

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<sup>52</sup> Commission meeting with RCMP National Headquarters, Contract and Aboriginal Policing Directorate officials (January 30, 2015) and Commission meeting with British Columbia RCMP Division officials (March 3, 2015).

<sup>53</sup> Interview with RCMP members in various detachments of the British Columbia North District (September 2014 and March 2015).

body orifices (excluding the mouth) and specifies that such searches are “highly intrusive and an assault on an individual’s dignity” and are only to be conducted by a medical practitioner. While the policy provides general guidance, it does not inform members about the required approval process or reporting requirements. In light of the affront to personal dignity inherent in this type of search, the policy should clearly outline the necessary grounds required to conduct an internal search, the appropriate approvals that must be obtained, and the reporting requirements.

**Finding No. 5:** Section 3. of RCMP National Headquarters *Operational Manual* chapter 21.2. does not provide clear direction to members on the required grounds to conduct an internal search the necessary approvals or reporting requirements.

**Recommendation No. 4:** That the RCMP amend its internal search policy to ensure that it clearly specifies the necessary grounds required prior to conducting an internal search as well as the required approvals.

Section 5. of the RCMP National Headquarters *Operational Manual* chapter 21.2. relates to a member’s reporting requirements for personal searches. It requires that RCMP members retain “on file” their notebook entries in which they articulate the reasons for the search and the manner in which the search was conducted, whereas section 5.2. states: “If you are unable to articulate in your notes, the procedures as outlined in sec. 2.4., seek authorization from an available supervisor, whenever possible [emphasis added].”<sup>54</sup>

Section 5.2. does not explain the circumstances under which a member would be considered “unable to articulate” the requirements under section 2.4. or what a supervisor would be asked to authorize under this provision. When asked about the policy, RCMP members in the National Contract and Aboriginal Policing Directorate were unable to explain the purpose and application of this section.<sup>55</sup>

Given the intrusive and humiliating nature of strip searches as well as the potential Charter implications of an unreasonably conducted strip search, the national policy should be clarified and strengthened by requiring that members articulate, in writing, how each of the required criteria is met. The policy should equally set out where this information should be captured (i.e. on the prisoner report, the occurrence report, and/or in the member’s notebook). Clarifying and strengthening reporting requirements

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<sup>54</sup> RCMP National Headquarters *Operational Manual* chap 21.2. “Personal Search”, s 5. “Reporting” (dated February 13, 2013).

<sup>55</sup> Commission meeting with RCMP National Headquarters, Contract and Aboriginal Policing Directorate officials (January 30, 2015).

will eliminate ambiguity, increase reporting transparency, enhance accountability, as well as provide a means to evaluate, measure and assess compliance with policies and procedures.

**Finding No. 6:** As written section 5.2. of RCMP National Headquarters *Operational Manual* chapter 21.2. is unclear and creates ambiguity regarding the section 2.4. requirement to articulate the reasons for and manner in which a search was conducted and where this information should be recorded.

**Recommendation No. 5:** That the RCMP amend chapter 21.2. of its national policy regarding personal searches to ensure that the policy addresses the member's requirement to articulate the reasons and manner of the search in writing, including the information members are required to document and where it must be recorded.

In its review of RCMP policy documents, the Commission noted that the RCMP's national policy does not provide any guidance or direction to members in relation to searching a transgendered or inter-sexed person. While this specific area was not included in the scope of this investigation, the Commission is of the view that RCMP policies, procedures and training should include provisions to address searching a transgendered or inter-sexed person.

The Commission also noted that neither RCMP national policies and procedures on personal searches nor the policies governing the use and application of closed-circuit video equipment in cell block areas<sup>56</sup> provide guidelines or direction to members in relation to recording/capturing personal searches on cameras or any limitations or restrictions in this regard. This is particularly relevant in light of the recent case (*R v Fine*)<sup>57</sup> wherein the British Columbia Provincial Court ruled that the Kelowna RCMP violated a woman's Charter right to be secure from an unreasonable search by videotaping and broadcasting the footage to a monitoring room while she was partially naked. Thus, the Commission believes that the RCMP should amend relevant policies and procedures to ensure that they address the use of closed-circuit video equipment during strip searches in order that the searched person's Charter rights are not infringed.

#### British Columbia RCMP Division Operational Manual – Personal Search Policies

British Columbia RCMP *Operational Manual* policies regarding personal searches are captured under British Columbia RCMP "E" Division *Operational Manual* chapter 21.2. (dated July 28, 2006). As previously noted, divisional policies are meant to supplement

<sup>56</sup> RCMP National Headquarters *Operational Manual* chap 16.4. "Closed Circuit Video Equipment" (dated April 28, 2008).

<sup>57</sup> *R v Fine*, 2015 BCPC 3.

and expand on national policies and to provide additional division-specific guidance or provincial context.

Section 1. refers members to the national policy on personal searches; states that all prisoners must be searched by a member before being placed in cells; and indicates that prisoners may be searched by a member of opposite sex, if: another member or guard is present during the entire search; or in an emergency. This section also emphasizes that members must “evaluate the circumstances and exercise their judgment when conducting prisoner searches.”<sup>58</sup> Section 1. of the British Columbia RCMP *Operational Manual* chapter 21.2. is generic and vague. The section does not differentiate between body and strip searches. As a result, in stating that searches may be conducted by members of the opposite sex if “another member or guard is present during the entire search; or, it is an emergency,” the chapter fails to make clear whether this applies to body searches, strip searches, or both.

Section 4. of the policy states:

4.1. If determined through a frisk search that a prisoner is wearing a bra and the criteria for conducting a strip search is not met, and if officer safety would not be compromised, then the member/matron should:

4. 1. 1. instruct the prisoner to remove the bra without removing any clothing and surrender the undergarment to the member/matron; or

4. 1. 2. in a private area, aid the prisoner in the removal of the bra;

4. 1. 3. thoroughly search the undergarment; and

4. 1. 4. if there are no articulable concerns, return the undergarment to the prisoner to put back on.

4. 2. The seizing of a prisoner’s bra and/or underwear prior to lodging the prisoner in cells is only to be carried out if there are articulable concerns that:

4. 2. 1. the underwire may be used as a weapon or to aid in escape; or

4. 2. 2. the undergarment may be used to aid in suicide.<sup>59</sup>

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<sup>58</sup> British Columbia RCMP “E” Division *Operational Manual* chap 21.2. “Personal Search”, s 1. “General” (dated July 28, 2006).

<sup>59</sup> British Columbia RCMP “E” Division *Operational Manual* chap 21.2. “Personal Search”, s 4. “Cell Block Searches” (dated July 28, 2006).

During interviews with the British Columbia RCMP officials, the Commission was advised that the removal of a woman's bra was done for safety reasons and that this is a routine practice with extremely intoxicated women. They also stated that removal of the bra is considered part of a thorough body search, not a strip search.<sup>60</sup>

As previously stated, under current jurisprudence, the requirement for a prisoner to remove her bra falls within the definition of strip search. The Provincial Court of British Columbia (Youth Division) ruled that the RCMP requirement for a female prisoner to remove her brassiere pursuant to general policy constitutes a strip search.<sup>61</sup> In addition, in 2013 the Saskatchewan Provincial Court and the Ontario Superior Court of Justice found that demanding that female detainees remove their bras (even though done discreetly without exposing their breasts) constitutes a strip search under the *Golden* definition.<sup>62</sup> Other court judgments also recognize that this practice is intrusive and should not be carried out as a routine matter without consideration of the circumstances.<sup>63</sup>

If a member has reasonable grounds to believe that a detained person's bra poses a risk to the safety and/or security of police members, the detained person and/or the public, the policies, procedures, approvals and reporting requirements attributed to strip searches should apply. There is no indication that the removal of a bra is necessary in all cases to ensure the safety of members, the detainee and other persons. The prescriptive nature of the policy may result in unnecessary and excessive searches of women, contrary to the criteria set forth in common law. Given the court decisions referenced above, the Commission believes that removing a prisoner's bra or enjoining a prisoner to remove a bra constitutes a strip search, which requires reasonable grounds and must be reflected in policy.

**Finding No. 7:** The British Columbia RCMP policy mandating the removal of bras is contrary to common law principles. Absent reasonable grounds to conduct a strip search the removal of a prisoner's bra is unreasonable.

Section 5. is the final section of the divisional policy, which outlines the Commander's responsibility to ensure that members are aware of the contents of the policy.

Based on the above, the Commission is of the view that British Columbia RCMP policy with respect to personal searches requires clarification and should be revised to reflect current jurisprudence.

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<sup>60</sup> Interview with British Columbia RCMP officials (March 3, 2015).

<sup>61</sup> *P.F.G.*, *supra*, note 39.

<sup>62</sup> *R v Deschambault*, 2013 SKPC 112; *R v Lee*, 2013 ONSC 1000.

<sup>63</sup> *R v Bouchard*, 2011 ONCJ 610; *R v Robb*, 2014 ONCJ 514.

**Recommendation No. 6:** That the RCMP in British Columbia amend its policy regarding personal searches (*Operational Manual* chapter 21.2.) to reflect current jurisprudence.

## RCMP Training

### Cadet Training Program

The Commission reviewed all RCMP Cadet Training Program<sup>64</sup> modules that specifically pertain to personal searches, including:

- a) Applied Police Sciences – Module 6, session 7 (version 8, September 20, 2012)
- b) Applied Police Sciences – Module 6, session 9 (version 8, June 19, 2014)
- c) Applied Police Sciences – Module 6, session 10 (version 8, February 26, 2014)
- d) Welcome Package Police Defensive Tactics, Appendix 9 – Types of Searches DARCS and ALPS the 4 C's – (version 8, January 18, 2013)
- e) Police Defensive Tactics – Session 8 – DARCS Procedures Standing Subject Search (version 8, April 1, 2012)
- f) Police Defensive Tactics – Session 9

The RCMP Depot Division confirmed that while the above modules and sessions are specifically dedicated to personal searches, cadets are expected to apply the relevant knowledge and skills in all subsequent training and scenarios during the Cadet Training Program.<sup>65</sup>

In the RCMP Cadet Training Program's Applied Police Sciences modules, among other key topics cadets learn about their authority to search an individual who is lawfully arrested; the rights and freedoms afforded under the Charter; relevant case law; the appropriate safeguards to take when searching and escorting a detained person to the detachment; and the types of personal searches and the associated procedures.<sup>66</sup>

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<sup>64</sup> For more information about the RCMP Cadet Training Program as well as RCMP divisional training, please see [Appendix C](#).

<sup>65</sup> Correspondence from RCMP Depot Division (May 13, 2014).

<sup>66</sup> RCMP Cadet Training Program, Applied Police Sciences, Module 6, Session 7 (version 8, September 20, 2012) and Module 6, Session 9 (version 8, June 19, 2014).

These modules and sessions also include information about the RCMP's national policy on personal searches, including specific training on searching a person of the opposite sex. The training stipulates that "[a] member shall not search a person of the opposite sex unless immediate risk of injury or escape exists." Cadets are taught that "[u]nless a person of the same gender is available in a reasonable amount of time, then the arresting member will conduct a body search. What a reasonable amount of time is must be left up to the individual member based on his/her assessment of risk [emphasis added]." <sup>67</sup>

In this regard, the Commission was informed that during the session, the course facilitator emphasizes that member availability and time, and other factors such as the weather, environment and situational factors, all influence the risk assessment and decision making of the officer in determining whether to conduct a body search of a subject of the opposite sex. The training provided is intended to help cadets develop the required skills and competencies to assess the risk of a given situation and make decisions. <sup>68</sup>

As part of the Applied Police Sciences modules, cadets participate in role-playing scenarios on escorting prisoners to the cell block, searching the cell and the prisoner, as well as completing the required paperwork (i.e. prisoner report). Cadets also discuss the reasons for the search and seizure of effects from prisoners, including items that have or may have religious meaning. <sup>69</sup>

In the Cadet Training Program, Police Defensive Tactics Training, cadets also learn about the types of searches and receive detailed training on how to conduct body searches of a standing subject and a prone subject. Cadets are reminded of the specific national policies on personal searches (including the grounds required to conduct a strip search) and the care required when searching a subject to ensure a complete and thorough search. <sup>70</sup>

During these sessions, cadets also learn about searching a person of the opposite sex. In this regard, cadets are taught that common law authority does not make a distinction between sexes and that members may search anyone subsequent to a lawful arrest. Cadets are instructed to ask for a same-sex RCMP member to conduct the search and that an opposite-sex search is permitted under policy, depending on the risk

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<sup>67</sup> RCMP Cadet Training Program, Applied Police Sciences, Module 6, Session 7 (version 8, September 20, 2012).

<sup>68</sup> Electronic correspondence from RCMP Depot Division (December 16, 2014).

<sup>69</sup> RCMP Cadet Training Program, Applied Police Sciences, Module 6, Session 10 (version 8, February 26, 2014).

<sup>70</sup> RCMP Cadet Training Program, Police Defensive Tactics, Session 8 – DARCS Procedures Standing Subject Search (version 8, April 1, 2012).



environment (i.e. if immediate risk of injury or escape exists).<sup>71</sup> Cadets also receive a demonstration of the different techniques used when a male or female RCMP member searches a female subject (i.e. instead of using a flat hand technique while searching the chest/breast area, members are taught to search the chest/breast area with the edge of their hand and whenever possible to ensure the palm of the hand is directed away from the breast). Cadets are subsequently required to practice arrest and searching techniques and procedures using role-play.<sup>72</sup>

Cadets are also taught that a strip search may only be conducted if “there are reasonable and probable grounds to believe the suspect is concealing evidence relating to a crime or items that may be used to cause injury, death or aid in escape.”<sup>73</sup> Cadets are instructed that a strip search is to be conducted by a member of the same sex, and that the following conditions must also be met prior to/during a strip search:

- Must be authorized by a supervisor if one is available.
- Be conducted quickly and, where possible, so that the detainee is not completely undressed at any time.
- Be conducted in a manner that is not abusive.
- Must not be conducted by more members than necessary, to ensure the safety of the members/detainee.

Based on a review of the course materials examined, training in relation to personal searches is consistent with the law as well as national policies and procedures. Furthermore, training specifically in relation to body searches is exhaustive and comprehensive. Cadets are provided detailed instruction and demonstrations as well as time to practice the required skills and competencies. Training includes an appropriate combination of reference material, presentations, practical exercises (including role-play and scenarios) and video instruction, and teaches relevant policies, case law and section 8 of the Charter in a manner that provides cadets with the necessary basis for conducting searches according to the law.

Training in relation to strip searches is provided from a theoretical perspective only. Cadets learn about the strip search policies and procedures in theory and through written assignments, but do not conduct strip searches in practice.

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<sup>71</sup> RCMP National Headquarters *Operational Manual* chap 21.2. “Personal Search” (dated February 13, 2013).

<sup>72</sup> *Supra* note 69.

<sup>73</sup> *Ibid.*



In this regard, Depot Division informed the Commission that the Cadet Training Program is designed for basic training. The emphasis is hence placed on body searches because cadets will perform this type of search within a very short time of entering the field and regularly over the course of their career. Strip searches are not routine police procedure and are performed rarely. As such, training scenarios during the Cadet Training Program do not involve strip searches or the requirement to articulate whether reasonable and probable grounds for a strip search exist.<sup>74</sup>

Further, when asked about the RCMP National Headquarters *Operational Manual* definition of strip search and whether requesting a person to strip down to his/her undergarments constitutes a strip search, Depot Division responded that in their view, it did. That said, Depot Division also informed the Commission that the partial removal of clothing is not addressed during cadet training. Based on the Commission's review, it appears that the identified policy ambiguities and weaknesses are leading to training gaps which must be addressed. The Commission believes that the Cadet Training Program should include specific guidance to cadets on the distinction between a body search and strip search, the legal authority to conduct those searches and the articulation of the reasonable grounds to conduct such a search. The training should also provide opportunities for cadets to exercise discretion in determining whether to conduct a strip search.

**Finding No. 8:** By limiting training on strip searches to a review of relevant policies Procedures law and written assignments the RCMP Cadet Training Program fails to provide adequate training to cadets on what constitutes a strip search.

**Recommendation No. 7:** That the RCMP enhance basic training at Depot Division to ensure that cadets are cognizant of the legal requirements and relevant policies and procedures for all types of personal searches.

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<sup>74</sup> Electronic correspondence from RCMP Depot Division (December 16, 2014).

### British Columbia RCMP Division Training – Field Coaching Program and Pacific Region Training Centre

During the Field Coaching Program, coach officers provide basic “on the job training.” In addition to the experiences gained through direct operational activities, new members are also required to complete assignments and tests. For the RCMP in British Columbia, this includes a specific module intended to familiarize new members with national, division and detachment policies. The module includes a review of search and seizure laws, statutes and RCMP policies.<sup>75</sup>

Other than the training received during the Field Coaching Program, members do not receive any specific or dedicated training in relation to personal searches on a mandatory or ongoing basis. The Commission was informed, however, that all RCMP regular members must attend a mandatory Operational Skills Maintenance Re-Certification once every three years at the Pacific Region Training Centre.<sup>76</sup> According to the information provided by the Pacific Region Training Centre, this recertification includes a session on Scenario Based Training and Articulation. While personal searches are not part of the scenario-based training requirements, members are monitored during the scenario for communication with the dispatcher to see whether members request the presence of a member of the same sex to conduct a body search, if it is appropriate to their scenario.<sup>77</sup>

The Pacific Region Training Centre informed the Commission that while the Operational Skills Maintenance Re-Certification does not specifically address personal searches, if during this recertification a member seeks clarification or asks a question, trainers use the Police Defensive Tactics training materials from Depot Division as the guide to answer any questions.<sup>78</sup> The Training Centre also reported that in addition to the mandatory Operational Skills Maintenance Re-Certification, members may, at the request of a member or detachment, receive refresher training on conducting personal searches at the detachment with the assistance of a Public and Police Safety Instructor, based on the needs and skills of the members and availability of a local instructor.<sup>79</sup>

The Commission finds that the RCMP in British Columbia does not have dedicated, mandatory or ongoing practical training in relation to personal searches.

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<sup>75</sup> RCMP Field Coaching Program, Pacific Region Training Centre, Module B, Coach and new member (dated August 29, 2013).

<sup>76</sup> Electronic correspondence from RCMP Pacific Region Training Centre (October 30, 2014).

<sup>77</sup> *Ibid.*

<sup>78</sup> *Ibid.*

<sup>79</sup> *Ibid.*

When training is provided, at the request of a member or detachment, it is reportedly based on and consistent with RCMP national policies, Depot Division training, and relevant case law.

While it may not be practical or reasonable to expect members to conduct actual strip searches on persons for training purposes, the RCMP should consider whether to develop specific practical training on what entails a strip search, when it is appropriate and how to conduct a strip search for the Cadet Training Program or for subsequent training at the divisional level. Limiting strip search training to “on-the-job” learning exposes the RCMP to a higher degree of risk and error. This was clearly evidenced during the Commission’s review when multiple members were unsure whether a strip search included stripping a person down to his/her undergarments. This may present an even greater risk for members transferred to remote locations, faced with the necessity or requirement to conduct a strip search without the benefit of formal training or practical experience, or access to more experienced personnel to provide guidance.

Furthermore, while internal searches likely occur rarely, members should learn the grounds required to conduct such a search, as well as how to ensure that the search is conducted appropriately and in accordance with the law. Members should know and learn about the required approvals and reporting requirements.

**Finding No. 9:** Relying on member or detachment initiative to request training rather than mandating ongoing practical training in body searches or any training in strip searches in the Division fails to ensure that members have adequate knowledge and experience in these areas.

**Recommendation No. 8:** That the RCMP enhance training in personal searches to ensure that Division members are cognizant of the legal requirements and relevant policies and procedures for body, strip and internal searches, and that such training also be included in the Operational Skills Maintenance Re-Certification.

## **Accountability, Compliance and Transparency**

The Commission initially intended to conduct a file review to examine member compliance with RCMP personal search policies and procedures. As previously noted, the Commission was informed that the British Columbia RCMP’s current records management system (Police Records Management Environment for British Columbia, known as PRIME-BC) does not track or otherwise account for the frequency and/or types of searches conducted; the approvals sought; the results of the search; or whether a search was conducted by a member of the opposite sex.

Interviews with members of the British Columbia North District consistently reported that strip searches are rare occurrences and that strip searches by members of the opposite

sex do not occur. But the lack of appropriate tracking systems means that the RCMP is unable to fully account for the actions taken by its members in this regard and the Commission is unable to verify RCMP assertions regarding strip searches. Moreover, the lack of clear differentiation in RCMP policy between body and strip searches, noted previously, may mean that strip searches are being misidentified as body searches and are not being recorded appropriately. While members are expected to record this information in their notebooks, without formal records or appropriate means of tracking strip searches and their results, the Commission was severely limited in its ability to evaluate member compliance with policies and procedures or to determine if a systemic issue may exist.

RCMP detachments in British Columbia are required to conduct unit-level quality assurance reviews and are subject to management reviews, which include reviews of search and seizure practices. The search and seizure reviews are intended to determine whether proper documentation was completed, whether the search and seizure of items was compliant with legal requirements and directives, and whether the search and seizure of items was deemed reasonable within these authorities. The reviews are also meant to assist in determining whether the searches and seizures were conducted only when clearly authorized by law or with expressed consent.<sup>80</sup> During such a review, a sample of files is examined to determine whether search and seizure policies and procedures are being followed in practice. The fact that search and seizure is included in these reviews suggests that the RCMP regards this as a high-risk area needing regular review. But the review focuses largely on material search and seizure, rather than personal searches. As well, in relation to strip searches, while the Search and Seizure Guide links back to the requirements set out in RCMP National Headquarters *Operational Manual* chapter 21.2. (specifically in relation to sections 2.4. and 2.5. as well as 5.1. in relation to a member's reporting requirements), it is unclear how a sample of files involving strip searches can be derived since information about strip searches is captured only in a member's notebook and is not otherwise tracked in existing records systems.

In this regard, the Commission obtained the Management Review reports conducted by the RCMP in British Columbia for detachments in the North District between 2008 and 2012. Of the 20 Management Review reports examined, four included sections addressing personal searches. Of these four reviews, one report revealed that the majority of members at a detachment did not possess the appropriate knowledge to justify their grounds for warrantless searches. The report found that while the file review did not identify any strip searches, further to interviews with detachment members, it was learned that all individuals being arrested for drugs seizures are being subjected to

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<sup>80</sup> British Columbia RCMP "E" Division, Internal Audit and National Review Services, Divisional Review Guide, Search and Seizure.

strip searches. In this regard, the review revealed that members are not adequately documenting the events/circumstances that occur during their investigations. The review recommended that the Unit Commander ensure that all members receive appropriate training in relation to legal authorities and policy requirements surrounding warrantless searches and strip searches as well as the need to properly document and justify their actions. Two reports found that members are not always clearly or consistently documenting the fact that a search was conducted incidental to arrest.<sup>81</sup>

In *Golden*, the Supreme Court of Canada highlighted the importance to the police of keeping proper records of the reasons for and manner in which a strip search was carried out. In *R v Muller*, the Ontario Superior Court of Justice stated:

There must be a means by which authorities can account for and be held accountable for such procedures. The failure to record these events creates any number of problems. It is impossible to gauge how often these searches are conducted and the proportion that result in no evidence being found. The ability to examine and revisit practices is limited. Important evidence capable of disclosing systemic problems is effectively erased. There is no record kept for other purposes, such as a police complaint or civil action. Persons such as the accused in this case may be deprived of evidence relevant to the advancement of their constitutional rights. More generally, the absence of a record might carry an implicit or subtle message of impunity for police engaged in these searches, the notion being that, if there is no record, there will be no review. This is a dangerous prospect and one which the *Charter* cannot countenance. No state power should be left unchecked, particularly one involving invasive search of the person.<sup>82</sup>

While the case above relates specifically to notebook entries (or more specifically the absence of notebook entries), and the guidelines in relation to “proper records” stipulated in *Golden* are not legislated, it seems reasonable nonetheless to expect the police to maintain an official record of police actions and conduct when subjecting a person to a strip search without a warrant.

In the United Kingdom, the *Police and Criminal Evidence Act 1984* codes of practice establish a framework of police powers and safeguards in relation to core policing activities (i.e. specifically relating to stop and search; arrest; detention; investigation; identification; and interviewing detainees). In this regard, the *Police and Criminal*

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<sup>81</sup> British Columbia RCMP “E” Division, Review Services, management reviews for North District detachments between 2008–2012 (received September 5, 2014).

<sup>82</sup> *R v Muller*, 2011 ONSC 4892 at para 85. But see *R v Muller*, 2014 ONCA 780 (decision reversed on appeal, but the Court of Appeal did not challenge this statement).

*Evidence Act Code C* provides clear and specific guidelines in relation to the detention, treatment and questioning of persons by the police. Annex A of this code outlines specific requirements for when and how a strip search should be conducted, including the requirement that certain information be captured on the custody record, namely the reason it was necessary, those present and the results of the strip search.<sup>83</sup>

The specific requirement to record the details of the search on the custody record is a paramount feature of these guidelines that not only increases police accountability and transparency but also ensures that compliance with policies and procedures can be measured.

Furthermore, while tracking personal searches may not be a "standard practice" for all police services, it is not without precedent in Canada. The Toronto Police Services Board requires the Chief of Police to report annually to the Board on the number (frequency) of strip searches; the reasons articulated for the searches; and the results of both strip searches and internal searches (i.e. cavity/orifice searches).<sup>84</sup> This information is made public on the Toronto Police Services Board's website. In this regard, in 2013 the Toronto Police Service reported conducting 20,152 strip searches, representing 34% of all arrests made. The report further indicates that the police found evidence such as drugs in just over 1% of these searches.<sup>85</sup>

Other Canadian police services also collect data and statistics on the frequency, details and results of strip searches. The Commission contacted 35 Canadian police services to ask about personal search policies and procedures. Of the 18 that responded, four reported collecting and being able to derive statistical data in relation to strip searches (this includes information such as the frequency of strip searches; the person's age, sex and ethnicity; as well as the results of the search).<sup>86</sup>

The Commission also obtained the search policies and procedures of a municipal police service in British Columbia. These include very specific directions and procedures on when and how to conduct a strip search and the required authorization, as well as detailed instructions on what information must be recorded and where the information must be captured. The police service also requires its officers to record the required information on a specific strip search template and the arrest report, which are both

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<sup>83</sup> *Police and Criminal Evidence Act 1984* (UK), c 60, Revised Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers, Code C (2014).

<sup>84</sup> Toronto Police Services Board, *Board Policies, Search of Persons*, online: Toronto Police Services Board <[http://www.tpsb.ca/FS/Docs/Policies/Board\\_Policies/](http://www.tpsb.ca/FS/Docs/Policies/Board_Policies/)>.

<sup>85</sup> Extract from the minutes of the public meeting of the Toronto Police Services Board held on February 13, 2014.

<sup>86</sup> CRCC Survey, Policing Practices – Research on Strip Search Policies and Procedures (2014).

electronic forms on PRIME-BC. This records management system is also used by the RCMP in British Columbia, as previously noted.

The Saskatchewan RCMP divisional policy on personal searches sets out strip search procedures that must be followed if a strip search is conducted, including the requirement to document the following on the operational file:

1. Date, place of arrest and time.
2. Name and sex of detainee.
3. Authority to Arrest.
4. Place of strip search and time.
5. Name of officer(s) conducting search and names of other officers present at time of arrest through to search.
6. Reasonable grounds for strip search. What were the facts that enabled you to draw the conclusion that there was concern for:
  - a. safety of officer, detainee and other persons; and
  - b. purpose of discovering evidence related to the reason for arrest to preserve it and prevent destruction.
7. Notification and consent from supervisor. In exigent circumstances this may not be possible, and if that is the case it should be noted.
8. Offer the detainee an opportunity to produce the material being sought.
9. Was advice or assistance from a trained medical officer considered and documented on the operational file?
10. Manner of strip search: How was it conducted at the scene in exigent circumstances. Indicate steps that were taken to enable the search to be done to the extent possible under the circumstances in a dignified way out of public view.
11. Manner of strip search at detachment. Indicate place and circumstances to show dignified and private search.
12. Was the search conducted by a person of the same sex as the detainee?<sup>87</sup>

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<sup>87</sup> Saskatchewan RCMP "F" Division *Operational Manual* Appendix 21.2.1 "Strip Search Procedures" (dated March 22, 2012).



The Commission believes that the Saskatchewan RCMP procedures for strip searches set a high standard, consistent with that of some other Canadian police forces, which could serve as a model for the RCMP in British Columbia. That said, while the procedures require members to capture the details and manner of the search on the operational file, the RCMP Division in Saskatchewan does not currently have the means to collect data or derive statistics on strip searches.

In addition to providing accountability for the use of a highly invasive procedure, systematic recording and reporting on strip searches increases transparency and thus contributes to public trust in the police.

**Finding No. 10:** From an accountability perspective the Commission finds that the RCMP's National Headquarters and British Columbia divisional personal search policies and practices are not adequate.

**Recommendation No. 9:** That the RCMP amend its National Headquarters and British Columbia divisional *Operational Manual* personal search policies to enhance transparency and accountability by ensuring the policies include an appropriate means of recording, tracking, and assessing compliance, thus facilitating independent review.

## Women and Youth

The Commission reviewed the RCMP's personal search policies and training in terms of their specific application towards and implications for police interactions with woman and youth. Human Rights Watch recommended that the RCMP “eliminate searches and monitoring of women and girls by male police officers in all but extraordinary circumstances and require documentation and supervisor and commander review of any such searches” and to prohibit opposite-sex strip searches under any circumstances.<sup>88</sup>

As previously mentioned, body searches are a relatively routine police practice, conducted to ensure the safety of RCMP members, the detainee and the public; and to avoid the destruction of evidence or to locate evidence connected to the offence for which the arrest was made.<sup>89</sup> As such, the courts have made a clear distinction between “body searches” and “strip searches.”

While the Commission found the RCMP definitions of “body search” and “strip search” unclear and inconsistent with the Supreme Court definitions, in relation to opposite sex

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<sup>88</sup> *Supra* note 41.

<sup>89</sup> *Supra* note 28.



searches the RCMP's national policy emphasizes that members should not conduct a body search of a person of the opposite sex unless immediate risk of injury or escape exists. Training materials further state that "[u]nless a person of the same gender is available in a reasonable amount of time, then the arresting member will conduct a body search."<sup>90</sup> The Commission is satisfied that the RCMP's approach to opposite sex body searches is consistent with common law.

In *Golden*, the Supreme Court adopted the guidelines for strip searches found in Code C, Annex A of the *Police and Criminal Evidence Act 1984* (UK), c 60, which outlines the specific requirements for when and how a strip search should be conducted, including the requirement to ensure that the strip search is carried out by someone of the same sex. But the Supreme Court did not elaborate on this same-sex requirement, while case law in this regard is limited. In almost all of the reported cases involving strip searches, the searches were conducted by someone of the same sex.

However, in *Weatherall v Canada (Attorney General)*, the Federal Court concluded that cross-sex viewing of strip searches may be justifiable in an emergency.<sup>91</sup> Moreover, in *R v Mattis*, the Ontario Court of Justice (Provincial Division) left open the possibility that opposite-sex strip searches might be acceptable in certain circumstances.<sup>92</sup>

In the Commission's survey in relation to personal search policies and procedures, 12 police services responded that strip searches on persons of the opposite sex are not permitted, whereas 5 police services reported allowing strip searches of persons of the opposite sex in exigent circumstances only.<sup>93</sup>

Given the urgent and volatile situations that police sometimes encounter, an exception to the same-sex strip search requirement may be reasonable in exigent circumstances. That being said, appropriate definitions as well as approvals and accountability mechanisms must be established to monitor and assess compliance with these policies and procedures.

While *Golden* did not differentiate between adults and young persons, the *Declaration of Principle* in section 3 of the *Youth Criminal Justice Act*, SC 2002, c 1 outlines the basis for this differential treatment. In addition, subsection 26(1) of this Act requires that police notify a parent as soon as possible when a young person is arrested and detained; subsection 26(2) requires parental notice where a youth is given a summons or appearance notice; and subsection 146(2) requires police to inform a youth of, among

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<sup>90</sup> RCMP Cadet Training Program, Applied Police Sciences, Module 6, Session 7 (version 8, September 20, 2012).

<sup>91</sup> *Weatherall v Canada (Attorney General)*, [1988] 1 FC 369 (although appealed, this finding was not challenged on appeal).

<sup>92</sup> *R v Mattis*, [1998] OJ No. 4332.

<sup>93</sup> CRCC Survey, Policing Practices – Research on Strip Search Policies and Procedures (2014).

other things, his/her right to consult a parent prior to giving a statement. Other than the general requirement to notify a parent when a youth is arrested, the *Youth Criminal Justice Act* has no explicit requirement to notify a parent prior to a strip search. Nevertheless, the Act's requirement to notify a parent as soon as possible when a young person is arrested and detained could reasonably extend to the expectation that a parent be notified of the police's intention to conduct a strip search of a youth as the search would occur subsequent to a lawful arrest.

In this regard, the United Kingdom's *Police and Criminal Evidence Act 1984*, Code C (revised) Annex A, dated July 10, 2012, outlines specific requirements for when and how a strip search should be conducted, including that:

(c) except in cases of urgency, where there is risk of serious harm to the detainee or to others, whenever a strip search involves exposure of intimate body parts, there must be at least two people present other than the detainee, and if the search is of a juvenile or mentally disordered or otherwise mentally vulnerable person, one of the people must be the appropriate adult. Except in urgent cases as above, a search of a juvenile may take place in the absence of the appropriate adult only if the juvenile signifies in the presence of the appropriate adult that they do not want the adult to be present during the search and the adult agrees. A record shall be made of the juvenile's decision and signed by the appropriate adult. The presence of more than two people, other than an appropriate adult, shall be permitted only in the most exceptional circumstances.<sup>94</sup>

The Commission's survey of police services on personal search policies and procedures found that of the respondents, all but one allow warrantless strip searches of youth so long as the search is lawful. Furthermore, three police services noted having a specific provision or reference within their search policies/procedures in relation to strip searches of young persons, including two police services that specifically indicated that the

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<sup>94</sup> See *Police and Criminal Evidence Act 1984* (UK), c 60, Revised Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers, Code C (2012), as amended by the *Police and Criminal Evidence Act 1984* (UK), c 60, Revised Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers, Code C (2014). In accordance with the *Police and Criminal Evidence Act*, in the case of a juvenile, an "appropriate adult" is:

- (i) the parent, guardian or, if the juvenile is in the care of a local authority or voluntary organisation, a person representing that authority or organisation (see *Note 1B*);
- (ii) a social worker of a local authority (see *Note 1C*);
- (iii) failing these, some other responsible adult aged 18 or over who is not a police officer or employed by the police.

parent(s) of a young person should be present during the search of the young person. One police service's policy also requires that the police officer explain the reason and manner of the search in language appropriate for the young person and that the parent should be present during the explanation and search of the young person.<sup>95</sup>

Based on the above, while Canadian law has not legislated any specific limitations or restrictions with regard to warrantless strip searches of youth, the Commission believes that from a policy perspective every effort should be made to ensure that youth are treated in accordance with the *Declaration of Principle* set out in the *Youth Criminal Justice Act*. In this regard, the RCMP should assess its policies and procedures to ensure that they include adequate provisions on searching and more specifically on strip-searching youth, including whether a parent, guardian or responsible adult should be notified prior to and/or be present during a strip search, as well as ensuring that extra care is afforded to young persons to ensure that they fully understand the reason for the search, how the search will proceed, and their rights.

**Finding No. 11:** The RCMP's personal search policy does not provide special measures to ensure the protection of a young person's rights consistent with the spirit of the *Declaration of Principle* in section 3 of the *Youth Criminal Justice Act* and police practices in some other jurisdictions.

**Recommendation No. 10:** That the RCMP amend its national policy on personal searches to include specific guidance and direction in relation to strip searches of youth.

## Conclusion

In conducting this investigation, the Commission set out to determine whether the RCMP's policies, procedures and training on personal searches are adequate with respect to meeting the standards of current jurisprudence, and to make findings and recommendations that would address concerns about RCMP personal search practices raised by human rights and civil liberties organizations.

The Commission found both national and British Columbia RCMP divisional policies on personal searches inadequate. To this end the Commission recommends that National Headquarters and British Columbia divisional policies be amended to ensure that authorities and requirements are clearly articulated, key terms are clearly defined, and the approval and reporting requirements (including the reason and manner of the search), and any limitations or restrictions, are clearly delineated.

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<sup>95</sup> CRCC Survey, Policing Practices – Research on Strip Search Policies and Procedures (2014).

Appropriate and official records of the reasons for and manner of the conduct of searches, particularly strip searches, ensure that compliance with policies and procedures can be monitored and assessed both internally and by an independent body such as the Commission. Failure to establish appropriate reporting requirements and tracking mechanisms diminishes accountability and raises concerns that systemic issues could go unnoticed.

The Commission found RCMP training to be consistent with the law and relevant case law and also aligned with national policies and procedures. In relation to training, the Commission found that neither the Cadet Training Program nor the divisional training provides adequate practical training on conducting a strip search or evaluating and articulating whether reasonable and probable grounds to conduct a strip search exist. Limiting strip search training to “on-the-job” learning could expose the RCMP to a higher risk of error. This may be particularly true for members in remote locations, faced with the requirement to conduct strip searches without formal training or practical experience, or access to advice from more experienced personnel. The RCMP should evaluate the practicality of including specific practical training on conducting strip searches in the Cadet Training Program and/or provide such training at the divisional level.

## POLICING OF PUBLIC INTOXICATION

### Context

To assess the RCMP's policing of publicly intoxicated persons in the North District of British Columbia, the Commission first had to establish the legal framework within which the police in the province deal with public intoxication.

In Canada, police authority to arrest and incarcerate persons who are intoxicated in a public place is derived primarily from section 175 of the *Criminal Code* of Canada (causing a disturbance) and relevant provincial statutes.

Under subsection 175.(1) of the *Criminal Code*, police have authority to arrest a person causing a disturbance in or near a public place "by being drunk." This subsection of the *Criminal Code* also authorizes the police to arrest a person in or near a public place who is causing a disturbance by other means, such as by fighting, screaming, shouting, using insulting or obscene language, and other types of disturbances.<sup>96</sup>

In British Columbia, the statutory provisions relating to the policing of public intoxication are found in the *Liquor Control and Licensing Act* and the *Offence Act*. Section 41 of the British Columbia *Liquor Control and Licensing Act* makes it an offence to be intoxicated in a public place and provides authority to the police to arrest, without a warrant, a person found intoxicated in a public place.<sup>97</sup> Under section 41 of the *Liquor Control and Licensing Act* the arresting officer has the discretion to issue a violation ticket or an appearance notice.<sup>98</sup>

Section 91 of the British Columbia *Offence Act* allows a peace officer to take an intoxicated person, who is in a place to which the public has access, into custody. The *Offence Act* further specifies that the peace officer must release the person in custody:

- (a) on recovering sufficient capacity to remove himself or herself without danger to himself or herself or others, or causing a nuisance, or
- (b) if application is made sooner by an adult who appears to be capable of taking charge of the person, into the charge of the applicant.<sup>99</sup>

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<sup>96</sup> *Criminal Code*, RSC 1985, c C-46, s 175.(1).

<sup>97</sup> *Liquor Control and Licensing Act*, RSBC 1996, c 267, s 41(1) and (2).

<sup>98</sup> *Violation Ticket Administration and Fines Regulation*, BC Reg 89/97, Schedule 1.

<sup>99</sup> *Offence Act*, RSBC 1996, c 338, s 91(1) and (3).

The main distinction between section 41 of the British Columbia *Liquor Control and Licensing Act* and section 91 of the *Offence Act* is that while the *Liquor Control and Licensing Act* makes it an offence to be intoxicated in a public place, the *Offence Act* does not. As a result, a person cannot be charged under the *Offence Act*. Further, while the *Liquor Control and Licensing Act* relies on the release conditions outlined in the *Criminal Code*,<sup>100</sup> the *Offence Act* stipulates the conditions under which an intoxicated person must be released from police custody.

However, section 91 of the *Offence Act* is applicable only “to those portions of British Columbia and to those classes of persons that the Lieutenant Governor in Council designates.”<sup>101</sup> The Commission was not able to confirm whether or not any of the place and class regulations are still in force and found no evidence that the provisions under section 91 are actually being used.

Given that arrests under section 175 of the *Criminal Code* and subsection 41(2) of the British Columbia *Liquor Control and Licensing Act* are warrantless arrests, sections 495 and 497 of the *Criminal Code* also apply. Section 495 of the *Criminal Code* stipulates that a peace officer may arrest without warrant a person he/she finds committing a criminal offence as long as he/she reasonably believes it is necessary in the public interest to establish the identity of the person, secure or preserve evidence of or relating to the offence, and/or prevent the continuation or repetition of the offence or the commission of another offence.<sup>102</sup> Subsection 497.(1.1) of the *Criminal Code* outlines similar grounds that may justify keeping a person in custody. Subsections 497.(1) and (1.1) provide that a peace officer shall as soon as practicable release a person from custody unless it is necessary in the public interest that the person be detained to establish the person's identity, secure or preserve evidence of or relating to the offence, prevent the continuation or repetition of the offence or the commission of another offence, or ensure the safety and security of any victim of or witness to the offence.<sup>103</sup> Based on these provisions of the *Criminal Code* and the *Liquor Control and Licensing Act*, police officers have authority to arrest without warrant and incarcerate an intoxicated person so long as the required conditions are met.

In *Besse v Thom*, the Court of Appeal for British Columbia found the term “intoxicated,” used in the context of an arrest for public intoxication under the *Liquor Control and Licensing Act*, to mean: the “condition of being stupefied or drunk from the consumption of alcohol or a drug to such a marked degree that the person is a danger

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<sup>100</sup> *Supra* note 96 at para 497(1.1)(a).

<sup>101</sup> *Supra* note 99 at s 91(7).

<sup>102</sup> *Supra* note 96 at para 495(1)(b) and 495(2)(d).

<sup>103</sup> *Ibid* at para 497(1.1)(a).

to himself or others or is causing a disturbance."<sup>104</sup> Subsequent cases have generally upheld this definition.<sup>105</sup> Further, in *R v Robinson*, the Court found that:

An arrest for intoxication in a public place is not an arrest for having consumed alcohol or for being under the influence of alcohol. The purpose of the arrest is for the protection of the public and there must be a significant reason for the arresting officer to deprive the citizen of his or her freedom.<sup>106</sup>

Thus, while the police have authority to arrest an intoxicated person in a public place, the mere fact of being intoxicated does not suffice under the *Liquor Control and Licensing Act*. The police must have reasonable grounds to believe a person is a danger to himself/herself or others, or is causing a disturbance.

Human rights and civil liberties organizations have long raised concerns about RCMP authority to arrest and incarcerate a person for being intoxicated in a public place, because most persons held in custody are not subsequently charged with an offence or provided the normal due process afforded to those who are arrested and detained, such as the opportunity to test the legitimacy of the arrest and detention in court.<sup>107</sup>

## RCMP Occurrence Reports

The Commission reviewed a sample of occurrence reports involving public intoxication incidents dated between 2008 and 2012 from the RCMP North District of British Columbia.<sup>108</sup> The review aimed to determine whether RCMP responses to public intoxication incidents complied with relevant policies and procedures, as well as to identify any systemic issues.

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<sup>104</sup> *Besse v Thom*, [1979] BCJ No. 2082, reversed on other grounds in *Besse v Thom* (1979), 107 DLR (3d) 694.

<sup>105</sup> *P.F.G.*, *supra* note 39 at para 26; *R v Wallace*, [1998] BCJ No. 2889 at para 22.

<sup>106</sup> *R v Robinson* (an unreported 1992 decision of the Prince Rupert Registry file 13072), as cited in *P.F.G.*, *supra* note 39 at para 28.

<sup>107</sup> British Columbia Civil Liberties Association, *Being Drunk in a Public Place* (Vancouver: British Columbia Civil Liberties Association, 1990); British Columbia Civil Liberties Association, *Small Town Justice: A Report on the RCMP in Northern and Rural British Columbia* (Vancouver: British Columbia Civil Liberties Association, 2001) at 21–22; Human Rights Watch, *Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada* (New York: Human Rights Watch, 2013).

<sup>108</sup> The sample was established based on reporting statistics provided by the British Columbia RCMP on January 14, 2014. For the purposes of this review, the Commission requested RCMP occurrence reports relating to public intoxication incidents from the Police Records Information Management Environment – British Columbia (referred to as PRIME-BC). The sample did not include occurrences wherein alcohol and/or drug intoxication were a contributing factor to an offence but only those reported specifically as public intoxication. Incidents that may have started as public intoxication calls for service but developed into more serious offences may not have been captured in the sample.



RCMP national and divisional policies and procedures regarding arrest, detention and assessing responsiveness have not substantially changed since 2008. While policies and procedures do not provide specific reporting requirements for RCMP occurrence reports on public intoxication, members are expected to capture the necessary grounds and elements of the offence. Occurrence reports are expected to contain sufficient details to justify why a person's liberty is being taken away.<sup>109</sup> Furthermore, RCMP members at British Columbia divisional Headquarters noted that when dispatched to a call, members are expected to provide the details of the incident on the occurrence report, and are expected to articulate the reasons for arrest no matter how routine a situation may be.<sup>110</sup>

Thus, to determine whether RCMP responses in the North District complied with relevant policies and procedures, each occurrence report was assessed based on the quality of the articulation provided in the occurrence report in relation to the following key areas: intervention details; actions taken; arrest, detention and incarceration details; assessing responsiveness; and supervisory review and/or quality assurance.<sup>111</sup>

### Review Results

Between January 1, 2008, and December 31, 2012, the RCMP North District received 796,200 calls for service.<sup>112</sup> Of these calls, 44,537 involved public intoxication complaints or incidents, representing approximately 5.6% of North District's total calls for service in that period.<sup>113</sup>

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<sup>109</sup> Electronic correspondence from RCMP National Headquarters, Contract and Aboriginal Policing Directorate, Operational Policy and Compliance, in response to questions received on December 12, 2014; and interview of members of RCMP National Headquarters, Contract and Aboriginal Policing Directorate, Operational Policy and Compliance (February 10, 2015).

<sup>110</sup> Interview with RCMP members in British Columbia divisional Headquarters, Policy Group (September 25, 2014).

<sup>111</sup> *Ibid.*

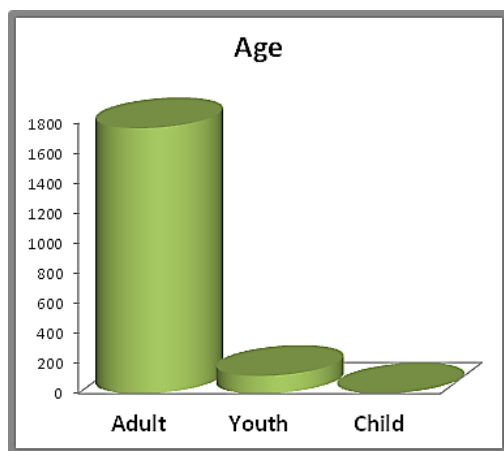
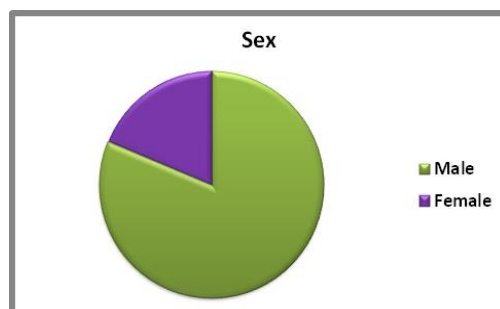
<sup>112</sup> This includes all files for every type of offence and every type of incident.

<sup>113</sup> Information provided by the British Columbia RCMP on January 14, 2014. While the divisional PRIME-BC records management system was in place in most detachments in the North District, some detachments were not fully operational until March 2008. As such, data from 2008 is not fully representative.



## Intervention Details

Of the 44,537 public intoxication complaints or incidents, the Commission reviewed a sample of 1,928 occurrence reports.<sup>114</sup> Of these reports, 73.9% ( $n=1,424$ ) were initiated by a complaint received from a member of the public, whereas 19.2% ( $n=371$ ) were initiated by an RCMP member. In 7.2% ( $n=139$ ) of the cases, the Commission was unable to determine whether the call was in response to a complaint received by a member of the public or whether it was member-initiated. In 12.4% ( $n=240$ ) of these cases, the incident had been resolved before the member arrived.<sup>115</sup>



In total, the file review identified 1,897 persons apprehended by the RCMP for public intoxication. Of these, 81.1% ( $n=1,539$ ) were male; 18.7% ( $n=355$ ) were female;<sup>116</sup> 93.1% ( $n=1,766$ ) were adults; 6.2% ( $n=118$ ) were young persons; and one report involved a child.<sup>117</sup>

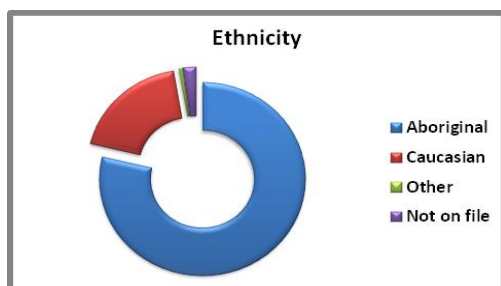
The review also found that of the total number of subjects, 78.9% ( $n=1,494$ ) were identified by the RCMP member as being of Aboriginal ethnicity; 18.6% ( $n=353$ ) were identified by the member as being of Caucasian ethnicity; 0.6% ( $n=12$ ) were identified as Other (e.g. Asian, Hispanic, Black or Middle Eastern); and 2% ( $n=38$ ) of the subjects did not have an identified ethnicity on the occurrence report.<sup>118</sup> The reliability

<sup>114</sup> Based on data provided by British Columbia divisional Headquarters, the Commission derived the sample of 1,928 public intoxication RCMP occurrence reports from a stratified and weighted sampling methodology, with a 95% confidence level and a 5% margin of error.

<sup>115</sup> While the Commission received 1,928 reports, the numbers cited here add up to more than 1,928. The breakdown into complaint-initiated and member-initiated categories, along with the occurrences involving multiple subjects, resulted in some reports being counted in more than one category. Some occurrence reports were initiated by a complaint lodged but also included or evolved into a member-initiated complaint, and some complaint-initiated occurrences involved multiple subjects wherein at least one subject was not found at the scene. This resulted in some reports being counted in more than one category.

<sup>116</sup> In three cases the occurrence reports did not specify the sex of the persons involved.

<sup>117</sup> In accordance with the British Columbia *Youth Justice Act*, SBC 2003, c 85, "A young person means a person who has reached 12 years of age but is less than 18 years of age." For the purposes of this report, a child includes any person younger than 12 years of age.

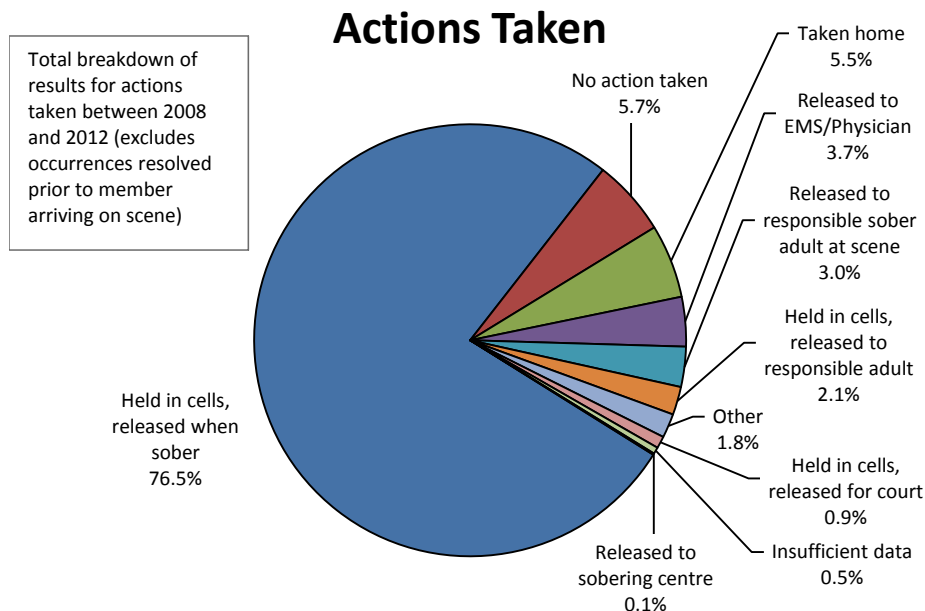


of this data as an indicator for potential trends, however, is limited due to the fact that the information is based primarily on the arresting member's perception of ethnicity. It is nonetheless noteworthy that while Aboriginal people represent 5.4% of British Columbia's total population and 17.5% of northern British Columbia's population,<sup>119</sup>

they represent 78.9% of the persons apprehended for public intoxication offences in the North District.

### Actions Taken

The following figure provides a breakdown of the RCMP response to incidents of public intoxication in the North District.



<sup>118</sup> PRIME-BC Reference Manual (dated May 23, 2012) at 8 and 65. The PRIME-BC Reference Manual states that members should "Use the ethnicity field to describe the racial origin of the subject, i.e. the race that best depicts skin coloration or the type of facial features." The categories included in the PRIME-BC Reference Manual are: Aboriginal; Caucasian; Black; Asian; Middle Eastern; Hispanic; Unknown or Other.

<sup>119</sup> See Statistics Canada, *Aboriginal Peoples in Canada: First Nations People, Métis and Inuit*, online: Stats Can <<http://www12.statcan.gc.ca/nhs-enm/2011/as-sa/99-011-x/2011001/tbl/tbl02-eng.cfm>>; BC Stats, *Aboriginal Profiles of British Columbia: 2006*, online: BC Stats <<http://www.bcstats.gov.bc.ca/StatisticsBySubject/AboriginalPeoples/CensusProfiles/2006Census.aspx>>.

The review determined that, between 2008 and 2012, the RCMP in the North District incarcerated and held until sober 76.5% ( $n=1,452$ ) of persons apprehended ( $n=1,897$ ) for public intoxication offences. The incarceration of intoxicated persons was at its highest in 2010 (84%,  $n=325$ ) and at its lowest in 2012 (64.8%,  $n=243$ ). By comparison, the proportion of persons apprehended for public intoxication offences and released into the care of a responsible adult was 3% ( $n=57$ ) overall, with the lowest year being in 2010 at 0.8% ( $n=3$ ) and the highest being in 2012 at 4.8% ( $n=18$ ). Similarly, the proportion of persons apprehended for public intoxication offences and taken home was 5.5% ( $n=105$ ) between 2008 and 2012 with the lowest year again being 2010 at 3.6% ( $n=14$ ) and the highest year being 2012 at 8% ( $n=30$ ).

The review also found that between 2008 and 2012, only 2 persons (0.1%) were taken to a shelter or sobering centre. This is consistent with information provided by several RCMP members in British Columbia, who indicated that shelters and sobering centres are not widely available in the North District.<sup>120</sup>

The review also compared the RCMP response to incidents of public intoxication by ethnicity. While the review did not find significant differences between the treatment of Aboriginal and non-Aboriginal persons in most cases (see table below), some differences were notable, for example: 79.7% ( $n=1,191$ ) of Aboriginal subjects and 68.6% ( $n=242$ ) of Caucasian subjects were held in cells and released when sober, whereas 3.7% ( $n=55$ ) Aboriginal subjects and 11.6% ( $n=41$ ) of Caucasian subjects were taken home.

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<sup>120</sup> Interviews and meetings with key officials at British Columbia divisional Headquarters, the Pacific Region Training Centre, North District Headquarters in Prince George, and Prince George City Detachment (September 22–26, 2014).

Actions Taken for all Subjects by Ethnicity										
Action Taken	Aboriginal		Caucasian		Ethnicity not on File		Other <sup>121</sup>		Total	
	n=1,494	%	n=353	%	n=42	%	n=8	%	n=1,897	%
Held in cells, released to responsible adult	35	2.3	5	1.4	0	0	0	0	40	2.1
Held in cells, released when sober	1,191	79.7	242	68.6	12	28.6	7	87.5	1,452	76.5
Held in cells, released for court	14	0.9	4	1.1	0	0	0	0	18	0.9
Released to EMS/Physician	48	3.2	15	4.2	7	16.7	0	0	70	3.7
Released to responsible sober adult (at scene)	43	2.9	12	3.4	2	4.8	0	0	57	3
Taken home	55	3.7	41	11.6	9	21.4	0	0	105	5.5
Other	24	1.6	9	2.5	1	2.4	0	0	34	1.8
No action taken	77	5.2	21	5.9	10	23.8	1	12.5	109	5.7
Sobering centre	2	0.1	0	0	0	0	0	0	2	0.1
Insufficient data	5	0.3	4	1.1	1	2.4	0	0	10	0.5

## Women and Youth

Human rights and civil liberties organizations have raised concerns about bias against Aboriginal women, alleging that Aboriginal women in the North District of British Columbia are treated more harshly by the RCMP than Caucasian women, and that Caucasian women are typically driven home rather than taken to cells when found intoxicated.<sup>122</sup> The Commission's review identified 355 adult women who were apprehended by the RCMP for public intoxication offences between 2008 and 2012. Of the 355 women, 69.3% (n=246) were held in cells until sober, 5.4% (n=19) were released

<sup>121</sup> "Other" refers to persons identified by the member as being of Asian, Hispanic, Black or Middle Eastern ethnicity.

<sup>122</sup> *Supra* note 3.

to a responsible adult at the scene, and 6.8% (n=24) were taken home.<sup>123</sup> Of the 355 women, 85.9% (n=305) were identified as Aboriginal and 12.1% (n=43) were identified as Caucasian (the remaining occurrence reports did not identify the ethnicity). Based on the occurrence reports reviewed, 72.8% (n=222) of the Aboriginal women and 53.5% (n=23) of the Caucasian women were incarcerated for public intoxication and held until sober, whereas 3.9% (n=12) of Aboriginal women and 16.3% (n=7) of Caucasian women were taken home.

Actions Taken for Female Subjects by Ethnicity								
Action Taken	2008–2012							
	Aboriginal		Caucasian		Not on File		Total	
	n=305	%	n=43	%	n=7	%	n=355	%
Released to EMS/Physician	12	3.9	3	7.0	0	0	15	4.2
Released to responsible sober adult (at scene)	16	5.2	3	7.0	0	0	19	5.4
Held in cells, released to responsible adult	16	5.2	2	4.7	0	0	18	5.1
Held in cells, released when sober	222	72.8	23	53.5	1	14.3	246	69.3
Held in cells, released for court	3	1.0	0	0	0	0	3	0.8
Taken home	12	3.9	7	16.3	5	71.4	24	6.8
Other	7	2.3	2	4.7	0	0	9	2.5
No action taken	17	5.6	3	7.0	1	14.3	21	5.9

<sup>123</sup> In the remainder of cases, the women were released to emergency medical services or a physician; held in cells then released to a responsible adult; held in cells until court; no action was taken (e.g. the person was left alone at the scene); or other action was taken, such as transfer to a shelter.

The Commission also looked at the RCMP response to public intoxication occurrences involving young persons. The review identified 118 young persons who were apprehended for public intoxication offences between 2008 and 2012. Of these, 91 were identified as Aboriginal, 23 were identified as Caucasian, and 4 reports did not specify the ethnicity. Aboriginal youth were held until sober in 39.6% ( $n=36$ ) of the incidents; held in cells and subsequently released to a responsible adult in 34.1% ( $n=31$ ) of the incidents; taken home 5.5% ( $n=5$ ) of the time; and released on scene to a responsible adult in 7.7% ( $n=7$ ) of the cases. In comparison, Caucasian youth were held until sober in 34.8% ( $n=8$ ) of the incidents; held in cells and subsequently released to a responsible adult in 13% ( $n=3$ ) of the cases; taken home 26.1% ( $n=6$ ) of the time; and released on scene to a responsible adult in 17.4% ( $n=4$ ) of the incidents.

<b>Actions Taken for Youth Subjects by Ethnicity</b>								
<b>Action Taken</b>	<b>2008–2012</b>							
	<b>Aboriginal</b>		<b>Caucasian</b>		<b>Not on File</b>		<b>Total</b>	
	<b><math>n=91</math></b>	<b>%</b>	<b><math>n=23</math></b>	<b>%</b>	<b><math>n=4</math></b>	<b>%</b>	<b><math>n=118</math></b>	<b>%</b>
<b>Held in cells, released to responsible adult</b>	31	34.1	3	13.0	0	0	34	28.8
<b>Held in cells, released when sober</b>	36	39.6	8	34.8	1	25	45	38.1
<b>Held in cells, released for court</b>	1	1.1	0	0	1	25	2	1.7
<b>Released to EMS/Physician</b>	10	11	2	8.7	2	50	14	11.9
<b>Released to responsible sober adult (at scene)</b>	7	7.7	4	17.4	0	0	11	9.3
<b>Taken home</b>	5	5.5	6	26.1	0	0	11	9.3
<b>No action taken</b>	1	1.1	0	0	0	0	1	0.8

The disproportionate number of Aboriginal women and youth as compared with Caucasian women and youth presented above is consistent with the Commission's earlier finding that Aboriginal people represent 78.9% ( $n=1,494$ ) of the total number of persons apprehended for public intoxication offences. However, as previously noted, the reliability of this data as an indicator for potential trends or differential treatment is limited. While the statistics indicated that Caucasian women and youth are more likely to be taken home, given the limitations of the data provided and scope of the

Commission's investigation, it is not possible for the Commission to make a finding of differential treatment of Aboriginal women and youth as compared to Caucasian women and youth. Descriptive statistics provide a useful quantitative summary of the data under investigation, but alone cannot be used to infer conclusions.

### Arrest, Detention and Incarceration Details

The occurrence report review determined that of the persons apprehended for public intoxication ( $n=1,897$ ), a total of 1,510 were held in custody.<sup>124</sup> Of those held in custody, 83.4% ( $n=1,259$ ) were not charged with any offence.

As previously discussed, to hold a person in custody for public intoxication pursuant to the *Liquor Control and Licensing Act*, the person must be stupefied by liquor such that the police would have reasonable grounds to believe a person is a danger to himself/herself or others, or is causing a disturbance. To hold a person in custody for being drunk in or near a public place under section 175 of the *Criminal Code*, a person must be causing a disturbance by being drunk. For this review, the Commission examined each occurrence report to assess whether the RCMP member articulated the reason(s) for the arrest, such as: a description of the level of intoxication (other than "found intoxicated"); if and how the person was a danger to himself/herself or others; and/or whether the subject was causing a disturbance.

The review found that of the persons held for public intoxication offences over the period of the review, RCMP members failed to articulate any reason for the arrest in 22.6% ( $n=341$ ) of cases. This included reports where a member would articulate only that an "intoxicated person" was found and lodged in cells until sober, without any clarification as to whether the person was stupefied by liquor or causing a disturbance. The Commission found a slight improvement in this regard from 2008 to 2012: in 2008, 25.7% of occurrence reports contained no articulation or explanation of the reason(s) for arrest, while in 2012 this decreased to 17.1% of the reports. Of the occurrence reports containing no articulation of the reason(s) for arrest ( $n=341$ ), 88.6% ( $n=302$ ) were incarcerated without being subsequently charged.

The Commission did not find a significant difference between occurrence reports involving Aboriginal persons and non-Aboriginal persons in this regard.

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<sup>124</sup> This includes persons held until sober; persons held until their release to a responsible adult; and persons held until their attendance in court.

Detention and Articulation of Reasons for Arrest by Ethnicity										
Articulation of the Reasons for Arrest	Aboriginal		Caucasian		Ethnicity not on File		Other <sup>125</sup>		Total	
	n=1,240	%	n=251	%	n=12	%	n=7	%	n=1,510	%
No articulation on the occurrence report of the reasons for the arrest/detention	278	22.4	56	22.3	6	50	1	14.3	341	22.6
Of these, persons held with no charge	246	88.5	50	89.3	5	83.3	1	100	302	88.6

The review found that in many other instances members failed to provide adequate articulation on the occurrence reports. For example, members articulated or described the subject's indications of intoxication in only 55.8% (n=842) of the incidents and while the members reported that the persons were a "danger to self" in 41.7% (n=629) of the instances, evidence to support the "danger to self" assessment was provided in only 64.2 % (n=404) of those cases. The review also found that members provided indication of both the level of intoxication and how a person was a "danger to self" in only 26.1% (n=394) of the occurrences.

The Commission, however, noted a modest improvement in articulation between 2008 and 2012. For example, in 2008, RCMP North District members included a description of the subject's level of intoxication 45.9% of the time and this increased to 66.2% by 2012. Similarly, members provided evidence to support a "danger to self" assessment in 60% of cases in 2008 and in 70.5% of cases in 2012. Based on the above, member articulation of supporting details to describe signs of intoxication or to explain why a person was a danger to himself/herself and/or others or was causing a disturbance was deemed inadequate overall in terms of the expectation for a reasonable standard of articulation on file.

**Finding No. 12:** Between 2008 and 2012 members failed to articulate on the occurrence report any reason for arresting an intoxicated person in 22.6% of cases and only provided a description of the person's level of intoxication in 55.8% cases.

<sup>125</sup> "Other" refers to persons identified by the member as being of Asian, Hispanic, Black or Middle Eastern ethnicity.



### Assessing Responsiveness

According to policy, before taking a person into police custody, members must assess the person's responsiveness and seek medical attention if required.<sup>126</sup> In this regard, the Commission assessed member articulation in public intoxication occurrence reports to determine whether, based on the information therein, the member had assessed the person's responsiveness and sought medical assistance when required.

The Commission found many instances where members used the expression "passed out" without further explanation about the person's state of responsiveness or consciousness (e.g. subject found "passed-out on a bench" or "passed-out in an alley way"). The expression "passed-out" could mean unconscious or could signify someone sleeping. The review found that of the persons held in custody ( $n=1,510$ ), the Commission was unable to assess whether or not a person's condition may have warranted medical attention in 9.9% ( $n=150$ ) of cases. These are primarily cases where the members' articulation included the term "passed-out."

### Supervisory Review and/or Quality Assurance

According to policy, supervisors must review and approve all occurrence reports and are accountable for the completeness and accuracy of the data included on the records management system.<sup>127</sup> The Commission's review showed that while reports were approved (e.g. received supervisory sign-off) only 9.1% ( $n=153$ ) included documented supervisory direction or feedback.<sup>128</sup>

While reports may be systematically approved by supervisors, given the high proportion of files that were not compliant with policy guidelines, as noted above, and the general absence of supervisor comments or direction in occurrence reports, the Commission finds that supervisory review of public intoxication occurrence reports is clearly inadequate. The importance of effective supervision in maintaining the quality of policing records must be emphasized. The onus is on supervisors to ensure that members properly and adequately document the reasonable grounds to arrest a person for public intoxication, pursuant to the applicable statute, as well as the details of the detention and release. Supervisors are responsible to ensure that members follow policy and that reports are complete.

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<sup>126</sup> RCMP National Headquarters *Operational Manual* chap 19.2. "Assessing Responsiveness / Medical Assistance", s 2.1. "Assessing Responsiveness" (dated January 12, 2015).

<sup>127</sup> RCMP National Headquarters *Operational Manual* chap 47.1. "Management of PROS/SPROS", s 5.3. (dated August 14, 2012).

<sup>128</sup> This includes a review of all occurrence reports ( $n=1,928$ ), excluding those that were resolved prior to the member arriving on scene ( $n=1,689$ ).

**Finding No. 13:** Given the high proportion of files that were not compliant with policy guidelines the Commission finds that supervisory review of public intoxication occurrence reports was inadequate.

**Recommendation No. 11:** That the RCMP remind North District supervisors of the requirement to be thorough in their review of occurrence reports and, in particular, of the importance of ensuring that all occurrence reports are properly documented, especially those involving the arrest and detention of a person.

## Accountability, Compliance and Transparency

RCMP detachments in British Columbia are required to conduct unit-level quality assurance reviews and are subject to management reviews, which include reviews of: arrest and release procedures; operational supervision; prisoners and cells; and quality of investigation. During such reviews, samples of files are examined to determine whether applicable laws, policies and procedures are being followed. For example, the Arrest and Release Guide includes a specific section on arrests pursuant to applicable provincial public intoxication legislation, warrantless arrests, and a section to determine whether the circumstances surrounding the arrest are clearly documented in the member's notebook and in the investigation file. The Operational Supervision Guide sets out to determine whether supervisors are ensuring compliance with laws, policies and procedures of a unit's operations activities and includes a section on whether supervisors are providing thorough and timely documented operational guidance and direction on files.<sup>129</sup>

The Commission obtained the 19 management reviews conducted by the RCMP in British Columbia for detachments in the North District between 2008 and 2012. Of the 19 management reviews examined, 8 included sections relating to public intoxication or intoxicated persons. These included findings that intoxicated persons are not routinely being informed of their Charter rights or afforded the opportunity to contact legal counsel; in other instances, the reviews pointed to better practices adopted by some detachments dealing with a high volume of intoxicated persons, including that when an arrested person is too intoxicated to fully understand the Charter and official police warning, members are reinforming them of their rights when the arrested person has sobered up.<sup>130</sup>

The unit-level quality assurance and management reviews provide an important means to evaluate whether members are complying with the law and applicable policies and

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<sup>129</sup> RCMP "E" Division, Internal Audit and National Review Services, Divisional Review Guides.

<sup>130</sup> RCMP "E" Division, Review Services, management reviews for North District detachments between 2008–2012.

to determine whether systemic issues exist. However, reliance on a random sample of occurrence reports without dedicated focus on public intoxication investigations provides little confidence in this process as a means of ensuring accountability in this area of policing. The British Columbia RCMP North District should utilize existing internal review mechanisms to ensure that members are complying with the law and applicable policies in the handling of all public intoxication occurrences.

**Recommendation No. 12:** That the RCMP incorporate mandatory review of public intoxication occurrences in North District unit-level quality assurance and management reviews.

## RCMP Policy

### [RCMP National Headquarters Operational Manual](#)

This section reviews RCMP national policies on the policing of public intoxication. The RCMP does not have a “stand alone” or dedicated policy for this; therefore the Commission examined the policies deemed most relevant to policing public intoxication,<sup>131</sup> including:

- National Headquarters *Operational Manual* chapter 18.1. “Arrest and Detention” (dated June 25, 2014);
- National Headquarters *Operational Manual* chapter 19.2. “Assessing Responsiveness and Medical Assistance” (dated January 12, 2015);
- National Headquarters *Operational Manual* chapter 19.3. “Guarding Prisoners and Personal Effects” (dated February 5, 2015);
- National Headquarters *Operational Manual* chapter 19.9. “Release of Prisoners” (dated April 30, 2004).

### [Chapter 18.1. “Arrest and Detention”](#)

Section 1. “General” provides guidance to members on their legal obligations when arresting and detaining a subject to ensure that the member’s actions comply with the Charter.

Section 7. of this policy specifically addresses the incarceration of intoxicated persons. Section 7.1. “General” states that members “must be aware of their responsibilities in

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<sup>131</sup> Two of the relevant policies cited were updated while the investigation was underway.

relation to the incarceration of intoxicated persons in public places, and of the responsibilities that the courts have imposed in relation to this activity.”

Section 7.2. “Arrest/Detention” of this national policy advises that a person may be arrested for the summary conviction offence of “causing a disturbance in a public place” under section 175 of the *Criminal Code* if he/she is found causing a disturbance in a public place. The policy further states that if insufficient grounds exist to arrest an intoxicated person under section 175 of the *Criminal Code*, the person may be detained under the applicable provincial statute. In this regard, the policy includes the following factors to consider when deciding if a person’s liberty should be removed:

7.2.2.1. There is clear evidence that the person is stupefied by liquor.

7.2.2.2. It is obvious the person could not prevent injury to himself/herself, or to others.

7.2.2.3. If the person is not incarcerated, there is reason to believe that the person is likely to commit a crime.

7.2.2.4. The police have considered other alternatives to the person being placed in a police lock-up, e.g. there is an adult capable and willing to look after the person such as a family member, a friend, or detoxification center.

7.2.2.5. If left alone, the person may succumb to external environmental conditions.<sup>132</sup>

The factors listed above are meant to provide guidance to RCMP members on when to take a person into custody for public intoxication. As previously stated, while the police have authority to arrest an intoxicated person in a public place, to take the person into custody the police must have reasonable grounds to believe a person is a danger to himself/herself, or others, or is causing a disturbance.

In this regard, section 7.2.2.2. refers to a person’s ability to “prevent injury to himself/herself or to others.” While this is indeed an important factor it is not without limitations and does not capture the full extent of risks to a person and/or others. The concept of “danger to himself/herself and/or others” captures a broader range of risks and aligns more closely with jurisprudence in this regard.<sup>133</sup>

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<sup>132</sup> RCMP National Headquarters *Operational Manual* chap 18.1. “Arrest and Detention”, s 7.2. “Arrest/Detention” (dated June 25, 2014).

<sup>133</sup> *R v Hagarty*, 2005 ONCJ 317; *R v Ing*, 2013 ONCJ 46; *R v EBK*, [2002] YJ No. 120, reversed on other grounds at *R v EBK*, [2003] YJ No. 185.

**Finding No. 14:** The factor outlined in section 7.2.2.2. of RCMP National Headquarters *Operational Manual* chapter 18.1. "Arrest and Detention" referring to a person's ability to prevent injury to himself/herself or to others is not entirely consistent with current jurisprudence and does not adequately reflect the broader range of risks captured under the concept of "danger to himself/herself and/or to others."

**Recommendation No. 13:** That the RCMP amend the National Headquarters *Operational Manual* chapter 18.1., section 7.2. to reflect current jurisprudence.

### Chapter 19.2. "Assessing Responsiveness and Medical Assistance"

Central to this policy is the requirement for members to complete an assessment of responsiveness prior to taking a subject into police custody. Under section 2.1., "Assessing Responsiveness," the policy specifically directs the member to:

2.1.2. Seek immediate medical assistance and provide the necessary first aid when a person exhibits any of the following conditions:

2.1.2.1. appears to be unconscious, not fully conscious, or there is a marked change in his or her state of consciousness;

2.1.2.2. displays symptoms of having sustained a head injury or is reported to have sustained a head injury;

2.1.2.3. is suspected of having alcohol and/or drug poisoning;

2.1.2.4. is suspected of concealing drugs internally;

2.1.2.5. vomits excessively; or,

2.1.2.6. exhibits any other signs indicating an injury or illness for which medical attention should be sought.<sup>134</sup>

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<sup>134</sup> RCMP National Headquarters *Operational Manual* chap 19.2. "Assessing Responsiveness and Medical Assistance" (dated January 12, 2015).

According to this policy, a person exhibiting the symptoms above “should not be placed in an RCMP cell unless a medical practitioner has declared the person medically fit for incarceration.”<sup>135</sup> The policy also specifies that in areas with limited or no access to a medical practitioner, members should seek assistance from a medically trained professional.

The policy was recently amended to include a note stating: “Consider seeking a medical assessment if an individual is suspected of having a drug or alcohol addiction and if he/she has been detained longer than twelve hours.”<sup>136</sup> This addition reflects concerns and potential risks associated with incarcerating acutely intoxicated persons and/or persons with alcohol and/or drug addictions who may suffer withdrawal symptoms if detained for extended periods.

Under section 2.2. “Documenting Medical Observations,” members are required to document in their notebooks, at the scene or as soon as practicable, any observations, medical concerns, and relevant information gathered from the victims/witnesses at the scene. The policy requires members to transfer information regarding the quantity of alcohol/drugs consumed and evidence of liquor bottles/drug paraphernalia observed to the prisoner report (i.e. form C-13-1) as well as to the investigational file.

Section 2.3. “Granting Access to Medical Assistance” requires that information relevant to the subject’s responsiveness, injuries, possible substances ingested, as well as the nature and degree of any force used to arrest the subject, be provided to the medically trained professional providing assistance.

Section 2.3. also addresses situations wherein a subject may refuse medical treatment. In such cases, members are expected to obtain the prisoner’s refusal in writing when practicable. In this regard, the policy notes that “[t]he final decision for transport of a prisoner to a medical facility for treatment rests with the member, regardless of a prisoner’s refusal . . . .” The policy further states that the RCMP is responsible for the prisoner while in police custody and, if in doubt, should transport the prisoner to a medical facility for treatment.

**Finding No. 15:** RCMP National Headquarters *Operational Manual* chapter 19.2. “Assessing Responsiveness and Medical Assistance” provides clear guidance to members and provides accountability by requiring members to document details of their assessment and actions taken.

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<sup>135</sup> According to RCMP National Headquarters *Operational Manual* chap 19.2. “Assessing Responsiveness and Medical Assistance”, s 1.1., a medical practitioner is defined as “a person who is authorized under the laws of the province/territory to practice medicine in that province/territory” and is not limited to a physician.

<sup>136</sup> *Supra* note 134.

### Chapter 19.3. "Guarding Prisoners and Personal Effects"

This chapter provides further direction to members and guards on assessing prisoner responsiveness.

Under section 3.1. "Incarcerating Prisoners," members are required to assess prisoner responsiveness and to note the information on the prisoner report. Members must instruct the guard on duty to assess responsiveness as required and to document the results of the assessment on the prisoner log record book. Members are also expected to brief the guard "concerning circumstances surrounding the arrest of prisoners to enhance the level of care required . . . ."

Section 3.1.4. requires that members consider seeking a medical assessment of known or suspected substance abusers and to look for signs of withdrawal. This is a recent addition to the policy and highlights the importance of assessing risks associated with incarcerating acutely intoxicated persons and/or persons with alcohol and/or drug addictions who may suffer withdrawal symptoms if detained for extended periods.

In addition to the above, the policy reminds members of their obligations under RCMP National Headquarters *Operational Manual* chapter 19.2., section 2.1.2. to seek immediate medical assistance when a subject is ill, injured and/or requires medical attention. The policy further requires that once a subject has been assessed and certified fit for incarceration by a medical practitioner, the subject will initially be placed in the recovery position in the cell with his/her face in plain view for monitoring. Members are required to document the date and time the prisoner was certified fit for incarceration, and the name of the medical practitioner who certified the prisoner, on the prisoner report, if possible. The policy also requires that members record any medical recommendations made by the medical practitioner on the prisoner report and "to advise the guard" accordingly.

This policy also specifies that guards are responsible for assessing the responsiveness of each prisoner under their care and must be familiar with the requirements to assess prisoner responsiveness and conduct assessments in accordance with the policies set out in chapter 19.2. It warns guards not to attempt to "determine the degree of responsiveness of a prisoner who appears less than fully conscious," but to seek immediate medical assistance and to ask a member to assist if a prisoner appears less than fully conscious.

The policy further stipulates that guards must "[n]ever assume a prisoner is 'sleeping it off'" and to assess responsiveness in accordance with RCMP National Headquarters *Operational Manual* chapter 19.2., appendix 19-2-1 "Assessing Responsiveness Chart."

Section 4.5. "Monitoring" outlines a guard's responsibilities to monitor prisoners under their care. This includes that guards must conduct physical checks of prisoners frequently and at irregular intervals, no more than 15 minutes apart, to ensure prisoner

security and well-being. In relation to intoxicated persons the policy requires that prisoners be awake or awakened every four hours, to assess responsiveness in accordance with chapter 19.2., and to seek immediate medical assistance when required.

The policy also outlines the detachment commander's responsibility to ensure that all members and personnel who are responsible for prisoner care read and initial the applicable national, divisional, detachment and unit supplements every six months.

### Chapter 19.9. "Release of Prisoners"

While the policy does not specifically mention or address intoxicated persons, under section 2. "Release of an Offender", the policy specifies that "[b]efore releasing a detainee from RCMP custody, take the necessary precautions as outlined in 19.2.<sup>137</sup> to ensure his/her health and safety."

This policy also directs that when a subject is arrested without a warrant, members must release him/her as soon as practicable unless there is a need to establish the identity of the person, secure or preserve evidence of or relating to the offence, or prevent the continuation and/or repetition of the offence or the commission of another offence.

This policy aligns with section 497 of the *Criminal Code* yet fails to capture the full list of exceptions listed under this provision, which also includes to "ensure the safety and security of any victim of or witness to the offence."<sup>138</sup>

**Finding No. 16:** RCMP National Headquarters *Operational Manual* chapter 19.9. "Release of Prisoners" aligns with section 497 of the *Criminal Code* yet fails to capture the complete list of exceptions listed under this provision.

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<sup>137</sup> As previously mentioned, RCMP National Headquarters *Operational Manual* chapter 19.2. relates to the RCMP's policy on Assessing Responsiveness and Medical Assistance.

<sup>138</sup> *Supra* note 96 at s 497.(1.1): "A peace officer shall not release a person under subsection (1) if the peace officer believes, on reasonable grounds,

(a) that it is necessary in the public interest that the person be detained in custody or that the matter of their release from custody be dealt with under another provision of this Part, having regard to all the circumstances including the need to

(i) establish the identity of the person,

(ii) secure or preserve evidence of or relating to the offence,

(iii) prevent the continuation or repetition of the offence or the commission of another offence, or

(iv) ensure the safety and security of any victim of or witness to the offence . . . ."



**Recommendation No. 14:** That the RCMP amend National Headquarters *Operational Manual* chapter 19.9. to capture the complete list of exceptions listed under section 497 of the *Criminal Code*.

## Women and Youth

In light of the concerns of human rights and civil liberties organizations about RCMP interactions with women and youth, the Commission examined relevant RCMP national policies relating to public intoxication, with a view to establishing whether they provide specific guidance or cautions in relation to RCMP interactions with women and youth.

A review of relevant RCMP national policies did not identify any specific direction or cautions regarding RCMP interactions with women who are arrested for public intoxication. The only reference found relates to the requirement in RCMP National Headquarters *Operational Manual* chapter 19.3., section 3.1. "Incarcerating Prisoners" that female and male prisoners must be held in separate cells and if practicable should be held in cells separated from sight. This policy also provides that young persons must be held separately from adult prisoners.<sup>139</sup>

In relation to youth, the RCMP National Headquarters *Operational Manual* chapter 39.2. covers the arrest of young persons. The policy provides general direction to members on the requirement to provide notice to parents when a young person is arrested and detained in custody pending his/her appearance in court, as well as the notification requirements when a young person receives a summons or an appearance notice, or cases where a young person is released on a promise to appear or enters into a undertaking or recognizance.<sup>140</sup> While the policy is consistent with the *Youth Criminal Justice Act*, the policy does not provide guidance to members about contacting parents in cases where a young person is arrested without a warrant and held in RCMP custody without charge (or in the case of British Columbia, without a recommendation to the Crown counsel to proceed with a charge). Most young persons who are arrested for public intoxication and detained in RCMP custody are held without charge.

**Finding No. 17:** RCMP National Headquarters *Operational Manual* chapter 39.2. relating to the arrest of young persons is consistent with the notification requirements set out in the *Youth Criminal Justice Act* but it does not provide guidance to members regarding notifying parents when a young person is arrested without a warrant and held in RCMP custody without being charged.

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<sup>139</sup> RCMP National Headquarters *Operational Manual* chap 19.3. "Guarding Prisoners and Personal Effects", s 3.1.8. (dated February 5, 2015).

<sup>140</sup> RCMP National Headquarters *Operational Manual* chap 39.2. "Arrest" (dated November 2, 2004).

**Recommendation No. 15:** That the RCMP amend National Headquarters *Operational Manual* chapter 39.2. relating to the arrest of young persons to include guidance to members on notification requirements in instances where a young person is arrested and held in custody without being charged—particularly in cases involving public intoxication.

#### British Columbia RCMP Operational Manual

Divisional policies relevant to policing public intoxication or RCMP handling of intoxicated persons in British Columbia include the following chapters of the “E” Division *Operational Manual*:

- Chapter 100.5. “Liquor Control and Licensing Act and Regulations” (dated April 7, 2015).
- Chapter 18.1. “Arrest and Detention” (dated January 9, 2014)
- Chapter 19.2. “Assessing Responsiveness and Medical Assistance” (dated August 21, 2009)
- Chapter 19.3. “Guarding Prisoners / Personal Effects” (dated July 2, 2013)

#### Chapter 100.5. “Liquor Control and Licensing Act and Regulations”

As previously discussed, police authority to arrest a person for being intoxicated in a public place is established under subsection 175.(1) of the *Criminal Code* (causing a disturbance) and relevant provincial statutes, such as section 41 of the British Columbia *Liquor Control and Licensing Act* or section 91 of the British Columbia *Offence Act*.

In this regard, British Columbia RCMP *Operational Manual* chapter 100.5. “Liquor Control and Licensing Act and Regulations” provides direction and guidance to members in relation to their authorities under this provincial statute. Specifically, section 1.3. “Intoxicated Persons” provides guidance to members on arrest and detention considerations as well as member responsibilities.

According to section 1.3.1.1.1.: “An intoxicated person is one who is stupefied or drunk to such a marked degree (*Besse v. Thom*, (1979), 96 D.L.R. (3d) 657) that he or she is a danger to him or herself or others, or is causing a nuisance (Section 91(3)(a) *Offence Act*).” The policy states that members “should exercise discretion when arresting persons under Section 41 [of the] *Liquor Control and Licensing Act* (LCLA).”

Section 1.3.3.1. of the divisional policy specifies:

When you arrest someone under the provisions of section 41(2) of the LCLA:

1.3.3.1.1. Hold the intoxicated person in custody until he or she is sober and then release him or her.

1.3.3.1.1.1. Seek medical attention immediately if the intoxicated person's physical condition warrants a medical examination (see "E" Div OM 19.2. Assessing Responsiveness/Medical Assistance).

1.3.3.1.2. Consider releasing the intoxicated person into the custody of a responsible, sober adult.

1.3.3.1.3. Consider laying charges, where appropriate, under:

1.3.3.1.3.1. Section 175(1)(a)(ii) [of the *Criminal Code*]*—Cause Disturbance By Being Drunk,*<sup>141</sup> or

1.3.3.1.3.2. Section 41 [of the British Columbia *Liquor Control and Licensing Act*]*—Drunkenness in Public.*<sup>142</sup>

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<sup>141</sup> Supra note 96 at s 175.(1): "Every one who

(a) not being in a dwelling-house, causes a disturbance in or near a public place,

(i) by fighting, screaming, shouting, swearing, singing or using insulting or obscene language,

(ii) by being drunk, or

(iii) by impeding or molesting other persons,

(b) openly exposes or exhibits an indecent exhibition in a public place,

(c) loiters in a public place and in any way obstructs persons who are in that place, or

(d) disturbs the peace and quiet of the occupants of a dwelling-house by discharging firearms or by other disorderly conduct in a public place or who, not being an occupant of a dwelling-house comprised in a particular building or structure, disturbs the peace and quiet of the occupants of a dwelling-house comprised in the building or structure by discharging firearms or by other disorderly conduct in any part of a building or structure to which, at the time of such conduct, the occupants of two or more dwelling-houses comprised in the building or structure have access as of right or by invitation, express or implied, is guilty of an offence punishable on summary conviction."

<sup>142</sup> As previously noted, section 41 (Drunkenness in public place) of the British Columbia *Liquor Control and Licensing Act* stipulates that (1) a person who is intoxicated must not be or remain in a public place; and (2) a peace officer may arrest, without a warrant, a person found intoxicated in a public place.

Section 1.3.3.1.1. provides for the release of the intoxicated person when sober. This is a higher threshold for release than that given in section 497 of the *Criminal Code*, which states that when a subject is arrested without a warrant, he/she must be released as soon as practicable unless there is a need to establish his/her identity, secure or preserve evidence of or relating to the offence, to prevent the continuation and/or repetition of the offence or the commission of another offence, or to ensure the safety and security of any victim of or witness to the offence.<sup>143</sup>

Section 1.3.3.1.2. of this policy directs members to consider releasing the intoxicated person into the custody of a responsible, sober adult. This is not consistent with national policy, which directs members to consider “alternatives to detention,” thereby allowing for the consideration of a broader range of release options.

**Finding No. 18:** Section 1.3.3.1. of British Columbia RCMP *Operational Manual* chapter 100.5. in relation to the consideration of alternatives to detention and the release of intoxicated persons is not consistent with national policy and the *Criminal Code*.

**Recommendation No. 16:** That the RCMP amend section 1.3.3.1. of divisional *Operational Manual* chapter 100.5. to outline conditions for release that mirror the guidance provided in the *Criminal Code* and to be consistent with national policy, which directs members to consider “alternatives to detention,” thereby allowing for the consideration of a broader range of release options.

In relation to young persons, British Columbia RCMP *Operational Manual* chapter 100.5., section 1.4.1. states: “Do not give a ‘Notice to Parents’ when you issue a Provincial Violation Ticket to a minor (Section 5(2) *Youth Justice Act*).” This is consistent with the federal *Youth Criminal Justice Act* as well as the British Columbia *Youth Justice Act*.

### Chapter 19.3. “Guarding Prisoners / Personal Effects”

Section 2. of this policy includes specific guidance to supervisors in relation to the incarceration of persons arrested for public intoxication. Under this policy, supervisors are expected to consider whether detention is necessary depending on three factors: the age of the person; known or suspected medical condition; and whether there is a responsible and sober adult available to assume charge of the person.

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<sup>143</sup> Supra note 96 at para 497.(1.1)(a).

The inclusion of a specific role for supervisors in making decisions on the incarceration of persons arrested for public intoxication is an important quality assurance measure that should be maintained. However, the final factor to be considered in deciding on incarceration, “whether there is a responsible and sober adult available to assume charge of the person,” does not capture the broader range of release options consistent with national policy, which directs members to consider “alternatives to detention.” Alternatives to detention should include all reasonable options available, such as: shelters; sobering centres; friendship centres; and/or other organizations, or persons able and willing to care for the intoxicated person.

## **RCMP Training**

### RCMP Training Academy – Cadet Training Program

The RCMP Depot Division does not have dedicated or specific training on the policing of public intoxication.<sup>144</sup> Correspondence from Depot Division informs that the Cadet Training Program focuses on teaching cadets to locate, interpret and apply federal law. The policing of public intoxication is dealt with primarily by provincial statute, and the laws in this regard vary from province to province. Members learn provincial laws and statutes in the Field Coaching Program that follows the Cadet Training Program.<sup>145</sup>

For the purposes of this review, the Commission identified several modules and sessions from the Cadet Training Program as particularly relevant to the policing of public intoxication:

#### *Introductory Guide to Legal Articulation*

The *Introductory Guide to Legal Articulation* provides foundational training on investigation report writing for members. It is intended to help members new to the field to “clearly, concisely and effectively communicate their own actions and the actions of others in relation to police investigations.” It directs members to articulate all their information in a chronological sequence, to tell the truth and avoid intentional omissions, leave out emotions in reporting, state opinions or conclusions only when supported by evidence, avoid police jargon, avoid assumptions, be professional, remember to cite legal grounds in an articulation, be concise, and review the information recorded for accuracy and completeness. As an example of connecting conclusions to evidence, the guide describes how to record the precise observations that led a member to conclude that a subject was impaired by alcohol.

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<sup>144</sup> For more information about the RCMP Cadet Training Program as well as RCMP divisional training, please see [Appendix C](#).

<sup>145</sup> Correspondence from RCMP Depot Division (May 13, 2014).

The guide stresses that members should give the whole story about a situation, including, for example, the exact language used when recording that a suspect understood their rights. The guide recommends using the Incident Management/Intervention Model as a guide for describing situational factors and subject behaviours.

### *Applied Police Sciences – Module 6*

In sessions 1 and 9 (Appendix 1.2: Care and Handling of Prisoners Handout and Questionnaire) cadets learn about the authorities and requirements for dealing with a person in custody. This includes a review of a member's legal obligations when arresting and detaining a person, search procedures, and when and how to assess responsiveness and when to seek medical assistance. The content of the material is consistent with relevant national RCMP policies and procedures.<sup>146</sup>

Cadets also receive training on transporting prisoners, search procedures, and completing the appropriate paperwork when lodging prisoners in cells. Cadets learn of the risks associated with fingerprinting an intoxicated or violent person and the recommended approach of waiting for the person to "sober up" rather than risk provoking the subject or jeopardizing the safety of members and/or the subject. This session also briefly reviews the authority to arrest an individual for public intoxication. Cadets are advised that all provinces have laws giving police authority "to arrest individuals that are very intoxicated while in public and allows you to keep them in custody until they sober up or as stated in the provincial legislation/division policy." This session also covers the risks or dangers associated with incarcerating severely intoxicated persons in cells. The session reiterates the requirements in RCMP National Headquarters *Operational Manual* chapter 19.2. "Assessing Responsiveness and Medical Assistance" and adds that "[i]t is preferable to turn over an intoxicated individual to an adult who is willing to take responsibility for the individual." During this session, cadets are reminded that prisoners are clients with legal rights, who must be handled in a professional manner, treated with respect and dignity and protected from harming themselves or others.<sup>147</sup>

The Commission also reviewed materials associated with the Applied Police Sciences – Module 6, Session 14 (Appendix 8.2: Persons in Custody Questionnaire). In this session cadets learn more about the law and the RCMP's national policy relating to their

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<sup>146</sup> RCMP Cadet Training Program, Applied Police Sciences, Module 6, Session 1 and Session 9, Appendix 1.2: Care and Handling of Prisoners Handout and Questionnaire (June 19, 2014).

<sup>147</sup> RCMP Cadet Training Program, Applied Police Sciences, Module 6, Session 10, Appendix 10.2: Learning Expectation Sheet – Care and Handling of Prisoners (version 8, April 1, 2012).

responsibilities for individuals that have been taken into custody. The questionnaire includes a question on apprehending and taking into custody a severely intoxicated person. During the session, cadets are reminded of the requirement to seek immediate medical assistance and to provide the necessary first aid when a person shows any of the signs and symptoms set out in RCMP National Headquarters *Operational Manual* chapter 19.2. "Assessing Responsiveness and Medical Assistance." Members are again reminded that all provinces have some kind of legislation that gives the police the authority to arrest individuals that are intoxicated in a public place. Cadets are also informed of the dangers (including in-custody deaths) associated with incarcerating severely intoxicated persons in cells. The course facilitator reiterates the importance of seeking medical assistance when needed and the preference to release an intoxicated prisoner into the care of an adult who is willing to take responsibility for the individual. While the training materials reiterate the preference of releasing an intoxicated person into the care of an adult, the material does not suggest or appear to discuss other alternatives to detention that may be available.<sup>148</sup>

### *Applied Police Sciences – Module 10*

This module teaches cadets of special considerations for "interacting with inebriated persons." Of particular note, cadets are advised "never to assume the individual is just drunk" and to look for medic-alert tags or cards that may provide clues as to whether the subject may be suffering from something other than alcohol abuse. Cadets are also reminded to seek immediate medical assistance when required.<sup>149</sup>

Additionally, cadets receive training about alcoholism from a subject matter expert, who provides insight and information on the signs, risk factors and behaviours associated with alcoholism. The presentation also provides cadets with general information on how alcoholism impacts behaviour to ensure RCMP interactions with intoxicated persons are professional.<sup>150</sup>

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<sup>148</sup> RCMP Cadet Training Program, Applied Police Sciences, Module 6, Session 14, Appendix 8.2: Persons in Custody Questionnaire (version 8, February 26, 2014).

<sup>149</sup> RCMP Cadet Training Program, Applied Police Sciences, Module 10, Session 6: Interacting with inebriated persons (version 8, April 1, 2012).

<sup>150</sup> RCMP Cadet Training Program, Applied Police Sciences, Module 10, Session 8b: Resources on Alcoholism (including a video entitled "The Disease of Alcoholism Update" AIMS Multimedia, Discovery Education, 2002) (version 8, June 14, 2013).



## *Applied Police Sciences – Module 7*

Cadets receive training on mental illness and the RCMP response to the mentally ill.<sup>151</sup> The training is relevant to dealing with intoxicated persons because the material provides intervention tips including factors to consider when apprehending a person exhibiting mental illness who is also intoxicated (by alcohol or drugs). The material states that “[u]nless there is an urgent medical or safety issue, there may be no point in taking subjects to hospital for psychiatric examination while they are intoxicated.” The material explains that “[t]he police decision on apprehension and the doctor’s decision on committal may need to wait until the intoxication wears off and the person’s base-line mental behavio[u]r can be observed.” The material also indicates that violent or otherwise unsafe subjects may need to be held overnight in cells.<sup>152</sup>

The content of this module is consistent with information the Commission received from RCMP members at British Columbia divisional Headquarters and the Pacific Region Training Centre, who commented that hospitals will not admit or take into their care highly intoxicated persons who are also exhibiting mental health issues.<sup>153</sup>

## **Divisional Training**

### *Field Coaching Program*

During the Field Coaching Program, new members are required to complete assignments and tests. In British Columbia, this includes Module “A” of the RCMP Pacific Region Training Centre Field Coaching Program, which must be completed in the first two months of the program. Module A includes ten questions about offences under the British Columbia *Liquor Control and Licensing Act* and one question on the British Columbia *Offence Act* dealing with intoxicated persons who are in police custody and require treatment.<sup>154</sup>

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<sup>151</sup> Please note that the Commission did not review all course materials in relation to mental illness; only the areas that related to intoxicated persons were considered for the purposes of this review.

<sup>152</sup> RCMP Cadet Training Program, Applied Police Sciences, Module 7, Session 11, Appendices 11.1 and 11.2 (version 8, April 1, 2012).

<sup>153</sup> Interview with British Columbia RCMP Headquarters (September 25, 2014) and with the RCMP Pacific Region Training Centre (September 22, 2014).

<sup>154</sup> RCMP Pacific Region Training Centre, Field Coaching Training, Module A (August 29, 2013).



### *RCMP Pacific Region Training Centre*

Officials from the RCMP Pacific Region Training Centre confirmed to the Commission that the Training Centre does not provide specific training on policing public intoxication. They emphasized that training, whether at the national or divisional level, cannot cover every potential scenario or law, and that members learn much of what they need through experience.<sup>155</sup>

The Training Centre provides Crisis Intervention and De-escalation training to all members in the Division. The British Columbia Ministry of Justice, Police Services Division, requires that all frontline police officers and supervisors in the province have this training. The Ministry also requires that all police officers receive Crisis Intervention and De-escalation refresher training every three years.<sup>156</sup>

The Crisis Intervention and De-escalation training course was developed in response and further to recommendations from the Braidwood Inquiry.<sup>157</sup> It was designed to ensure that police officers are able to use communication techniques to de-escalate crises effectively, including cases involving persons experiencing mental health crises. The course has an online training module followed by a full-day training session.<sup>158</sup>

The online component of this training includes various techniques for assessing risk, de-escalating crisis situations, and determining the most appropriate intervention method/technique.<sup>159</sup>

The full-day in-class Crisis Intervention and De-escalation training session includes a review of relevant RCMP national and divisional policies and procedures, a discussion panel with mental health resource and service people as well as consumers, a review of the Crisis Intervention and De-escalation Model and associated techniques, practical role-play scenarios designed to apply crisis intervention and de-escalation techniques, and a final written exam.<sup>160</sup>

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<sup>155</sup> Interview with RCMP Pacific Region Training Centre (September 22, 2014).

<sup>156</sup> British Columbia Ministry of Justice, Police Services Division, Crisis Intervention and De-escalation Training, Course Training Standard (April 18, 2012).

<sup>157</sup> The Braidwood Inquiry refers to the Government of British Columbia's Inquiry into the death of Mr. Robert Dziekanski who died while in the custody of RCMP members on October 14, 2007.

<sup>158</sup> *Supra* note 156.

<sup>159</sup> *Ibid.*

<sup>160</sup> *Ibid.*; British Columbia Ministry of Justice, Police Services Division, British Columbia Crisis Intervention and De-escalation Class Room Training Facilitator Guide (October 2011).

The Training Centre informed the Commission that while the Crisis Intervention and De-escalation training was designed to assist the RCMP in dealing with emotionally disturbed persons and does not specifically address the policing of public intoxication, the training principles apply to all types of policing scenarios and situations. The training emphasizes the importance of communication as a key tool in all RCMP interventions and/or interactions. Communication skills are standard features or essential components of all RCMP training.<sup>161</sup>

Although there is no specific training dedicated to policing publicly intoxicated persons, the Commission found that, as a whole, the training is consistent with policies and procedures.

**Finding No. 19:** The RCMP training on policing public intoxication is consistent with national and divisional policies and procedures.

## Conclusion

The Commission's investigation identified significant shortcomings in member articulation of pertinent details on occurrence reports and found little evidence of supervisory direction and oversight on these reports. While some improvement was seen from 2008 to 2012, the results still point to RCMP failure to adequately address these shortcomings. The absence of pertinent details raises serious challenges for review bodies (such as the Commission) and lessens public trust. RCMP members must accept the duty to provide a full account of events as more than just a burden of paperwork.

The review also identified areas for policy improvement in how the RCMP responds to occurrences involving public intoxication. These policy changes should enhance the rigour of the RCMP's policy framework. However, there remains a need for active engagement of detachment commanders and supervisors to emphasize the importance of articulation and maintaining proper records in all cases, even high volume public intoxication occurrences.

The training review revealed that while dedicated training on policing public intoxication is not provided at the national or the divisional level in British Columbia, the training in place appears to provide members with the basic required skills and competencies to deal with situations involving intoxicated persons as well as to understand the legal authorities in this regard.

At the national level, the Cadet Training Program focuses on developing the cadets' abilities to solve problems, use judgment, and ultimately use discretion in deciding when and how to intervene in various situations and scenarios.

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<sup>161</sup> Interview with RCMP Pacific Region Training Centre officials (September 22, 2014).

The program also teaches cadets that all provinces have legislation giving police the authority to arrest individuals that are intoxicated in a public place and allowing them to hold the subjects until they are sober or as stated in the provincial legislation/divisional policy. The training also emphasizes, repeatedly, the importance of assessing responsiveness and seeking medical assistance when required as well as the importance of treating all persons with dignity and respect.

RCMP training in British Columbia appears to rely on the Field Coaching Program to provide new members with the experience, practical training and knowledge needed for policing public intoxication. Members at the Pacific Region Training Centre indicated that community expectations and requirements differ from one community to the other and the various detachments may have different ways of dealing with public intoxication.<sup>162</sup> Thus, the Field Coaching Program provides essential hands-on training tailored to the community in which the member serves.

It is important to note that while police interventions involving intoxicated persons may be routine police occurrences, the arrest and incarceration of any person should never be treated as a trivial matter.

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<sup>162</sup> *Ibid.*

## USE OF FORCE

### Context

Human rights and civil liberties organizations raised concerns and alleged abusive treatment and excessive use of force by police members in northern British Columbia, specifically against women and girls, as well as apparent shortcomings of oversight mechanisms designed to provide accountability for police misconduct.<sup>163</sup> These prompted the Commission to examine use of force accountability for the RCMP in British Columbia's North District.

The *Criminal Code* authorizes peace officers, such as RCMP members, to use as much force as deemed necessary for the enforcement and administration of law.<sup>164</sup> Officers must act on reasonable grounds and the onus is on the peace officer to justify not only having used force, but also the degree of force used.<sup>165</sup> As a result, when an RCMP member is in a situation requiring the use of force, the member must not only act reasonably, but is also required to provide a full accounting of the circumstances and justification for the force used. The limits set out in law and the RCMP's own policies are vital to ensuring that accountability accompanies the RCMP's authority to use force when necessary.<sup>166</sup>

The RCMP's Subject Behaviour/Officer Response database, an online reporting and storage tool, is the primary instrument for recording use of force interventions.

The database includes instances where force is used and captures information such as: behaviour and actions of the subject prior to the intervention; the results of the intervention; and information on any injuries sustained by the subject, the member or any other individual present at the scene.<sup>167</sup> RCMP members are required to record all use of force interventions in the database.<sup>168</sup>

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<sup>163</sup> *Supra* note 3 at 8 and 46.

<sup>164</sup> *Supra* note 91 at s 25(1).

<sup>165</sup> *Ibid*; Royal Canadian Mounted Police, *Incident Management/Intervention Model*, online: Royal Canadian Mounted Police <<http://www.rcmp-grc.gc.ca/ccaps-spcca/cew-ai/imim-migi-eng.htm>>.

<sup>166</sup> Royal Canadian Mounted Police, *Progress: Transformation of the Royal Canadian Mounted Police* (Ottawa: Royal Canadian Mounted Police, 2010) at 15.

<sup>167</sup> Royal Canadian Mounted Police, *Privacy Impact Assessment – Subject Behaviour/Officer Response Database (SBOR)*, online: Royal Canadian Mounted Police <<http://www.rcmp-grc.gc.ca/pia-efvp/sbor-cpia-eng.htm>>.

<sup>168</sup> RCMP National Headquarters *Operational Manual* chap 17.8. "Subject Behaviour/Officer Response Reporting" (dated December 24, 2013).

According to the RCMP, this database is intended to respond to external pressures to meet higher standards of transparency and accountability.<sup>169</sup>

Members are required to articulate the use of force interventions in the database. The “how and why” in the articulation is based on the member’s assessment of the particular situation. RCMP members are trained to assess situations and are guided in their decisions regarding use of force by the Incident Management/Intervention Model. This is a risk assessment tool used to select an intervention method, constantly evaluate as the situation evolves and subsequently explain why the given method of intervention was chosen.<sup>170</sup>

According to the RCMP, under the Incident Management/Intervention Model, the risk assessment must account for the totality of the situation and clearly explain the events that occurred before, during and after an intervention. It includes an assessment of how the following factors may have affected the officer’s assessment of the situation:<sup>171</sup>

- 1) **The situational factors**, such as the environment, number of subjects, perceived subjects’ abilities, knowledge of the subject, time and distance and threat cues;
- 2) **The subject’s behaviour**, as co-operative, passive resistant, active resistant, assaultive or exhibiting actions that are intended to cause grievous bodily harm or death;
- 3) **The officer’s perceptions**, which are factors unique to the individual officer that interact with situational factors and behaviour categories to affect how the officer perceives and ultimately assesses and responds to a situation; and
- 4) **Tactical considerations**, such as tactical repositioning, officer appearance, uniform and equipment, number of officers, availability of backup, availability of cover, geographic constrictions, practicality of containment, distance, communications, and agency policies and guidelines.

The Incident Management/Intervention Model requires members to give careful consideration to the above factors to formulate a risk assessment. The member chooses an appropriate response based on the overall assessment. The model is also intended to help a member explain why certain intervention methods were used, and explain his/her actions to others. Following a use of force intervention, the member must explain

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<sup>169</sup> RCMP Contract and Aboriginal Policing Directorate, National Criminal Operations, National Use of Force, Training Deck, *Subject Behaviour/Officer Response (SB/OR) Reviewer Training* (2011).

<sup>170</sup> Royal Canadian Mounted Police, *Incident Management/Intervention Model*, online: Royal Canadian Mounted Police <<http://www.rcmp-grc.gc.ca/ccaps-spcca/cew-ai/imim-migi-eng.htm>>.

<sup>171</sup> *Ibid.*

and justify not only having used force, but also the degree of force used.<sup>172</sup> Thus, the Incident Management/Intervention Model assists members in articulating and explaining how a particular situation was perceived, assessed and responded to. This risk assessment framework guides members in that articulation.

All RCMP members are trained in the use of the Incident Management/Intervention Model. It is outlined and explained to members in Cadet training, in national and divisional *operational manuals*, in a mandatory Incident Management/Intervention Model annual course, and on the RCMP website.

## **Qualitative Review of Subject Behaviour/Officer Response Reports**

The Commission reviewed a sample of North District reports from the Subject Behaviour/Officer Response database to determine whether members were completing Subject Behaviour/Officer Response reports and articulating use of force interventions in a manner that is transparent and consistent with the Incident Management/Intervention Model guidelines and Subject Behaviour/Officer Response policy.

The Commission selected a random sample of 301 Subject Behaviour/Officer Response reports from a total of 1,397 reports completed in the 35 RCMP detachments in the North District between 2010 and 2012.<sup>173</sup> The Commission reviewed report data and narratives against a checklist designed to evaluate whether members' articulation of use of force aligned with Incident Management/Intervention Model requirements.

The assessment took into consideration the following key questions:

- Did the member articulate the factors considered in the risk assessment process, as outlined in the Incident Management/Intervention Model: subject behaviour, situational factors, officer perceptions, and tactical considerations?
- Did the member clearly and effectively explain the totality of circumstances?
- Did the member's articulation explain why the intervention method was chosen to manage the incident?
- In consideration of the above, did the articulation align with the Incident Management/Intervention Model?

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<sup>172</sup> *Ibid*; RCMP National Headquarters *Operational Manual* chap 17.1. "Incident Management Intervention Model" s 1. "General" and 3. "Assessment Process" (dated May 8, 2009).

<sup>173</sup> The time period was selected based on the period identified by Human Rights Watch, in conjunction with the implementation of the Subject Behaviour/Officer Response database on January 1, 2010.

The review revealed that a total of 35.9% (108 of 301) of reports were missing key components of the Incident Management/Intervention Model risk assessment and therefore did not comply with policy requirements for Subject Behaviour/Officer Response reporting. In addition, the Commission found that 32.9% of the Subject Behaviour/Officer Response reports (99 of 301) failed to explain in the narrative articulation why the intervention methods were chosen to manage the incident, which is one of the key objectives of the Incident Management/Intervention Model tool. The Commission also found that, of the 108 reports considered not to align with policy, 81.5% (88 of 108) of them did not provide any insight into the officer's perceptions, and 64.8% (70 of 108) of reports failed to identify any tactical considerations. North District RCMP officials acknowledged the need for members to improve articulation in use of force interventions in the Subject Behaviour/Officer Response system, and have been working to address issues in this regard on an ad hoc basis through feedback and by educating supervisors and members about the requirements.<sup>174</sup>

The Commission found a number of examples where members' articulation was unclear due to the use of generic statements that fail to provide a rationale for the use of force intervention or a clearly articulated risk assessment. In the Commission's view, these statements fail to meet reasonable standards for written articulation because they provide no rationales for the use of force, the factors considered in the risk assessment process, and in particular, the members' perceptions of the events. This finding is in line with the observation in a North District document of the same time period, which expresses concern about a "trend towards generic and conservative descriptions of officer reactions that contrast with the levels of resistance/violence attributed to the subject."<sup>175</sup>

The Commission noted improvement in the style and degree of explanation of the risk assessments provided in 2012, as compared with 2010 and early 2011. The Commission found that compliance with the Incident Management/Intervention Model guidelines and Subject Behaviour/Officer Response policy improved modestly throughout the period under review. In 2010, 49% (49 of 100) of Subject Behaviour/Officer Response reports were found not to align with the Incident Management/Intervention Model risk assessment framework; in 2011, 39.3% (35 of 89) of reports failed to meet the standard. However, the Commission identified only 20.6% (21 of 102) of reports from 2012 that did not align with the Incident Management/Intervention Model.

RCMP members in the North District similarly indicated to the Commission that they had seen improvements in articulation since the Subject Behaviour/Officer Response system was first implemented in 2010, and cited the negative effect of the lack of formal

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<sup>174</sup> Interview with RCMP members of the British Columbia North District (September 24, 2014).

<sup>175</sup> RCMP North District, Subject Behaviour/Officer Response Reporting – North District (dated April 2012).

training to support members and supervisors during implementation of the system.<sup>176</sup> North District members confirmed that the District had reported many of the same shortcomings in articulations in a bulletin and a presentation in August 2010 and April 2012.<sup>177</sup> Although aware of the compliance issues around Subject Behaviour/Officer Response completion and articulation, the RCMP in the North District acknowledged that oversight of Subject Behaviour/Officer Response review was sometimes inconsistent and slow.<sup>178</sup>

The Commission also noted improvement in articulations following an update to policy and additional training on reporting tools in 2011.<sup>179</sup> Nonetheless, the Commission found compliance issues in 2012 similar to those in earlier reports, and that articulations still lacked essential detail in the risk assessment, and in particular, failed to explain members' perceptions of events.

**Finding No. 20:** Despite modest improvement in 2012 a significant proportion of Subject Behaviour/Officer Response reports failed in various ways to articulate use of force interventions according to policy and training requirements.

**Recommendation No. 17:** That the RCMP in British Columbia's North District ensure that articulations of use of force interventions are clear and comprehensive, and fully align with policies, guidelines, and training requirements.

## Statistical Data

The Commission compiled and analyzed statistical data from the RCMP's Subject Behaviour/Officer Response system with a view to understanding the extent, type and frequency of force being applied by members in the North District, as well as to look for potentially significant statistical trends regarding North District use of force interventions and more specifically to identify any trends regarding use of force interventions involving youth and female subjects.

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<sup>176</sup> *Supra* note 174.

<sup>177</sup> The British Columbia North District provided a Bulletin outlining Subject Behaviour/Officer Response reporting issues, dated August 4, 2010, and a PowerPoint presentation which highlighted compliance issues in Subject Behaviour/Officer Response reporting, dated April 2012.

<sup>178</sup> *Supra* note 174.

<sup>179</sup> The national Subject Behaviour/Officer Response Reporting policy was updated in August 2011, Subject Behaviour/Officer Response Reviewer Training was provided to the North District in June 2011, and a new Subject Behaviour/Officer Response User Guide was produced in April 2012.

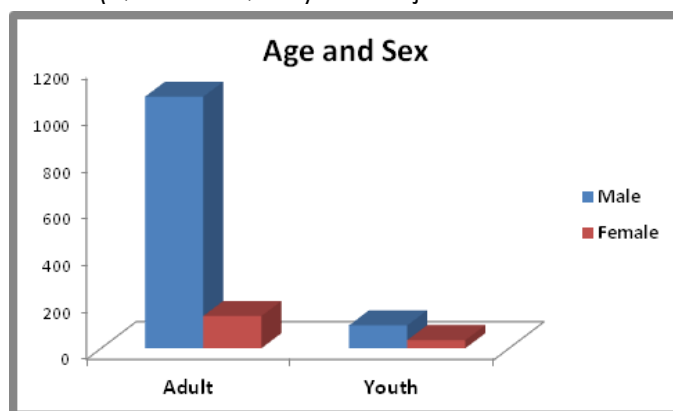


The Commission reviewed 1,397 Subject Behaviour/Officer Response reports. These represent all the reports created between January 1, 2010, and December 31, 2012, by members of the 35 RCMP detachments in the North District. These reports pertain to 1,128 use of force occurrences, involving 1,340 subjects.

The following section provides statistics describing the age and gender of subjects, the type of subject behaviour in relation to the member's response, the extent of substance abuse amongst subjects involved in use of force incidents, the extent of injuries caused by use of force incidents, member rank and duty type, and the types of occurrences to which the RCMP were responding when force was being used. Descriptive statistics provide a useful quantitative summary of the data under investigation, but alone cannot be used to infer conclusions.

### *Age and Sex*

The Commission found that an overwhelming majority, 91.3% (1,030 of 1,128), of use of force incidents involved adult subjects (i.e. 18 years of age and older), while youth were involved in only 8.7% (98 of 1,128) of reported occurrences. The figures showed that 87.2% (1,169 of 1,340) of subjects involved in use of force interventions were male and



12.8% (171 of 1,340) were female. While the overall number of female subjects was low (171 female subjects between 2010 and 2012), female youth (aged 12–17) represented 19.9% (34 of 171) of all female subjects overall. In contrast, male youth represented only 8.3% (97 of 1,169) of all male subjects involved in use of force incidents in that time period.

### *Subject Behaviour and Officer Response*

The Incident Management/Intervention Model identifies five different categories of subject behaviour:

- Co-operative means that the subject responds appropriately to the officer's presence, communication and control;
- Passive Resistant means that the subject refuses, with little or no physical action, to cooperate with the officer's lawful direction;
- Active Resistant indicates that the subject uses non-assaultive physical action to resist, or while resisting an officer's lawful direction;
- Assaultive is when the subject attempts to apply, or applies force to any person; attempts or threatens by an act or gesture, to apply force to another person, if he/she has, or causes that other person to believe upon reasonable grounds that he/she has the present ability to effect his/her purpose;
- Grievous Bodily Harm or Death is the term used when the subject exhibits actions that the officer reasonably believes are intended to, or likely to cause grievous bodily harm or death to any person, such as assault with a knife, stick or firearm, or actions that would result in serious injury to an officer or member of the public.<sup>180</sup>

In 26.9% (497 of 1,853) of use of force events, subjects were deemed *Active Resistant*, 35.2% (653 of 1,853) were thought to be *Assaultive*, and 14.2% (264 of 1,853) displayed behaviour consistent with the intent to cause *Grievous Bodily Harm or Death*. Only 18.3% (339 of 1,853) of subjects were characterized as *Cooperative*, while 5.4% (100 of 1,853) were regarded as *Passive Resistant*.

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<sup>180</sup> *Supra* note 170.

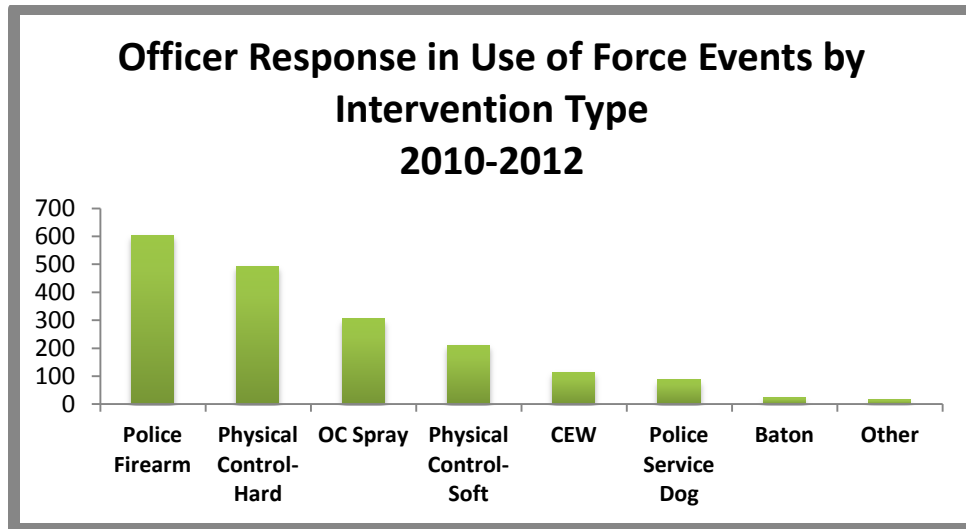
**Subject Behaviour and Officer Response in Use of Force Events, “E” Division’s North District, 2010–2013**

<b><u>Subject Behaviour</u></b>	<b>Physical Control – Soft</b>	<b>Physical Control – Hard</b>	<b>OC Spray</b>	<b>Baton</b>	<b>CEW</b>	<b>Police Service Dog</b>	<b>Police Firearm</b>	<b>Other</b>	<b>Total</b>	<b>%</b>
<b>Cooperative</b>	8	0	0	0	5	7	315	4	339	18.3
<b>Passive Resistant</b>	20	9	0	0	7	3	58	3	100	5.4
<b>Active Resistant</b>	98	162	96	3	14	61	62	1	497	26.9
<b>Assaultive</b>	76	293	196	18	45	8	13	4	653	35.2
<b>Grievous Bodily Harm or Death</b>	9	29	13	2	43	8	156	4	264	14.2

When youth displayed *Active Resistant* behaviour, members deployed a police service dog in 53.7% (22 of 41) of incidents. A third, 31.3% (41 of 131), of youth subjects displayed this behaviour. The second most common behaviour displayed by youth was *Cooperative*, observed in 30.5% (40 of 131) of incidents involving youth. A police firearm was used in 90% (36 of 40) of the incidents in which youth displayed *Cooperative* behaviour.<sup>181</sup>

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<sup>181</sup> The review of Subject Behaviour/Officer Response reports clarified the high rate of firearm interventions on cooperative subjects. The Commission found that in a majority of cases, RCMP members drew a firearm as a tactical precaution in situations assessed as high risk, for example, prior to entering a residence where a crime was in progress, and that subjects were cooperative due to the presence of a drawn firearm and were therefore reported as such.



Overall, the most common use of force interventions by RCMP members was a police firearm, used in 32.6% (604 of 1,853) of interventions, followed by physical control-hard used in 26.6% (493 of 1,853) of interventions and OC spray used in 16.5% (305 of 1,853) of interventions.

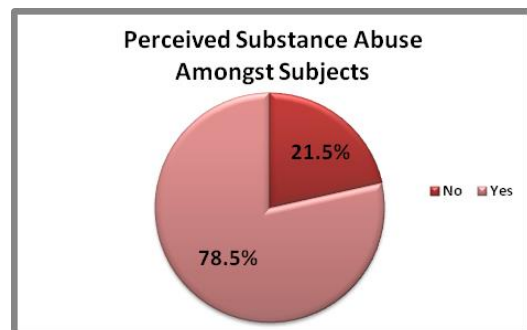
In 88.2% (1,635 of 1,853) of cases involving use of force, RCMP members judged the intervention option employed to have been effective in controlling subjects. The only exception was the baton, which was perceived as effective in only 56.5% (13 of 23) of use of force incidents. In contrast, police service dogs were considered effective in all 87 cases (100%) where they were employed.

### *Injury*

Of 1,340 subjects, 18.6% (249 of 1,340) sustained injuries during use of force-related incidents. Adult male subjects accounted for 81.1% (202 of 249) and adult females accounted for 9.2% (23 of 249) of those injured. Male youth subjects only accounted for 6.8% (17 of 249) and youth female subjects represented only 2.8% (7 of 249) of those injured.

### *Substance Abuse*

From 2010 to 2012, RCMP members in the North District perceived substance abuse (i.e. alcohol, drugs or inhalants) amongst subjects in 78.5% (885 of 1,128) of use of force-related occurrences. No significant differences were noted between adult male and female subjects.



Of the male adults involved in use of force incidents, 70.8% (759 of 1,072) were perceived to be influenced by alcohol, 27.5% (295 of 1,072) by drugs, and 22.2% (238 of

1,072) by both substances. Comparatively, of the adult females involved in use of force incidents, 62.0% (106 of 171) were perceived to be influenced by alcohol, 28% (48 of 171) by drugs, and 19.3% (33 of 171) by both substances. However, in comparing adult to youth subjects, 70.1% (848 of 1,209) of adults and only 45.8% (60 of 131) of youth were perceived to be influenced by alcohol, while 27.9% (337 of 1,209) of adult subjects and 19.1% (25 of 131) of youth subjects were perceived to be influenced by drugs. Of the female youth, 50% (17 of 34) were perceived to be influenced by alcohol, 5% higher than the male youth group, 45% (43 of 97).

### Occurrence Types

From 2010 to 2012, the three top occurrence types in use of force incidents were as follows: Assault Against a Police Officer (302 of 1,128), Causing a Disturbance (143 of 1,128) and Assault with a Weapon or Cause Bodily Harm (138 of 1,128).

With respect to recording use of force incidents in the Subject Behaviour/Officer Response reporting system, RCMP members are asked to enter the most serious offence. With this in mind, one of the limitations of the system is that it does not track the occurrence type that the RCMP member responded to at the outset. For example, an RCMP member might have initially received a call for police service regarding an intoxicated person in a public place but, in the end, the incident escalated into a situation where the intoxicated subject physically assaulted the RCMP member hence resulting in the occurrence type being identified as "Assault Against a Police Officer." This limits the usefulness of the data and precludes its use as a means of identifying potential trends for assessing the risk associated with certain occurrence types.

## **RCMP Policy**

### National Subject Behaviour/Officer Response Policy

In January 2010 the RCMP implemented the Subject Behaviour/Officer Response database. The RCMP National Headquarters *Operational Manual* chapter 17.8.<sup>182</sup> sets out the requirements for completing a Subject Behaviour/Officer Response report.

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<sup>182</sup> The most current version at the time of writing is RCMP National Headquarters *Operational Manual* chap 17.8. "Subject Behaviour/Officer Response Reporting" (dated December 24, 2013).

This report is required whenever a member is involved in an incident where his/her intervention involves the use of:

- Physical control soft, which resulted in an injury to the subject, the member, or other person;
- Physical control hard: stuns/strikes, takedown;
- An intermediate weapon: conducted energy weapon, baton, OC spray,<sup>183</sup> or extended range impact weapon;
- Vascular neck restraint;
- Specialty munitions;
- Firearm;
- Police service dog;<sup>184</sup> or
- Other responses: weapon of opportunity, flashlight, etc.

According to policy, a member is required to initiate and complete the report within 48 hours of an incident unless a supervisor approves an extension under exceptional circumstances.<sup>185</sup> RCMP National Headquarters *Operational Manual* chapter 17.8. states that a member's Subject Behaviour/Officer Response report is the written account of an intervention option and supplements his/her notes.<sup>186</sup> Members are also required to attach all completed Subject Behaviour/Officer Response reports and any subsequent revisions to the record management system/operational file.<sup>187</sup>

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<sup>183</sup> Oleoresin capsicum spray, also known as pepper spray.

<sup>184</sup> The RCMP National Headquarters *Operational Manual* chap 17.8. "Subject Behaviour/Officer Response Reporting" (dated December 24, 2013) provides additional detailed scenarios outlining the requirements for completing a Subject Behaviour/Officer Response report when a police service dog is involved.

<sup>185</sup> Examples of exceptional circumstances include weather, distance from detachment, injury, sickness, operational constraints, covert operations, pending a risk assessment and supervisor's approval. Policy directs that the extension approval be documented on the Record Management System/Operational file. RCMP National Headquarters *Operational Manual* chap 17.8. "Subject Behaviour/Officer Response Reporting", s 3. "Roles and Responsibilities" (dated December 24, 2013).

<sup>186</sup> A Subject Behaviour/Officer Response report may include several intervention methods used on one or multiple subjects.

<sup>187</sup> National policy does not specify the record management system to be used. The system used in British Columbia is PRIME-BC.

The Subject Behaviour/Officer Response reporting tool includes many mandatory fields and several areas for open text narrative articulations. It requires members to complete fields that describe the subject's behaviour and the totality of circumstances surrounding an incident, according to the principles of the Incident Management/Intervention Model.

**Finding No. 21:** The RCMP's national policy clearly establishes a member's responsibility for reporting use of force interventions.

In addition to setting the parameters for the completion of reports by members, the national Subject Behaviour/Officer Response policy establishes the role of supervisors, including: review, quality assurance, and reporting of "issues." An "issue," as defined by policy, "includes but is not limited to, non-compliance to policies, procedures, training, complaints, and/or the appropriateness of an intervention that may require further review of the incident by a Use of Force Subject Matter Expert . . . ."<sup>188</sup>

Supervisors are responsible for the first level of review. However, in examining the supervisor responsibilities in the national policy, the Commission found ambiguity with respect to the way national policies address the subject of "issues."

First, the definition of issues in the national policy is broad, ranging from non-compliance with any policy, procedure or training requirement up to calling into question the appropriateness of the use of force. Use of force non-compliance issues, therefore, may be minor and dealt with informally by the supervisor, or major, possibly leading to investigation or even disciplinary measures. The national policy states that "if an issue, as defined in sec. 2.5., is identified during the review process, notify the Unit Commander/designate [emphasis added]."<sup>189</sup> In practice, however, it was evident from discussions with North District members that issues are managed in various ways, depending on their seriousness, and that not all would be reported to unit commanders.

The policy does not provide guidance to supervisors or criteria on which to base a decision to notify the Unit Commander or designate about an issue. Moreover, the national policy contains no requirement for supervisors to track or record the decision to refer an issue to the Unit Commander, or to follow up on its resolution. The Commission's investigation also revealed no training materials, procedures, or documents that provide guidance to supervisors on the thresholds for reporting issues to the Unit Commander.

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<sup>188</sup> RCMP National Headquarters *Operational Manual* chap 17.8. "Subject Behaviour/Officer Response Reporting", s 2. "Definitions" (dated December 24, 2013).

<sup>189</sup> *Ibid*, s 3. "Roles and Responsibilities" (dated December 24, 2013).

According to RCMP National Headquarters *Operational Manual* chapter 17.8., a supervisor is responsible for reviewing Subject Behaviour/Officer Response reports for completeness and documenting the approval on the record management system/operational file in a timely manner. If the Subject Behaviour/Officer Response report requires amendments, supervisors are required to document their rationale for the amendment on the record management system/operational file. An appendix to the national Subject Behaviour/Officer Response policy further notes that “[a]pproval of the [Subject Behaviour/Officer Response] report acknowledges that the report has been reviewed for completeness and not for the appropriateness of the member’s intervention.”<sup>190</sup> Thus, because policy focuses solely on supervisors’ responsibility to ensure that reports are complete, the responsibility for reporting issues appears to be left to the supervisor’s discretion.<sup>191</sup> North District RCMP members acknowledged that the national policy introduces uncertainty with respect to a supervisor’s role in identifying and reporting issues, stating that it appears contradictory and could be interpreted in various ways by supervisors.<sup>192</sup>

According to the RCMP, some upgrades were made to the Subject Behaviour/Officer Response database to improve the report review and approval process. The upgrades included: automated email notifications to remind members and supervisors when reports were outstanding, and enhanced business rules, pop-up screens and warnings to assist members in filling out the report while also minimizing errors and confusion. Also included was a new checklist for members and supervisors, asking them to confirm:

- the internal consistency of the report summary and mandatory categories;
- the timeliness of completion;
- the inclusion of all versions of the report in the record management system/operational file;
- the absence of subject/victim/witness names;
- the correct categorization of subject behaviour;
- the recording of changes in subject behaviour and each intervention option used; and
- the narrative’s accurate description of the incident.

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<sup>190</sup> RCMP National Headquarters *Operational Manual* Appendix 17-8-2 “SB/OR Review Process – Supervisor” (dated September 19, 2013). The national policy does not specify the record management system to be used.

<sup>191</sup> *Ibid.*

<sup>192</sup> *Supra* note 174.



The Commission found that the above checklist does not aid in identifying or tracking “issues.” In the Commission’s view, these updates to the Subject Behaviour/Officer Response database did little to improve quality assurance processes to allow the RCMP to track “issues” identified as a result of a supervisor’s review, or to identify trends.

In speaking with North District RCMP members, it became apparent that the accountability structure for Subject Behaviour/Officer Response reporting was not functioning as intended.<sup>193</sup> Despite the national policy stating that the database “enhances police accountability and promotes relevant training,” North District members were adamant that it was not an accountability tool but that its primary purpose was to gather statistics on use of force.<sup>194</sup> Members pointed out that the national policy does not require supervisors to review reports for appropriateness, and that supervisors are only required to report issues to their Unit Commander if they happen to come across something that raises concern.<sup>195</sup> North District members also noted that it is possible for supervisors to handle certain issues informally because there is no formal mechanism or systematic approach for supervisors to document or track issues, in particular when there are policy compliance issues.<sup>196</sup> Thus, the RCMP appears unable to monitor use of force issues on a broader scale.

The Commission believes that the RCMP’s national policy on Subject Behaviour/Officer Response reporting, as contained in RCMP National Headquarters *Operational Manual* chapter 17.8., is insufficiently clear regarding the requirement for supervisors to identify, report and track “issues” related to compliance with policy or appropriateness of use of force.

**Finding No. 22:** The RCMP’s national policy on Subject Behaviour/Officer Response reporting does not provide clear direction to supervisors with regard to identifying reporting and tracking use of force issues in the reports.

**Recommendation No. 18:** That the RCMP establish criteria and reporting thresholds to aid in the identification of “issues,” and provide clear direction on reporting and tracking use of force issues identified in reports.

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<sup>193</sup> *Ibid.*

<sup>194</sup> *Ibid.*

<sup>195</sup> *Ibid.*

<sup>196</sup> *Ibid.*

The Commission's examination of supervisor responsibility identified a further shortcoming in the Subject Behaviour/Officer Response database that hampers comprehensive review of reporting on use of force interventions.

The database does not contain information on the following:

- Supervisor feedback and comments following review of a Subject Behaviour/Officer Response report;
- Supervisor approval and justification for time extensions for member reports;
- Previous versions of Subject Behaviour/Officer Response reports prior to supervisor or member amendments;
- Information on "issues" identified in reports;
- Review of "issues" by a use of force subject matter expert.

Thus, little or no information is recorded in the Subject Behaviour/Officer Response database on the review, quality assurance, and identification of issues in reports on use of force interventions. Rather, this information is recorded elsewhere, in operational files or the Division's record management system. North District members confirmed that it would require a manual review of operational files to see supervisor feedback and comments, or to determine whether an issue was identified.<sup>197</sup> Moreover, North District members indicated their concern that previous versions of Subject Behaviour/Officer Response reports would be lost if members were not diligent in attaching copies to the operational file in PRIME-BC.<sup>198</sup> This limits the ability of reviewers to examine issues identified and their disposition. As a result, the value of the database as a tool for internal and external accountability, and organizational learning and improvement is reduced.

Interviews with RCMP members in British Columbia and at National Headquarters confirmed that the RCMP lacks any systematic means for tracking "issues" identified through the Subject Behaviour/Officer Response reporting process.

**Finding No. 23:** The lack of information in the Subject Behaviour/Officer Response database on the identification and disposition of issues in use of force reporting reduces the value of the database as an accountability tool.

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<sup>197</sup> *Ibid.*

<sup>198</sup> *Ibid.*

**Recommendation No. 19:** That the RCMP modify the Subject Behaviour/Officer Response database and reporting policies to enhance accountability by ensuring issues identified through the reporting process can be monitored, tracked, and independently reviewed.

#### British Columbia RCMP Subject Behaviour/Officer Response Policy

The RCMP in British Columbia established its Subject Behaviour/Officer Response policy on February 2, 2012, as a supplement to the national requirements. The divisional policy reiterates the review and accountability structure of the national policy, but contains some differences in terminology and requirements.

For example, the divisional policy provides that, in accordance with the national policy, supervisors are to review each Subject Behaviour/Officer Response report submitted by members under their command. It then states that supervisors are required to report to the Unit Commander or delegate any concern regarding the use of force.<sup>199</sup> While not defined by the divisional policy, the term “concern” is interpreted by North District RCMP officials to mean the same as “issue” in RCMP National Headquarters *Operational Manual* chapter 17.8.<sup>200</sup> By not using the term from the national policy, the Division leaves its policy open to interpretation by members and supervisors.

The divisional policy also establishes District Subject Behaviour/Officer Response Coordinator positions, reporting to the Division Subject Behaviour/Officer Response Coordinator as well as to the District Commander. The District-level coordinators are required to review all Subject Behaviour/Officer Response reports for their area of supervision,<sup>201</sup> expanding on the national Subject Behaviour/Officer Response policy, which only requires the Use of Force Coordinator to review reports involving conducted energy weapons or firearms. The District Coordinator is required both to notify the Division Coordinator about concerns regarding the application of use of force noted in a Subject Behaviour/Officer Response report and to return a report to the supervisor if they note errors regarding compliance or in the completion of the report.<sup>202</sup> This establishes another layer of accountability in the Division's Subject Behaviour/Officer Response reporting structure.

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<sup>199</sup> British Columbia RCMP “E” Division *Operational Manual* chap 17.8. “Subject Behaviour/Officer Response Reporting”, s 3. “Supervisor” (dated February 2, 2012).

<sup>200</sup> *Supra* note 174.

<sup>201</sup> *Supra* note 199 at s 6. “District/Regional/Detachment SB/OR Coordinator”.

<sup>202</sup> *Ibid.*

## Use of Force and Subject Behaviour/Officer Response Training

RCMP members receive extensive training on use of force. This training includes the legal framework of the use of force as well as the use of various intervention methods, tools and tactics. The Commission reviewed RCMP training materials to determine how members are trained in Subject Behaviour/Officer Response reporting and in articulating interventions involving force, as well as whether current training materials are adequate and consistent with national policies. The Commission also examined several job aids and user guides available to members to assess whether they are consistent with national policies.

### Cadet Training Program

Cadet training includes modules that deal directly or indirectly with use of force. For the purpose of this investigation, the Commission reviewed modules that outline use of force Incident Management/Intervention Model scenarios and police defensive tactics, as well as modules that serve as an introduction to the Incident Management/Intervention Model risk assessment model, and the Subject Behaviour/Officer Response reporting policy and database:

- Use of Force / Incident Management/Intervention Model Scenarios
- Subject Behaviour/Officer Response Reporting
- Police Defensive Tactics
- Incident Management/Intervention Model Guide
- Risk Assessment, Legal Articulation and Notebook Entry

The Cadet Training Program also includes an *Introductory Guide to Legal Articulation*, which is designed to help members develop the skills necessary to clearly, concisely and effectively communicate their actions in verbal or written form. This guide also refers to the Incident Management/Intervention Model, highlighting the importance of including a member's perception of the situational factors, their perception of the subject behaviour, and their own perceived risk. It further emphasizes that it is important for members to identify how their own perceptions influenced their tactical considerations.<sup>203</sup>

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<sup>203</sup> Cadet Training Program, Welcome Package, Appendix 9: Introductory Guide to Legal Articulation (version 8, April 1, 2012).

These modules were clear and consistent with the framework set out in the Incident Management/Intervention Model and the requirements established in the Subject Behaviour/Officer Response reporting policies, all of which emphasize the importance of adequate legal articulation to explain the use of an intervention involving force.

### Completing a Written Narrative Job Aid

The *Completing a Written Narrative Job Aid* (2009) is another tool available on the RCMP internal web page that provides guidance to members on how to articulate use of force interventions. The document is intended to address issues concerning a lack of reasonable articulation of use of force. It points out that the RCMP has had issues in the past with members using generic statements in their documentation, such as "The subject resisted arrest and force was used to subdue him."<sup>204</sup> RCMP members in the North District indicated that members are encouraged to refer to this document if they require additional guidance regarding articulations.

The document stresses the importance not only of listing all the elements of a risk assessment but also of clearly explaining what those observations meant, considering the member's previous police experiences and own skills and abilities.<sup>205</sup> Members are advised to include the steps taken to attempt to de-escalate the situation and if they did not work, "why [the member] may have had to escalate in [his/her] use of force [emphasis added]."<sup>206</sup> It specifies that a member's articulation of use of force should be clear enough to allow others to read and understand the events and actions taken.

The Commission was satisfied that this document was available to members as a plain language reminder about the important aspects of a comprehensive written narrative, and that the Subject Behaviour/Officer Response database also directs members to the guide.

### Subject Behaviour/Officer Response Review Training for Supervisors

The RCMP's National Use of Force Program introduced the Subject Behaviour/Officer Response Reviewer Training course in 2011.<sup>207</sup> It was offered to North District supervisors on June 8, 2011,<sup>208</sup> to explain forthcoming changes to the Subject Behaviour/Officer

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<sup>204</sup> Incident Management/Intervention Model Classroom Course, *Completing a Written Narrative Job Aid* (version 2, August 2009).

<sup>205</sup> *Ibid.*

<sup>206</sup> *Ibid.*

<sup>207</sup> RCMP Contract and Aboriginal Policing Directorate, National Criminal Operations, National Use of Force, Training Deck, *Subject Behaviour/Officer Response (SB/OR) Reviewer Training* (2011).

<sup>208</sup> Electronic correspondence from an RCMP member of the British Columbia North District (October 21, 2014).

Response policy and database upgrades<sup>209</sup> and give further direction to supervisors on review processes and quality assurance.<sup>210</sup>

The course provided a framework for supervisors to assist them in ensuring that reports are complete in accordance with policy requirements. It emphasized the importance of supervisors documenting their review on the record management system/operational file, including any required amendments, and of members attaching each version of a Subject Behaviour/Officer Response report to the operational file. The training highlighted the fact that all reports are subject to disclosure, and that members may be required to articulate in court any amendments made to the original report. The training also indicated that unit coordinators have a responsibility to ensure that supervisors properly document their reviews on operational files.

While the updated Subject Behaviour/Officer Response Reviewer Training Module developed in April 2012 provided a general overview of “issues” and the accompanying reporting structure as stated in the policy, it otherwise provided no guidance, examples or thresholds to supervisors on identifying “issues” in Subject Behaviour/Officer Response reports. Nor did the training provide any insight into what policies, procedures or training items they should assess compliance against in the process of identifying “issues.”<sup>211</sup>

**Finding No. 24:** Supervisor training does not further inform national policy regarding the identification of issues in use of force reports.

**Recommendation No. 20:** That the RCMP modify supervisor training to provide guidance on the identification and reporting of issues in use of force reports.

### Subject Behaviour/Officer Response User Guide Version 2.0

Following the changes to the national Subject Behaviour/Officer Response policy in August 2011, the RCMP issued a *Subject Behaviour/Officer Response User Guide Version 2.0* (of the Subject Behaviour/Officer Response database) in April 2012. This user guide reiterates the purpose and benefits of Subject Behaviour/Officer Response reporting

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<sup>209</sup> Version 2 of Subject Behaviour/Officer Response database.

<sup>210</sup> RCMP Contract and Aboriginal Policing Directorate, National Criminal Operations, National Use of Force, Training Deck, *Subject Behaviour/Officer Response (SB/OR) Reviewer Training* (2011).

<sup>211</sup> *Ibid.* The national Subject Behaviour/Officer Response Reporting policy was updated in August 2011, Subject Behaviour/Officer Response Reviewer training was provided to the North District in June 2011, and a new Subject Behaviour/Officer Response User Guide was produced in April 2012.

and gives step-by-step guidance to members, supervisors and Subject Behaviour/Officer Response reviewers for completing the mandatory fields and narratives, and for reviewing the data once a report is complete.<sup>212</sup> According to the user guide, the online “Subject Behaviour/Officer Response Summary” warns against the use of subject names in the summary, and contains the following message to members upon completion of the report:

Legal articulation is the ability to recount the events that transpired, relating continually to the incident management intervention model (IMIM), criteria outlined in RCMP policies and procedures, and the Criminal Code. When writing your narrative, ensure that the details will capture all information required to properly articulate the incident.<sup>213</sup>

The user guide also requires members to confirm several policy-related requirements prior to completing the Subject Behaviour/Officer Response report. These requirements include, among other issues, confirmation that the appropriate principles were applied in articulating use of force, and that no subject, victim or witness was identified.<sup>214</sup>

Supervisors reviewing Subject Behaviour/Officer Response reports must also confirm that the aforementioned requirements have been met prior to approving the reports for completion.

Overall, the Commission found this guide to be clearly explained and useful in supporting implementation of the Subject Behaviour/Officer Response database version 2.0. It aptly highlighted key changes to the database that were implemented to improve quality assurance around the completion of the reports.

#### [Incident Management/Intervention Model Annual Course](#)

According to the RCMP Pacific Region Training Centre, all regular members of the RCMP and persons with RCMP peace officer status<sup>215</sup> must be recertified annually on

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<sup>212</sup> RCMP Cadet Training Program, Applied Police Sciences, Module 6, Session 7, Appendix 8.4.: Subject Behaviour/Officer Response User Guide Version 2.0 (version 8, April 1, 2012).

<sup>213</sup> *Ibid.*

<sup>214</sup> *Ibid.*

<sup>215</sup> For example, auxiliary constables are “unarmed, unpaid, uniformed RCMP volunteer whose activities are governed under provincial legislation. RCMP Auxiliary Constables may have peace officer or equivalent status, in accordance to their provincial or territorial statutes.” See Royal Canadian Mounted Police, *Auxiliary Constable Program*, online: Royal Canadian Mounted Police <<http://www.rcmp-grc.gc.ca/ccaps-spcca/auxil-eng.htm>>.

the Incident Management/Intervention Model. The recertification training is a four-hour course.<sup>216</sup>

The course objective is to ensure that all attendees will be able to “articulate the appropriate response to an incident given a realistic scenario by applying the principles and terminology of the Incident Management/Intervention Model.”<sup>217</sup> The course includes a review and discussion of the Incident Management/Intervention Model and a complete description of the model and risk assessment. At the end of the course, members are assessed on their ability to articulate both verbally and in writing.

The Commission reviewed several versions of the Incident Management/Intervention Model annual course. It was revised most recently in late 2014.<sup>218</sup> The RCMP reported that the new course materials no longer uses the “fill-in-the-blank” assessments for the written narratives, seen in earlier versions, and that members are now required to watch scenarios on video and complete an entire Subject Behaviour/Officer Response report as part of the assessment.<sup>219</sup> After reviewing the new course materials, the Commission was satisfied that the revised format for the course assessment was suitable for assessing a member’s ability to write a comprehensive written narrative in the Subject Behaviour/Officer Response report.

The Commission’s review showed that all the training materials consistently provide direction to RCMP members, emphasizing the importance of ensuring that there is an adequate legal articulation on file, and the importance of using the Incident Management/Intervention Model risk assessment as a guide but to explain their actions from their own perspective. The materials also give extensive direction to members and supervisors on the proper completion of Subject Behaviour/Officer Response reports to ensure that they capture the essential details of an incident involving use of force.

**Finding No. 25:** Training materials and user guides related to the Incident Management/Intervention Model and Subject Behaviour/Officer Response reporting are consistent with national policies and comprehensive in setting out expectations for articulating use of force interventions.

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<sup>216</sup> Electronic correspondence from RCMP Pacific Region Training Centre (February 5, 2015); the RCMP indicated that the recertification training was implemented in 2011, and that 39 members in the North District completed it in 2011, and 248 members, in 2012. The RCMP has not responded to the Commission regarding whether these numbers represent all members who would have been required to complete the annual training in those years.

<sup>217</sup> Incident Management/Intervention Model annual course – Facilitator Guide (dated February 24, 2011).

<sup>218</sup> RCMP officials could not specify exactly when the course materials were revised, but indicated it was in late fall 2014.

<sup>219</sup> Briefing to the RCMP on Use of Force Investigation (January 30, 2015).



## Conclusion

The Commission's review of RCMP use of force policies found that member responsibility for reporting use of force interventions is clearly established. The policies set clear expectations and standards for record-keeping and articulation regarding interventions where force was used on a person. In practice, however, the Commission found that RCMP members in British Columbia's North District showed a significant shortfall in compliance with these policies. While improvement has been made since the reporting system was introduced, over a third of reports submitted in 2012 were found to be inadequate relative to policy standards for reporting.

Further, the Commission found that national and British Columbia divisional policies lack clarity with respect to providing direction to supervisors on the criteria and thresholds for identifying and reporting issues found in these reports, as well as in the tracking of reported issues and their resolution.

In introducing the Subject Behaviour/Officer Response system, the RCMP recognized the importance of comprehensive record-keeping and appropriate information management in use of force scenarios.<sup>220</sup> The Subject Behaviour/Officer Response database contains little or no information regarding supervisor review of reports or interventions by use of force subject matter experts when issues with regard to use of force are identified. Thus, the Commission was unable to assess adequately the role of supervisors in maintaining or improving the quality of articulation of use of force interventions. The Commission also noted that the database is not adequately configured or utilized for use of force accountability, and does not adequately support independent review of use of force interventions and related issues.

The inability to rely on the database to review reporting, and to track the identification and disposition of issues in use of force interventions, reduces the value of the database for its intended use as an accountability tool. While the Commission was unable to examine the role of supervisor review in the identification of issues, the high level of reports that were found to be non-compliant with policy standards point to serious shortfalls in the quality of supervisory review.

Police officers must regularly account for their actions. In so doing, they contribute to public trust in the police. This is particularly important in use of force incidents, which can quickly erode the public's confidence—as has been recently seen in the United States. Ensuring that an adequate system for tracking and reviewing police actions in use of force incidents is in place and being properly applied can foster that trust and confidence.

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<sup>220</sup> Interview with RCMP members of the British Columbia North District (September 24, 2014).

## DOMESTIC VIOLENCE

### Context

Family violence and domestic violence are terms used to capture many different forms of physical and emotional abuse, and neglect by family members or intimate partners. It occurs in a range of relationships and contexts and includes intimate partner violence, child abuse and neglect, elder abuse, “honour”-based violence, and forced marriage.<sup>221</sup> For the purposes of this review and in light of the concerns raised by human rights and civil liberties organizations, the Commission focused exclusively on intimate partner violence or violence in relationships. Violence in relationships is characterized by violence or abuse within a marriage, common-law or dating relationship; in an opposite-sex or same-sex relationship; at any time during a relationship, including while it is breaking down, or after it has ended.<sup>222</sup> The RCMP uses the term “violence in relationships” in its policies and procedures; therefore, this is the term primarily used throughout this report.

There is no specific offence of domestic violence in the *Criminal Code*. Rather, the police must consider multiple *Criminal Code* provisions. When responding to an incident involving violence in relationships that deals with physical or sexual violence, the offence is generally captured under the sections of the *Criminal Code* pertaining to assault, kidnapping and forcible confinement, or sexual assault. If the violence relates to psychological or emotional abuse within an intimate partner relationship, offences of criminal harassment, uttering threats, and/or mischief may apply. The *Criminal Code* also contains a number of provisions, such as peace bonds and conditions of release, that aim to improve the safety of victims of violence in relationships and their children by setting out certain conditions the accused must follow (e.g. no contact with the victim).<sup>223</sup>

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<sup>221</sup> Department of Justice, *About Family Violence*, online: Department of Justice <<http://www.justice.gc.ca/eng/cj-jp/fv-vf/about-apropos.html>>.

<sup>222</sup> Department of Justice, *Intimate partner violence*, online: Department of Justice <<http://www.justice.gc.ca/eng/cj-jp/fv-vf/about-apropos.html>>.

<sup>223</sup> Department of Justice, *Family Violence Laws*, online: Department of Justice <<http://www.justice.gc.ca/eng/cj-jp/fv-vf/laws-lois.html>>; British Columbia Ministry of Justice, *Help Starts Here*, online: BC Ministry of Justice <<http://www.pssg.gov.bc.ca/victimservices/shareddocs/pubs/HSHEnglishDomesticViolence.pdf>>.

Provincial and territorial governments can make laws in their own jurisdictions to complement the protections afforded in the *Criminal Code* and offer further protection to victims of family violence. For example, in British Columbia, the *Family Law Act* provides for family violence protection orders.<sup>224</sup>

When responding to an incident involving violence in relationships, the RCMP is responsible for restoring order, protecting victims, as well as investigating and gathering evidence. This may involve arresting or taking into custody the accused of the violence or abuse and may lead to the recommendation or the laying of criminal charges.<sup>225</sup> Beyond enforcement of the *Criminal Code*, the RCMP also works toward addressing violence in relationships by:

- raising public awareness on risk factors;
- leading or partnering in community-based workshops on victims' issues, sexual assault, and relationship violence;
- assisting communities in using problem-solving approaches to family violence; and
- delivering family violence-related training to its members, victims' services coordinators and community volunteers.<sup>226</sup>

Human rights and civil liberties organizations raised issues with respect to RCMP handling of violence in relationships incidents in northern British Columbia, ranging from the failure to conduct thorough investigations and inconsistently applying violence in relationships policies; to lack of risk assessment, including the failure to identify primary aggressors; and improper arrests of women acting in self-defence.<sup>227</sup>

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<sup>224</sup> *Supra* note 222.

<sup>225</sup> Royal Canadian Mounted Police, *Intimate Partner Violence and Abuse – It can be stopped*, online: Royal Canadian Mounted Police <<http://www.rcmp-grc.gc.ca/cp-pc/spouse-epouse-abu-eng.htm>>.

<sup>226</sup> Royal Canadian Mounted Police, *Family and Relationship Violence*, online: Royal Canadian Mounted Police <<http://www.rcmp-grc.gc.ca/cp-pc/fam-eng.htm>>.

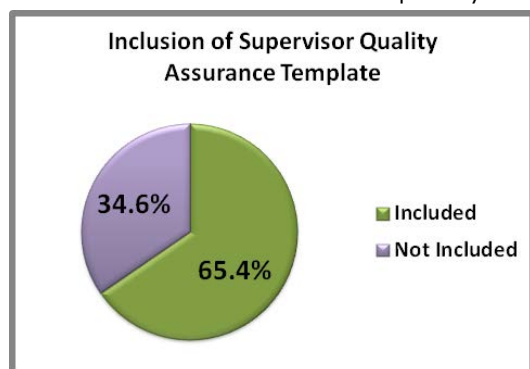
<sup>227</sup> *Supra* note 3; Angela Marie MacDougall, *Battered Women Arrests and Police Complaints – We Must Remain Vigilant* (2011) 22:1 Women Making Waves 16; Community Coordination for Women's Safety, *When Women Victims of Domestic Violence are Arrested*, online: The Freda Centre <[http://fredacentre.com/wp-content/uploads/2012/11/Novakowski\\_4e.pdf](http://fredacentre.com/wp-content/uploads/2012/11/Novakowski_4e.pdf)>.

## RCMP Occurrence Reports

Between January 1, 2008, and December 31, 2012, the RCMP North District received 796,200 calls for service.<sup>228</sup> Of these, 8,846 involved violence in relationships incidents, representing approximately 1.1% of North District's total calls for service in that period.<sup>229</sup>

The Commission reviewed a sample of occurrence reports involving violence in relationships incidents dated between 2011 and 2012 from the British Columbia RCMP North District.<sup>230</sup> In light of the importance attributed to supervisory review in both national and divisional policies, the review aimed to determine whether RCMP supervisors had completed the Domestic Violence Supervisor Quality Assurance template during the shift that the file was received, as required by the divisional policy at the time.<sup>231</sup>

The Domestic Violence Supervisor Quality Assurance template is a mandatory form that must be completed in all violence in relationships investigations. The template requires supervisors to answer eight questions to ensure appropriate investigative steps were taken in accordance with policy. These questions include: whether a safety plan was



established; whether indices checks have been conducted; whether the Ministry of Child and Family Development Services was contacted if children were involved; whether a referral was made to Victim Services; whether a primary aggressor analysis was conducted; whether dual arrests and/or dual charges were recommended; and whether any follow-up action was assigned.

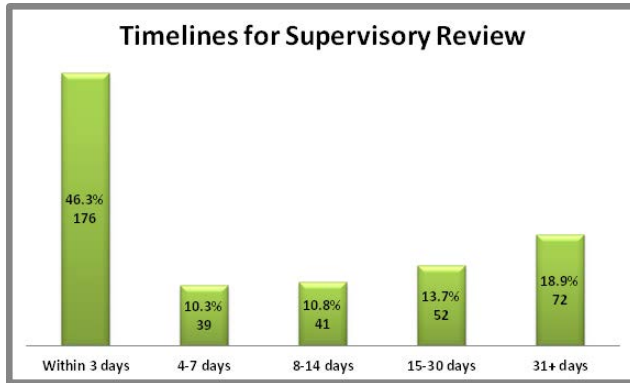
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<sup>228</sup> This includes all files for every type of offence and every type of incident.

<sup>229</sup> Information provided by the British Columbia RCMP on January 14, 2014. While the "E" Division PRIME records management system was in place in most detachments in the North District, some detachments were not fully operational until March 2008. As such, data from 2008 is not fully representative.

<sup>230</sup> The sample was established based on reporting statistics provided by the British Columbia RCMP on January 14, 2014. For the purposes of this review, the Commission requested RCMP occurrence reports relating to violence in relationships incidents from the Police Records Information Management Environment – British Columbia (referred to as PRIME-BC).

<sup>231</sup> British Columbia RCMP "E" Division *Operational Manual* chap 2.4. "Violence in Relationships", s 9.3. (dated February 18, 2011). Due to the policy's implementation date, the file review included files dated from February 18, 2011, to December 31, 2012.



The Commission's review found that of the 599 occurrence reports reviewed 65.4% ( $n=392$ ) included the mandatory Domestic Violence Supervisor Quality Assurance template in accordance with policy. The Commission found an improvement in this regard: in 2011, 59.8% of the occurrence reports included the form, while in 2012, this increased to 70.8% of the reports.

**Finding No. 26:** The Commission's review found that 34.6% of the reports did not include the mandatory Domestic Violence Supervisor Quality Assurance template.

The Commission also examined the timeliness of supervisory review by comparing the occurrence report date with the date the Domestic Violence Supervisor Quality Assurance template was completed. Of the 392 occurrence reports that included a Domestic Violence Supervisor Quality Assurance template, 12 did not include the date that the supervisor completed the document or contained an inaccurate date (i.e. date provided on the template was earlier than the date of the reported incident); as a result, those reports were excluded from the review.

Of the remaining 380 occurrence reports, 46.3% ( $n=176$ ) of the Domestic Violence Supervisor Quality Assurance templates were completed within 3 days of the occurrence report date; 10.3% ( $n=39$ ) were completed between 4 and 7 days; 10.8% ( $n=41$ ) were completed between 8 and 14 days; and 32.6% ( $n=124$ ) were completed in more than 14 days. Further, of the Domestic Violence Supervisor Quality Assurance templates completed in more than 14 days ( $n=124$ ), 58% ( $n=72$ ) were completed in more than 31 days.

**Finding No. 27:** While the divisional policy requires the completion of the Domestic Violence Supervisor Quality Assurance template during the shift that the file was received less than half of the templates reviewed (46.3%) were completed within three days of the reported occurrence date.

Effective supervision is necessary to ensure policy compliance and to demonstrate accountability. During an interview with the Commission, North District advisory non-commissioned officers confirmed that inconsistent supervision of violence in relationships files was a concern. The inconsistencies noted in supervision were

attributed in part to vacancies in many supervisory positions as well as the steep learning curve encountered by many newer supervisors in the North District.<sup>232</sup>

## Internal Accountability

RCMP violence in relationships investigations are subject to multiple levels of internal quality assurance, beginning with a supervisor review of each operational file, which in some detachments is supplemented by a Domestic Violence Unit review. RCMP detachments in British Columbia are also required to conduct unit-level quality assurance reviews and are subject to management and district-directed reviews. Specific guides exist for reviews in policing areas such as violence in relationships, arrests and release procedures, investigator's notebook, quality of investigations, and operational supervision. During reviews, samples of files are examined to determine whether applicable laws, policies and procedures are being followed.<sup>233</sup>

The Commission reviewed the Unit-Level Quality Assurance and Management Review Guide for violence in relationships investigations. According to the guide, the review examines whether all key policy requirements have been met. This includes whether the member referred the victim to Victim Services and encouraged the victim to accept their support; whether a safety plan was established; whether a primary aggressor analysis was conducted; if the investigation was deemed "highest risk," whether a B-SAFER Risk Assessment was conducted; if the case was designated as being "highest risk," whether the appropriate information was shared with justice and child welfare partners; for the cases designated as "highest risk," whether the suspect was being monitored to ensure compliance with imposed conditions; and whether the member completed the Domestic Violence Risk Summary in the first instance upon intake and included it on the request to Crown counsel. From a supervisory perspective, the Violence in Relationships Review Guide examines whether the supervisor completed the Domestic Violence Supervisor's Checklist during the shift the complaint was received and whether the supervisor was notified at the earliest opportunity and consulted where dual charges were recommended.<sup>234</sup>

The Commission reviewed all management reviews completed in the North District from January 1, 2008, to December 31, 2012. During this period, 19 management reviews were completed with all but one addressing violence in relationships investigations. In 12 of the 18 management reviews (67%) that addressed violence in relationships

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<sup>232</sup> Interview with the Commission, North District advisory non-commissioned officers on January 19, 2015.

<sup>233</sup> *Supra* note 129.

<sup>234</sup> British Columbia RCMP "E" Division, Internal Audit and National Review Services, Divisional Review Guides, Violence in Relationships Guide.

investigations, lack of consistent supervision was noted.<sup>235</sup> Findings or observations with respect to supervision included the following:

- Forms documenting supervisory direction and guidance are not being completed fully or are of insufficient quality;
- The quality of violence in relationships investigations showed marked improvement after supervisory positions were staffed and all Constable positions were filled;
- Files need to be reviewed by supervisors in a timelier manner.
- The lack of documented feedback from supervisors to investigators is the root cause for inconsistency in the violence in relationships files.

This is consistent with the Commission's occurrence report review that identified issues with compliance with respect to both supervisors completing the required Domestic Violence Supervisor Quality Assurance template and completing the template in a timely manner. The Commission also noted several inconsistencies in how the template is being filled (e.g. while the template specifically requires "yes" or "no" answers to all questions, some templates included "x" and many fields were left blank, making it impossible to assess these files).

Other observations noted in the management reviews across the North District included missing investigative steps/documentation, non-adherence to timelines, and lack of victim services referrals. Detachments were given recommendations and action plans to remedy weaknesses discovered during the Management Review process. Follow-ups to the action plans were noted with evidence that problem areas were being addressed; however, no follow-up Management Review was done for any of the North District detachments over the five-year period (2008–2012).

During an interview with the Commission, North District advisory non-commissioned officers indicated that in 2012, a team of North District advisory non-commissioned officers travelled to North District detachments to provide classroom-based training to address gaps that had been noted in recent management reviews, including a section on violence in relationships investigations, with particular emphasis on supervision.<sup>236</sup>

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<sup>235</sup> Trends identified through analysis of management reviews should be considered as general in nature. The Commission has no method of determining whether these are truly representative of all North District detachments because not all detachments were reviewed.

<sup>236</sup> *Supra* note 232.



**Recommendation No. 21:** That the RCMP ensure that yearly unit-level quality assurance and/or management reviews always include a review of violence in relationships investigations.

## RCMP Policy

### RCMP National Headquarters Operational Manual – Violence in Relationships

The RCMP's national policy relating to incidents involving violence in relationships is laid out in RCMP National Headquarters *Operational Manual* chapter 2.4. "Violence in Relationships."<sup>237</sup> The Commission reviewed the most recent version of the policy at the time of writing, dated February 13, 2013.

The national policy directs members to investigate and document all complaints of violence in relationships. While member discretion in this regard still applies, in cases involving violence in relationships, its ambit is very narrow. Violence in relationships investigations are to be treated as a priority and RCMP members have a duty to lay or to recommend charges if a *Criminal Code* offence has been committed. Further, supervisors are expected to closely and actively review all violence in relationships complaints, ensuring that all investigative procedures are completed. Commanders are responsible for ensuring that all violence in relationships complaints are investigated and supervised and that appropriate action is taken.

The national policy pertaining to incidents involving violence in relationships demonstrates the seriousness of such allegations and emphasizes the need for prevention, enforcement efforts, victims' safety, and public safety. While the Commission is satisfied that the national policy generally provides clear guidance to members and ensures appropriate quality assurance and accountability, the Commission nonetheless identified some minor issues that resulted in the findings and recommendations below.

### Chapter 2.4. "Violence in Relationships" – Section 1. "General"

Section 1. provides general guidance and direction to members. It highlights the serious and often unpredictable nature of occurrences involving violence in relationships; provides examples of the types of violence; and reminds members to exercise caution, to consider all options in determining the appropriate course of action, and of the necessity to investigate and document all complaints of violence in relationships.

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<sup>237</sup> RCMP National Headquarters *Operational Manual* chap 2.4. "Violence in Relationships" (dated February 13, 2013).



Section 1.6.1. states: “The onus is on the police to lay or recommend charges if a CC [*Criminal Code*] offence has been committed under provincial or territorial legislation.” As written, this section incorrectly conflates the authority deriving from the *Criminal Code*, a federal law, with that of provincial and territorial legislation. The policy should be corrected to clarify that the onus is on police to lay or recommend charges if a *Criminal Code* offence or an offence under any other federal, provincial or territorial legislation has been committed.<sup>238</sup>

**Finding No. 28:** Section 1.6.1. of the national policy on violence in relationships fails to clearly differentiate between offences under the *Criminal Code* and those under other federal provincial or territorial legislation.

**Recommendation No. 22:** That the RCMP amend section 1.6.1. of National Headquarters *Operational Manual* chapter 2.4. to correctly reflect the distinction between *Criminal Code* offences and provincial and territorial statutes.

#### Chapter 2.4. “Violence in Relationships” – Section 2. “Member”

Section 2. of the national policy outlines member responsibilities and procedures when responding to an occurrence involving violence in relationships. The focus is on member safety and ensuring that members consider all options in determining the appropriate course of action. For example, it provides detailed direction to members regarding protection of victims and child welfare responsibilities, as well as guidance relating to firearms prohibition orders, peace bonds, and judicial release conditions.

Section 2.2.4. states: “[i]f practicable, obtain victim and witness statements [emphasis added].” This provision appears insufficiently rigorous considering the priority afforded to violence in relationships incidents and section 1.5. of the policy, which stipulates that “[a]ll complaints of violence in relationships must be investigated and documented.” Victim and witness statements support well-documented investigations and ensure that relevant information will be available to inform risk assessments during any future encounters with the persons involved. Strengthening the requirement to obtain victim and witness statements for all violence in relationship investigations unless exigent circumstances exist and to require that members who do not obtain victim and witness statements must document the reasons they were not obtained would enhance accountability and may help address concerns raised by human rights and civil liberties organizations regarding the failure to conduct thorough investigations.

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<sup>238</sup> *Supra* note 222.

**Finding No. 29:** Section 2.2.4. of the national policy on violence in relationships requiring members to obtain victim and witness statements if practicable appears insufficiently rigorous in light of the policy's requirement to investigate and document all complaints of violence in relationships.

**Recommendation No. 23:** That the RCMP amend section 2.2.4. of National Headquarters *Operational Manual* chapter 2.4. to enhance accountability by requiring members who do not obtain victim and witness statements to document the reasons they were not obtained.

Section 2.2.7. states:

If there are reasonable grounds to believe that it is not in the interests of public safety, including the safety of the individual, determine whether he/she has legal access to firearms or other weapons. If applicable, seize firearms and other regulated items, pursuant to sec. 117.04 (1), CC (with warrant) or pursuant to sec. 117.04 (2), CC (without a warrant in exigent circumstances).

This section does not adequately capture the law as outlined in section 117.04 of the *Criminal Code*. Section 117.04 applies where “it is not desirable in the interests of the safety of the person, or of any other person, for the person to possess the weapon, prohibited device, ammunition, prohibited ammunition or explosive substance . . . [emphasis added].” Therefore, the police must reasonably believe that it is not safe for the person to possess the weapon or ammunition. That legal requirement is missing from section 2.2.7.

Furthermore, the national policy refers to “legal access to” weapons, as opposed to “possess[ion]” of weapons/ammunition. The authority to seize in section 117.04 of the *Criminal Code* applies where someone “possesses a weapon” or ammunition. The concept of having “legal access to” a weapon may connote something broader. As written, section 2.2.7. is unclear and should be amended to align more closely with the applicable provisions of the *Criminal Code*.<sup>239</sup>

**Finding No. 30:** Section 2.2.7. of the national policy on violence in relationships is unclear and does not adequately reflect the *Criminal Code* provisions for search and seizure.

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<sup>239</sup> *Supra* note 96 at s 117.04(1) and 117.04(2).

**Recommendation No. 24:** That the RCMP amend section 2.2.7. of National Headquarters *Operational Manual* chapter 2.4. to make it consistent with the search and seizure provisions in section 117.04 of the *Criminal Code*.

#### Chapter 2.4. “Violence in Relationships” – Section 3. “Supervisor” and Section 4. “Commander”

Sections 3. and 4. of the national policy concern the roles and responsibilities of supervisors and commanders.

According to the national policy, supervisors are expected to closely and actively review all violence in relationships complaints, ensuring that all investigative procedures are completed. Section 3. of the policy outlines specific timelines for supervisory review of violence in relationships investigations after the initial 24 hours, and then again after seven days and every 14 days thereafter. Supervisors are responsible for recommending or approving the laying of charges and required to document in writing if charges are not recommended or approved. They are also expected to ensure that all members under their command are familiar with RCMP national violence in relationships policy and applicable provincial and territorial legislation and directives.

According to section 4. of the national policy, commanders are responsible for ensuring that all violence in relationships complaints are investigated and supervised and that appropriate action is taken. Commanders are also directed to “[p]articipate in multi-agency coordinated community-based initiatives or programs [aimed] to reduce the incidence of violence in relationships and to improve public awareness.”<sup>240</sup>

#### British Columbia RCMP Operational Manual – Violence in Relationships

The British Columbia RCMP divisional policy in relation to violence in relationships is contained in “E” Division *Operational Manual* chapter 2.4. “Violence in Relationships.”<sup>241</sup> The Commission reviewed the most recent policy version at the time of writing, dated December 17, 2013. The divisional policy builds on the national violence in relationships policy and provides additional guidance and direction to members on all aspects of the police response and investigation of occurrences involving violence in relationships.

The divisional policy contains 14 distinct sections, including sections on: general policy links and references; the British Columbia provincial Violence Against Women in Relationships policy; sections regarding the role of Operational Communications Centre

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<sup>240</sup> *Supra* note 237 at s 4.2.

<sup>241</sup> British Columbia RCMP “E” Division *Operational Manual* chap 2.4. “Violence in Relationships” (dated December 17, 2013).

operators, members, supervisors and commanders; as well as other areas such as training, sureties to keep the peace, court orders, and the province's *Family Law Act*.

In British Columbia, the provincial government developed the Violence Against Women in Relationships policy, which sets out protocols, roles, responsibilities and guidelines for integrated, multi-agency, coordinated response of justice and child welfare service providers involved in responding to domestic violence. The provincial policy sets out specific roles for the police and specifies that police agencies must ensure that their operational policies are consistent with these guidelines.<sup>242</sup>

The Commission reviewed the divisional policy and related procedures in their entirety. While the Commission is satisfied that the divisional policy is consistent with national policy, that it generally aligns with provincial policy, and that it provides adequate quality control and accountability of violence in relationships investigations, the Commission nonetheless identified some minor issues. Below is a summary of the provisions that resulted in the Commission's findings and recommendations.

#### Chapter 2.4. "Violence in Relationships" – Section 5. "Primary Aggressor" and Section 6. "Dual Arrest/Dual Charge Recommendation"

Section 5. of the divisional policy outlines general considerations regarding the identification of primary aggressors in violence in relationships investigations. The requirement for members to conduct a primary aggressor analysis is referenced in section 4.1. of Appendix 2-4-3 Investigative Procedures.<sup>243</sup>

The term "primary aggressor" is defined as the party who is the most dominant, rather than the first aggressor.<sup>244</sup> The concept of primary aggressor comes from the provincial Violence Against Women in Relationships policy and was conceived to address the challenge of situations of mutual aggression or where someone has reacted in self-defence.<sup>245</sup>

Section 6. states that arrests of both parties should be rare and specifically requires that supervisors must be notified at the earliest opportunity in situations of dual arrest and consulted in all cases of dual charge recommendations.

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<sup>242</sup> British Columbia Ministry of Public Safety and Solicitor General, Ministry of Attorney General, and Ministry of Children and Family Development, *Violence Against Women in Relationships Policy*, December 2010, online: Government of British Columbia <<http://www.pssg.gov.bc.ca/victimservices/shareddocs/pubs/vawir.pdf>>.

<sup>243</sup> British Columbia RCMP "E" Division *Operational Manual* Appendix 2-4-3 "Violence in Relationships – Investigative Procedures" (dated August 1, 2013).

<sup>244</sup> *Supra* note 241 at s 5.

<sup>245</sup> *Ibid*, at 8.

The requirement to notify and consult supervisors in situations of dual arrest is an important quality assurance mechanism that may address concerns alleged by human rights and civil liberties organizations regarding the RCMP's failure to identify primary aggressors and improper arrests of people acting in self-defence.

#### Chapter 2.4. "Violence in Relationships" – Section 8. "Member"

Section 8. provides detailed direction to members in relation to incidents involving violence in relationships. This includes the requirements "to conduct a complete and thorough investigation even when the victim is reluctant to cooperate," to coordinate the investigation with Victim Services whenever possible, and to document the circumstances and results of the investigation on the investigation file as well as in the Report to Crown Counsel.<sup>246</sup>

Section 8.2.1. refers members to Appendix 2-4-3 "Violence in Relationships – Investigative Procedures," which provides direction in relation to the collection of evidence, statement and risk assessments, safety planning, as well as arrest, court and release procedures, and monitoring requirements.<sup>247</sup> The investigative procedures reiterate some of the divisional policy provisions and provide additional procedural direction on others.

Section 8.3.2. directs members to "[n]otify justice and child welfare partners of the highest risk designation to ensure a heightened and collaborative case management response."

The provincial Violence Against Women in Relationships policy includes a protocol for highest risk domestic violence cases. According to this protocol, highest risk cases are defined as those that "pose a greater risk of violence for serious bodily harm or death." The protocol is intended "to enhance the justice and child welfare system response to highest risk cases through heightened information sharing, comprehensive and collaborative safety planning and risk mitigation strategies."<sup>248</sup>

The provincial protocol states that the police are to assign a highest risk designation on a case-by-case basis according to their professional judgment, training and experience and should be supported by a formal risk assessment. It specifies that "[w]hen a responding officer has concerns that a domestic violence case may possibly be highest risk based on their preliminary investigation, they contact their supervisor or a specialized investigator with formal risk assessment training to advise them of their

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<sup>246</sup> A Report to Crown Counsel (RTCC) is the document submitted by police to Crown counsel to recommend charges/seek charge approval. In British Columbia, Crown counsel is responsible for approving charges.

<sup>247</sup> *Supra* note 243.

<sup>248</sup> *Supra* note 242 at 59.

concerns." The provincial protocol also states that "[o]nce a case is identified as highest risk by police, this protocol comes into effect and with it, enhanced provisions for information sharing and case management."<sup>249</sup>

While section 8.3.2. of the divisional policy directs members to "notify justice and child welfare partners of the highest risk designation," it does not include guidance or direction on how to make such designations.

**Finding No. 31:** The divisional policy does not provide clear direction to members making highest risk designations in violence in relationships cases.

**Recommendation No. 25:** That the British Columbia RCMP ensure that the divisional policy adequately addresses the process for making highest risk designations.

The RCMP in British Columbia was unable to provide the number of files identified as highest risk, as this type of information is not currently tracked by the records management system. However, the RCMP informed the Commission of a pilot project launched by the Division in late 2014 that will track highest risk cases across the province of British Columbia.<sup>250</sup> The pilot project includes 15 detachments, including three from the North District. The project seeks to provide heightened awareness of highest risk cases, to assist in identifying provincial "hot spots" for highest risk cases of violence in relationships and explore potential causes and remedies, as well as to establish baseline data for decision-making purposes and to facilitate and guide work with community partners.<sup>251</sup>

#### Chapter 2.4. "Violence in Relationships" – Section 9. "Supervisor" and Section 10. "Commander"

Section 9. of the divisional policy outlines in detail the responsibilities of supervisors in relation to violence in relationships investigations and acknowledges that violence in relationships investigations "require a higher degree of supervision and guidance." This is consistent with the national RCMP policy, which states that a supervisor is to "[c]losely and actively review all violence in relationship complaints,"<sup>252</sup> and with the provincial Violence Against Women in Relationships policy, which states that "[d]ue to the

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<sup>249</sup> *Ibid*, at 59–61.

<sup>250</sup> Interview of British Columbia RCMP Crime Prevention Services (November 18, 2014).

<sup>251</sup> Electronic correspondence from British Columbia RCMP Domestic Violence Coordinator (May 28, 2015).

<sup>252</sup> *Supra* note 237 at s 3.1.

complexity of domestic violence cases, and the risk to victim safety, a high degree of supervision is required."<sup>253</sup>

In this regard, section 9.3. of the divisional policy specifically requires supervisors to complete the Domestic Violence Supervisor's Checklist template during the shift that the file was received. This ensures early supervisory review of all violence in relationships investigations.

Supervisors are also required, where operationally feasible, to obtain a B-SAFER (Brief Spousal Assault Form for the Evaluation of Risk) risk assessment in all highest risk violence in relationships investigations.<sup>254</sup> This is consistent with the provincial policy and protocol, which state that a formal risk assessment should be conducted in highest risk cases and that specifically requires the supervisor or specialized investigator to "decide whether to initiate a B-SAFER risk assessment" in highest risk cases.<sup>255</sup>

Section 10. of the divisional policy reiterates the RCMP's national policy requirement that specifies detachment commanders are to ensure that a high level of supervision is maintained in violence in relationships investigations.

Section 10. of the divisional policy also aligns with provincial policy in that detachment commanders are to ensure their members review divisional and provincial violence in relationships policies annually.<sup>256</sup> The divisional policy also requires detachment commanders to ensure that members are aware of the *Victims of Crimes Act*, victim services protocols and available community resources, and that members obtain mandatory violence in relationships training.

Where viable, detachment commanders are to consider establishing a Domestic Violence Unit.<sup>257</sup> Otherwise, they must assign a Domestic Violence Liaison for the detachment. The RCMP confirmed that domestic violence units have been established in Prince George and Williams Lake. Further, in 2013, the RCMP in British Columbia created a new position, the Domestic Violence Coordinator, that is responsible for improving the quality of violence in relationships investigations across the Division.

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<sup>253</sup> *Supra* note 242 at 17.

<sup>254</sup> The Brief Spousal Assault Form for the Evaluation of Risk (B-SAFER) is an advanced risk assessment tool used in highest risk domestic violence cases. It provides a set of structured professional guidelines for assessing and managing risk for domestic violence. P. R. Kropp, S. D. Hart, & H. Belfrage, *Brief Spousal Assault Form for the Evaluation of Risk (B-SAFER) Manual and Worksheets* (Vancouver: Proactive-Resolutions, 2005).

<sup>255</sup> *Supra* note 242 at 59–61.

<sup>256</sup> *Ibid*, at 7.

<sup>257</sup> Domestic violence units serve as detachment centres of expertise and also supplement the role of the supervisors in domestic violence investigations, by reviewing files for quality assurance. Currently, the RCMP's North District has domestic violence units established in Prince George and Williams Lake. Electronic correspondence for the British Columbia RCMP Division Domestic Violence Coordinator (January 22, 2015).



Quality assurance in violence in relationships investigations is also highlighted. Detachment commanders are to “consider” regular inclusion of violence in relationships cases in their detachment quality assurance process and monitor investigations and feedback from internal and external sources in order to adjust local protocols as required to ensure compliance with law as well as RCMP and provincial policy.

**Finding No. 32:** The divisional policy emphasizes the importance of supervision and provides for adequate quality assurance and oversight of violence in relationships investigations.

## RCMP Training

### RCMP Depot Division – Cadet Training Program

The Commission examined training modules from the RCMP Depot Division Cadet Training Program that were relevant to the policing of violence in relationships to determine whether they were consistent with the law, policies and procedures.<sup>258</sup> The review also aimed to assess whether members receiving this training could reasonably be expected to have acquired the necessary knowledge to guide them when intervening in situations involving violence in relationships.

Cadets at Depot Division participate in a 32-hour module of domestic violence-related training. The purpose of the module is to “provide cadets with the skills and knowledge necessary to ensure quality response to incidents in progress.”<sup>259</sup> It comprises a multimedia combination of exercises, readings and research, role plays, panel presentations, and discussion.<sup>260</sup> The module is divided into 17 sessions designed to integrate and teach other subject matter at the same time as cadets learn about domestic violence, covering topics such as search warrants, weapons offences, risk assessments in crisis intervention situations, victim impact statements, witness and suspect interviews, and values and ethics.

The training is practically-oriented. Many of the sessions involve scenario-based learning and cover various practical and legal aspects of violence in relationships interventions. The time dedicated to violence in relationships policy is limited. The module dedicates

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<sup>258</sup> For more information about the RCMP Cadet Training Program as well as RCMP divisional training, please see [Appendix C](#).

<sup>259</sup> RCMP Cadet Training Program, Applied Police Sciences, Module 7: Facilitator Guide – Introduction (version 8, April 1, 2012) at 1–2.

<sup>260</sup> RCMP Cadet Training Program, Applied Police Sciences, Module 7: Facilitator and Participant Guides (version 8, April 1, 2012).



fifteen minutes to a review of RCMP National Headquarters policies on Violence in Relationships (*Operational Manual* chapter 2.4.) and Victim Services (*Operational Manual* chapter 37.6.).<sup>261</sup> This is intended to familiarize cadets with these policies. Cadets are informed that each RCMP division may have policy giving more specific directions on investigating violence in relationships and the laying of charges.<sup>262</sup>

The risk assessment methodology included throughout the module is based on the *Incident Management/Intervention Model* used in use of force analysis. It assesses risk based on situational factors, subject behaviours, and tactical considerations.<sup>263</sup>

**Finding No. 33:** The RCMP Cadet Training Program provides members with the basic required skills and competencies to deal with situations involving violence in relationships as well as to understand the legal authorities in this regard.

### British Columbia RCMP Training

The Commission also reviewed current training materials from the British Columbia RCMP Field Coaching Program, the provincially mandated violence in relationships training provided to members working in British Columbia, and other training and information resources available to British Columbia RCMP members that relate to the policing of violence in relationships investigations.

In addition to the Field Coaching Program, members in British Columbia also have access to the “E” *Division Service Standards Investigation Guide* on their desktop computers and all mobile data terminals in vehicles to assist with certain investigations, including violence in relationships investigations. The guide provides mandatory requirements, minimum investigational standards and general guidelines, as well as supervisor responsibilities.<sup>264</sup> In addition, RCMP members in British Columbia have access to an *Investigation Guide for First Responders* developed by the British Columbia Office of Investigative Standards and Practices and implemented on all mobile data terminals in the province. That guide also acts as a basic resource for members by providing recommended responses to violence in relationships incidents.<sup>265</sup>

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<sup>261</sup> RCMP Cadet Training Program, Applied Police Sciences, Module 7, Session 2 (version 8, July 14, 2014) at 3–4.

<sup>262</sup> *Ibid*, at 4.

<sup>263</sup> RCMP Cadet Training Program, Applied Police Sciences, Module 7, sessions 5 and 9 (version 8, April 1, 2012); in accordance with RCMP National Headquarters *Operational Manual* chap 17.1. “Incident Management Intervention Model”, members recertify annually on the Incident Management/Intervention Model.

<sup>264</sup> British Columbia RCMP “E” *Division Service Standards Investigation Guide* at 37–47.

<sup>265</sup> *Investigation Guide for First Responders*, British Columbia Office of Investigative Standards and Practices at 34–39.

### British Columbia Ministry of Justice Online Training

The British Columbia Ministry of Justice currently offers two online, interactive domestic violence training courses that are mandatory for all police officers in the province who may attend, follow up or supervise a violence in relationships call (i.e. most if not all police officers). The first, *DVI: Evidence-Based, Risk-Focused Domestic Violence Investigations*, was released in November 2009.<sup>266</sup> This course encourages members to take a proactive and collaborative approach to managing victim safety. The second course, *DVII: Assessing Risk and Safety Planning in Domestic Violence Investigations*, was released in July 2013.<sup>267</sup> This course seeks to standardize how police assess and document risk in domestic violence cases and promotes practices that prioritize victim safety. Together the two courses are 7.5 hours in duration and contribute to educating RCMP members in British Columbia about provincial expectations with respect to the conduct of violence in relationships investigations.

The Province mandated that all police officers in British Columbia take *DVI* by October 2011.<sup>268</sup> As of December 31, 2014, 95% of North District members had completed both online courses, as had 96% of their colleagues across the Division.<sup>269</sup>

**Finding No. 34:** The training provided to RCMP members in British Columbia appears to cover the essential elements of violence in relationships investigations.

## Conclusion

The Commission conducted a review of RCMP occurrence reports involving violence in relationships investigations to determine whether supervisors had discharged their duties in accordance with relevant policies and procedures. The Commission also reviewed RCMP policies, procedures and training with respect to violence in relationships to assess whether they are consistent with legislation, whether clear guidance is provided to members, whether divisional policies are consistent with national policies, and whether they provide for accountability and quality control.

While the Commission identified minor issues in national and divisional policies, overall the Commission found that British Columbia RCMP policies and procedures are

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<sup>266</sup> Canadian Police Knowledge Network, *Course Catalogue: Evidence-based, Risk-focused Domestic Violence Investigations*, online: Canadian Police Knowledge Network <[http://www.cpgn.ca/course\\_domestic\\_risk](http://www.cpgn.ca/course_domestic_risk)>.

<sup>267</sup> *Ibid.*

<sup>268</sup> RCMP Field Coaching Program, Pacific Region Training Centre, Module A, Coach's Copy (dated August 29, 2013) at 65.

<sup>269</sup> Statistics as of January 5, 2014, provided through electronic correspondence from the Officer in Charge of Training Services at the Pacific Region Training Centre.

consistent with national policies and that both national and divisional violence in relationships policies provide adequately for accountability and quality control.

However, the Commission's occurrence report review identified shortcomings in the practical application of these requirements.

The Commission believes the onus is on supervisors and detachment commanders to ensure that policies and procedures are being followed. Effective supervision, from the initial stages and throughout an investigation, is necessary to ensure policy compliance and to demonstrate accountability.

## MISSING PERSONS

### Context

According to the National Centre for Missing Persons and Unidentified Remains, a missing person is someone whose whereabouts are unknown, whatever the circumstances of their disappearance.<sup>270</sup> There is no waiting period prior to reporting a person as missing, and they are considered missing until they are located.<sup>271</sup> The Centre reports that the majority of missing persons cases across the country are resolved within 24 hours, and approximately 85% are resolved in less than one week.<sup>272</sup>

Over the past ten years, many government and non-government agencies have examined the issue of unresolved cases of missing persons, and particularly the disappearance of Aboriginal women in Canada.<sup>273</sup>

In September 2014, amid continuing public attention on the issue of missing Aboriginal women in Canada, the RCMP issued its National Missing Persons Strategy and made substantial changes to its national missing persons policy.

The Commissioner of the RCMP also launched an RCMP-led study of reported incidents of missing and murdered Aboriginal women across all police jurisdictions in Canada, stating that the intention was to contribute to the ongoing dialogue on the disappearance and murder of females of Aboriginal origin in Canada.<sup>274</sup> The RCMP report *Missing and Murdered Aboriginal Women: A National Operational Overview*

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<sup>270</sup> See the National Centre for Missing Persons and Unidentified Remains, *Report a Missing Person/Unidentified Remains*, online: Canada's Missing <<http://www.canadasmissing.ca/report-signale/index-eng.htm#rmpur-spdnrn>>. Definition obtained from the National Centre for Missing Persons and Unidentified Human Remains of the RCMP, which is Canada's national centre that assists law enforcement, medical examiners and chief coroners with missing persons and unidentified remains investigations across the country.

<sup>271</sup> *Ibid.*

<sup>272</sup> See the National Centre for Missing Persons and Unidentified Remains, *Fact Sheets*, online: Canada's Missing <<http://www.canadasmissing.ca/pubs/2014/index-eng.htm>>. According to the National Centre for Missing Persons and Unidentified Remains *Fast Fact Sheets*, from 2010 to 2014 the percentages of adult and youth cases removed from CPIC within 24 hours and within one week were generally consistent across all years. From 2010 to 2014, 67% of adult missing persons cases were removed from CPIC within 24 hour, and 85% were removed within a week. Likewise, 65% of children and youth missing persons cases were removed from CPIC within 24 hours, and 87% within one week.

<sup>273</sup> As part of its review, the Commission examined the findings and recommendations identified in the various consultation, policy and research reports on the subject of missing persons that have been published in the last ten years. For a complete list of the reports reviewed, please refer to [Appendix D](#).

<sup>274</sup> Royal Canadian Mounted Police, *Missing and Murdered Aboriginal Women: A National Operational Overview* (Ottawa: Royal Canadian Mounted Police, 2014) at 3–6.

garnered a great deal of media attention for concluding that the total number of murdered and missing Aboriginal females in Canada exceeded previous public estimates. In its report, the RCMP indicated that its study of the issue resulted in a better understanding of the numbers because it supplemented publicly available data with a comprehensive extract of information from law enforcement holdings from across all police jurisdictions in Canada. The RCMP report identified British Columbia as having the highest rate of unsolved Aboriginal female homicides and unresolved cases of missing Aboriginal females.<sup>275</sup>

Over the past several years, British Columbia has reported the highest number of missing adults in comparison with other provinces.<sup>276</sup> Consequentially, numerous advances in policy related to missing persons investigations have also been made in British Columbia. Part of the provincial response to missing persons was the establishment of the British Columbia Police Missing Persons Centre. It is an integrated unit composed of RCMP and municipal police services resources that provides investigative support and oversight for all missing persons investigations in British Columbia, and in particular helps to identify and monitor high-risk missing persons investigations in the province. The Centre was initially established in 2004 to focus on policy development, but its resources and mandate have been expanding steadily since 2010.<sup>277</sup> The Centre is now involved in reviewing and monitoring missing persons cases that have been open for seven days.<sup>278</sup> The Commission was informed that the Centre also provides assistance to RCMP members in the conduct of investigations or in identifying files in need of additional attention.<sup>279</sup>

Recommendations from the Missing Women Commission of Inquiry (2012) influenced the evolution of police handling of missing persons cases in British Columbia.<sup>280</sup> The Commission of Inquiry report highlighted the RCMP's failure to promptly and fully investigate reports of missing women. In 2013, Human Rights Watch echoed these

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<sup>275</sup> *Ibid*, at 15. The statistics presented in the report represent cases from all police jurisdictions within British Columbia, including the RCMP, and are valid as of November 4, 2013.

<sup>276</sup> According to the National Centre for Missing Persons and Unidentified Remains *Fast Fact Sheets* from 2010 to 2014. See the National Centre for Missing Persons and Unidentified Remains, *Fact Sheets*, online: Canada's Missing <<http://www.canadasmissing.ca/pubs/2014/index-eng.htm>>.

<sup>277</sup> Interview with RCMP members at the British Columbia Police Missing Persons Centre (March 2, 2013).

<sup>278</sup> According to the RCMP at the British Columbia Police Missing Persons Centre, the level of risk may be higher after the seven-day mark because the statistics show that the majority of cases are resolved within one week.

<sup>279</sup> Interview with RCMP members at the British Columbia Police Missing Persons Centre (March 2, 2013).

<sup>280</sup> See British Columbia, Missing Women Commission of Inquiry, *Forsaken - Report of the Missing Women Commission of Inquiry: Executive Summary*, Commissioner: The Honourable Wally T. Oppal (Victoria: Shared Services BC, 2012). The Missing Women Commission of Inquiry was a fact-finding investigation into the women reported missing from downtown Eastside Vancouver between January 23, 1997, and February 5, 2002, and the stay of proceedings on charges against Robert Pickton in 1998.

concerns and, in particular, poor report-taking and follow-ups on reports of missing women, failure to consider all investigative strategies, and failure of internal review and external accountability mechanisms.<sup>281</sup>

## Occurrence Reports on Missing Persons

The objective of the file review was to determine whether the RCMP's investigations of missing persons reports were conducted in accordance with policy requirements in force during the period under review and to identify issues of a systemic nature. The Commission examined the documented actions on missing persons occurrence reports to determine the extent to which RCMP members handled missing persons reports in accordance with the pertinent policies, procedures and guidelines for missing persons investigations.

RCMP policies on missing persons have evolved significantly since 2008, both nationally and in British Columbia. RCMP National Headquarters *Operational Manual* chapter 37.3. on missing persons contains the overarching policy directives for all RCMP divisions across the country. The RCMP made substantive amendments to this policy in September 2014, which will be discussed in a subsequent section of this report. However, for the purposes of the file review, the Commission referred to the previous version of the national policy on missing persons, which had been in place since May 2008. The Commission also considered relevant earlier versions of the British Columbia divisional policy on missing persons to which substantive amendments had been made throughout the period within the scope of this investigation, namely from July 2007, November 2010, February 2011, and November 2012.

Despite the evolution in national and divisional policy since 2008, core policy principles and requirements have remained the same, namely that members are required to investigate cases of missing persons promptly and thoroughly,<sup>282</sup> and that missing persons investigations should be considered high-risk investigations that require detailed documentation and close supervision.<sup>283</sup> In fact, the 2008 national policy states that a supervisor will “monitor the investigative file regularly for quality assurance to ensure that

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<sup>281</sup> *Supra* note 3 at 38.

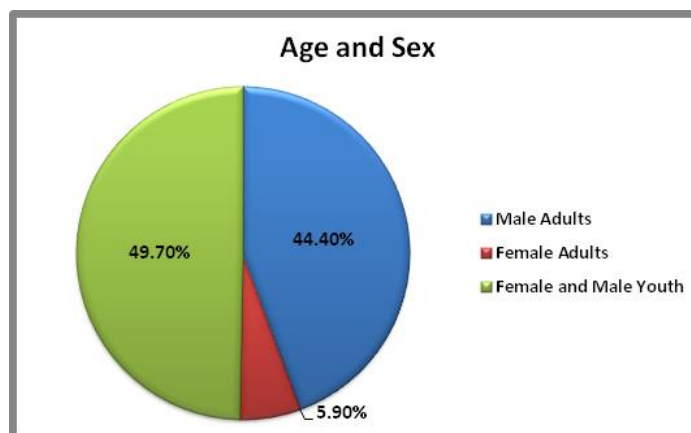
<sup>282</sup> RCMP National Headquarters *Operational Manual* chap 37.3. “Missing Persons”, s 3.1.1. (dated May 15, 2008); RCMP National Headquarters *Operational Manual* chap 37.3 “Missing Persons”, s 3.1.1. (dated September 5, 2014); RCMP British Columbia “E” Division *Operational Manual* chap H. “General Public”, s 1.a.1. (dated July 6, 2007); RCMP British Columbia “E” Division *Operational Manual* chap 37.3. “Missing Persons”, s 1.2.1. (dated November 1, 2010); RCMP British Columbia “E” Division *Operational Manual* chap 37.3. “Missing Persons”, s 1.3. (dated February 10, 2011); RCMP British Columbia “E” Division *Operational Manual* chap 37.3. “Missing Persons”, s 1.3. (dated November 15, 2012).

<sup>283</sup> RCMP British Columbia “E” Division *Operational Manual* chap H. “General Public”, s 1.a.1. (dated July 6, 2007).

appropriate priority has been assigned, and that all investigative actions have been documented, on file [emphasis added]."

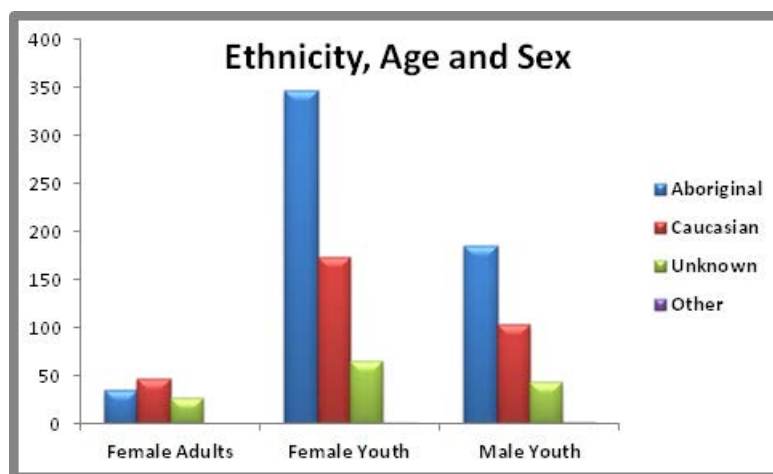
Accordingly, the Commission based its assessment of missing persons occurrence reports on these core principles and policy requirements:

- 1) "Prompt and thorough" investigations;
- 2) Repeat/chronic runaways;
- 3) High risk persons and risk assessments;
- 4) Supervisor review;
- 5) Coding occurrence reports;
- 6) Unresolved cases.



According to the RCMP, from 2008 to 2012 the North District received a total of 20,985 calls for service related to missing persons. Of these reports, the Commission reviewed a sample of 1,851 occurrence reports from 35 detachments in northern British Columbia.<sup>284</sup>

Of the 1,851 reports, 44.4% ( $n=822$ ) involved male adults; 5.9% ( $n=109$ ) involved female adults; and 49.7% ( $n=920$ ) were female and male youth reported missing from January 1, 2008, to December 31, 2012. In accordance with the investigation's Terms of Reference, the Commission focused on the 1,029 occurrence reports involving



<sup>284</sup> The time period was selected based on the approximate time frame within which Human Rights Watch raised concerns about policing practices in northern British Columbia, and covering the most recent versions of key policies, procedures, guidelines and training materials at the time of writing this report. The sample was established based on reporting statistics provided by the British Columbia RCMP on January 14, 2014. Based on data provided by divisional Headquarters, the Commission derived the sample of 1,851 missing persons RCMP occurrence reports from a stratified and weighted sampling methodology, with a 95% confidence level and a 5% margin of error.



women ( $n=109$ ) and youth ( $n=920$ ), while the remaining occurrences, involving adult males, were examined for statistical purposes only.

Among the occurrence reports reviewed, a total of 37.1% (382 of 1,029) involved Aboriginal females, both adult and youth. Although statistical information will be presented in this report, its usefulness as an indicator for potential trends or differential treatment is limited. Given the limited information contained on the occurrence reports and the scope of the Commission's public interest investigation, it is not possible for the Commission to make a finding of differential treatment by the RCMP of Aboriginal women and youth.

### "Prompt and Thorough" Investigations

Since 2008, both RCMP national and British Columbia divisional policies on missing persons have contained a central requirement that "all reports of missing persons will be promptly and thoroughly investigated [emphasis added],"<sup>285</sup> and that all investigative actions are to be documented on file.<sup>286</sup> To evaluate compliance with this requirement, the Commission reviewed RCMP occurrence reports to assess whether members adequately documented the investigative steps taken, and also examined the timelines of the documented actions on file for evidence that the investigation was initiated promptly.

In evaluating the documented investigative steps on file, the Commission took into consideration the range of investigative procedures outlined in Appendix 37-3-1 of the 2008 version of the national policy on missing persons.<sup>287</sup> In particular, the Commission examined the files for evidence that the member conducted basic investigative steps, such as: interviewed the individual who reported the person missing, interviewed witnesses or contacted family/friends/known associates; obtained a physical description of the missing person and/or a description of the clothing they were wearing when last seen; conducted patrols or neighbourhood drive-by(s); attended the scene where the missing person was last seen; used any support services; and/or articulated a risk assessment on the file.

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<sup>285</sup> RCMP British Columbia "E" Division *Operational Manual* chap 37.3. "Missing Persons", s 1.3. (dated November 1, 2010); RCMP British Columbia "E" Division *Operational Manual* chap 37.3. "Missing Persons", s 1.3. (dated November 15, 2012); and RCMP National Headquarters *Operational Manual* chap 37.3. "Missing Persons," s 3.1.1. (dated May 15, 2008) states that a member will "[p]romptly investigate all missing persons complaints."

<sup>286</sup> RCMP National Headquarters *Operational Manual* chap 37.3. "Missing Persons", s 3.2.1. (dated May 15, 2008) states that a supervisor will "[m]onitor the investigative file regularly for quality assurance to ensure that appropriate priority has been assigned, and that all investigative actions have been documented, on file."

<sup>287</sup> RCMP National Headquarters *Operational Manual* Appendix 37-3-1 "Missing Persons – Investigative Procedures" (dated October 3, 2007).



Of the 1,029 occurrence reports reviewed, all pertaining to females and youth, the Commission found that 26% (263 of 1,029) had no articulated investigative steps in the report. Specifically, in these cases the narrative did not contain any detail or description of actions on the part of the member to investigate the case. This proportion was generally consistent across all years in the scope of this review, although the proportion was somewhat higher in 2012, when 33.7% (57 of 263) of files had no articulated investigative steps. In cases involving Aboriginal females (adult and youth), the Commission found that 24.1% (92 of 382) of reports had no investigative steps articulated, whereas 26.2% (82 of 313) of reports involving non-Aboriginal females (identified on file as "Caucasian," "other" or "unknown") had no investigative steps on file.

The Commission also examined occurrence reports to determine whether the documentation on file demonstrated that investigations were initiated promptly in accordance with policy. In particular, the Commission examined the articulations on file to determine whether the documentation noted when investigations were initiated, following receipt by the RCMP of a report of a missing person: immediately, the same day, or more than one day later. Of the 1,029 occurrence reports reviewed, a total of 74% (766 of 1,029) were found to contain some documented investigative steps on file. Of the 766 files, 36% (273 of 766) demonstrated that the investigative steps were taken immediately following dispatch and another 33% (250 of 766) demonstrated that the investigative steps were taken the same day the person was reported missing. Of the remaining occurrence reports that contained documented investigative steps, 26% (215 of 766) did not provide clear timelines or demonstrate in the report that the investigative steps were taken promptly in accordance with policy. In these cases, the Commission found that articulations were often vague, failed to explain the sequence of events and/or lacked details to explain the investigative steps documented on the occurrence report.

These findings were consistent across all years in the scope of this review despite amendments to divisional policy in 2010, which added provisions that required "a diligent initial response"<sup>288</sup> and "the early and efficient gathering of witness accounts/leads/information/facts required for the immediate and long term investigation."<sup>289</sup>

In cases involving Aboriginal females (adult and youth), the Commission found that slightly fewer cases, 19.6% (75 of 382), contained documented investigative steps that

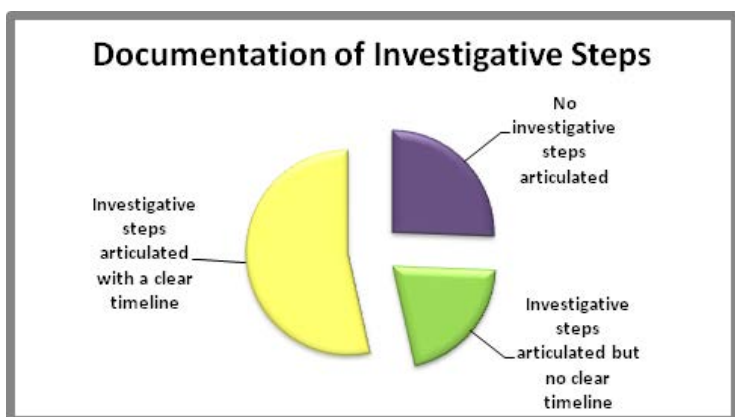
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<sup>288</sup> RCMP British Columbia "E" Division *Operational Manual* chap 37.3. "Missing Persons", s 1.2.1. (dated November 1, 2010).

<sup>289</sup> *Ibid*, s 1.2.2.

failed to provide clear timelines or documented evidence that the investigative steps were taken promptly in accordance with policy.

Throughout the file review, the Commission noted general deficiencies in the quality of some documentation, including overly generic narratives, case notes with no timelines, failures to describe the circumstances of how an individual went missing and vague or generic notes on interviews or other investigative actions. For example, the Commission noted case synopses that provided only generic summaries, such as “[subject] reported missing, chronic, added to CPIC, returned, removed from CPIC, concluded” or “habitual missing, returned, concluded,” even in cases involving youth who had been missing for several days. The Commission also noted files where members did not clearly indicate when investigative actions were taken, failed to explain the details or outcomes of investigative steps, or failed to provide a rationale for an assessment of risk.



Examples included statements such as “extensive patrols but negative results”; “did patrols, no reason to assume [MP] is in any danger”; “not at risk and typically returns on his own”; or “patrols made, however, [MP] is a chronic runaway with drug/alcohol abuse tendencies.”

A central policy requirement is that “all reports of missing persons will be promptly and thoroughly investigated [emphasis added].” The Commission’s examination of occurrence reports showed that 25.6% ( $n=263$ ) of them failed to document any investigative steps and 20.9% ( $n=215$ ) of them failed to provide clear timelines or evidence that investigative steps were taken promptly. Taking these numbers together, the Commission found that 46.5% (478 of 1,029) of the occurrence reports from 2008–2012 failed to demonstrate compliance with this policy requirement.

**Finding No. 35:** Nearly half (46%) of the occurrence reports failed to show that the RCMP in the North District investigated missing persons cases promptly and thoroughly contrary to policy.

## High-Risk Persons and Risk Assessments

In order to review compliance with policy regarding high-risk persons and the requirements for risk assessments, it is necessary to understand the changes in policy in these areas in the period under review.

In 2008, the national policy did not contain provisions outlining how to assess risk in missing persons cases. The process was defined by the divisions. The divisional policy at the time contained only a general provision that “missing persons investigations are to be considered ‘high risk’ investigations that require close supervision and detailed documentation.”<sup>290</sup>

Based on statements made by senior RCMP members in British Columbia, the approach to missing persons investigations was less rigorous during the period covered by the 2008 policy. The absence of a requirement for formal risk assessments was an indicator of this. As another example, lack of defined procedures for handling files led to gaps in the documentation of investigative steps.<sup>291</sup> According to the RCMP, investigative procedures and requirements have since become more rigorous.<sup>292</sup> It should be noted, however, that the Commission did not independently verify practices falling outside the scope of this investigation covering 2008 to 2012.

In 2010, the RCMP in British Columbia amended its policy provisions concerning high-risk missing persons investigations, adding a detailed definition of persons considered high-risk and reference to high-risk cases in a provision that stated: “All reports of missing persons will be promptly and thoroughly investigated, especially those that are high risk [emphasis added].”<sup>293</sup> The divisional policy stated that persons considered at high risk include “children, elderly, mentally/physically handicapped, medically ill, mentally ill, suicidal, sex-trade workers, gang or drug-trade associates, court witnesses, victims of domestic violence and elder abuse, victims of bullying, transient/homeless persons and those involved in high-risk activities such as hitchhiking and drug/alcohol abuse.”<sup>294</sup>

The divisional policy contained a requirement to “[i]mmediately undertake a risk assessment, which must include an evaluation of how the person went missing, their personal history and their status as it pertains to persons considered high-risk.”<sup>295</sup> It specified that the “risk assessment of the missing person must be documented on file

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<sup>290</sup> RCMP British Columbia “E” Division *Operational Manual* chap H. “General Public”, s 1.a.1. (dated July 6, 2007).

<sup>291</sup> Interview with RCMP members in British Columbia (March 2, 2015).

<sup>292</sup> *Ibid.*

<sup>293</sup> *Supra* note 288 at 1.3.

<sup>294</sup> *Ibid.*

<sup>295</sup> *Ibid.*, s 7.1.2.

along with all contributing factors" and "[t]he risk assessment must establish the priority of the investigation."<sup>296</sup> The policy also contained a provision stating that unit commanders should "[c]onsider implementing mandatory use of risk assessment tools (e.g. App 37-3-1 Missing Persons Risk Assessment Tool) for investigating members and developing similar tools for OCCs and front counter staff that provide a coordinated approach to risk assessment for missing persons complaints or information."<sup>297</sup>



While the 2010 divisional policy required members to undertake and document risk assessments in missing persons cases, the most recent update to the policy, which occurred in late 2012,<sup>298</sup> requires members to complete a mandatory risk assessment form. The policy also requires supervisors to review the risk assessment form to ensure that the appropriate priority has been assigned to the case.<sup>299</sup> Senior RCMP members in

British Columbia explained that the form was needed to provide a more defined risk assessment process for members.

The Commission's review of occurrence reports from 2008 to 2012 showed that 9.4% (97 of 1,029) cases were flagged as high-risk. The number of cases per year decreased from 31 in 2008 to 13 in 2012.<sup>300</sup> No investigative steps were articulated on file in 28.8% (28 of 97) of the cases flagged as high-risk, and another 20.6% (20 of 97) contained some references to investigative steps but the file provided no clear timeline to indicate that investigative steps were taken promptly. The Commission noted some high-risk cases that contained no details or contextual information to explain the high-risk designation and some showing significant delays in the investigative steps taken on file. Generally speaking, these issues were noted in cases that pre-dated the 2010 amendments to the divisional missing persons policy. These issues were less prevalent in 2012, wherein only 2

<sup>296</sup> *Ibid*, s 7.1.2.2 and 7.1.2.3.

<sup>297</sup> *Supra* note 288 at s 9.2.

<sup>298</sup> ED6116 Missing Persons Risk Assessment form.

<sup>299</sup> RCMP British Columbia "E" Division *Operational Manual* chap 37.3. "Missing Persons", s 1.3.2., 7.1.2. and 8.1. (dated November 15, 2012).

<sup>300</sup> The numbers were: 31 cases in 2008; 18 cases in 2009; 20 cases in 2010; 15 cases in 2011; and 13 cases in 2012.

out of 13 high-risk files had no articulation of investigative steps and only 1 failed to articulate the promptness of the investigative actions.

**Finding No. 36:** Nearly half (49.4%) of the occurrence reports from 2008 to 2012 for missing persons cases identified by the RCMP in the North District as “high risk” failed to show that the cases had been investigated promptly and thoroughly.

### Repeat/Chronic Runaways

The majority of occurrence reports reviewed by the Commission involved missing persons identified by the RCMP as having a previous history of going missing. In 60.6% (624 of 1,029) of cases, the RCMP indicated a history of “habitual, repeat, chronic” in PRIME-BC,<sup>301</sup> and in 31.4% (323 of 1,029) of cases, the member specified the probable cause as “Runaway.” The majority of the cases identified as *habitual, repeat, chronic* involved youth (98.1% or 612 of 624). Of these, 63.8% (398 of 624) of cases involved Aboriginal people, and the remaining 36.2% (226 of 624) were identified as either “Caucasian,” “other” or “unknown.”

In 2008, the RCMP’s national policy on missing persons required that “[a] missing person complaint must be given investigative priority,”<sup>302</sup> but also stated that “[t]he commander will assign an investigative priority to complaints concerning chronic runaways, whose whereabouts are known, and who are expected to return home after a brief absence.”<sup>303</sup> This gave commanders discretion in assigning higher or lower priority to chronic runaway cases. In the period of this review, neither the RCMP’s national nor divisional policy on missing persons specified that cases involving missing persons with a *habitual, repeat, chronic* history should be treated as high-risk cases.

In its review of occurrence reports, the Commission found that the documentation on file in cases identified as *habitual, repeat, chronic* was less likely to contain information showing that the investigative steps were taken promptly in accordance with policy. In 42.3% (264 of 624) of those files, the documentation failed to provide clear timelines or evidence that the investigative steps were taken promptly in accordance with policy, whereas this was the case in 26% (215 of 766) of the total number of reports that contained investigative steps. In interviews with the Commission, senior RCMP members in British Columbia acknowledged that the policy framework in place from 2008 to 2010

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<sup>301</sup> This information was contained in the “Missing Person Details” section in PRIME-BC.

<sup>302</sup> RCMP National Headquarters *Operational Manual* chap 37.3. “Missing Persons”, s 2.2. (dated May 15, 2008).

<sup>303</sup> *Ibid*, s. 2.2.1.

allowed for much more discretion in handling missing persons investigations that were not considered high-risk than is allowed in the current policy.<sup>304</sup>

Following amendments in 2010, the divisional policy on missing persons changed to include a requirement to “[i]mmediately undertake a risk assessment, which must include an evaluation of how the person went missing, their personal history and their status as it pertains to persons considered high risk.”<sup>305</sup> The policy also specified that the “risk assessment of the missing person must be documented on file along with all contributing factors [and] the risk assessment must establish the priority of the investigation.”<sup>306</sup>

Although the 2010 policy amendments in British Columbia clearly required that a risk assessment setting a priority for the investigation be documented on file, the Commission noted *habitual, repeat, chronic* cases that contained unexplained gaps in the documented investigative actions on file as well as a lack of documentation on file to explain why the risk for the missing person might have been assessed as low or why the case might have been given a lower investigative priority.

In early 2011, the divisional policy was amended again to add a requirement to conduct a formal debriefing with missing persons, once they are located, if they had a previous history of going missing, or who were considered at risk by virtue of lifestyle, age, or any other relevant factor.<sup>307</sup> The purpose of the debriefing is to establish and document on the occurrence report the reasons the person went missing, where the individual went while they were missing, and any other information that could be beneficial to either reduce the likelihood of the person going missing again or to help a future missing person investigation to locate that individual.<sup>308</sup> After February 2011, following implementation of this policy change, 211 cases were identified by the RCMP as *habitual, repeat, or chronic* or as *high-risk* in the Commission's sample. Of those cases, less than 1% (18 of 211) had indications on file that a debriefing had been conducted.

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<sup>304</sup> Interview with RCMP members in British Columbia (March 2, 2015).

<sup>305</sup> *Supra* note 288 at s 7.1.2.

<sup>306</sup> *Ibid*, s 7.1.2.2. and 7.1.2.3.

<sup>307</sup> RCMP British Columbia “E” Division *Operational Manual* chap 37.3. “Missing Persons”, s 7.5.3 (dated February 10, 2011).

<sup>308</sup> *Ibid*, s 7.5.3. and 7.6.

**Finding No. 37:** Missing persons cases involving youth identified by the RCMP in the North District as *habitual repeat* or *chronic* were more likely than other cases to have deficiencies in the documented investigative actions including unexplained gaps in the investigative timelines and failures to document risk assessments or missing persons debriefs on file.

Furthermore, in occurrence reports from 2008 to 2010, the Commission generally noted that a number of cases involving repeat/chronic runaways were documented in a way that suggested there may have been a passive “monitoring” of the file rather than an active investigation. These occurrence reports showed members periodically contacting the complainant who had reported the individual missing (most often a group home, parent, foster parent or other guardian) to ask if the missing person had returned. In some of these cases, other investigative steps outlined in policy, such as contacting witnesses or conducting patrols of the area, were not documented at all, or according to the occurrence report were initiated days after the initial report that the individual was missing. Interviews with RCMP members in British Columbia confirmed that simply contacting a parent or guardian to enquire about a missing youth's return would be contrary to current policies.<sup>309</sup>

### Supervisor Review

In 2008, the national policy identified that the primary role of supervisors with regard to missing persons files was to “[m]onitor the investigative file regularly for quality assurance to ensure that appropriate priority has been assigned, and that all investigative actions have been documented, on file.”<sup>310</sup> In British Columbia, the divisional policy in place from 2007 to 2010 required that supervisors review the operational file and if they were “satisfied that the facts of the case indicate “no foul play suspected,” make a personally signed notation to this effect on the file.”<sup>311</sup>

Following the previously noted amendments to the divisional policy in 2010, requirements for supervisors were added, namely: assisting members in determining risk assessment and file priority; reviewing the operational file immediately to ensure that members comply with their requirements; ensuring that the file is investigated under the presumption that foul play is involved until the facts demonstrate otherwise; and

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<sup>309</sup> Interview with RCMP members at the British Columbia Police Missing Persons Centre (March 2, 2013).

<sup>310</sup> *Supra* note 282 at s 3.2.1.

<sup>311</sup> *Supra* note 283 at s 1.c.2.



ensuring the file remains under active investigation. The policy also stated that supervisors were required to document observations and directions on file.<sup>312</sup>

The Commission examined occurrence reports for documented comments by supervisors in accordance with those policy requirements; in particular, the Commission looked for indications that the supervisor had reviewed the file and provided direction to members on the investigation, and had ensured that members complied with the direction provided. The Commission's review revealed that supervisors only provided direction on file in 44.3% (456 of 1,029) of the occurrence reports reviewed. The Commission found that only 40% (182 of 456) of the files that contained directions from supervisors also contained notations indicating that the member had complied with the supervisor's direction. While supervisor direction and follow-up may have been done informally, policy requires that these actions be documented.

**Finding No. 38:** Over half of the files reviewed showed that North District supervisors failed to comply with the policy requirements to document observations and directions on file, and showed no indications of follow up on member compliance with directions.

In addition to the foregoing, the Commission found that the quality of the written direction, when such was provided, was often generic or provided little actual direction. Common examples of remarks on the supervisor follow-up page in PRIME-BC included statements such as "monitor the return," "missing person," "missing youth invest," "follow-up," "locate [MP]," "SUI [still under investigation] to locate [MP]," "validate missing" and "locate or pass-on." The Commission also found no examples where the supervisor made notations to indicate that no foul play was suspected,<sup>313</sup> and there was no evidence on the occurrence report to indicate that supervisors were assisting members in determining risk and file priority. Certain generic comments that denote more passive monitoring of occurrence reports, such as "monitor return" and "file to remain open to *confirm the return of* missing" were common in earlier years (2008 to 2010). However, the Commission noted that the use of generic feedback such as "locate [MP]," which provide little actual direction to members, was still an issue in the years following the divisional policy amendment in 2010. In the view of the Commission, supervisor observations or directions on the occurrence report should provide enough detail that the direction would be understood when reviewed.

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<sup>312</sup> *Supra* note 288 at s 8.1., 8.2., 8.3. and 8.5.

<sup>313</sup> *Supra* note 283 at s 1.a.1.



### Coding Operational Files

The RCMP's operational records management system in British Columbia, PRIME-BC, contains several different "occurrence types" for categorizing reports of missing persons: Missing Person; MP-High Risk; Runaway; Injured; Lost or Overdue Person; Endangered Runaway; Otherwise Missing; and Query to Locate. In the occurrence reports reviewed, only three occurrence types were used to categorize missing persons reports in the period under review:

- Missing Person
- MP-High Risk
- Query to Locate

According to the RCMP in British Columbia, the "Query to Locate" occurrence type does not demand the same investigative process entailed in a missing persons case. It is intended to be used for tourist alerts and to find persons travelling legitimately, and requests to check on the welfare of individuals. It is not to be used for runaways, as they are presumed not to want to be located.<sup>314</sup>

As part of the original sample of 1,851 missing persons files, the Commission received a total of 572 occurrence reports coded as "Query to Locate." The Commission examined those occurrence reports to determine if the "Query to Locate" coding was used in accordance with the RCMP definition for the occurrence type. A report coded as "Query to Locate" does not require the user to enter the same information as required in a report coded as "Missing Person," which results in incomplete information entered into the system. Moreover, "Query to Locate" occurrences are not held to the same stringent policy requirements and standards of investigation as missing persons reports. The Commission found that 45.3% (259 of 572) of the occurrence reports coded as "Query to Locate" did not meet the RCMP definition, but rather appeared to be missing persons cases.

During the course of its investigation, the Commission became aware of a Management Review conducted by the RCMP in British Columbia in 2011–2012 which found that the Terrace RCMP Detachment had an "unwritten" local policy to initially code all missing persons reports as "Query to Locate" and to subsequently modify them to the "Missing Person" coding if the individual was still missing at the end of a shift. In the report issued following the review, the RCMP noted its great concern with the practice and that the detachment policy was clearly intended to bypass a "significant

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<sup>314</sup> According to the RCMP's Information Management and Technology Branch, this definition has been in place since 2008 as per RCMP OSR Index & Tables (revision 22, December 8, 2008).

amount” of the paperwork related to the correct coding. The report also underlined a lack of consistent supervision of operational files pertaining to missing persons. As a result, the Officer in Charge of the detachment was directed to cease applying the detachment policy and to abide by the divisional policy.<sup>315</sup> The Commission interviewed the Detachment Commander at the Terrace RCMP Detachment, who confirmed that the unwritten detachment policy that had been in place prior to his arrival was no longer being applied.

In May 2012, the British Columbia Police Missing Persons Centre, an integrated unit comprised of RCMP and municipal police service resources,<sup>316</sup> conducted an informal review of missing persons, high-risk missing persons, and “Query to Locate” cases in the province (including records from the RCMP and municipal police agencies) to determine if the cases had been coded according to policy requirements. That review found an error rate of 13–24% in the use of occurrence codes.<sup>317</sup> As a result, in 2014 the Centre added clarification of the use of “Query to Locate” versus “Missing Person” occurrence codes to its training for RCMP members.

**Finding No. 39:** The RCMP in the North District appears to have made inappropriate use of the coding “Query to Locate” on missing persons files.

### Unresolved Cases

All occurrence reports reviewed by the Commission in the course of this investigation were ultimately cases which resulted in the missing person being located. The review found that in 80.5% (724 of 899) of cases the missing person was found within 24 hours, and that in 96.6% (868 of 899) of cases the missing person was found in one week or less.<sup>318</sup>

Unresolved cases represent only a small proportion of missing persons files and therefore may not have been captured in the sample received as a result of the randomness of the Commission's approach. The Commission subsequently requested all missing persons files reported in the North District from 2008 to 2012 that remain unresolved.<sup>319</sup> The RCMP identified 31 missing persons files that remain unresolved as of February 27,

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<sup>315</sup> RCMP Management Review for Terrace Detachment conducted April 1, 2011, to March 31, 2012.

<sup>316</sup> The British Columbia Police Missing Persons Centre is discussed in greater detail in a subsequent section.

<sup>317</sup> British Columbia Police Missing Persons Centre Training Deck (dated April 12, 2014) at slide 33.

<sup>318</sup> To determine the length of time missing, the “Reported Missing” date and the “Located” date must both be indicated on the file. If either piece of data was missing, or other data integrity issues were present, the file was omitted from the population for this calculation. The Commission found that 12.6% (130 of 1,029) of the files contained data integrity issues of that nature, therefore resulting in a sample of 899 files for this figure.

<sup>319</sup> Interview with RCMP members in British Columbia (March 2, 2015).

2015, and provided an extract derived from the RCMP's case management system that contains a summary of the circumstances of the unresolved cases.<sup>320</sup> According to this information, 58% (18 of 31) of the cases involve persons who are suspected to have drowned or are missing as a result of "misadventure" in the wilderness,<sup>321</sup> 6% (2 of 31) of the cases are believed to be suicide, 22% (7 of 31) involve individuals who remain missing but foul play is not believed or established in relation to the case, and 13% (4 of 31) of the cases involve missing persons who are believed to have met with foul play, or foul play has been established in the investigation.<sup>322</sup> The extract provided by the RCMP did not, however, include demographic information such as sex, age or the ethnicity of the individuals involved, or information concerning the nature or extent of the investigations.

Stemming from the RCMP's report *Missing and Murdered Aboriginal Women: A National Operational Overview (2014)*, the RCMP committed to conducting reviews of all the unresolved cases of missing or murdered Aboriginal women under the responsibility of the RCMP that had been identified in that report.<sup>323</sup> In a meeting with RCMP members at National Headquarters, the RCMP confirmed that the divisions were directed to review unresolved cases of missing or murdered Aboriginal women, which includes verifying that all investigative avenues have been fully explored and ensuring there is a communications schedule developed with the family members.<sup>324</sup> When asked by the Commission, RCMP members in British Columbia were unable to provide specific information about the follow-up reviews on the unresolved cases of missing or murdered Aboriginal women that fall within the jurisdiction of the North District in British Columbia,

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<sup>320</sup> The Commission requested the occurrence reports for the 31 missing persons cases from 2008 to 2012 that remain unresolved both in an interview with RCMP members in British Columbia on March 2, 2015, and in a follow-up request on March 18, 2015. On April 15, 2015, the RCMP responded to the Commission's request by providing an extract containing a summary of the cases. The PRIME-BC extract report was prepared by the RCMP British Columbia "E" Division Business Intelligence Unit, Major Crime Section, on February 27, 2015.

<sup>321</sup> According to the RCMP, "misadventure" refers to cases where an individual disappeared in the wilderness and rescue attempts were made but no body was recovered. Interview with RCMP members in British Columbia (March 2, 2015).

<sup>322</sup> PRIME-BC Extract Report for 31 unresolved cases in the North District, prepared by the RCMP British Columbia "E" Division Business Intelligence Unit, Major Crime Section, on February 27, 2015, and provided to the Commission on April 15, 2015.

<sup>323</sup> The report had confirmed that there are 105 unresolved cases involving Aboriginal females in Canada that have been missing for more than 30 days as of November 4, 2013, whose cause of disappearance was categorized at the time as "unknown" or "foul-play suspected." Out of the 105 unsolved cases of missing Aboriginal women identified across the country, the RCMP has jurisdiction over 53 cases, and the report identified 40 of those unresolved missing Aboriginal female cases as being within British Columbia (all police jurisdictions).

<sup>324</sup> Meeting with RCMP National Headquarters, Contract and Aboriginal Policing Directorate, on missing persons (January 30, 2015).

although they did indicate that reviews had been conducted.<sup>325</sup> The RCMP members did note, in general, that reviews of unresolved cases are quite complex, sometimes involving external review or forensic analysis, but that each case may be handled differently, as there is no prescribed process or structure for those reviews.<sup>326</sup>

In June 2015, the RCMP released an update to the 2014 overview report on missing and murdered Aboriginal women, which promised to address “the investigative, procedural and preventative strides that the RCMP has taken in meeting the ‘Next Steps’ outlined in the 2014 Overview.”<sup>327</sup> However, with respect to the RCMP’s commitment to conducting reviews of all the unresolved cases of missing or murdered Aboriginal women, the update report only states that the RCMP has reviewed all of the outstanding cases of missing and murdered Aboriginal women within its jurisdictions and found that “investigations were being diligently investigated with appropriate investigative resourcing.”<sup>328</sup> The update report otherwise provides no details or substance about the cases or the RCMP’s procedures for conducting reviews of unresolved cases. In light of the RCMP’s failure to provide the requested unresolved missing persons files in a timely manner and the lack of detail regarding the follow-up reviews of unresolved cases, the Commission will request an update from the RCMP in this regard and determine whether further investigation by the Commission should be conducted in relation to the manner in which these cases have been investigated and subsequently reviewed.

## RCMP Policy

### [RCMP National Headquarters Operational Manual – Missing Persons](#)

The Commission reviewed current RCMP national missing persons policy to determine if it addresses the issues that the Commission identified in the review of 2008 to 2012 occurrence reports, as well as some of the concerns raised by human rights and civil liberties organizations, government and non-government organizations and commissions of inquiry.

The RCMP’s national policy relating to missing persons is laid out in RCMP National Headquarters *Operational Manual* chapter 37.3. The Commission reviewed the most recent version of the policy at the time of writing, dated September 5, 2014. The previous version had been in place since 2008. It was amended as part of the RCMP’s

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<sup>325</sup> Interview with RCMP members in British Columbia (March 2, 2015).

<sup>326</sup> *Ibid.*

<sup>327</sup> *Supra* note 269 at 3.

<sup>328</sup> *Ibid.*, at 10.

newly developed Missing Persons Strategy, which was introduced in 2014 to enhance the quality of missing persons investigations. According to the RCMP, the amendments represent established best practices, which aim to “contribute to national standardization and professional consistency in the calibre of missing persons investigations conducted by the RCMP.”<sup>329</sup>

The national policy sets a broad national standard for the investigation of missing persons cases. Key amendments to the policy include: the addition of a new national definition for “high-risk person” and “high-risk lifestyle”; additional emphasis on documenting operational files; the implementation of a mandatory risk assessment form and a new intake form; and a revised appendix to the policy which provides a Missing Person Information Checklist.

The following sections examine those key amendments to the national policy to determine if they address issues uncovered in the Commission’s review of occurrence reports.

### *Definitions*

The revised national policy changed substantially with respect to the definitions it contains. It amends the definition of “missing person,” adds definitions for “high-risk person” and “high-risk lifestyle,” and it removes a definition of “runaway” that was contained in the 2008 version of the policy.

The revised policy defines “missing person” as “an individual reported to or by police as someone whose whereabouts are unknown, whatever the circumstances of their disappearance, and who will be considered missing until he/she is located.”<sup>330</sup> The previous definition stated that a missing person was “a person whose location is unknown and who might be: in need of assistance to be reunited with his/her family, or to return home; the victim of an offence; in critical need of medical attention; or mentally impaired and unable to care for himself/herself or who might pose a danger to his/her safety or to that of others.”<sup>331</sup> The policy now emphasizes that a person is considered missing whatever the circumstances of their disappearance, and is considered missing until he/she is located. It does not attempt to provide definitions of specific circumstances that may unreasonably limit which cases are investigated as “missing persons” cases.

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<sup>329</sup> Royal Canadian Mounted Police, National Missing Persons Strategy 2014 (dated September 15, 2014).

<sup>330</sup> RCMP National Headquarters *Operational Manual* chap 37.3. “Missing Persons”, s 1.1. (dated September 5, 2014).

<sup>331</sup> RCMP National Headquarters *Operational Manual* chap 37.3. “Missing Persons”, s 1. “Definitions” (dated May 15, 2008).

The policy amendments removed the definition of “runaway person” as a separate definition and included it in the revised definition of “high-risk person.”<sup>332</sup> RCMP members at National Headquarters explained that a runaway person was now included in the definition of high-risk persons because of characteristics frequently noted in such cases, including drug and alcohol use, violent histories or violence in the family, and lack of resources and family links.<sup>333</sup> While earlier versions of the policy gave discretion to individual members to assign investigative priority to cases involving chronic runaways,<sup>334</sup> RCMP members are now expected to consider that a runaway may be a high-risk person according to the revised definition.<sup>335</sup>

The 2014 national policy also added the term “high-risk lifestyle,” which it defined as “the engagement in or the association with others involved in dangerous activities and/or frequenting or residing in dangerous environments, either by personal choice or circumstance.”<sup>336</sup>

As a guiding principle, the national policy now states that “[a]ll reports of a missing person will be promptly and thoroughly investigated regardless of the individual's gender, age, race, national or ethnic origin, colour, religion, sexual orientation, belief, social standing, or lifestyle,”<sup>337</sup> and explicitly states that “under no circumstance will a complainant be advised that he/she must wait a specific period of time before a report of a missing person can be made.”<sup>338</sup>

Overall, the guiding principles and amendments to the definitions address some of the concerns raised by human rights and civil liberties organizations and the Missing Women Commission of Inquiry (2012), which argued that one of the underlying factors of the delays and/or inactions of police to investigate reports of missing women was a systemic bias against marginalized people and Aboriginal women.

**Finding No. 40:** The definitions and guiding principles of the revised national policy on missing persons address concerns raised by the 2012 Missing Women Commission of Inquiry.

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<sup>332</sup> *Supra* note 330 at s 1.2.

<sup>333</sup> *Supra* note 324.

<sup>334</sup> *Supra* note 302 at s 2.2.1.

<sup>335</sup> *Supra* note 324.

<sup>336</sup> *Supra* note 330 at s 1.3.

<sup>337</sup> *Ibid*, s 2.1.

<sup>338</sup> *Ibid*, s 2.2.

### *Mandatory Risk Assessment Form and New Intake Form*

According to the RCMP, one of the biggest changes in the revised national policy is the requirement that a risk assessment be completed at the earliest stage following the report of a missing person.<sup>339</sup> According to the revised policy, the investigating member must "[d]etermine the appropriate investigational response considering the circumstances, as well as any risk factors associated to the missing person, e.g. high-risk person."<sup>340</sup> The member is required to complete the Missing Persons Risk Assessment form to assist in determining the appropriate response and resources,<sup>341</sup> and to consult their supervisor regarding the appropriate response.<sup>342</sup>

According to the RCMP, the main objective of the mandatory risk assessment form is to trigger the involvement of a supervisor at an early stage in the investigation.<sup>343</sup> Moreover, according to the RCMP Missing Persons Strategy (2014), the implementation of the national risk assessment form is an initiative supporting the RCMP's efforts to demonstrate accountability by providing strong leadership and supervision related to missing persons investigations.<sup>344</sup> The Commission believes that the establishment of the national risk assessment form is a positive step and broadly addresses recommendations made by the Missing Women Commission of Inquiry (2012) in British Columbia, which had highlighted concerns that police were making decisions based on faulty risk assessments, and made recommendations for the implementation of standardized risk factors for risk assessments.<sup>345</sup> In light of the expanded definitions of high-risk person and

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<sup>339</sup> *Supra* note 324.

<sup>340</sup> *Supra* note 330 at s 3.1.2.

<sup>341</sup> *Ibid*, s 3.1.4.

<sup>342</sup> *Ibid*, s 3.1.4.1.

<sup>343</sup> *Supra* note 324.

<sup>344</sup> *Supra* note 329 at 3 and Appendix II: Missing Persons Action Plan – Schedule of Assignments.

<sup>345</sup> See British Columbia, Missing Women Commission of Inquiry, *Forsaken – Report of the Missing Women Commission of Inquiry: Executive Summary*, Commissioner: The Honourable Wally T. Oppal (Victoria: Shared Services BC, 2012); Amnesty International, *No more stolen sisters: The need for a comprehensive response to discrimination and violence against indigenous women in Canada* (Ottawa: Amnesty International, 2009); M. Buckley, *Policies and practices in the investigation of missing persons and suspected multiple homicides. A policy discussion report prepared for the Missing Women Commission of Inquiry* (Victoria: Shared Services BC, 2012); Coordinating Committee of Senior Officials (Criminal) Missing Women Working Group, *Report and recommendations on issues related to the high number of murdered and missing women in Canada*, 2012, online: Canadian Intergovernmental Conference Secretariat <[www.scics.gc.ca/cmfiles/831-016005-we11hop-1262012-7454.pdf](http://www.scics.gc.ca/cmfiles/831-016005-we11hop-1262012-7454.pdf)>; E. Welch, *Bridging the gap to shape the future: The report on the policy forums. A consultation report prepared for the Missing Women Commission of Inquiry* (Victoria: Shared Services BC, 2012); E. Welch, *Comparative approaches to missing persons procedures: An overview of British, American and Australian Policies. A research report prepared for the Missing Women Commission of Inquiry* (Victoria: Shared Services BC, 2012); Royal



high-risk lifestyle added to the national policy, the Commission identified some shortcomings in the content of the Missing Persons Risk Assessment form.

The Missing Persons Risk Assessment form contains 13 questions for members to consider and answer with “yes” or “no” responses. If the answer is “yes” to any of the questions it contains, the member is required to bring the risk assessment for “**immediate review** and consultation with a supervisor to assess the appropriate response and resources [emphasis in original].”<sup>346</sup>

According to the definitions now in the national policy, runaways may be considered potentially high-risk persons, and a person may be at risk due to a high-risk lifestyle. Despite the inclusion of these definitions in the policy, the Commission found that the risk assessment form did not contain any questions that prompt members to consider runaways as potentially high-risk persons, nor did it contain questions to prompt members to consider the factors pertaining to individuals with a “high-risk lifestyle.”

Only two questions on the form relate to a missing person's lifestyle, namely: “Is this person involved in the sex trade, hitchhiking, gambling, and/or transient lifestyle?” and “Is the person associated to Gang Members or other Organized Crime?” These questions present a narrower range of lifestyle factors than the definition of “high-risk lifestyle” in the policy, which states that a person may be at high risk because of their associations with others involved in dangerous activities and/or because they frequent or reside in dangerous environments. In the Commission's view, the policy itself provides an appropriately flexible definition of high-risk lifestyle, but the questions currently on the form do not reflect the same range of high-risk lifestyle factors. The risk assessment form is intended as an investigational tool and states that there may be other factors to consider and document when determining risk and investigational response.<sup>347</sup> However, the form provides no space for narrative or questions that would prompt the member to identify other high-risk factors and trigger the immediate involvement of a supervisor. The Commission's concern, therefore, is that some high-risk cases may not be brought to a supervisor's attention at an early stage if the “yes/no” questions used in the risk assessment checklist represent too narrow a range of factors.

**Finding No. 41:** The national implementation of the Missing Persons Risk Assessment form addresses concerns raised in the Missing Women Commission of Inquiry but the content of the form does not fully reflect new definitions in the 2014 national policy.

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Canadian Mounted Police, *Missing and Murdered Aboriginal Women: A National Operational Overview* (Ottawa: Royal Canadian Mounted Police, 2014).

<sup>346</sup> RCMP, Missing Persons Risk Assessment form – RCMP GRC 6446e (dated September 2014).

<sup>347</sup> *Ibid.*



**Recommendation No. 26:** That the RCMP review and amend its Missing Persons Risk Assessment form to ensure that it contains questions that assist members in assessing the full range of risks that pertain to high-risk persons, including runaways and individuals with a high-risk lifestyle.

The Commission also found that although the amended national policy makes the risk assessment mandatory, it does not provide clear direction to the member and supervisor about the need for articulation of the risk assessment on the operational file. The national policy indicates that completion of the risk assessment form is intended to assist in determining the “appropriate response.”<sup>348</sup> However, the form itself is a checklist and has no space for a narrative assessment of risk, supervisor feedback or directions, or to record contributing factors that may not be covered in the 13 closed questions on the form. Nor does the national policy require members to document the assessment of risk on the operational file, or to expand, re-evaluate and document the reassessment of risk throughout the investigation.

Since 2010, RCMP divisional policy in British Columbia has contained a provision stating that “[a]s time advances, or new information/leads come in, the risk to the missing person may change and, as such, [the] risk assessment must be expanded, re-evaluated and documented on an ongoing basis.”<sup>349</sup> Even though this provision has been contained in the divisional policy since 2010, the Commission’s file review still revealed shortcomings in member articulation of risk assessments.

In the Commission’s view, given that the RCMP has identified the importance of demonstrating accountability and ensuring that there is a comprehensive and coordinated response to missing persons investigations, the expectations surrounding articulation of risk and the documentation of that assessment should be set out in national policy. Therefore, in addition to mandating the use of the risk assessment checklist, the national policy should emphasize the importance of fully articulating risk assessments on file.

**Finding No. 42:** The revised national policy on missing persons does not require members to fully articulate risk assessments on file.

**Recommendation No. 27:** That the RCMP amend its national policy on missing persons to include a clear requirement to fully articulate risk assessments on file, and to update the risk assessment on file as a case progresses.

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<sup>348</sup> *Supra* note 330 at s 3.1.4.1.

<sup>349</sup> *Supra* note 288 at s 7.1.2.4.

### *Documenting Operational Files and Information Gathering*

The revised national policy explicitly emphasizes the requirement for members to document all investigational steps taken, in detail, in their notebook and on the records management system.<sup>350</sup>

The revised national policy requires supervisors to “confirm” that the appropriate investigative response is underway,<sup>351</sup> confirm the continuance of the investigation until the missing person is located,<sup>352</sup> and monitor the investigative file on an ongoing basis to ensure that all investigative actions have been properly documented.<sup>353</sup> As noted above, the Commission's occurrence report review found deficiencies in the quality of documentation of missing persons investigations in occurrence reports from 2008 to 2012 by members and supervisors in the North District. In light of that, the Commission believes that the RCMP has addressed the issue of member articulation adequately by placing additional emphasis on the requirement for members to document detailed investigational steps in the records management system in its revised policy. However, the national policy does not specifically state that supervisors are to document feedback and directions provided to the member on the occurrence report. Given that the RCMP has indicated in its National Missing Persons Strategy (2014) that effective supervision is necessary to ensure policy compliance and to demonstrate accountability,<sup>354</sup> the Commission is of the view that national policy should establish clear and standard requirements for supervisors to document their observations and directions to members on the occurrence report. This would contribute to the RCMP's goal of national standardization and ensure there is a consistent approach to the supervision of missing persons investigations. Furthermore, the Commission's findings from the review of occurrence reports from the North District demonstrate the necessity of stating this requirement in policy.

**Finding No. 43:** The national policy on missing persons does not explicitly require supervisors to document their observations and directions to members on the occurrence report.

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<sup>350</sup> *Supra* note 330 at s 3.1.1.

<sup>351</sup> *Ibid*, s 3.2.1.1.

<sup>352</sup> *Ibid*, s 3.2.1.2.

<sup>353</sup> *Ibid*, s 3.2.7.

<sup>354</sup> Royal Canadian Mounted Police, National Missing Persons Strategy 2014 (dated September 15, 2014) at 3.

**Recommendation No. 28:** That the RCMP amend national policy on missing persons to ensure that it requires supervisors to fully document observations and directions to members on file.

With respect to information gathering, the RCMP's revised national policy amended the directive in Appendix 37-3-1 outlining investigative procedures. The revised Appendix 37-3-1 no longer outlines investigative guidelines for members in their investigation of missing persons reports; rather, it now contains a "Missing Person Information Checklist." The checklist asks members to note information in a number of categories, including information about the subject, possible DNA sources, medical and behavioural information, activities and communications, the person's personal situation, timelines and circumstances surrounding the disappearance, information about friends and family, and the person's environment, location and travel habits. Under the policy, members are directed to refer to Appendix 37-3-1 "to ensure comprehensive information gathering."<sup>355</sup>

The revised national policy also includes a new 12-page intake form, entitled *Lost/Missing Person Report and Search Results*, which aims to ensure that pertinent information is documented on file at the outset of an investigation. A number of consultation, policy and research reports recommended the development of a standardized missing persons intake form to gather consistent information at the outset of investigations.<sup>356</sup> Although the new intake form is an important step towards ensuring a national coordinated response to missing persons reports, the policy only requires that members "consider using" the form.<sup>357</sup>

When interviewed on this issue, RCMP members at National Headquarters informed the Commission that the national policy currently does not require the completion of the intake form on a mandatory basis, due to concerns raised by the divisions that it could affect operations given the volume of missing persons reports, in particular reports on

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<sup>355</sup> RCMP National Headquarters *Operational Manual* chap 37.3. "Missing Persons", s 3.1.6. (dated September 5, 2014).

<sup>356</sup> See British Columbia, Missing Women Commission of Inquiry, *Forsaken – Report of the Missing Women Commission of Inquiry: Executive Summary*, Commissioner: The Honourable Wally T. Oppal (Victoria: Shared Services BC, 2012); Government of Saskatchewan, *Final report of the Provincial Partnership Committee on Missing Persons*, 2007, online: Saskatchewan Ministry of Justice <<http://www.justice.gov.sk.ca/adx.aspx/adxGetMedia.aspx?DocID=3025,104,81,1,Documents&MediaID=1615&Filename=missing-persons-final.pdf>>; Coordinating Committee of Senior Officials (Criminal) Missing Women Working Group, *Report and recommendations on issues related to the high number of murdered and missing women in Canada*, 2012, online: Canadian Intergovernmental Conference Secretariat <<http://www.scics.gc.ca/cmfiles/831-016005-we11hop-1262012-7454.pdf>>; Royal Canadian Mounted Police, *Missing and Murdered Aboriginal Women: A National Operational Overview* (Ottawa: Royal Canadian Mounted Police, 2014).

<sup>357</sup> *Supra* note 330 at s 3.1.5.

chronic runaways. The RCMP reported that it is currently working on ways of making the form more easily usable.<sup>358</sup> According to the RCMP, one of the goals of the National Missing Persons Strategy is to standardize an organizational approach to missing persons investigations.<sup>359</sup> Use of a standardized intake form would contribute to that goal.

**Finding No. 44:** The *Lost/Missing Person Report and Search Results* form provides a comprehensive and standardized method of collecting pertinent information at the outset, but the voluntary nature of its use by members detracts from the goal of standardizing the approach to missing persons investigations.

**Recommendation No. 29:** That the RCMP update its national policy on missing persons to require members to complete the new *Lost/Missing Person Report and Search Results* form at the outset of an investigation.

#### British Columbia RCMP Operational Manual – Missing Persons

As part of its review of occurrence reports, the Commission reviewed the evolution of the RCMP divisional policy in British Columbia since 2008, until its most recent update in 2012.

According to the RCMP, the 2012 policy on missing persons in British Columbia served as the model for the revisions to the national policy.<sup>360</sup> However, in light of the new emphasis on national standardization, revised definitions and new forms referenced in the revised national policy, there may be a few areas in which the divisional policy may require updates to ensure alignment with the revised national requirements.

**Recommendation No. 30:** That the RCMP review and amend the divisional missing persons policy in British Columbia to ensure that it is in line with the revised national policy.

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<sup>358</sup> *Supra* note 324.

<sup>359</sup> *Supra* note 329 at 3.

<sup>360</sup> *Supra* note 324.

## RCMP Training

The RCMP informed the Commission that there is no mandatory training related to missing persons investigations available at Depot Division, nor is there at the Pacific Region Training Centre in British Columbia.<sup>361</sup> When queried about this issue, the RCMP in British Columbia responded that members are guided by policies and procedures and that new members receive practical training during their Field Coaching Program.<sup>362</sup>

Participation in the Field Coaching Program does not, however, necessarily provide new members with practical training specific to missing persons investigations because the practical training uses the cases in which the new member is involved and a missing persons case may or may not arise.

According to the RCMP, members in British Columbia also have access to the “E” Division *Service Standards Investigation Guide* on their desktop computers and all mobile data terminals in vehicles to assist with certain investigations. The guide provides mandatory requirements, minimum investigational standards and general guidelines, as well as supervisor responsibilities, namely for the investigation of a missing persons case.<sup>363</sup> In addition, RCMP members in British Columbia have access to an *Investigation Guide for First Responders* developed by the British Columbia Office of Investigative Standards and Practices and implemented on all mobile data terminals in the province. That guide also acts as a basic resource for members by providing recommended responses to missing adults investigations.<sup>364</sup>

Training on missing persons investigations is now available to members when requested. For example, the British Columbia Police Missing Persons Centre recently developed a training package on the handling of missing persons investigations. The Centre offers the training to supervisors or members upon request.<sup>365</sup>

In addition, the action plan for the RCMP's Missing Persons Strategy (2014) highlights that three new online courses developed by the National Centre for Missing Persons and Unidentified Remains was projected to be completed by April 2015. According to the RCMP, under the action plan the new courses are intended to support “increasing

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<sup>361</sup> Correspondence from RCMP Depot Division (May 13, 2014) and electronic correspondence from RCMP “E” Division (December 2, 2014).

<sup>362</sup> Electronic correspondence from RCMP “E” Division (December 2, 2014).

<sup>363</sup> RCMP British Columbia “E” Division *Service Standards Investigation Guide* at 19–20.

<sup>364</sup> *Investigation Guide for First Responders*, British Columbia Office of Investigative Standards and Practices at 61.

<sup>365</sup> Interview with RCMP members at the British Columbia Police Missing Persons Centre (March 2, 2013).

awareness" and highlight established best practices for missing persons investigations.<sup>366</sup> The courses, directed at investigators, address the investigation of missing children, missing adults and unidentified remains.<sup>367</sup> According to the Missing Persons Strategy documents, the new courses will provide enhanced training for RCMP members with their respective roles in missing persons investigations;<sup>368</sup> however, it is not clear whether these new courses will be mandatory for members. Given that the training was recently developed in conjunction with the strategy, the Commission was unable to assess these courses in the context of this investigation.

**Finding No. 45:** The RCMP does not have any mandatory training on missing persons investigations at Depot Division, the Pacific Region Training Centre or in the Field Coaching Program.

**Recommendation No. 31:** That in the interest of promoting a standardized approach, and to support effective, comprehensive and coordinated responses to missing persons investigations, the RCMP consider making training on the revised national missing persons policy requirements mandatory for members in contract policing.

## Conclusion

Through its National Missing Persons Strategy, the RCMP has made the investigation of missing persons cases a priority.<sup>369</sup> In a meeting with the Commission, the RCMP indicated that the goal of the new Missing Persons Strategy and of the national policy is to standardize RCMP processes for the investigation of missing persons cases and to ensure the same quality of investigations across the country.<sup>370</sup> According to the RCMP, the strategy guides and supports an effective, comprehensive and coordinated response to missing persons investigations in RCMP jurisdictions. It includes a focus on demonstrating accountability and confirming RCMP members' policy compliance through effective supervision.<sup>371</sup>

During the course of this investigation, the RCMP provided the Commission with its projected action plan, which introduces measures to reduce or eliminate historical

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<sup>366</sup> *Supra* note 329 at 3 and Appendix II: Missing Persons Action Plan – Schedule of Assignments.

<sup>367</sup> *Supra* note 329.

<sup>368</sup> *Ibid*, at 5.

<sup>369</sup> *Ibid*.

<sup>370</sup> *Supra* note 324.

<sup>371</sup> *Supra* note 329.

challenges faced in missing persons investigations.<sup>372</sup> The Commission has reviewed this plan and notes that it addresses some of the recommendations made by various government and non-government organizations, as well as the Missing Women Commission of Inquiry (2012), which have called for the development of standard policies and practices for missing persons, including a standard definition of “missing person,” a missing person risk assessment tool, stronger supervisory responsibility for quality control, and increased monitoring of outstanding missing persons cases.<sup>373</sup>

In this investigation, the Commission identified concerns with respect to the manner in which RCMP members in British Columbia's North District handled missing persons investigations from 2008 to 2012. In particular, the Commission found shortcomings with the quality of articulation on missing persons occurrence reports, as well as failures to document occurrence reports to demonstrate that missing persons reports were investigated promptly and thoroughly in accordance with policy, including in cases identified by the RCMP as “high risk.”

Key policy changes implemented since the period of the Commission's review, in particular amendments to the divisional policy in 2012, as well as more recent amendments to the national policy in 2014, marked a significant evolution in the RCMP's approach to missing persons investigations. Considerable efforts have been made to ensure that there is a comprehensive approach and increased accountability for handling missing persons investigations across the country, and the RCMP appears to have taken into consideration some key recommendations from human rights and civil liberties organizations, government and non-government organizations and commissions of inquiry.<sup>374</sup> Progress in the area of RCMP policy is encouraging; however, implementation of the policy will be key to its effectiveness. These recommendations are designed to strengthen the articulation by members on occurrence reports, reinforce the role of supervisors, and further enhance policies and training in relation to missing persons investigations.

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<sup>372</sup> *Supra* note 329 at Appendix II: Missing Persons Action Plan – Schedule of Assignments.

<sup>373</sup> British Columbia, Missing Women Commission of Inquiry, *Forsaken – Report of the Missing Women Commission of Inquiry: Executive Summary*, Commissioner: The Honourable Wally T. Oppal (Victoria: Shared Services BC, 2012).

See the complete list of reports at [Appendix D](#).

<sup>374</sup> In particular, British Columbia, Missing Women Commission of Inquiry, *Forsaken – Report of the Missing Women Commission of Inquiry: Executive Summary*, Commissioner: The Honourable Wally T. Oppal (Victoria: Shared Services BC, 2012). See the complete list of reports at [Appendix D](#).



## PART IV: COMMUNITY AND MEMBER ENGAGEMENT

In an effort to gain insight into community experiences with the RCMP in the North District and to ascertain community satisfaction with and confidence in both the RCMP and the public complaint process, the Commission engaged community and RCMP members.

A Commission investigator travelled to 21 communities in northern British Columbia to conduct interviews, as well to other locations in British Columbia, Alberta and Ontario. Those interviewed included 64 community members, among them band chiefs, band managers, band councilors, municipal/city employees and representatives of non-governmental organizations, and, in each community location, RCMP members from the local detachment, including detachment commanders, First Nations Policing members and General Duty members. In light of concerns raised by human rights and civil liberties organizations about the treatment of Aboriginal persons, there was a focus on interviewing Aboriginal community leaders.

The communities visited included remote and semi-remote predominantly First Nations communities, smaller and mid-size communities with an Aboriginal population and one or more First Nations communities nearby, and a larger community with an Aboriginal population and one nearby First Nations community.

Participants expressed their desire to be heard and offer tangible suggestions to help improve policing in northern British Columbia. Statements were obtained on a confidential basis and participants spoke openly and with candour.

Every effort was made to accurately reflect in this report the comments of the community and RCMP members. Many anecdotal examples were provided which the Commission has not been able to substantiate. Thus, the opinions and suggestions remain those of the persons interviewed and are not necessarily the shared views of the communities, the RCMP or the Commission.

This information is provided for the consideration of the RCMP.

### COMMUNITY PERSPECTIVE

In smaller North District communities, particularly with a high First Nations population, both First Nations Policing and General Duty<sup>375</sup> RCMP members are engaged in

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<sup>375</sup> For example, General Duty members provide first response to all police complaints ranging from robberies, assaults, break and enters, missing persons, thefts, frauds as well as all other calls for service from the general public. See City of Chilliwack, *General Duty*, online: City of Chilliwack <<http://www.chilliwack.ca/main/page.cfm?id=1057>>; RCMP First Nations Community Policing Service incorporates the principles and objectives of the FNPP, including service levels equivalent to those of non-First Nations



enhanced (focused on community involvement and relationship building) and core policing (related to enforcement activities). When asked about relations with the RCMP, the predominant response from smaller communities was that they have a good relationship. Almost every community with a dedicated First Nations Policing member had positive comments to make about that RCMP member. The majority of First Nations community members, however, expressed to the Commission a desire for more core policing in their communities. Some individuals attributed the largely positive impression of the RCMP in smaller communities to the efforts made by the RCMP members to develop relationships with community members.

Conversely, the Commission heard many negative comments about policing in larger urban areas where the anonymity of RCMP members may contribute to less positive interactions with the public—or the perception thereof.

Another recurring issue raised by some community members was RCMP leadership. Based on community and police statements, leadership appears to be a critical determining factor in community–police relations.

In this regard, the Commission noted indications of RCMP efforts to assign suitable members to leadership positions in the North District. RCMP success in this regard is demonstrated by the many positive comments from First Nations communities about the detachment commanders in their area. Even in larger and urban communities, where negative comments were made about front-line policing, members of some Aboriginal organizations had positive comments about the Detachment Commander. In particular, the RCMP appears to have made a substantial effort to assign culturally aware detachment commanders with significant experience dealing with Aboriginal communities to those communities with large Aboriginal populations. In many cases, the detachment commanders interviewed by the Commission had lengthy service histories working in the North and with Aboriginals. In some cases, prior experience working with Aboriginals was a requirement for the position and the communities themselves were involved in the selection of the RCMP Commander.

A common criticism by community members related to the perception of frequent turnover of RCMP officers, including detachment commanders. They expressed the view that, all too commonly, the community would have just developed a good relationship with the assigned RCMP member, whatever rank, and then the member would be transferred, leaving the community to begin building a relationship with the newly assigned member.

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communities, compatibility and sensitivity to First Nations culture and beliefs, and flexibility to accommodate local variations in policing needs. See Royal Canadian Mounted Police, *RCMP First Nations Community Policing Service*, online: Royal Canadian Mounted Police <<http://www.rcmp-grc.gc.ca/pubs/abo-aut/fncps-spcpn-eng.htm>>.

The final issue of note made by several community members, particularly in larger urban communities, was the perception of racism towards Aboriginal and First Nations persons by the RCMP—and by society more broadly. Some witnesses spoke of the distrust Indigenous people have for the police as a result of the perceived racism. The fact that historically the RCMP was used to assist with apprehending children to be sent to residential schools was also cited as a general factor for the lack of trust in the RCMP by Indigenous people.

Community members made recommendations for improving RCMP policing. Among these was that RCMP members receive more cultural training, focused on local (i.e. community) culture. It was also recommended that such training include the broader issues stemming from the legacy of the residential schools.

Other recommendations related directly or indirectly to resources, including funding for policing services. One example related to the coastal communities that receive only part-time policing services and would like full-time or at least greater police presence. The primary concern from these communities was that the lack of police presence permitted criminal activity to occur when the police were not in the community. Generally, communities expressed a need for additional members in many areas as well as more resources for dedicated units, such as domestic violence units.

## **MEMBER PERSPECTIVE**

Some RCMP members acknowledged the importance of developing community relationships to be successful in smaller communities, while in larger urban areas, RCMP members reported having less time to deal with people and may not know the individual they are interacting with. RCMP members also stressed the importance of effective leadership both in establishing good community relations and in setting the tone for member interactions with the public. Members suggested that it would help if communities understood the limitations placed on First Nations Policing members, that is the distinction between enhanced and core policing, as well as the limitations that are placed on police authority. For example, in some smaller communities, community members wanted police to undertake enforcement action that could be considered beyond their legal authority, such as conducting searches without reasonable grounds.

Some RCMP members suggested that an urban-based First Nations Policing program or Aboriginal policing strategy was needed, providing a form of enhanced policing in urban communities.

## AREAS OF INVESTIGATION

As part of the Commission's engagement activities, community and RCMP members were asked to comment on the specific areas under investigation. The following provides a summary of the comments received.

### Cross-Gender Police Searches

There were few concerns from community or RCMP members about cross-gender police searches (i.e. searches of persons by a member of the opposite sex). However, based on the comments provided by RCMP members it appears that there is no standardized approach to conducting such searches. Depending on the availability of female RCMP members, the impression was that male RCMP members "risk manage" searching females.

The availability of female RCMP members varied from normally being available in larger detachments to some detachments having no female RCMP members. The Commission was informed that in many cases, male RCMP members will call in a female RCMP member to search a female. However, even in a large detachment a female RCMP member may not be readily available and the male member will conduct a body search (i.e. frisk search) before transporting the female. Female RCMP members also talked about doing frisk searches of males if no male RCMP member was available.

There did not appear to be a consistent method of body-searching (i.e. frisk search) a person of the opposite sex. Some RCMP members described this type of search as a pat down and a search of the waistband and anything within reach of a person's hands. However, a Watch Commander described a roadside search as checking the hands and wristbands, using the back of the hand, blading the hand across the top/middle/bottom breast area, with no search of the genital area, no groping of pockets, and searching the socks. There also was not a consistent view expressed by members regarding whether or not a female prisoner's bra would be removed before lodging the female prisoner in cells.

### Public Intoxication

There were few concerns raised by community members relating to the policing of public intoxication. It was generally understood that the issue of public intoxication is a social problem with multi-factorial influences, including the legacy of Indian residential schools for First Nations persons, and that the RCMP must respond to calls of intoxicated persons even where there is no enforcement action required.

RCMP members confirmed that while many people are incarcerated for being intoxicated, that is being drunk in a public place under the British Columbia *Liquor Control and Licensing Act* or causing a disturbance under the *Criminal Code*, rarely are they formally charged. An RCMP member relayed that charging intoxicated persons with a criminal offence would not be a good use of resources given the work that would be required to prepare the necessary documents to initiate a criminal prosecution, and that issuing a violation ticket to such persons was of little value, as they are often not able to pay the fined amount.

The treatment of intoxicated persons and the efforts to find an alternative to lodging them in an RCMP jail appeared to be influenced by the existing relationship between the police and the community. RCMP members in smaller communities tended to take more time to interact with intoxicated persons because they often knew the individuals and also had more time. This is contrasted in larger communities, where police witnesses talked about having less time to interact with people, which would practically manifest itself in taking less time to explore alternatives for intoxicated persons. This may also be influenced by the fact that smaller communities do not have dedicated guards in RCMP cells, so there is a greater incentive not to lodge persons in jail, as opposed to larger communities where there are full-time guards.

## **Use of Force**

The witness evidence regarding use of force was largely general in nature. Some community members expressed concern about past use of force incidents in one particular community but this has apparently been addressed by the current Detachment Commander.

There were also several references from various community members to notorious or well-publicized incidents involving use of force; however, in many cases, the community members believed that the police were using appropriate force when dealing with persons.

No public complaints were received as a result of the Commission's investigation and no specific information was provided to allow the Commission to follow up on allegations.

## **Domestic Violence**

Although witnesses agreed that domestic violence is a problem, overall the RCMP was perceived as addressing domestic violence incidents appropriately. In many cases, it was noted that the RCMP was participating in local committees related to domestic violence.

One witness made a comment that the police will not remove a non-community member (the aggressor in a relationship) even though the person has been banned from being in the community. Another witness said that the police will not take action in a domestic dispute until something actually happens. There were some comments from community members that the RCMP is slow to respond to domestic violence calls when they are not in the community or not in the office.

## **Missing Persons**

There were some recent examples where witnesses talked about the RCMP in a particular community not taking missing persons reports seriously. In both cases, a community authority figure had to personally contact someone in management at the RCMP detachment to elicit an appropriate response. In one of these cases, the RCMP initially told the individual to wait 24 hours before reporting the person missing—another witness relayed a similar story. On the contrary, a witness talked about the positive efforts made to locate a missing person, including making use of the RCMP's plane and helicopter.

RCMP witnesses indicated that many missing persons cases involve search and rescue scenarios rather than suspected foul play. That said, the RCMP members interviewed were adamant that all missing persons files are taken seriously.

RCMP members in larger communities also commented on “chronic runaways” from group homes. Dealing with chronic runaways was reportedly a significant drain on RCMP resources, at times requiring all available RCMP members on shift.

One RCMP member stated that although all missing persons reports are taken seriously, there is a different response for a chronic runaway versus a missing child. These comments were echoed by another member who explained that he tries to work with group homes to have realistic reporting conditions for youth in their care, to prevent unnecessary missing persons reports, for example where the youth is not actually missing but has instead simply not complied with a curfew condition.

## **Youth**

In relation to RCMP interaction with youth, the Commission heard few comments regarding police interactions with youth in an enforcement capacity. There were, however, many positive comments about the efforts made by RCMP members to interact with youth in smaller communities. These included RCMP members going into schools, participating in community events and youth activities, organizing youth activities and engaging in sporting activities with youth. These positive comments appear to reflect the relationships between the RCMP and these communities.

## PART V: CONCLUSION

The RCMP in northern British Columbia—and across Canada—requires public confidence and trust in order to fulfill its mandate. Only when people trust the police and regard them as legitimate can they be successful in carrying out their duties. The RCMP earns such trust by being held to a high standard of transparency and accountability, both internally and externally. That standard is achieved, in part, through processes such as this public interest investigation.

In initiating a complaint and undertaking a public interest investigation, the Commission set out to determine whether any systemic problems existed in the RCMP's policing of: missing persons cases; publicly intoxicated persons; use of force reporting; domestic violence; and personal searches in northern British Columbia. The Commission placed a particular focus on transparency and accountability in reviewing operational policies and procedures, examining the role of supervisors and reviewing documented articulation of member actions.

The Commission's investigation consisted of a careful examination of documentary evidence of over 100,000 pages of documentation, including relevant RCMP policies, procedures and training documents; over 4,000 police occurrence reports; 301 Subject Behaviour/Office Response reports; applicable legislation and case law; inquiry reports; reports from human rights and civil liberties organizations; coroners' inquests reports; academic research; and also involved numerous interviews of RCMP and community members.

Furthermore, the Commission undertook outreach efforts in 21 northern communities, meeting with nearly 100 people. The results of the community engagement reflected a certain level of satisfaction with the RCMP in northern British Columbia. However, there remained a perception by many community members that the RCMP is biased against Indigenous people. Notwithstanding the Commission being unable to substantiate that view through its policy and file review, it is acknowledged that the weaknesses in transparency and accountability identified through the investigation can foster distrust of the RCMP and feed negative public perceptions.

In that regard, two main issues were consistent throughout the public interest investigation: inadequate articulation of police actions on occurrence or use of force reports and inconsistent supervisory review of case files. In addition, the Commission's personal search and use of force investigations identified important shortcomings in reporting practices that seriously impedes or limits independent review. These problems are not insignificant, as they directly affect RCMP accountability.

Police are trusted with considerable powers and are accountable to the public for how those powers are exercised. In that regard, RCMP policy is clear on the importance of completeness and quality of file content, including member articulation. Members are

accountable for the data on occurrences to which they are assigned, while supervisors and commanders are accountable for the completeness and accuracy of that data. However, the Commission found several instances of non-compliance with policies on articulation in the areas examined. While articulation may be seen by some members and supervisors as an administrative burden, it is far more than that. A lack of sufficient articulation leaves the door open to legitimately draw negative inferences of police actions.

An effective reporting system allows for both internal and external review of police activities. Maintaining the integrity of such a system is critical to fostering a culture of transparency within the RCMP. The Commission believes that RCMP management has a responsibility to promote such a culture by ensuring that all members understand the need to account through adequate articulation.

Supervisory review emerged as another problematic issue. Inadequate supervisor review was manifested in the high proportion of files that were not fully compliant with policy guidelines and/or the general absence of indications of supervisor comments or direction in files, such as those for missing persons. Given their leadership role, supervisors have an impact on organizational culture, including integrity and transparency. Thus, the importance of effective supervision was emphasized throughout the Commission's investigation, as it is a critical element of internal accountability.

Finally, the Commission faced some challenges with systems and procedures that did not support or otherwise facilitate external review. For example, the Commission intended to conduct a file review to examine member compliance with RCMP personal search policies and procedures—including instances of strip searches. However, the Commission was informed that the RCMP records management system in British Columbia does not track or otherwise account for the frequency or type of searches conducted, nor does the system allow for a recording of searches by members of the opposite sex (i.e. cross-gender searches). While this information may be recorded in a member's notebook, the lack of systematic recording or tracking severely limited the Commission's ability to evaluate compliance or determine if a systemic issue existed in this regard. The Commission has previously reported on "... the importance of appropriate document

Police can establish, restore or enhance public confidence through measures that enhance accountability, in particular by accepting civilian oversight. Such oversight requires transparency; police forces with high levels of integrity will have fewer difficulties being transparent and accountable.

- United Nations Office on Drugs and Crime, *Handbook on police accountability, oversight and integrity*, Criminal Justice Handbook Series (United Nations,



management and storage, so as to facilitate later review."<sup>376</sup> This remains an ongoing problem, which hinders the Commission's ability to hold the RCMP accountable for its actions. Ultimately, accountable policing means accepting, and in turn facilitating, external review.

Given that effective policing depends in large part on public consent, having the trust and confidence of the public they serve is critical to the legitimacy of the RCMP. Such consent is predicated on the transparency of police powers, integrity in exercising such powers and accountability for doing so.

In conclusion, the investigation did not result in findings of systemic misconduct by RCMP members in northern British Columbia, nor did it result in a single public complaint against an individual RCMP member. However, the investigation found evidence of policy and reporting weaknesses, compliance issues and the need for more robust training and supervision. In this regard, the Commission has made several recommendations aimed at enhancing RCMP policies, procedures and practices.

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

A handwritten signature in black ink, appearing to read 'Ian McPhail', with a stylized flourish at the end.

Ian McPhail, Q.C.  
Chairperson

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<sup>376</sup> *Supra* note 13.



## APPENDIX A: LIST OF FINDINGS AND RECOMMENDATIONS

# COMMISSION FINDINGS

### PERSONAL SEARCHES

**Finding No. 1:** The RCMP National Headquarters *Operational Manual* definitions of “body search” and “strip search” are unclear and do not provide sufficient guidance for members to clearly differentiate between the two.

**Finding No. 2:** The definition of “strip search” provided by the RCMP's national policy is not consistent with the definitions provided by current jurisprudence.

**Finding No. 3:** The RCMP's national policy requirement that members obtain the approval of a supervisor for a strip search “when one is available” is insufficiently stringent to ensure that such approval will be sought in all but exigent circumstances.

**Finding No. 4:** Sections 4.3. and 4.4. of RCMP National Headquarters *Operational Manual* chapter 21.2. lack clarity with respect to when strip searches by a member of the opposite sex are permitted.

**Finding No. 5:** Section 3. of RCMP National Headquarters *Operational Manual* chapter 21.2. does not provide clear direction to members on the required grounds to conduct an internal search, the necessary approvals or reporting requirements.

**Finding No. 6:** As written, section 5.2. of RCMP National Headquarters *Operational Manual* chapter 21.2. is unclear and creates ambiguity regarding the section 2.4. requirement to articulate the reasons for and manner in which a search was conducted, and where this information should be recorded.

**Finding No. 7:** The British Columbia RCMP policy mandating the removal of bras is contrary to common law principles. Absent reasonable grounds to conduct a strip search, the removal of a prisoner's bra is unreasonable.

**Finding No. 8:** By limiting training on strip searches to a review of relevant policies, procedures, law and written assignments, the RCMP Cadet Training Program fails to provide adequate training to cadets on what constitutes a strip search.

**Finding No. 9:** Relying on member or detachment initiative to request training, rather than mandating ongoing practical training in body searches or any training in strip searches in the Division, fails to ensure that members have adequate knowledge and experience in these areas.

**Finding No. 10:** From an accountability perspective the Commission finds that the RCMP's National Headquarters and British Columbia divisional personal search policies and practices are not adequate.

**Finding No. 11:** The RCMP's personal search policy does not provide special measures to ensure the protection of a young person's rights consistent with the spirit of the *Declaration of Principle* in section 3 of the *Youth Criminal Justice Act* and police practices in some other jurisdictions.

## **POLICING OF PUBLIC INTOXICATION**

**Finding No. 12:** Between 2008 and 2012 members failed to articulate on the occurrence report any reason for arresting an intoxicated person in 22.6% of cases and only provided a description of the person's level of intoxication in 55.8% cases.

**Finding No. 13:** Given the high proportion of files that were not compliant with policy guidelines the Commission finds that supervisory review of public intoxication occurrence reports was inadequate.

**Finding No. 14:** The factor outlined in section 7.2.2.2. of RCMP National Headquarters *Operational Manual* chapter 18.1. "Arrest and Detention," referring to a person's ability to prevent injury to himself/herself or to others, is not entirely consistent with current jurisprudence and does not adequately reflect the broader range of risks captured under the concept of "danger to himself/herself and/or to others."

**Finding No. 15:** RCMP National Headquarters *Operational Manual* chapter 19.2. "Assessing Responsiveness and Medical Assistance" provides clear guidance to members and provides accountability by requiring members to document details of their assessment and actions taken.

**Finding No. 16:** RCMP National Headquarters *Operational Manual* chapter 19.9. "Release of Prisoners" aligns with section 497 of the *Criminal Code* yet fails to capture the complete list of exceptions listed under this provision.

**Finding No. 17:** RCMP National Headquarters *Operational Manual* chapter 39.2. relating to the arrest of young persons is consistent with the notification requirements set out in the *Youth Criminal Justice Act*, but it does not provide guidance to members regarding notifying parents when a young person is arrested without a warrant and held in RCMP custody without being charged.

**Finding No. 18:** Section 1.3.3.1. of British Columbia RCMP *Operational Manual* chapter 100.5., in relation to the consideration of alternatives to detention and the release of intoxicated persons, is not consistent with national policy and the *Criminal Code*.

**Finding No. 19:** The RCMP training on policing public intoxication is consistent with national and divisional policies and procedures.

## USE OF FORCE

**Finding No. 20:** Despite modest improvement in 2012, a significant proportion of Subject Behaviour/Officer Response reports failed in various ways to articulate use of force interventions according to policy and training requirements.

**Finding No. 21:** The RCMP's national policy clearly establishes a member's responsibility for reporting use of force interventions.

**Finding No. 22:** The RCMP's national policy on Subject Behaviour/Officer Response reporting does not provide clear direction to supervisors with regard to identifying, reporting and tracking use of force issues in the reports.

**Finding No. 23:** The lack of information in the Subject Behaviour/Officer Response database on the identification and disposition of issues in use of force reporting reduces the value of the database as an accountability tool.

**Finding No. 24:** Supervisor training does not further inform national policy regarding the identification of issues in use of force reports.

**Finding No. 25:** Training materials and user guides related to the Incident Management/Intervention Model and Subject Behaviour/Officer Response reporting are consistent with national policies and comprehensive in setting out expectations for articulating use of force interventions.

## DOMESTIC VIOLENCE

**Finding No. 26:** The Commission's review found that 34.6% of the reports did not include the mandatory Domestic Violence Supervisor Quality Assurance template.

**Finding No. 27:** While the divisional policy requires the completion of the Domestic Violence Supervisor Quality Assurance template during the shift that the file was received, less than half of the templates reviewed (46.3%) were completed within three days of the reported occurrence date.

**Finding No. 28:** Section 1.6.1. of the national policy on violence in relationships fails to clearly differentiate between offences under the *Criminal Code* and those under other federal, provincial or territorial legislation.

**Finding No. 29:** Section 2.2.4. of the national policy on violence in relationships requiring members to obtain victim and witness statements if practicable appears insufficiently rigorous in light of the policy's requirement to investigate and document all complaints of violence in relationships.

**Finding No. 30:** Section 2.2.7. of the national policy on violence in relationships is unclear and does not adequately reflect the *Criminal Code* provisions for search and seizure .

**Finding No. 31:** The divisional policy does not provide clear direction to members making highest risk designations in violence in relationships cases.

**Finding No. 32:** The divisional policy emphasizes the importance of supervision and provides for adequate quality assurance and oversight of violence in relationships investigations.

**Finding No. 33:** The RCMP Cadet Training Program provides members with the basic required skills and competencies to deal with situations involving violence in relationships as well as to understand the legal authorities in this regard.

**Finding No. 34:** The training provided to RCMP members in British Columbia appears to cover the essential elements of violence in relationships investigations.

## **MISSING PERSONS**

**Finding No. 35:** Nearly half (46%) of the occurrence reports failed to show that the RCMP in the North District investigated missing persons cases promptly and thoroughly contrary to policy.

**Finding No. 36:** Nearly half (49.4%) of the occurrence reports from 2008 to 2012 for missing persons cases identified by the RCMP in the North District as "high-risk" failed to show that the cases had been investigated promptly and thoroughly.

**Finding No. 37:** Missing persons cases involving youth identified by the RCMP in the North District as *habitual*, *repeat* or *chronic* were more likely than other cases to have deficiencies in the documented investigative actions, including unexplained gaps in the investigative timelines and failures to document risk assessments or missing persons debriefs on file.

**Finding No. 38:** Over half of the files reviewed showed that North District supervisors failed to comply with the policy requirements to document observations and directions on file, and showed no indications of follow-up on member compliance with directions.

**Finding No. 39:** The RCMP in the North District appears to have made inappropriate use of the coding "Query to Locate" on missing persons files.

**Finding No. 40:** The definitions and guiding principles of the revised national policy on missing persons address concerns raised by the 2012 Missing Women Commission of Inquiry.

**Finding No. 41:** The national implementation of the Missing Persons Risk Assessment form addresses concerns raised in the Missing Women Commission of Inquiry, but the content of the form does not fully reflect new definitions in the 2014 national policy.

**Finding No. 42:** The revised national policy on missing persons does not require members to fully articulate risk assessments on file.

**Finding No. 43:** The national policy on missing persons does not explicitly require supervisors to document their observations and directions to members on the occurrence report.

**Finding No. 44:** The *Lost/Missing Person Report and Search Results* provides a comprehensive and standardized method of collecting pertinent information at the outset, but the voluntary nature of its use by members detracts from the goal of standardizing the approach to missing persons investigations.

**Finding No. 45:** The RCMP does not have any mandatory training on missing persons investigations for members at Depot Division, at the Pacific Region Training Centre or in the Field Coaching Program.

# COMMISSION RECOMMENDATIONS

## PERSONAL SEARCHES

**Recommendation No. 1:** That the RCMP update its National Headquarters *Operational Manual* policy definitions for “body search” and “strip search” to eliminate ambiguity and ensure that the definitions are consistent with current jurisprudence.

**Recommendation No. 2:** That the RCMP amend chapter 21.2. of its national policy regarding personal searches to ensure more robust supervisory oversight by explicitly requiring a supervisor's approval prior to conducting a strip search unless exigent circumstances exist.

**Recommendation No. 3:** That the RCMP amend chapter 21.2. of its national policy regarding personal searches to clarify if and when a strip search of a person of the opposite sex is ever permitted. Further, the policy should articulate the circumstances or criteria that must be met prior to conducting or overseeing a strip search of a person of the opposite sex (i.e. if immediate risk of injury or escape exists and/or in exigent circumstances).

**Recommendation No. 4:** That the RCMP amend its internal search policy to ensure that it clearly specifies the necessary grounds required prior to conducting an internal search as well as the required approvals.

**Recommendation No. 5:** That the RCMP amend chapter 21.2. of its national policy regarding personal searches to ensure that the policy addresses the member's requirement to articulate the reasons and manner of the search in writing, including the information members are required to document and where it must be recorded.

**Recommendation No. 6:** That the RCMP in British Columbia amend its policy regarding personal searches (*Operational Manual* chapter 21.2.) to reflect current jurisprudence.

**Recommendation No. 7:** That the RCMP enhance basic training at Depot Division to ensure that cadets are cognizant of the legal requirements, and relevant policies and procedures for all types of personal searches.

**Recommendation No. 8:** That the RCMP enhance training in personal searches to ensure that Division members are cognizant of the legal requirements and relevant policies and procedures for body, strip and internal searches, and that such training also be included in the Operational Skills Maintenance Re-Certification.

**Recommendation No. 9:** That the RCMP amend its National Headquarters and British Columbia divisional *Operational Manual* personal search policies to enhance transparency and accountability by ensuring the policies include an appropriate means of recording, tracking, and assessing compliance, thus facilitating independent review.

**Recommendation No. 10:** That the RCMP amend its national policy on personal searches to include specific guidance and direction in relation to strip searches of youth.

## **POLICING OF PUBLIC INTOXICATION**

**Recommendation No. 11:** That the RCMP remind North District supervisors of the requirement to be thorough in their review of occurrence reports and, in particular, of the importance of ensuring that all occurrence reports are properly documented, especially those involving the arrest and detention of a person.

**Recommendation No. 12:** That the RCMP incorporate mandatory review of public intoxication occurrences in North District unit-level quality assurance and management reviews.

**Recommendation No. 13:** That the RCMP amend the National Headquarters *Operational Manual* chapter 18.1., section 7.2. to reflect current jurisprudence.



**Recommendation No. 14:** That the RCMP amend National Headquarters *Operational Manual* chapter 19.9 to capture the complete list of exceptions listed under section 497 of the *Criminal Code*.

**Recommendation No. 15:** That the RCMP amend National Headquarters *Operational Manual* chapter 39.2. relating to the arrest of young persons to include guidance to members on notification requirements in instances where a young person is arrested and held in custody without being charged—particularly in cases involving public intoxication.

**Recommendation No. 16:** That the RCMP amend section 1.3.3.1. of divisional *Operational Manual* chapter 100.5. to outline conditions for release that mirror the guidance provided in the *Criminal Code* and to be consistent with national policy, which directs members to consider “alternatives to detention,” thereby allowing for the consideration of a broader range of release options.

## USE OF FORCE

**Recommendation No. 17:** That the RCMP in British Columbia's North District ensure that articulations of use of force interventions are clear and comprehensive, and fully align with policies, guidelines, and training requirements

**Recommendation No. 18:** That the RCMP establish criteria and reporting thresholds to aid in the identification of “issues,” and provide clear direction on reporting and tracking use of force issues identified in reports.

**Recommendation No. 19:** That the RCMP modify the Subject Behaviour/Officer Response database and reporting policies to enhance accountability by ensuring issues identified through the reporting process can be monitored, tracked, and independently reviewed.

**Recommendation No. 20:** That the RCMP modify supervisor training to provide guidance on the identification and reporting of issues in use of force reports.

## DOMESTIC VIOLENCE

**Recommendation No. 21:** That the RCMP ensure that yearly unit-level quality assurance and/or management reviews always include a review of violence in relationships investigations.

**Recommendation No. 22:** That the RCMP amend section 1.6.1. of National Headquarters *Operational Manual* chapter 2.4. to correctly reflect the distinction between *Criminal Code* offences and provincial and territorial statutes.

**Recommendation No. 23:** That the RCMP amend section 2.2.4. of National Headquarters *Operational Manual* chapter 2.4. to enhance accountability by requiring members who do not obtain victim and witness statements to document the reasons they were not obtained.

**Recommendation No. 24:** That the RCMP amend section 2.2.7. of National Headquarters *Operational Manual* chapter 2.4. to make it consistent with the search and seizure provisions in section 117.04. of the *Criminal Code*.

**Recommendation No. 25:** That the British Columbia RCMP ensure that the divisional policy adequately addresses the process for making highest risk designations.

## MISSING PERSONS

**Recommendation No. 26:** That the RCMP review and amend its Missing Persons Risk Assessment form to ensure that it contains questions that assist members in assessing the full range of risks that pertain to high-risk persons, including runaways and individuals with a high-risk lifestyle.

**Recommendation No. 27:** That the RCMP amend its national policy on missing persons to include a clear requirement to fully articulate risk assessments on file, and to update the risk assessment on file as a case progresses.

**Recommendation No. 28:** That the RCMP amend national policy on missing persons to ensure that it requires supervisors to fully document observations and directions to members on file.

**Recommendation No. 29:** That the RCMP update its national policy on missing persons to require members to complete the new *Lost/Missing Person Report and Search Results* form at the outset of an investigation.

**Recommendation No. 30:** That the RCMP review and amend the divisional missing persons policy in British Columbia to ensure that it is in line with the revised national policy.

**Recommendation No. 31:** That in the interest of promoting a standardized approach, and to support effective, comprehensive and coordinated responses to missing persons investigations, the RCMP consider making training on the revised national missing persons policy requirements mandatory for members in contract policing.

## APPENDIX B: THE PUBLIC COMPLAINTS PROCESS

The public complaint process forms part of the system of accountability for the RCMP. Pursuant to subsection 45.35(1) of the *Royal Canadian Mounted Police Act* (RCMP Act), a complaint regarding RCMP member conduct may be made by any member of the public. Complaints can be lodged with the Commission, directly with the RCMP or with a provincial body responsible for accepting complaints regarding police officers.

Subsection 45.37(1) of the RCMP Act also provides that the Commission Chairperson may make his or her own complaint when he or she is satisfied that there are reasonable grounds to investigate the conduct of the implicated member(s). The Minister of Public Safety and Commissioner of the RCMP are notified of all Chair-initiated complaints. The Commission accepts complaints concerning the on-duty conduct of RCMP members. It may also accept complaints regarding off-duty conduct where it determines that the conduct is likely to adversely affect a member's performance and/or the RCMP's reputation.

The RCMP may dispose of a public complaint in three ways:

- A complaint can be investigated by the RCMP, and a report detailing the RCMP's response to the allegations in the complaint is issued;
- The complainant and the subject member(s) involved can agree to an informal resolution, a process whereby the RCMP meets with the complainant to address the concerns and allegations raised in the complaint and both parties agree on the resolution of specific allegations or the entire complaint; and
- A public complaint investigation can be terminated or not commenced on the basis of criteria identified in subsection 45.35(1) of the RCMP Act. A Notice of Decision, rather than a report, is issued when the RCMP decides not to investigate a complaint or when an investigation into a complaint is terminated on the basis of one or more of the three distinct grounds provided for in the RCMP Act.

If a complainant is dissatisfied with the manner in which the RCMP disposed of his or her complaint, he or she may request a review of that disposition. The Commission will commence a review and notify the RCMP, requesting that it provide all material relevant to the complaint. The Commission reviews the RCMP's disposition of the complaint in light of the applicable policies, guidelines, training, and legislation.

If the Commission determines that the RCMP's disposition of the complaint is reasonable, it will issue a satisfied report to the complainant, the RCMP Commissioner and the Minister of Public Safety. However, if the Commission concludes that the disposition of a complaint is not reasonable, it will issue an interim report containing adverse findings and/or recommendations for improvement.

Following receipt of a Commission Interim Report, the RCMP Commissioner must respond to the Commission indicating whether he or she agrees or disagrees with the Commission's findings and recommendations as outlined in the Interim Report. Prior to the completion of its satisfied or interim report, the Commission may conduct further investigation or request that the RCMP conduct such further investigation on its behalf if more information is required in order for the Commission to form a conclusion.

Once the Commission has received the Commissioner's response, it prepares a Final Report After Commissioner's Response, which is sent to the complainant, the Commissioner, the Minister of Public Safety and the implicated member(s). This report is an acknowledgement of the Commissioner's response and provides the Commission's final findings and recommendations.

## APPENDIX C: RCMP TRAINING REVIEW

The RCMP Depot Division Cadet Training Program is a mandatory 24-week training course for all new RCMP recruits. The program provides training on the law, RCMP National Headquarters policies and procedures, and specific training on the vast array of policing competencies required for community policing.<sup>377</sup> Case studies and scenarios are used throughout the program to allow cadets to apply and practice the knowledge and skills learned.

Cadets who successfully complete the RCMP Cadet Training Program and are offered employment with the RCMP must subsequently complete the Field Coaching Program.

The Field Coaching Program is a six-month competency-based program implemented to assist new members in making the transition from the training environment to active operational policing. The program allows new members to apply the knowledge and skills acquired in the Cadet Training Program in an operational setting under the close guidance and supervision of an experienced RCMP member, with more than two years of experience. The program is divided into three phases, each phase requiring the new member to exercise increasing responsibility, judgment and independence.<sup>378</sup>

In British Columbia the Field Coaching Program requires new members to complete assignments and tests designed to familiarize them with national, division, and detachment policies and legal statutes.<sup>379</sup>

In addition to the Field Coaching Program, members in British Columbia also have access to the *“E” Division Service Standards Investigation Guide* on their desktop computers and all mobile data terminals in vehicles to assist with certain investigations, such as missing persons and violence in relationships investigations. The guide provides mandatory requirements, minimum investigational standards and general guidelines, as well as supervisor responsibilities.<sup>380</sup> In addition, RCMP members in British Columbia have access to an *Investigation Guide for First Responders* developed by the British Columbia Office of Investigative Standards and Practices and implemented on all mobile data terminals in the province. That guide also acts as a basic resource for members by providing recommended responses to various types of incidents.<sup>381</sup>

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<sup>377</sup> Cadet Training Program, Brief Overview, Program Training Standard (April 1, 2012).

<sup>378</sup> RCMP Field Coaching Program, Program Training Standard (June 2014) at 1–11.

<sup>379</sup> RCMP Field Coach Program, Program Training Standard – Module A and B (June 2014).

<sup>380</sup> RCMP *“E” Division Service Standards Investigation Guide* at 37–47.

<sup>381</sup> *Investigation Guide for First Responders*, British Columbia Office of Investigative Standards and Practices at 34–39.

## APPENDIX D: CONSULTATION, POLICY AND RESEARCH REPORTS ON MISSING PERSONS

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