



Commission for
Public Complaints Against the
Royal Canadian Mounted Police

Commission des
plaintes du public contre la
Gendarmerie royale du Canada

Kingsclear Investigation Report

Public Interest Investigation into RCMP Investigations
of the New Brunswick Training School

Executive Summary

Canada

Kingsclear Investigation Report: Public Interest Investigation into RCMP Investigations of the New Brunswick Training School—Executive Summary

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COMMISSION FOR PUBLIC COMPLAINTS AGAINST THE RCMP

CHAIR'S FINAL REPORT AFTER COMMISSIONER'S NOTICE

RCMP Act
Subsection 45.46(3)

KINGSCLEAR PUBLIC INTEREST INVESTIGATION REPORT

File No.: PC- 5710-200401

CHAIR'S FINAL REPORT AFTER COMMISSIONER'S RESPONSE

After concluding the public interest investigation, I forwarded my Interim Report to the Commissioner who responded to my recommendations in his Commissioner's Notice. After considering the Commissioner's comments, I have now prepared this, my Final Report.

The Investigation

In May 2004, the Commission for Public Complaints Against the RCMP (CPC) announced a public interest investigation into RCMP investigations of alleged sexual and physical assaults of residents at the New Brunswick Training School (NBTS) at Kingsclear. The investigation, which became known as the Kingsclear Investigation, also examined allegations that the RCMP did not properly investigate alleged criminal conduct of RCMP Staff Sergeant Clifford McCann and NBTS custodial staff and residents, and that the RCMP engaged in activities designed to cover up this alleged criminal conduct. In addition, the CPC examined 11 allegations that were lodged by seven complainants about RCMP investigative work spanning almost 15 years.

With a budget of \$3.1 million and a team of 19 investigators and staff, the CPC combed through more than 50,000 pages of documents and conducted 150 interviews in nine provinces. In 2007, the CPC completed its investigation, the results of which are provided in the Chair's Interim Report.

The Chair's Interim Report on the Investigation

In accordance with subsection 45.43(3) of the *RCMP Act*, which directs me to send to the Minister and Commissioner a report setting out my findings and recommendations, I forwarded my Interim Report on August 10, 2007.

After examining the facts and verifying the evidence in accordance with its Terms of Reference, the CPC is satisfied that there is no substantiated evidence that members of the RCMP attempted to cover up alleged criminal actions of retired Staff Sergeant Clifford McCann or of sexual and physical assaults by former NBTS custodial and supervisory staff. However, the CPC did find inadequacies in the RCMP's criminal investigations of both the staff at the NBTS and Staff Sergeant McCann, some of which are serious enough to create the perception of a cover-up.

Based upon these findings, I made nine recommendations which are outlined in the Conclusion section of the Interim Report.

The RCMP Commissioner's Response to the Chair's Interim Report

Subsection 45.46(2) of the *RCMP Act* directs the RCMP Commissioner to notify the Minister and the CPC of "any further action that has been or will be taken with respect to the complaint, and where the Commissioner decides not to act on any findings or recommendations set out in

the report, the Commissioner shall include in the notice the reasons for not so acting.” The Commissioner provided that response on September 13, 2007.

The Chair’s Final Report

I have now reviewed the Commissioner’s responses to the recommendations contained in the Interim Report and have provided this Final Report in accordance with subsection 45.46(3) of the *RCMP Act*. I note that the Commissioner’s individual responses vary greatly with respect to their substance and specificity. Set forth below are some examples of the Commissioner’s variable treatment of my recommendations.

For example, in response to recommendations associated with enhancing and enforcing note taking, report writing and documenting, the Commissioner’s response was more detailed than in other areas. He advised that the RCMP is redrafting its policy and referred to the specific elements of the policy to be addressed. He then went on to delineate the various methods by which the RCMP trains its members including two new training initiatives with a central focus on note taking and report writing. The Commissioner also made note of the current updating of the Unit Level Quality Assurances meant to assess the quality of investigations including the quality of documentation. The adequacy of note taking, report writing and documenting has long been identified as a problem by the CPC and the RCMP alike and, in fact, in this particular case two members interviewed Staff Sergeant McCann, who was the subject of a serious criminal investigation, and the notes kept by both members were so cursory and devoid of substance that they were of no value to the investigation.

Neither previous policies dealing with note taking, report writing and documenting nor the focused cadet training mentioned in the Commissioner’s Notice have been successful in eliminating chronic problems in this area. The key element of any effective strategy to ameliorate compliance with note taking, report writing and documenting policies should include an accountability mechanism whereby the RCMP identifies non-compliance and then provides directed remedial measures to the member. The RCMP might consider the practices of other police agencies which regularly assess adherence to their performance standards. It will be in this light that the CPC will be reviewing the new protocols in the near future and monitoring their impact in redressing past deficiencies in this area.

The Commissioner’s more robust treatment of the recommendations dealing with note taking, report writing and documenting can be contrasted with his weaker responses in other areas. First, in regards to my recommendations relating to inadequate resourcing of sensitive or large-scale investigations, I note that this was one of two recommendations to which the Commissioner did not specifically indicate his agreement. Rather he provided general comments from which I am unable to glean whether he intends to take any steps to rectify this problem. He stated that resource issues are assessed in the normal course and that it “must be recognized that resources are finite and that there are various factors, including vacancy rates and staff turn-over, that need to be considered.” I wish to assure the Commissioner that I recognize that resource and personnel issues come into play and that some of the difficulties associated with these factors are unique to the RCMP in terms of contract policing and staff mobility.

While I respect that these considerations may require tough choices to be made, my recommendation was made to address my concern that the RCMP investigations under review suffered from a lack of resources that resulted in interruptions, delays and an inadequate investigative quality. Citing fiscal and staffing realities without directing action designed to combat these problems is equivalent to accepting these investigative shortcomings for all sensitive or large-scale investigations.

I urge the Commissioner to reconsider his response to this issue and to raise the resource implications directly with the RCMP's contract partners (provinces/territories/municipalities), who must also contribute financially to any future initiatives designed to overcome these problems. I appreciate the difficulties raised by the Commissioner but maintain that this issue warrants extraordinary effort to avoid a recurrence of these problems during future investigations.

Another of the Commissioner's responses that does not go far enough to address the concerns raised in the Interim Report is the response to the recommendation dealing with cases where the RCMP investigates one of its own. I specifically recommended that another police service should be tasked with this type of investigation or, at the very least, a team of RCMP members from another region. The Commissioner stated that "appropriate policies and practices need to be in place to provide for independent investigations into allegations relating to members or employees of the RCMP." This comment amounts to no more than a generalized statement of principle absent the substance and commitment needed to satisfy me that the issue will be appropriately dealt with.

The Commissioner indicated that policy development is underway to address these concerns but provided no specifics. This response fails to demonstrate that the RCMP is being proactive in resolving the deficiencies identified in the Interim Report. I am not convinced that the ongoing practice of policy review, which was cited as a response to this and a number of other recommendations, will properly address the CPC's concerns without clear direction from the Commissioner.

The practice of the RCMP investigating itself is an issue of great public concern. The media scrutiny and public debate that surround sensitive and large-scale investigations which impact on the community's trust in the RCMP speak to the need for a concerted effort to create policy and procedures which ensure both the reality of and the perception of impartiality, transparency and accountability. Many of the concerns generated in relation to the RCMP investigations under review, were rooted in the lack of appropriate accountability and transparency mechanisms to ensure the public's confidence as to the integrity of the investigative process.

The Commissioner also made reference to the Independent Observer Pilot Project in "E" Division. This is a collaborative effort between the CPC and the RCMP designed to ensure the impartiality of the investigation of select serious or high-profile cases. This is only a bridging mechanism until legislative changes are made enhancing the accountability framework which ensures impartiality and transparency.

Conclusion

After careful review and analysis of the evidence and upon consideration of the Commissioner's response to my Interim Report, I conclude my review and confirm the recommendations contained in the Interim Report, as set forth below.

1. The CPC recommends that the Commissioner of the RCMP and RCMP commanding officers ensure that a mechanism is in place to identify investigations that may become sensitive or of a large-scale or both.
2. The CPC recommends that appropriate response and accountability mechanisms be put in place at the senior officer level to enable senior officers to monitor continuously the progress of any sensitive or large-scale investigation and assure the public of transparency, effectiveness and impartiality.
3. The CPC recommends that an assessment and follow-up be conducted to determine the actual resource needs of the RCMP "J" Division to ensure that any sensitive and large-scale investigation is conducted without interruption and in a timely and professional manner.
4. The CPC recommends that the CO and senior members of the RCMP in a pre-charge screening province ensure that members clearly understand their role in the administration of justice vis-à-vis the Crown to preserve their independence.
5. The CPC recommends that the RCMP examine, amend and enforce the "Investigator's Notebook" policy and all policies related to note taking, report writing and documenting to ensure that the policies are operationally effective and that officers adhere to and are continuously trained according to the guidelines.
6. The CPC recommends that the RCMP examine the policy on notebook retention used by other police agencies to glean best practices applied across the country, especially for officers who are retired, transferred or who voluntarily resign.
7. The CPC recommends that the various issues associated with note taking, report writing and documenting be addressed through various approaches, including training, policy revisions, internal oversight and monitoring.
8. The CPC recommends that any sensitive or large-scale investigation into allegations which impact on the community's trust in the RCMP should be tasked to another police service or, at the very least, to a team of RCMP officers from another region or province who would have the appropriate experience and who would be unfamiliar with the member under investigation. This would assist in limiting the perception of bias and ensure that public trust in the RCMP is maintained.
9. The CPC recommends that the RCMP improve its internal and external communication strategies for any sensitive or large investigation, adopting a proactive communications

approach using modern technologies to clearly demonstrate transparency and the RCMP's accountability to the public.

Serious steps must be taken by the RCMP to address the concerns raised in my Interim Report or there inevitably will be a recurrence of the problems which gave rise to the public's concern in this instance. The CPC will actively monitor the adequacy of the RCMP response and I will follow up directly with the Commissioner to verify the actions taken by the RCMP and the adequacy of those actions in responding to these recommendations. In addition to reporting to the Minister on these issues, the CPC will report to the public biannually on the status of the RCMP response to my recommendations.

A handwritten signature in cursive script, reading "Paul E. Kennedy".

Chair

Paul E. Kennedy
Chair
Commission for Public Complaints Against the RCMP
P.O. Box 3423, Station "D"
Ottawa, Ontario
K1P 6L4



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le professionnalisme, la compassion, le respect et la responsabilisation

September 13, 2007

Mr. Paul E. Kennedy
Chair
Commission for Public Complaints Against
the Royal Canadian Mounted Police
P.O. Box 3423, Station "D"
Ottawa, Ontario
K1P 6L4

Dear Mr. Kennedy:

I acknowledge receipt of your interim report dated August 10, 2007, following your public interest investigation into allegations of sexual and physical abuse at the Kingsclear Youth Training Centre, in Kingsclear, New Brunswick, file reference 5710-200401.

On September 7, 2007, I reviewed your report which contained a number of findings and recommendations. This notice is provided pursuant to subsection 45.46(2) of the *Royal Canadian Mounted Police (RCMP) Act*.

Generally speaking, I am in agreement with your findings; however, I have some concerns with the following:

- 1. The deference to the Crown's office in pursuing charges affected the public's perception of the RCMP and may have affected the outcome of the McCann investigation.**

First, I agree that our members need to understand that they have the authority and obligation to make decisions to investigate and lay charges

.../2

unimpeded by the Crown. The Crown and the police have separate and important roles to play in the administration of justice. As you know, the Crown's advice, as well as their independent determination of whether or not to proceed with charges relative to any criminal case, is based on two factors: the reasonable prospect of a conviction based on admissible evidence, and the public interest. Only in extraordinary cases would the RCMP proceed to lay charges following the Crown's recommendation to the contrary. To do so, in most cases, would not be in the public interest, nor would it serve in the furtherance of the administration of justice.

Second, I do not agree that deference to the Crown may have affected the outcome of the McCann investigation. As you know, our members interviewed and re-interviewed a number of possible witnesses before eventually receiving a complaint many years later. Unfortunately, the fact that the complainants had previously denied having suffered any kind of abuse at the hands of Mr. Clifford McCann, coupled with the complainants' criminal records and/or history of alcohol and drug abuse, affected their credibility to the point where a conviction based on their word alone was highly unlikely. Our members were very much aware of this and Crown's advice only confirmed their view. Deference to the Crown did not affect the outcome of the investigation. The investigation was already concluded when the Crown was consulted.

2. **The CPC finds that there is no evidence of a cover-up as defined for the purpose of this investigation involving the RCMP members interviewed. In fact, the CPC finds that the RCMP pressed the Crown to lay additional charges against Mr. Toft and considered hiring its own lawyer to prosecute the charges.**
3. **The CPC finds that there is no substantiated evidence that members of the RCMP who were interviewed engaged in a cover-up in relation to the RCMP investigations into the allegations against Staff Sergeant McCann.**

I agree with these two findings, but am concerned with the inclusion of the words "involving the members interviewed" in the second finding, and "who were interviewed" in the third finding. This leaves open the potential interpretation that there may be evidence suggesting that other members of

the RCMP were engaged in a cover-up, which is not consistent with your finding articulated at paragraph 16.1 (Overview of findings):

After examining the facts and verifying the evidence in accordance with its Terms of Reference, the CPC is satisfied that there is no substantiated evidence that members of the RCMP attempted to cover up alleged criminal actions of retired Staff Sergeant Clifford McCann or of sexual and physical assaults by former NBTs custodial and supervisory staff.

I will now address your nine recommendations.

Recommendations 1 and 2

- 1. The CPC recommends that the Commissioner of the RCMP and RCMP Commanding Officers ensure that a mechanism is in place to identify investigations that may become sensitive or of a large scale or both.**
- 2. The CPC recommends that appropriate response and accountability mechanisms be put in place at the senior-officer level to enable senior officers to monitor continuously the progress of any sensitive or large-scale investigation and assure the public of transparency, effectiveness and impartiality.**

I agree with these two recommendations and would point out that in every division, an officer in charge of Criminal Operations reports directly to the Commanding Officer. The officer in charge of Criminal Operations is to be regularly briefed on all major operations within that division, including sensitive or large scale investigations. The officer in charge of Criminal Operations has a responsibility to keep the Commanding Officer briefed on a regular basis.

In light of your findings and recommendations I will remind Commanding Officers and Criminal Operations Officers of the requirement to have appropriate practices and processes in place to monitor large scale and sensitive investigations.

Recommendation 3

- 3. The CPC recommends that an assessment and follow-up be conducted to determine the actual resource needs of the RCMP "J" Division to ensure that any sensitive and large-scale investigation is conducted without interruption and in a timely and professional manner.**

Resource requirements in "J" Division, as well as other divisions are assessed on an ongoing basis, in consultation with our contract partners (provinces/territories/municipalities). It must be recognized that resources are finite, and that there are a number of factors, including vacancy rates and staff turn-over, that need to be considered. Vacancies are being addressed on a number of fronts, including by the RCMP enhancing capacity at our training academy, Depot Division, and by increasing the numbers of recruits.

Recommendation 4

- 4. The CPC recommends that the CO and senior members of the RCMP in a pre-charge screening province ensure that members clearly understand their role in the administration of justice vis-à-vis the Crown to preserve their independence.**

As previously above, I agree that our members need to understand that they have the authority and obligation to make decisions to investigate and lay charges unimpeded by the Crown; however, only in extraordinary cases would the RCMP proceed to lay charges following the Crown's recommendation to the contrary.

The three divisions with pre-charge screening are New Brunswick, Québec and British Columbia. I will ask the Commanding Officers of these divisions ("J", "C" and "E") to remind members under their command of their role and authority with respect to the laying of criminal charges independent of the Crown.

Recommendations 5 and 7

- 5. The CPC recommends that the RCMP examine, amend and enforce the "Investigator's Notebook" policy and all policies related to note taking, report writing and documenting to ensure that the policies are operationally effective and that officers adhere to and are continuously trained according to the guidelines.**

7. **The CPC recommends that the various issues associated with note taking, report writing and documenting be addressed through various approaches, including training, policy revisions, internal oversight and monitoring.**

We are currently redrafting the policy on "Investigator's Notebooks" which emphasizes the importance of good note taking. The policy sets rules for the care and maintenance of the notebook, the types of notebooks that are acceptable, basic information required, methods of making entries and corrections, and links to retention provisions that are proposed in Recommendation 6.

Efforts are underway to update and standardize the Unit Level Quality Assurances (ULQA) which are meant to assess the quality of all aspects of an investigation including note taking, the quality of documentation and report writing.

Our Learning and Development Branch is working on a new supervisors' course as well as on updating the field coaching course, both of which stress quality note taking and report writing. Moreover, Depot Division has a well-defined Cadet Training Program which stresses and evaluates the quality of note taking and report writing.

I am satisfied that these efforts will address the issue of note taking appropriately.

Recommendation 6

6. **The CPC recommends that the RCMP examine the policy on notebook retention used by other police agencies to glean best practices applied across the country, especially for officers who are retired, transferred or who voluntarily resign.**

The policy development checklist followed by the Operational Policy Section (OPS) requires consultation with the policies and practices of other police agencies. The OPS is currently developing policy on notebooks which will deal with the issues that you have brought to my attention, specifically with respect to turning in all notebooks prior to retirement or resignation, and the time period that these notebooks must then be retained.

Recommendation 8

8. **The CPC recommends that any sensitive or large-scale investigation into allegations which impact on the community's trust in the RCMP should be tasked to another police service or, at the very least, to a team of RCMP officers from another region or province who would have the appropriate experience and who would be unfamiliar with the member under investigation. This would assist in limiting the perception of bias and ensure that public trust in the RCMP is maintained.**

I agree that appropriate policies and practices need to be in place to provide for independent investigations into allegations relating to members or employees of the RCMP.

A number of initiatives are underway to address concerns which have been identified. These include the development of policies specifically addressing the matter of such investigations, and the ongoing pilot project in "E" Division involving the CPC from the outset of investigations.

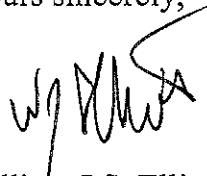
Recommendation 9

9. **The CPC recommends that the RCMP improve its internal and external communication strategies for any sensitive or large investigation, adopting a proactive communications approach using modern technologies to clearly demonstrate transparency and the RCMP's accountability to the public.**

Once again, I agree and will therefore direct that a review into current policy pertaining to sensitive and large-scale investigations be conducted to ensure that our communication strategies take into consideration the need to demonstrate transparency and accountability to the public, that it is adequate, and that it is being applied consistently RCMP-wide.

Thank you for bringing these very important issues to my attention. I look forward to reading your final report.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'W. J. Elliott', with a stylized flourish at the end.

William J.S. Elliott

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1. Introduction

In 2004, the Commission for Public Complaints Against the RCMP (CPC) received a series of allegations against the RCMP following the conclusion of the RCMP's multi-year investigation into allegations of sexual assault at the now-closed New Brunswick Training School (NBTS) at Kingsclear, New Brunswick. In all, seven complainants lodged 11 allegations (two of which were repeated), primarily alleging that

- the RCMP investigations into allegations of abuse at the NBTS were inadequate;
- there was a cover-up by the RCMP of wrongdoing with respect to alleged criminal activities at the NBTS;
- the RCMP investigations into allegations against Staff Sergeant Clifford McCann were inadequate; and
- there was a deliberate cover-up by the RCMP of alleged wrongdoing on the part of Staff Sergeant McCann.

Following a review of the allegations, the CPC determined it would be in the interest of the public, the complainants, the victims and their families, as well as RCMP members and their families, to initiate a CPC-led investigation into the circumstances surrounding the allegations. Thus, the CPC launched the largest public interest investigation it has ever undertaken in order to canvass all relevant evidence. The findings and recommendations that are presented here and in the *Kingsclear Investigation Report* cover concerns such as senior-officer involvement in the RCMP investigations in relation to accountability; resourcing; procedures for interview techniques and note taking; and communication with the public.

With a budget of \$3.1 million and a team of 19 investigators and staff, the CPC combed through more than 50,000 pages of documents and conducted 150 interviews. In 2007, the CPC completed the Kingsclear public interest investigation into the series of criminal investigations conducted by the RCMP from 1990 to 2003, the results of which are provided in the *Kingsclear Investigation Report*. The following is a summary of the report by the CPC.

1.1 Background

For decades, the NBTS was the scene of the sexual and physical assault of young delinquent and homeless boys entrusted to its care, leading the New Brunswick government to hold a public inquiry from 1992 to 1994 and establish a compensation program for victims. The Commission of Inquiry (the Miller Inquiry as it became known) was established following the conviction and sentencing of a former guard at the NBTS for sexual assault in December 1992. The purpose of the Miller Inquiry was to look into the response by some members of the provincial government to complaints of physical and sexual assault.

The school opened in 1962 and was operated by the provincial Department of the Attorney General as a reformatory for young offenders, and a place of safety for any child in need of protection. By the time it finally closed in 1998, it had become infamous for the abuse suffered by many of its residents. Many of the residents who had been sexually or physically assaulted while confined there suffer emotional scars or struggle with alcohol and drug addiction.

The first indication of their mistreatment emerged in 1985 when a youth counsellor at the school reported a fellow employee for molesting three boys to his superiors, the Fredericton Police Force (FPF) and officials from the Solicitor General's department. Nothing came of his allegations and four years later he tried again, eventually gaining audience with a senior CBC news reporter and the provincial Attorney General.

The RCMP became aware of the FPF's investigation into the NBTS on 7 February 1990. This was after the Attorney General asked the RCMP to investigate the youth counsellor's allegations about the investigation involving the Fredericton Police Force, some members of the Department of the Solicitor General and in particular, Karl Toft. The RCMP investigated and reported on the Attorney General's request in July 1990. It was not until October 1990, when the RCMP received information from the provincial Executive Director of Policing Services, that the RCMP started its investigations into the NBTS. These investigations into alleged sexual and physical assaults initially focused on Mr. Toft and eventually expanded to include several former NBTS employees and RCMP Staff Sergeant McCann.

Although the RCMP's investigations spanned almost 15 years and included hundreds of hours spent interviewing former NBTS residents, reviewing investigation files and compiling a potential suspect list of nearly 50 persons, only three persons were charged and only two were convicted. Mr. Toft pled guilty to 34 counts in 1992 which included both RCMP and FPF charges and was sentenced to 13 years in jail (which he served in full) and former maintenance worker Hector Duguay was found guilty of four of five charges in 1993. He served a five-month concurrent sentence.

Three former residents of the NBTS, dissatisfied with the results of the RCMP investigations, lodged complaints with the CPC in February 2004. The CPC announced that it was launching the Kingsclear public interest investigation on 27 May 2004; by November 2004, four more men had also lodged complaints with the CPC that were related to the RCMP's investigation.

1.2 Planning the Public Interest Investigation

For the sake of efficient and effective management of the public interest investigation, the CPC assigned two teams to look at the RCMP's series of criminal investigations as though they were two separate RCMP investigations—one that investigated persons implicated at the NBTS and one that investigated Staff Sergeant McCann. The facts and the findings presented in the *Kingsclear Investigation Report* and this *Executive Summary* are similarly organized along two investigative tracks.

2. About the RCMP Investigations

From 1990 to 2003, the RCMP conducted a series of criminal investigations that were initiated, concluded and reopened into persons implicated at the NBTS, including Karl Toft and other staff of the NBTS, as well as former RCMP Staff Sergeant Clifford McCann, whose name came up during interviews with former school residents. Some of the same officers who were investigating former employees at the NBTS also investigated the allegations against Staff Sergeant McCann as a part of the NBTS investigation.

2.1 Overview of the NBTS Investigations

In 1985, NBTS youth counsellor David Forbes filed a complaint with the Fredericton Police Force (FPF) against Mr. Toft, a guard at the school, alleging that Mr. Toft sexually assaulted three young boys confined at the NBTS. The RCMP did not learn of Mr. Forbes' complaint until 7 February 1990, when the Attorney General requested the RCMP investigate the matter.

The investigation was concluded in July 1990 without any charges being laid because the three boys that Mr. Forbes had identified as victims did not want to testify in court; a fourth possible victim to whom Mr. Forbes had referred was not contacted because the original three were reluctant to pursue the matter. The province's Executive Director of Policing Services questioned why the fourth boy was not interviewed and provided the RCMP with the name of a possible new victim, leading the RCMP to commence an investigation in October 1990 into these two names and Mr. Toft's behaviour with them. In June 1991, the FPF began its second investigation into the NBTS after receiving an allegation from a former resident regarding Mr. Toft.

In the course of its investigation, the RCMP learned of complaints of possible sexual assault committed by other NBTS employees. Eventually, the RCMP prepared court briefs for the Crown to review in relation to criminal charges against Mr. Toft, Weldon (Bud) Raymond, Hector Duguay and other staff at the NBTS. Both the RCMP and the FPF laid criminal charges against Mr. Toft, which resulted in Mr. Toft pleading guilty and receiving a 13-year jail sentence in 1992.

The RCMP attempted to pursue additional charges against Mr. Toft. After discussing the matter with the Crown's office, the RCMP laid 15 charges involving 13 victims on 22 October 1993. However, about a week later the Attorney General stayed the charges, stating that the public interest would be better served if the Miller Inquiry were permitted to proceed rather than to permit the criminal charges against Karl Toft to stand.

The investigation was concluded in 1995 when the Attorney General confirmed that it would not lift the stay of proceedings it had imposed on the RCMP's additional charges against Mr. Toft. In 1999 following new complaints related to the NBTS, the RCMP asked for and received clarification regarding the Attorney General's position relating to Mr. Toft. The Attorney General's office explained that, while it would not proceed with charges against Mr. Toft similar to those for which he had been convicted, investigations into complaints of crimes committed by other NBTS staff members should continue. With this new understanding of the Attorney General's position, the RCMP began investigating these new allegations.

Initially, the investigation was sporadic and involved only a few former residents. In February 2000, the investigation was broadened after a self-identified victim, unhappy with the outcome of a complaint he had made in 1998 against retired Staff Sergeant Clifford McCann, expressed his concerns with the Criminal Operations (CROPS) Officer at the RCMP "J" Division in Fredericton, New Brunswick. As a result, the RCMP

reviewed the relevant files and decided to form an investigation team in 2000. Staffing and resource issues delayed the assembly of the team until May 2001. By 2002, the RCMP had informed four complainants that, based on consultation with Crown counsel, their respective cases against Messrs. Toft and Raymond did not have a reasonable prospect of conviction—the test for proceeding with charges in New Brunswick—and that their files had therefore been concluded.

2.2 Overview of Staff Sergeant McCann Investigations

RCMP investigators began to hear rumours and innuendo about fellow police officer Staff Sergeant McCann a year after they began investigating staff at the NBTS. Staff Sergeant McCann participated in activities with young boys at the NBTS and through minor hockey associations. The rumours and innuendo stemmed from the fact that Staff Sergeant McCann often took boys from the NBTS out on passes just as Mr. Toft had.

In January 1992, a senior RCMP officer requested that the rumours about Staff Sergeant McCann be investigated to determine if there was any substance to them. The investigators did not uncover any evidence or receive any specific complaints to support the rumours. Staff Sergeant McCann denied any wrongdoing during an interview in March 1992. Although Staff Sergeant McCann retired in April 1993, the investigation continued until the end of the year. One former resident made an allegation against Staff Sergeant McCann in December 1992, but refused to make a formal complaint or give a statement despite repeated attempts by the RCMP to get him to co-operate. In December 1993, the RCMP closed the investigation without laying any charges against Mr. McCann and without any review by the Crown.

In January 1998, a former resident called the RCMP to make a sexual assault complaint against Mr. McCann. The RCMP contacted this former resident and one other resident and conducted an interview with Mr. McCann later that year. Following informal consultation with Crown counsel, the alleged victims were advised in early 2000 that no charges would be laid given that any possible charge would be a summary conviction offence and the limitation period of six months for laying a charge for a summary conviction offence had elapsed.

The RCMP reopened the investigation in February 2000 when the complainant who came forward in early 1998 re-contacted the RCMP to express his dissatisfaction with the results of his case. However, delays in obtaining funding and establishing an investigation team meant that it did not really get underway until May 2001.

During the reopened investigation, seven former NBTS residents disclosed alleged instances of sexual assault by Mr. McCann. Four of the seven complainants had initially told investigators in 1992 that Staff Sergeant McCann had not abused them. In August 2002, the Crown counsel assigned by the provincial Director of Public Prosecutions was asked to review the seven complaints. Despite not having received any response from the Crown, the RCMP arrested Mr. McCann and questioned him for several hours on 11 September 2002. He was released that evening without any charges being laid because he did not make any incriminating statements while in police custody. The Staff Sergeant in charge did not feel there was sufficient evidence to lay any criminal charges.

At the end of January 2003, the Crown's office asked for more investigative work to be done in relation to the seven alleged victims. The RCMP provided all the information requested by the Crown's office with the exception of one file. RCMP investigators had concluded that they did not find the former resident in that one file to be credible; moreover, the time for laying the charge for a summary conviction offence had long since elapsed. In July 2003, the Crown's office responded: having determined that an acquittal was more likely than a conviction in all cases, largely because of the lack of credibility of the complainants, the Crown's office did not recommend any criminal charges be laid.

3. Findings of the Kingsclear Investigation

The CPC spent 22 months conducting its investigation into the RCMP's handling of allegations of sexual and physical assault at the NBTS. The Terms of Reference for the Kingsclear public interest investigation were established to provide a framework and scope for the investigation. The term "cover-up" was defined in the Terms of Reference as

an intentional or reckless disregard of evidence that has the effect, or potential effect, of interfering with or undermining internal or external accountability mechanisms. In accordance with the foregoing, a "cover-up" is not proven if the evidence solely or simply establishes negligence, carelessness, laziness, incompetence or lack of interest by RCMP investigators.

3.1 Overview of Findings

After examining the facts and verifying the evidence in accordance with its Terms of Reference, the CPC is satisfied that there is no substantiated evidence that members of the RCMP attempted to cover up alleged criminal actions of retired Staff Sergeant Clifford McCann or of sexual and physical assaults by former NBTS custodial and supervisory staff. However, the CPC did find inadequacies in the RCMP's criminal investigations of both the staff at the NBTS and Staff Sergeant McCann, some of which are serious enough to create the perception of a cover-up.

3.2 Public Perception

The public's perception has been influenced by rumours and what little information was available to the public during the almost 15-year series of investigations into former Staff Sergeant McCann and the NBTS staff. The public did not have access to information that was available to the CPC. Through its investigation, the CPC obtained and validated information that answered some of the questions the public has had over the years, and that explained the many misconceptions.

For example, the CPC learned during its investigation, that the RCMP was so determined to proceed with charges against Karl Toft that it was prepared to hire its own prosecutor had the Crown refused to go forward with charges, and that it even advised the provincial Director of Public Prosecutions that it would do so. Ultimately, the Director agreed to lay 15 additional charges against Mr. Toft in October 1993; however, the Attorney General of New Brunswick stayed the criminal proceedings a week later.

The CPC found that the RCMP's investigative efforts were not widely known by the public. For example, some former residents who lodged complaints with the CPC did not know that Weldon (Bud) Raymond had been charged and acquitted of criminal offences following two separate trials composed of a judge and jury, and that Hector Duguay was charged and convicted. Another CPC complainant was unaware that, during its investigation, the RCMP had arrested and interrogated Mr. McCann for several hours.

The complainants and their family members who were interviewed did not have a clear understanding or, in some cases knowledge, of the pre-charge screening system that is in place in New Brunswick, where the Crown's policy is to scrutinize and give their consent to all charges before they are laid by the police. This was yet another factor influencing the public's skepticism of the RCMP's investigations and their results. Before recommending whether the police or the RCMP should lay charges, the Crown counsel considers the strength of the evidence, the seriousness of the offence, the public interest, the credibility of an alleged victim when on the witness stand and the alleged victim's willingness to testify. Unless the Crown is convinced that a "conviction is more likely than an acquittal," he or she will not recommend laying criminal charges.

3.3 Difficulties Encountered in the RCMP Investigations

Sexual assault investigations, especially those involving pre-teen and teenaged youth, are different from any other criminal investigation. In these situations, investigators have to use different approaches to obtain information from the alleged victims. This was the situation the RCMP encountered during the investigations into the NBTS and Staff Sergeant McCann.

The majority of former residents were reluctant to get involved, which presented a significant obstacle to investigators. Because most of the victims had not come forward on their own initiative, the RCMP had to solicit their co-operation, adding to the length and complexity of the investigation. The fact that it was an historical investigation, especially one involving sexual assault, also presented major obstacles, including the passage of time, the trauma experienced by the victims and the effect of these two factors on the ability of potential witnesses to recall events accurately and credibly.

Initially, the RCMP encountered difficulties in accessing the NBTS records stored at the Provincial Archives of New Brunswick. After receiving legal advice, the provincial government took the position that Section 45.2 of the *Young Offenders Act*, which was in force at the time of the RCMP's inquiries, prohibited the release of any information on past or present residents of the NBTS. As a result, the RCMP spent valuable time dealing with Crown counsel, filing affidavits and appearing before the court. Although they were eventually successful in gaining access, they were restricted in the number of former NBTS residents they could collect information on at any one time. As well, because the court orders specified the name of the suspect about whom the RCMP could gather information, the RCMP had to obtain a new court order whenever the name of a new suspect came up, which caused further delays.

3.4 Findings Related to the NBTS Investigations

Few investigations, if any, are perfect, and the RCMP's investigations into the NBTS and Mr. McCann are no exception. The CPC identified a number of shortcomings with the RCMP investigations, which can be attributed to personality issues, the RCMP's allocation of resources and the fact that other important investigations were occurring in New Brunswick at the same time. These shortcomings can also be attributed in part to a lack of due diligence by some members and senior management of the RCMP. Moreover, rather than one investigation, the RCMP conducted a series of investigations into identical allegations over a period of 15 years.

3.4.1 Finding One

The due diligence of senior officers in relation to this investigation was lacking.

Analysis

The 1992 investigation of Staff Sergeant McCann provides an example of the lack of diligence on the part of senior officers. One of the most significant weaknesses of that investigation was the lack of appropriate involvement by the senior officers in “J” Division, in particular, their apparent lack of any specific or even general knowledge about the investigation. The only officers who admitted to knowing anything about the investigation into Staff Sergeant McCann were the Commanding Officer (CO), Chief Superintendent Herman Beaulac, and the Criminal Operations (CROPS) Officer, Superintendent Giuliano Zaccardelli. The Staffing and Personnel Officer, Inspector Peter Miller, who first initiated Staff Sergeant McCann’s transfer in January 1992, and Superintendent Al Rivard, who was Staff Sergeant McCann’s immediate superior, indicated that they did not know of any criminal investigation being conducted into Staff Sergeant McCann’s activities at the time.

Several retired senior officers (all former Administration and Personnel [A&P] officers) advised the CPC that an internal investigation file is customarily opened at the outset of a criminal investigation of a member. Upon completion of the criminal investigation, the CO, usually in conjunction with the A&P Officer, would make a decision about whether an internal investigation would be conducted. Even if no criminal charges are laid, a decision should have been made to proceed with an internal investigation, at which point the file would have been examined to determine if there were any Code of Conduct infractions that could result in some form of internal discipline. However, the CPC has not received any documentation indicating that an internal file on Staff Sergeant McCann, who retired in April 1993, was opened at any time. The fact that further criminal investigations were conducted later, without an internal investigation being conducted or at the least a file opened, demonstrates the lack of involvement of senior officers.

The priority senior officers gave to the NBTS investigation in its early years was inconsistent. For instance, in their interviews with the CPC, former Commissioner Zaccardelli and retired Assistant Commissioner, Ford Matchim, the Officer-in-Charge (OIC) (Superintendent) of Fredericton Subdivision during that period, recalled the priority given to the investigation differently. On the one hand, Mr. Zaccardelli maintained that the investigation was always a high priority and that he reflected this in the directions he provided to Mr. Matchim. Mr. Matchim, on the other hand, indicated that for the investigators at the street level it was just another investigation, even though the senior officers, as he referred to them, thought differently. He further maintained that it was just another investigation on the list of many investigations being conducted by the Fredericton Subdivision General Investigation Section (GIS) at the time, which indicates that senior management was not involved at the appropriate level.

The lack of the due diligence expected in a large investigation of this nature may have impacted other areas that the CPC found problematic such as resourcing; the relationship with the Crown; note taking, reporting and documentation; and communication with the public. The impact of these problem areas on the investigations might have been lessened had senior management realized the importance and sensitivity of the allegations and been appropriately involved.

3.4.2 Finding Two

The resourcing for the investigations was inadequate.

Analysis

During its investigation, the CPC heard concerns about the adequacy of the RCMP's allocation of human resources. These concerns were raised from all levels, including the senior officers in "J" Division. This was reflected in the early years of the investigation by the fact that individual officers, as opposed to teams, were assigned to the investigation. The system of officers working in pairs or as part of an investigative team was generally not practiced, exposing the investigation to problems such as delays and inconsistent investigative work when an officer was transferred to another investigation or to another division.

The availability of resources also affected workload allocation. Members assigned to the investigation were required to maintain their assigned files while diverting their attention to urgent cases, such as the lobster fishing dispute at Burnt Church and the Bischoff murder case. Various officers informed the CPC that after dealing with more immediate issues, they would return their focus to the NBTS investigation.

A number of members were rotated in and out of the investigations over the course of almost 15 years. Members would be assigned for a few months and then transferred to another position, leaving gaps in the investigations. If and when a new member came on board, he or she required time to become familiar with the status of that investigation. Such constant rotations can present a challenge to conducting a thorough and timely investigation. Responsibility for these types of resourcing challenges rests with the senior command in "J" Division.

3.4.3 Finding Three

The deference given to the Crown's office in pursuing charges affected the public's perception of the RCMP and may have affected the outcome of the McCann investigation.

Analysis

As noted by Justice LeBel of the Supreme Court of Canada in *R. v. Regan* [2002], 1 S.C.R. 297, under the Canadian criminal justice system, the police are responsible for conducting investigations and have the ultimate responsibility for deciding which charges should be laid. New Brunswick is one of three Canadian provinces which has a procedure in place that requires the police to engage with the Crown counsel in a pre-charge assessment as to the likelihood of a conviction at trial. The majority of RCMP officers interviewed erroneously believed that they could not lay criminal charges absent a positive Crown assessment.

Although it is recognized that cooperation and consultation between the police and the Crown counsel is essential to the proper administration of justice, it should be remembered that the police have the ultimate right to investigate and lay charges unimpeded by the Crown, just as prosecutors have the right to stay, withdraw or discontinue a prosecution once a charge has been laid by the police. This distinction is recognized in the New Brunswick *Public Prosecutions Operations Manual* (27 July 1999) that was received by the CPC in August 2005.

The various Crown counsel involved in the RCMP investigations over the past decade told the CPC that they do not instruct the police on how or what to investigate; they only make recommendations about which charges to proceed with. The Crown counsel acknowledged that, despite a recommendation not to lay charges, the police still have the authority to lay a charge, and the Attorney General has the authority to stay the charge.

It is evident to the CPC that the ultimate responsibility of the police in respect to laying criminal charges is not well understood by many RCMP officers in “J” Division. This misperception was enough of an issue that Superintendent Zaccardelli, while CROPS Officer for “J” Division, tried to clarify the matter by responding to a memorandum from Corporal Clive Vallis via a Transit Slip dated 13 February 1991:

Whenever we refer to laying charges we should always indicate that ... we will determine if charges should be laid after review of the evidence. The Crown of course is often consulted but only for their opinion. Too many members think that the Crown decides what charges should be laid. Or some members don't want to have to decide. They take the easy way out and let the Crown make the decision. From CROPS the message has to go out that members must make the decision after due consultation with supervisors, section NCOs, OCs, etc.

In interviews with the CPC, Crown counsel and members who served in “J” Division said that relations between the Crown and the police have always been close, professional and cordial. The CPC did not find any instance where the Crown was dissatisfied with RCMP briefs or reports. The pre-charge screening procedure was implemented in the province many years ago and still exists today. The investigators interviewed indicated that they rely on the Crown to a great extent for advice on cases they are investigating. The RCMP has rarely proceeded with charges after receiving a recommendation from the Crown not to do so.

3.4.4 Finding Four

Note taking, report writing and documenting by some RCMP members were inadequate.

Analysis

The quality of the notes kept by some RCMP members at crucial points during the investigation is a serious issue. The CPC found wide variation in the manner and comprehensiveness of officers' notes and reports. At one extreme are officers who document every action taken in various reports; at the other are officers who keep minimal notes, if any, and enter them only in a Continuation Report or an Investigation Report.

Examples

- At the conclusion of his investigation, Constable Tom Spink verbally discussed with Crown counsel Hilary Drain whether to proceed with charges against Mr. Toft. The only documentation the CPC received about the meeting was in a Continuation Report that briefly summarizes the decision. The CPC cannot confirm whether the parties discussed the findings and conclusions or other topics of concern, such as the allegations involving the Fredericton Police Force (FPF) and the NBTS that were set out in the letter from the Attorney General on 7 February 1990. Constable Spink did not prepare any documentation in advance of his meeting with Ms. Drain. It would appear from speaking with Ms. Drain and Constable Spink that this was, in fact, just a verbal briefing and that no documentation was given or received. He told the CPC that he would have consulted with his supervisor and peers before going to see Ms. Drain. However, there is no documentation that could support his recollection of the events.

- Sergeant Doug Lockhart's interview of Staff Sergeant McCann on 12 March 1992 is poorly documented. There is no documentation detailing the questions asked or indicating if Sergeant Lockhart briefed his superior officers before or after the interview, and what such a briefing may have contained.
- Staff Sergeant McCann's second interview on 29 October 1998 was not recorded, nor was there a formal statement taken. Following the interview, the officers, Constable Pat Cole and Staff Sergeant Jacques Ouellette, prepared very brief summaries noting that Staff Sergeant McCann's residence was visited and the names of those present. It is disconcerting that two experienced police officers would fail to record in any detail what was discussed in such an important interview.
- On 14 September 1998, according to Constable Cole, he spoke with Crown counsel Jim McAvity and Kelly Winchester regarding a complainant's file. According to Constable Cole, he had not prepared any documentation for the Crown counsel to review. The importance of the conversation became apparent a few years later when Staff Sergeant Dunphy needed to make a decision about whether to seek a written decision from the Crown counsel regarding potential charges against Staff Sergeant McCann. In his final response to the complainant, Staff Sergeant Dunphy indicated that he based his decision on Constable Cole's version of the conversation, in which he said that the two Crown counsel indicated that there was not enough evidence to proceed with charges. The CPC interviewed Mr. McAvity and Ms. Winchester, neither of whom could remember the events as recounted by Constable Cole. Both indicated that they would not have given a formal opinion on such a serious issue without a brief of some kind being given to them.

3.5 Findings Specific to the McCann Investigation

It is evident to the CPC that the treatment afforded Mr. McCann during the 1992 and 1998 interviews differed from what a civilian suspect would have received. In fact, given that both interviews were clearly inadequate, it is reasonable for members of the public to perceive that Mr. McCann did receive preferential treatment. Inadequacies that occur when the RCMP is investigating one of its own can become magnified when assessed through the eyes of the public. The rumours surrounding the missing pictures (it is alleged that Mr. McCann is depicted in one of the pictures with three young men in various states of undress), the alleged incident in the arena washroom and the speculation around his transfer in 1992 (the timing and the administration of his transfer has been put into question) had a significant effect on the public's perception about the impartiality of the RCMP investigation.

The CPC did not find any substantiated evidence to suggest there was a cover-up of the allegations made against Staff Sergeant McCann. However, the rumours and innuendo percolating throughout "J" Division while he was a senior Non-commissioned Officer (NCO) working in the Division should have alerted all officers, especially the senior command, to treat the investigation with greater care.

3.5.1 Finding One

There is no credible evidence that the pictures were purposely destroyed as part of a cover-up to protect Staff Sergeant McCann.

Analysis

The CPC has concluded that retired Corporal Dan Arnett is the one person who should be able to clarify unresolved questions related to the missing pictures and the rumoured washroom incident involving Staff Sergeant McCann. Corporal Arnett was identified as the “go-to” person in the Detachment at the time. He was the shift supervisor on duty on 1 March 1990, the night of an attempted murder during which a number of pictures were seized from the victim’s home. He was also one of the officers, according to some of the members interviewed, who attended the scene. Corporal Claude Tremblay, who was a constable at the time of the attempted murder investigation, said that on the morning after the incident, he saw Corporal Arnett in possession of some Polaroid pictures allegedly taken from the crime scene.

There are many aspects surrounding the matter that are troubling. For example, according to a report by Corporal Vallis, the original RCMP file on the matter was believed to have been purged. As a result, the officers assigned to the investigation team did not have the benefit of seeing the file. It was not until the CPC interviewed Records Clerk, Elaine Parker Brown, on 12 June 2006 that the CPC learned that an “Attempt Murder” file is never purged but is instead archived in Ottawa. As a result of receiving this information, the CPC requested, received and reviewed the file and discovered that there was no exhibit form that listed Polaroid pictures as an item seized from the victim’s house, nor was there a copy of any of the involved officers’ notebook entries.

The CPC interviewed 31 people who worked at the Riverview detachment before, during and after the attempted murder investigation of March 1990, including the Assistant Crown Attorney responsible for prosecuting the two teenagers charged with the crime.

As with any investigation, especially one that is 15 years old, witnesses remember events with varying degrees of accuracy. There is ample evidence that Staff Sergeant McCann participated in activities with young boys, such as at the NBTS and with minor hockey programs. However, there is no evidence that would have supported the laying of any criminal charges against Staff Sergeant McCann at that time, nor is there any information to confirm whether the pictures were purposely destroyed, misplaced or returned to the victim. The CPC could also not determine whether there is any evidentiary value to the pictures. What the CPC does know is that an exhibit report for keeping track of seized exhibits does not exist in reference to the pictures from the attempted murder case.

Corporal Tremblay was the only officer to say he saw a photograph of Staff Sergeant McCann along with three other males in Corporal Arnett’s possession. He was adamant about seeing the picture in January 2002 and again in March 2002 when he gave a written statement; he was just as adamant in 2006 when interviewed by the CPC. During his audiotaped interview, Corporal Tremblay told the CPC that he did not feel it was anybody’s business what Staff Sergeant McCann was doing in the photograph because the young males in the photographs appeared to be of the age of consent. Most of those interviewed made similar estimates of the ages, suggesting that the young males in the photographs were between 17 and 19 years old.

The CPC examined the attempted murder investigation and the rumours that Staff Sergeant McCann was in one of the pictures found at the victim's house. The first thing to note is the fact that the attempted murder occurred on 1 March 1990, while the investigation into Staff Sergeant McCann did not start until 31 January 1992. There was no evidence of any kind that would have alerted the RCMP investigators who were investigating the attempted murder to the possibility that Staff Sergeant McCann was involved in any criminal or offensive conduct with young boys from the NBTS or elsewhere. However, some members found it strange that he was spending so much time at the NBTS. For instance, a retired staff sergeant told the CPC that, in the 1980s, he had told Staff Sergeant McCann that he did not think it wise for him to be spending so much time at the NBTS; but he also said that he never suspected that Staff Sergeant McCann was involved in anything inappropriate.

In the course of its investigation, the CPC confirmed that the RCMP seized, without a warrant, several pictures from the residence of the attempted murder victim. The majority of the people interviewed who saw the pictures have varying recollections about the age of the youth, how they were clothed and the actions depicted. The CPC has also confirmed that the photographs are missing. Their disappearance remains a mystery, as does whether they were returned to the victim along with other personal effects seized during the investigation. During his interview with the CPC, the attempted murder victim discussed the Polaroid pictures the RCMP had removed from his home; however, he was unable to recall whether they had been returned to him. He was adamant that Mr. McCann was not in any of the pictures taken from his residence and informed the CPC that he, the victim, had taken the pictures himself.

3.5.2 Finding Two

There is no credible evidence of a cover-up with regard to the rumoured washroom incident.

Analysis

During the course of the 1992 investigation, Sergeant Lockhart was told of an incident or incidents in which Staff Sergeant McCann had allegedly been caught in a washroom with a young male hockey player. Sergeant Lockhart could not determine the validity of this rumour; the members involved indicated to Sergeant Lockhart that they either had no knowledge of it or they could not recall the specifics.

This rumour was circulating throughout Riverview Detachment. This was apparently brought to the attention of Corporal Arnett by one of his subordinates. The subordinate was interviewed and confirmed that he had heard the rumour and brought it to Corporal Arnett's attention, who, at the time, was his immediate supervisor. The subordinate said he did not know what, if anything, transpired thereafter.

Another member stationed at Riverview informed the CPC during an interview that Corporals Arnett and Bill Trewin had told him that a father had complained to them about catching Staff Sergeant McCann in a compromising position in an arena washroom with his son in late 1991 or early 1992. Corporals Arnett and Trewin were upset because the father did not want to continue with the complaint. The CPC interviewed retired Corporal Trewin who said he did not know anything about any alleged washroom incident involving Staff Sergeant McCann and that he did not recall ever having a conversation with another member about it.

A different version of the alleged incident that was circulating in the detachment held that one of two RCMP members who played hockey with Staff Sergeant McCann had witnessed the incident. During their interviews with the CPC, both members denied any knowledge of the event and indicated that if they had observed anything of this kind, they would have reported it.

The CPC did not find any evidence that an incident of the kind rumoured to have taken place between Staff Sergeant McCann and a young male had actually occurred. There were no known witnesses to any such event; when interviewed by the CPC, the officers identified as possible informants did not recall the events in question and denied knowing anything about it.

3.5.3 Finding Three

There is no evidence of an ulterior motive in the transfer of Staff Sergeant McCann.

Analysis

Through a review of the documentation and interviews with RCMP members, the CPC determined that the general investigation into the NBTS had been ongoing since February 1990. The reference to Staff Sergeant McCann's name in association with Mr. Toft began in the fall of 1991. He was identified for a transfer on 4 January 1992, which was approved by his immediate superior, Superintendent Rivard, on 15 January 1992, and signed off by the CO, Chief Superintendent Beaulac, on 17 January 1992. The RCMP's criminal investigation into Staff Sergeant McCann commenced on 31 January 1992. The timing of the transfer came at a time when the allegations against Staff Sergeant McCann were being investigated.

The CPC learned that the alteration that was made on the Transfer document (A22A) in the transfer destination box is not a normal occurrence, although it does occasionally happen. Based on all available evidence, including the interviews conducted with personnel in the Staffing and Personnel Branch, it appears that Staff Sergeant McCann's transfer from Riverview detachment to "J" Division Headquarters in June 1992 may have been the result of routine business. However, on 3 April 2007, in a second interview with the CPC, retired Deputy Commissioner Beaulac stated that Staff Sergeant McCann might have been transferred because of the ongoing criminal investigation, although he had no specific recollection of that being the case.

The CPC cannot determine if the Transfer document of Staff Sergeant McCann was deliberately altered to affect his placement in the CROPS office or whether it was made during the course of an administrative review. Staff Sergeant McCann's transfer to "J" Division Headquarters in Fredericton had the effect of curtailing his interaction with the general public from the time of his transfer in June 1992 to his retirement in April 1993. It was during this time that the initial criminal investigation into allegations against him was conducted.

3.5.4 Finding Four

The interviews of March 1992 and October 1998 of Staff Sergeant McCann were inadequate.

Analysis

First Interview

In the opinion of the CPC investigators, Sergeant Lockhart's meeting with Staff Sergeant McCann on 12 March 1992 was premature. At the very minimum, all 11 former residents identified as having had contact with Staff Sergeant McCann should have been interviewed and all other avenues exhausted before Staff Sergeant McCann was confronted.

The CPC identified the following problems with Sergeant Lockhart's interview with Staff Sergeant McCann, any one of which could call into question an officer's motives:

- All potential victims were not interviewed prior to the meeting.
- Only one officer, who was of a lower rank than the potential suspect/person of interest, conducted the interview.
- The officer did not tape-record or keep detailed notes of the interview and did not prepare a detailed report of the discussion that took place.
- The meeting was held in Staff Sergeant McCann's office, which was not an appropriate location.
- There were no briefings with squad members or senior officers before or after the meeting.

Based on its review of all relevant Continuation Reports, witness statements and officer notebooks, as well as an interview with the officer involved, the CPC finds that the meeting was premature and inadequate. The possibility also exists that the timing of the meeting and the fact that Sergeant Lockhart was not in a position to lay criminal charges at that time, may have given Staff Sergeant McCann an opportunity to destroy potentially damaging evidence, such as pictures or diaries that may have been in his possession. As a result of the meeting and being told of the allegations, Staff Sergeant McCann could have used the opportunity to contact former residents to caution them against coming forward. (There is information that Staff Sergeant McCann contacted two of the former residents some time after his meeting with Sergeant Lockhart.)

Regardless of whether the individual is a suspect, a person of interest or even a witness, such an interview should be carefully orchestrated. However, the fact that Sergeant Lockhart continued his investigation into Staff Sergeant McCann after the interview on 12 March 1992 leads the CPC to conclude that he did not meet with Staff Sergeant McCann to give him a heads-up. He told the CPC that even though he did not have any evidence that would lead him to believe the rumours about Staff Sergeant McCann, he wanted him to be aware that the rumours were being investigated.

The CPC is aware from its review of the relevant material that RCMP officers tried on several occasions, though unsuccessfully, to convince an alleged victim of Staff Sergeant McCann to come forward and give a written statement after the interview with Staff Sergeant McCann. They even attempted to enlist the help of the alleged victim's mother, who eventually stated that she had seen her son engaged in a sexual act with Staff Sergeant McCann in his police car. She refused to give a statement at the time without her son's consent.

Second Interview

Retired Staff Sergeant McCann became the focus of an investigation again in 1998 after a complaint was lodged with the CROPS Officer in "J" Division. Once it was decided by the team that the investigation had reached the point at which Mr. McCann should be interviewed, Constable Cole, the lead investigator, enlisted the help of Staff Sergeant Ouellette, who was in charge of the Major Crime Unit, to conduct an interview of Staff Sergeant McCann. The interview was held on 29 October 1998.

The interview, which lasted less than an hour, was conducted in Mr. McCann's living room with his wife present. The interview was not recorded, even though, as they told the CPC, both officers considered him to be a suspect. Rather than take Mr. McCann into a detachment for questioning and obtain a formal statement, the RCMP gave the former RCMP member a consideration not generally accorded to suspects. Neither officer took any detailed notes nor made any reports about what they discussed during the interview. In their interviews with the CPC, Staff Sergeant Ouellette and Constable Cole gave conflicting accounts of their visit to Mr. McCann's home. According to Constable Cole, Mrs. McCann did most of the talking and Staff Sergeant Ouellette took the lead. However, Staff Sergeant Ouellette said that Constable Cole conducted the interview and that Mrs. McCann said very little.

The CPC finds the conduct of the interview to be inadequate. Experienced members conducted the interviews and should have followed established procedures for dealing with suspects. The lack of an interview strategy, detailed notes and reports, combined with the location of the interview, are all problematic and give the impression that the officers might have been going through the motions and not taking the investigation seriously. This lack of professionalism fuels public concern about the RCMP investigating themselves.

3.5.5 Finding Five

Due diligence on the part of Staff Sergeant Dunphy was lacking in regard to acting upon the recommendations from his team, the Behavioural Science Profiler and the Crown counsel in the lead up to the arrest and interrogation of Mr. McCann.

Analysis

After speaking with all members of the investigative team commanded by Staff Sergeant Dunphy, it was apparent that two different thought processes were at play during this investigation. Constables Kathy Long and Denise Potvin were of the opinion, which they shared with the CPC, that each time something controversial was raised, such as interviewing the family of Mr. McCann, Staff Sergeant Dunphy took the safe approach and backed off. Some other members interviewed stated that it was clear at the outset that Staff Sergeant Dunphy wanted to see the matter fully investigated and that he was determined to have Mr. McCann charged; however, they were confused by his behaviour when it came time to conduct certain interviews.

Examples

- Both Crown counsel Connell and Constable Long wanted interviews conducted with Mr. McCann's children. One complainant stated that the McCanns' son was present during a situation at a recreational club but was not sure if in fact the son would have seen anything that may have occurred at the time. This is an area that should have been taken up with Mr. McCann's son; even the Crown requested that an interview be conducted, but it was never done.
- Superintendent Glenn Woods of the Behavioural Science Branch suggested that the entire family be interviewed in conjunction with or shortly after the arrest of Mr. McCann. This was one of many recommendations ignored by Staff Sergeant Dunphy. When interviewed by the CPC, Mr. Dunphy stated that he did not want to divulge evidence during the course of the investigation; however, when prompted during her interview, Ms. Long said that he was more concerned about a civil suit.

- Staff Sergeant Dunphy refused to allow an interview to take place with the organization to which the McCanns were volunteering their time. It was discovered during the course of the investigation that Mr. McCann and his wife were volunteering at a community centre and that Mr. McCann was paying particular attention to a 13-year-old boy. Again, Constables Long and Potvin thought that the organization should be approached and at least cautioned about the allegations against Mr. McCann. Constables Long and Potvin wanted to warn the centre and interview the family in question and when they advised Staff Sergeant Dunphy of their plans, he refused to allow this to happen. Both Constables Long and Potvin decided to disobey Staff Sergeant Dunphy's instructions and conducted the interviews and warned the organization.
- Another officer, Constable Pierre Gervais, was so concerned about Mr. McCann spending time with the boy at the community centre that he did some sporadic surveillance to see what he was doing when in the company of the boy. Staff Sergeant Dunphy did not authorize dedicated and full-time surveillance, but he was aware of what Constable Gervais was doing and did not interfere in this part of the investigation.
- Staff Sergeant Dunphy appeared to refuse to act on suggestions in relation to the Behavioural Science Profiler's recommendations and suggestions concerning the arrest and interrogation of Mr. McCann. The idea of obtaining the profile was attributed to Constable Long, who provided the information to have the report compiled. The recommendations regarding the arrest of Mr. McCann were specific about the rank of the arresting officers, the means of conducting the interrogation and the roles certain officers should undertake. The recommendation that a member of equal or higher rank interrogate Staff Sergeant McCann was ignored. According to Sergeant Mike St. Onge, Staff Sergeant Dunphy was supposed to conduct the interrogation but at the last minute plans changed and Sergeant St. Onge commenced the interrogation.

During his interview with the CPC, retired Staff Sergeant Dunphy said that the profiler's report was a tool and that he does not recall specifically what was used in the interrogation of Mr. McCann.

The CPC could find no evidence to suggest that, had the recommendations by members of the team or the Behavioural Science Branch been followed, the final outcome would have been different. However, following the suggestions or taking that extra step would have erased any suggestions of an inadequate investigation or of a cover-up. Due diligence on the part of Staff Sergeant Dunphy was lacking, especially when compared to his investigators.

3.6 Findings Regarding Allegations of CPC Complainants

The CPC received 11 allegations, two of which are identical and thus are not repeated here. The allegations are presented below, along with the findings of the CPC in regard to each of them. The response to each allegation should be considered in conjunction with the *Kingsclear Investigation Report*, including the findings regarding the issues that are specific to the RCMP investigations into Mr. McCann.

3.6.1 First Allegation

RCMP Staff Sergeant Dave Dunphy misled, lied to, put down, deceived, yelled at, swore at and name-called a complainant during telephone conversations.

Analysis	Findings
During their interviews with the CPC, RCMP members mentioned their frustration when dealing with the complainant and their concern that his interruptions were having a negative impact on the investigation. Consequently, Corporal Paulette Delaney-Smith was assigned to be the RCMP liaison for the complainant. For a detailed analysis, see Chapter 9, "Investigation by Staff Sergeant Dave Dunphy 2000–2003," in the <i>Kingsclear Investigation Report</i> .	The CPC finds that the allegation that Staff Sergeant Dunphy "put down," "yelled at, swore at" and called the complainant names during telephone conversations is likely to have occurred. The CPC did not find evidence to substantiate the allegation that Staff Sergeant Dunphy "misled, lied to" and "deceived" the complainant.

3.6.2 Second Allegation

Despite all the evidence that was presented to Staff Sergeant Dave Dunphy and/or the RCMP Task Force relating to the complaints of sexual abuse against Kingsclear staff members, inmates and RCMP Staff Sergeant Clifford McCann, no charges were ever laid.

Analysis	Finding
The CPC referred to the evidence provided by the File Coordinator, Constable Al Rogers, regarding the complaints investigated by the RCMP and the way the complaints were investigated. This evidence demonstrates the length investigators went to in order to locate and interview the alleged victims. There were very few new complaints brought to the RCMP's attention. In addition to what has been stated at length in the report, Constable Rogers confirmed that the RCMP's investigation of numerous Tip files only yielded charges related to the claims made by a complainant and three other victims.	The CPC finds that comprehensive court briefs were prepared by the RCMP for six of the seven alleged offences. In 2002, Crown counsel Connell wrote letters indicating that he was not recommending that charges be laid against Messrs. Toft, Raymond or McCann.

3.6.3 Third Allegation

Unknown members of the RCMP engaged in a cover-up of the alleged criminal actions of the Kingsclear staff members, inmates and RCMP Staff Sergeant Clifford McCann.

Analysis	Finding
The CPC interviewed 150 witnesses, some of whom were re-interviewed to help clarify and corroborate events and evidence. During its review of relevant material, the CPC found that in October 1993 the RCMP had urged the Crown to lay additional charges against Mr. Toft and even considered hiring its own prosecutor upon learning that the Crown initially refused their court briefs. They also prepared court briefs relating to charges on other staff members at the NBTS that were not approved by Crown counsel. In relation to Staff Sergeant McCann, in 2003 the RCMP prepared and delivered investigative briefs to Crown counsel for review. Following a lengthy and detailed review, Crown counsel recommended against laying any criminal charges against Staff Sergeant McCann.	The CPC finds that there is no evidence of a cover-up as defined for the purpose of this investigation involving the RCMP members interviewed. In fact, the CPC finds that the RCMP pressed the Crown to lay additional charges against Mr. Toft and considered hiring its own lawyer to prosecute the charges.

3.6.4 Fourth Allegation

RCMP Commissioner Zaccardelli, who was Officer in Charge of Criminal Operations in New Brunswick in the early 1990s, knew that Staff Sergeant Clifford McCann was sexually abusing boys and did nothing to stop it.

Analysis	Finding
Sergeant Lockhart informed Superintendent Zaccardelli of the allegations against Staff Sergeant McCann in January 1992. During his interview with the CPC, Mr. Zaccardelli said that he told Sergeant Lockhart to get to the bottom of the allegations and instructed him to treat Staff Sergeant McCann like anyone else. Sergeant Lockhart confirmed in his interview with the CPC that Superintendent Zaccardelli gave him these instructions. He also said that he kept Superintendent Zaccardelli abreast of his progress throughout the McCann investigation. However, when questioned about Sergeant Lockhart's interview with Staff Sergeant McCann, neither could say with any certainty that they discussed it. Mr. Zaccardelli did recall being told that none of the complainants could provide any direct evidence and that there was no actual complaint. Both Mr. Zaccardelli and Sergeant Lockhart insisted that they would have laid charges against Staff Sergeant McCann if the evidence existed.	The CPC finds that Mr. Zaccardelli was aware of the allegations and the evidence confirms that he took the appropriate steps to ensure that the allegations were investigated.

3.6.5 Fifth Allegation

RCMP Staff Sergeant Dave Dunphy violated the *RCMP Act* on numerous occasions.

Analysis	Finding
In an effort to assess the validity of the allegations that Staff Sergeant Dunphy violated the <i>RCMP Act</i> , and in the absence of any specific allegation as to which section of the Act was violated, the CPC revisited the interactions between a complainant and Staff Sergeant Dunphy. The CPC examined Staff Sergeant Dunphy's conduct, as well as that of all RCMP members involved in these investigations, in terms of their performance of duties or functions under the <i>RCMP Act</i> .	The CPC finds that Staff Sergeant Dunphy may have been less than professional with the complainant on occasion in that it is likely that he swore, yelled at him, called him names, and put him down.

RCMP Staff Sergeant Dave Dunphy committed criminal offences, interfered in criminal police investigations and conspired to alter the outcome of these investigations.

Analysis	Finding
The CPC conducted 150 interviews and read and summarized over 50,000 pages of documents to determine if this allegation against Staff Sergeant Dunphy could be corroborated.	The CPC did not uncover any evidence to substantiate this allegation.

3.6.6 Sixth Allegation

That there was an inadequate investigation of sexual assaults alleged by the complainants and others and, as a result, there was a failure to lay charges against Staff Sergeant Clifford McCann.*

Analysis	Findings
The first interview with Staff Sergeant McCann was premature and ill advised, and the second interview was conducted at Staff Sergeant McCann's home in the company of his wife. In both instances, documentation of the interviews was inadequate.	The CPC finds that the interviews conducted by the RCMP officers with regard to Staff Sergeant McCann were inadequate. The CPC finds that there was a lack of due diligence on the part of Staff Sergeant Dunphy.
There were many factors contributing to the failure to lay charges, the most important of which was Crown counsel's decision not to lay charges. It is the CPC's conclusion that the RCMP did intend to lay criminal charges: Mr. McCann was arrested, held in the cell block and subsequently interrogated for several hours. The RCMP submitted seven briefs to Crown counsel all of which were rejected.	The CPC finds that while aspects of the investigations were inadequate, they did not result in the failure for charges to be laid against Staff Sergeant McCann.

* This allegation was repeated by another complainant.

3.6.7 Seventh Allegation

That there was a cover-up by unidentified members of the RCMP of the alleged criminal actions of Staff Sergeant McCann from the period of 1988 until the end of Staff Sergeant McCann's police career (which ended with his retirement).*

Analysis	Finding
Several RCMP members and NBTS employees were aware that Staff Sergeant McCann was heavily involved with the residents of the NBTS before the rumours began circulating about him in fall 1991. However, there is no evidence that would substantiate any allegation that there was a cover-up by the RCMP at any time during the course of its investigations into Staff Sergeant McCann's activities. Some RCMP members that the CPC interviewed indicated that they were not surprised when they heard about the rumours while others said they were shocked. All members who acknowledged that they were suspicious said they had no reason to believe that anything of a criminal nature was taking place.	The CPC finds that there is no substantiated evidence that members of the RCMP who were interviewed engaged in a cover-up in relation to the RCMP investigations into the allegations against Staff Sergeant McCann.

* This allegation was repeated by another complainant.

3.6.8 Eighth Allegation

That unknown RCMP members conducted an inadequate investigation into alleged criminal activities by Kingsclear staff and others.

Analysis	Finding
<p>The lack of notes taken by some members and the poor quality of notes taken by others may have affected the conduct of the investigation when follow-up was required or the source information was unavailable, incomprehensible or inaccurate. Moreover, the poor quality of note taking influenced the CPC's perception of the officers' commitment to the investigation. It was not until the interviews were conducted that the CPC was able to confirm that the officers' commitment to the investigations was not problematic.</p> <p>It was known almost from the beginning that the investigation was sensitive, high-profile and had the potential to develop into a large-scale investigation, yet few dedicated resources were allocated to it. It should have involved greater scrutiny by management, and senior officers should have provided more direction and resources. With some exceptions, senior officers only became involved once there was media attention, when complainants communicated directly with them or when government officials enquired about the progress of the investigation. These are just a few examples of the inadequacies.</p>	<p>The CPC finds that the investigation by some members of the RCMP into the alleged criminal activities by NBTS staff and others were inadequate.</p>

3.6.9 Ninth Allegation

That unknown members of the RCMP failed to adequately investigate allegations of sexual assault and, as a result, failed to lay charges against four Kingsclear staff members including Karl Toft.

Analysis	Finding
<p>Court briefs were prepared on several NBTS staff, including Mr. Toft who pled guilty and was sentenced to 13 years in prison. The Crown did not recommend any further charges be laid against Mr. Toft because of its previous decision regarding the totality of sentencing.</p> <p>The criteria used by both the RCMP and the Crown counsel in deciding whether to lay charges against other NBTS staff who were implicated and subsequently investigated by the RCMP included the lack of credibility of the complainants and witnesses, lack of corroboration of the allegations, seriousness of the alleged assaults (whether sexual or physical) and the category of offence to which the criminal charges applied (i.e., summary conviction or indictable).</p> <p>In most cases, the Crown did not recommend that charges be laid based on the above criteria. In a few cases the RCMP made the decision not to proceed without a review by Crown counsel based on the type of allegation made, the lack of corroborating evidence in relation to the allegation and the inability of the RCMP to prove the elements of a criminal offence.</p> <p>The CPC does not have any comment regarding the last three suspects as they were not staff members of the NBTS. The RCMP referred one of the allegations to the FPF as the alleged assault took place in that city. Another was considered a summary conviction offence and the time limit for prosecution had expired. The complaint against the last suspect was that he had made sexual innuendo; since no touching was involved, there was no applicable charge that could be laid.</p> <p>The additional complaint to the RCMP in relation to Staff Sergeant McCann was forwarded to the FPF for investigation as the alleged offence occurred in Fredericton.</p>	<p>The CPC finds that there were inadequacies in the NBTS investigation; however, the CPC finds that these inadequacies did not affect the possibility of additional criminal charges being laid against Mr. Toft or the other staff members at the NBTS.</p>

4. Recommendations

4.1 Recommendation One

The CPC recommends that the Commissioner of the RCMP and RCMP commanding officers ensure that a mechanism is in place to identify investigations that may become sensitive or of a large scale or both.

4.2 Recommendation Two

The CPC recommends that appropriate response and accountability mechanisms be put in place at the senior officer level to enable senior officers to monitor continuously the progress of any sensitive or large-scale investigation and assure the public of transparency, effectiveness and impartiality.

It is evident to the CPC that the RCMP encountered challenges during its investigations into allegations against staff at the NBTS and Staff Sergeant Clifford McCann, in part because of the lack of appropriate involvement of senior officers. The RCMP investigations into the NBTS were initiated after a written request from the Attorney General of New Brunswick to the Commanding Officer (CO) of “J” Division. These investigations were conducted soon after the Mount Cashel investigations, which had generated intense media coverage and public outrage. The similarities to the NBTS investigation were immediately apparent and senior officers should have been more vigilant at the outset and increasingly thereafter. The effect of the lack of appropriate involvement of senior officers on the progress of the investigations included the following obstacles and shortcomings:

- *Lack of resources.* In most instances, officers who were interviewed by the CPC indicated that a lack of resources was a systemic problem not only for this investigation but for all investigations that they were involved with at “J” Division. Although senior officers complained about the lack of resources, it is not obvious that their involvement was intimate enough to realize how the issue was affecting their staff.
- *Lack of direction.* This lack of direction is especially evident in the confusion regarding the mandate of the first investigation led by Constable Tom Spink. The confusion of the officer and, to a lesser extent, his superiors may be one indication of the effect of the lack of appropriate direction.
- *Lack of clear and accurate documentation for internal records and for sharing information with outside individuals, such as Crown counsel.* This lack of documentation may be attributed to the fact that senior officers were not appropriately following the development of an investigation of this size and sensitivity, especially in the early stages.
- *Inadequacy of the two interviews with Staff Sergeant McCann.* Senior officers were not informed of the interviews with Staff Sergeant McCann before the interviews took place, nor were they made aware of the content of the interviews afterwards. This may be partially attributed to the lack of appropriate involvement by senior officers, which should include reporting at defined major stages in a major investigation.

4.3 Recommendation Three

The CPC recommends that an assessment and follow-up be conducted to determine the actual resource needs of the RCMP “J” Division to ensure that any sensitive and large scale investigation is conducted without interruption and in a timely and professional manner.

With few exceptions, most officers have complained about the lack of resources during the investigations. Even the officers involved in the recent 2003 investigation commented about this. A lack of resources is not uncommon in the average police investigation; this is not an anomaly. However, officers located in other detachments were sporadically asked to help in the investigation into the NBTs, while officers working on the NBTs file were often asked to assist in other urgent issues. NBTs investigative plans proposed as late as the year 2000 were scaled down significantly or completely disregarded.

Although it may appear as if the lack of resources had little effect on the outcome of the investigations, they did add to the challenge of managing them. For example,

- consultation with Crown counsel and senior officers, as well as investigation documentation, may have been conducted more professionally had there been additional resources to accommodate the workload of the investigating officers and the associated administrative and managerial work;
- the investigation would have progressed more quickly had additional resources been available and had officers not been distracted from daily investigative tasks to accommodate other incidents and events that were deemed pressing by senior officers, especially in the early stages of the investigation; and
- the slow pace of the investigations may have influenced the public’s perception of there being a possible cover-up.

4.4 Recommendation Four

The CPC recommends that the CO and senior members of the RCMP in a pre-charge screening province ensure that members clearly understand their role in the administration of justice vis-à-vis the Crown to preserve their independence.

Inconsistencies in the approach to the laying of charges are evident. Some officers, such as Inspector Mike Connolly, disagreed with the Crown’s decision not to prosecute and opted to challenge the Crown’s decision. Others chose to disagree yet do nothing; for instance, in the case of the incomplete request regarding the *Information to Obtain a Search Warrant*. These inconsistencies, along with statements made by two senior officers concerning the confusion between the roles of the Crown and the police, points out the possibility that the roles and responsibilities between the two are sometimes blurred, perhaps more often than is appropriate. Furthermore, the majority of RCMP members interviewed believe that they could not lay criminal charges absent a positive Crown assessment.

The principle of police independence was affirmed in the relatively recent case of *R. v. Regan* [2002], 1 S.C.R. 297. At page 23 of the decision, LeBel J., for the majority, in reviewing the need for separation between police and Crown functions, quoted the *Commissioner’s Report: Findings and Recommendations* (vol. 1, 1989) of the Royal Commission on the Donald Marshall, Jr., Prosecution:

[U]nder our system, the policing function—that of investigation and law enforcement—is distinct from the prosecuting function. We believe the maintenance of a distinct line between these two functions is essential to the proper administration of justice.

LeBel J. also noted that

[t]he distinct line appears to be that police, not the Crown, have the ultimate responsibility for deciding which charges should be laid. This can still be true after the Crown has made its own pre-charge assessment, and when the two arms of the criminal justice system disagree on whether to lay charges.

Although it is recognized that co-operation and consultation between the police and the Attorney General's office is essential to the proper administration of justice, it should be remembered that the police have the right to investigate and lay charges unimpeded by the Crown, just as prosecutors have the right to stay, withdraw or discontinue a prosecution once a charge has been laid by the police.

4.5 Recommendation Five

The CPC recommends that the RCMP examine, amend and enforce the “Investigator's Notebook” policy and all policies related to note taking, report writing and documenting to ensure that the policies are operationally effective and that officers adhere to and are continuously trained according to the guidelines.

4.6 Recommendation Six

The CPC recommends that the RCMP examine the policy on notebook retention used by other police agencies to glean best practices applied across the country, especially for officers who are retired, transferred or who voluntarily resign.

4.7 Recommendation Seven

The CPC recommends that the various issues associated with note taking, report writing and documenting be addressed through various approaches, including training, policy revisions, internal oversight and monitoring.

Throughout the RCMP investigations, there were systemic problems affecting note taking, report writing and documenting, including vaguely worded policies that were inadequately enforced. One result was extreme inconsistencies in terms of the quality and comprehensiveness of notes and reports. The impact of incomplete and deficient reports or notebooks is so great that the administration of justice may be affected as a result. With so many examples of inadequate reports or notes throughout the investigations, this is an issue that cannot be ignored.

The RCMP policy regarding notebook retention has been revised over the years. In 1990, it provided an overview but lacked guidance on matters of content, retention and destruction. In 1997, a major shift in the policy discouraged the use of notebooks other than in “exceptional circumstances.” Members were instead instructed to record investigations directly in Continuation Reports. The 1997 version also made members responsible for the security, retention and destruction of their notebooks but did not give any guidelines on how to proceed. In 2000, the policy reverted almost entirely to what had been in use before 1997. Later versions of the policy, including the most recent one that came into effect in 2006, were expanded to specify notebook content, notebook use in team and major investigations, and guidelines on notebook retention and destruction. There is now a requirement to retain notebooks for a minimum period of two years in certain situations, although it remains the member’s responsibility to retain and store his or her notebook safely. For example, Section 6.2 of Part 25.2, “Investigator’s Notebook,” states: “Notebooks will be retained and stored safely by each member, and will only be destroyed with the authorization of the appropriate commander.” The policy does not deal with members who retire, are transferred or resign.

The current policy does not alleviate the problems associated with obtaining a member’s notes. With control over the notebooks remaining with the individual member instead of the organization, the courts, the RCMP and the CPC would likely encounter similar challenges if a requirement to access these notes materialized today.

Most police departments in Canada are more stringent than the RCMP regarding notebook retention, requiring their members to hand in their notebooks prior to retirement. Some even require their officers to hand in their notebooks upon transfer. Other police services go as far as requiring their officers to hand in their notebooks, which are reviewed by a supervisor, before being given a new one, an activity that helps ensure complete and accurate notebook use and maintenance.

The retention and storage of RCMP member notebooks is a significant issue. There is a need to have the “Investigator’s Notebook” policy amended and enforced to address it. This is crucial, not only in relation to oversight, but more importantly for cold cases that are reopened. Notebooks are issued by the RCMP and should be retained by the RCMP when a member completes a notebook, resigns, retires or is transferred out of the division. The rigour and clarity in the most recent policy with respect to notebook retention is insufficient.

4.8 Recommendation Eight

The CPC recommends that any sensitive or large scale investigation into allegations which impact on the community’s trust in the RCMP should be tasked to another police service or, at the very least, to a team of RCMP officers from another region or province who would have the appropriate experience and who would be unfamiliar with the member under investigation. This would assist in limiting the perception of bias and ensure that public trust in the RCMP is maintained.

A criminal investigation into allegations against a member of the RCMP is sensitive and high profile and should be afforded the highest priority. Like any police force, the RCMP is restricted in the amount of information it can divulge; however, this only adds to speculation that the matter is not being addressed as aggressively as it should.

In addition to being able to manage the investigations fairly, impartially, thoroughly and in a timely manner, the investigative team must also manage its relation with the media and, most importantly, with the affected community. As is evident from the various RCMP investigations into the NBTS and Staff Sergeant McCann, this is not easy. Although the public may not be aware of the inner workings of police investigations, it is the duty of the police to ensure that the public can understand the RCMP's actions. This can be achieved by assigning the investigation to an outside police agency or, at the very least, to an RCMP team from a different jurisdiction.

4.9 Recommendation Nine

The CPC recommends that the RCMP improve its internal and external communication strategies for any sensitive or large investigation, adopting a proactive communications approach using modern technologies to clearly demonstrate transparency and the RCMP's accountability to the public.

The CPC is unaware of any RCMP public communication strategy for the NBTS investigations, other than a few press releases in response to media articles. Although the RCMP continued to communicate with and be accommodating to the complainants, the CPC did not find any material other than these press releases that took wider public concerns into consideration. The CPC did not find evidence of a strategy employed by the RCMP to communicate with the public on a regular basis in its investigations into the NBTS and Staff Sergeant McCann. The RCMP's current policy, "Communications Services," does not provide clear guidelines on the lead roles and responsibilities in communicating with the public in a large-scale, high-profile investigation. Even in *The RCMP and the Media: A Spokesperson's Guide*, which includes a section on being proactive with the media, there are no guidelines on how to manage the public's expectations during an investigation of this size and sensitivity.

Appendix A: NBTS Investigations

The RCMP assigned a lead investigator to manage the day-to-day operations of each reopened investigation and would replace the lead investigator as required. The following table provides the sequence of criminal investigations into persons implicated at the NBTS, identifies the lead investigator, the officers assigned to the investigation and senior officers responsible for oversight of the investigation, as well as summarizes their findings.

Lead Investigator	Other Investigating Officers	Senior Officers	Outcome
Investigation Phase: February 1990–July 1990			
Constable Tom Spink	N/A	<p>Superintendent Herman Beaulac, Commanding Officer (CO), “J” Division</p> <p>Superintendent Ford Matchim, Officer Commanding (OC), Fredericton Subdivision</p> <p>Superintendent Giuliano Zaccardelli, Officer-in-Charge (OIC) Criminal Operations (CROPS)</p>	Given the reluctance of the victims to testify, Constable Spink concluded his investigation after consulting with Crown counsel Hilary Drain.
Investigation Phase: October 1990–May 1995			
Sergeant Gary McNeill (October 1990–November 1991)	<p>Constable Ed Paquet</p> <p>Corporal Ray Brennan</p>	<p>Superintendent Beaulac, CO, “J” Division (replaced by Assistant Commissioner Roy Berlinquette in April 1993)</p> <p>Superintendent Matchim, OIC, Fredericton Subdivision from February 1990 to October 1992 (after two other persons acted in this position, he was officially replaced by Superintendent Wayne Wawryk in February 1993)</p> <p>Superintendent Zaccardelli, OIC CROPS (replaced by Superintendent Pierre Lange in September 1993)</p> <p>Inspector Mike Connolly, Assistant OIC CROPS</p> <p>Inspector Al Hutchinson, Assistant OIC CROPS</p>	Based on contact from the provincial Executive Director of Policing Services, the investigation was reopened.

Lead Investigator	Other Investigating Officers	Senior Officers	Outcome
Corporal Brennan (May 1991–March 1992)	Sergeant McNeill Constable Paquet Constable Ken Legge Sergeant Doug Lockhart (replaced Sergeant McNeill)	Ibid	Based on charges by the RCMP and the FPF, Karl Toft was sentenced to 13 years in prison in December 1992.
Sergeant Lockhart (January 1992–May 1994)	Corporal James McAnany (File Coordinator) Constable Lise Roussel Constable Paquet Corporal Chuck Orem Constables Legge, Pat Cole, Denise Potvin, Rick Potvin, Shaun Ryan and Rick Evans	Ibid	Hector Duguay went on trial in September 1993 and was found guilty on four of five charges. A month later he was sentenced to five months in a provincial jail. The provincial Attorney General stayed proceedings on new RCMP charges against Mr. Toft in October 1993.

Lead Investigator	Other Investigating Officers	Senior Officers	Outcome
No lead investigator (from the time charges against Mr. Toft were stayed and the Miller Inquiry was established)	<p>Constable McAnany</p> <p>Constable Evans (He was assigned to attend the Miller Inquiry and to report any information that might assist in furthering the investigation into staff at the NBTS.)</p>	Ibid. (except for Inspector Hutchinson who left in the spring of 1992)	<p>After the stay of proceedings was entered on 29 October 1993, the RCMP continued to take complaints about the NBTS but did not conduct investigations. Constable McAnany continued to report on certain aspects of the investigation, particularly the trials of Weldon (Bud) Raymond.</p> <p>In October 1994, Mr. Raymond went on trial in Saint John on two charges; he was found not guilty on both charges.</p> <p>Mr. Raymond went on trial in November 1994 on five charges in Fredericton; he was found not guilty on two counts. The Crown did not offer any evidence on two other counts; as a result, the presiding Justice dismissed the charges, and the jury was unable to reach a verdict regarding the remaining count.</p> <p>The Director of Public Prosecutions confirmed in April 1995 that the stay of proceedings issued on 29 October 1993 would not be lifted. The RCMP therefore decided to conclude their investigations into the NBTS.</p>

Lead Investigator	Other Investigating Officers	Senior Officers	Outcome
Investigation Phase: March 1999–November 2003			
Corporal Legge (March 1999– June 1999)	Staff Sergeant Jacques Ouellette Constable Cole	Chief Superintendent Michel Seguin, OIC CROPS (replaced by Chief Superintendent Jim Payne in December 2000) Inspector Bill Smith, Inspector-in- Charge (Insp. i/c), Operational Support Services (OSS)	The investigation was reopened following clarification by the province regarding new complaints and the stay of proceedings issued on 29 October 1993.
Constable Cole (June 1999– January 2000)	Staff Sergeant Ouellette	Ibid	
Corporal Paulette Delaney-Smith (January 2000– April 2001)	Staff Sergeant Ouellette Sergeant Mac Eaton Constable Phil Houle	Ibid	
Staff Sergeant Dave Dunphy (October 2000– November 2003) Investigation team not formed until May 2001, but Staff Sergeant Dunphy, Corporal Delaney-Smith and Constable Houle were assigned to the investigation	Corporal Clive Vallis Corporal Delaney- Smith Constable Al Rogers Constable Kathy Long Constable Pierre Gervais Constable Denise Potvin	Ibid	Four investigative briefs are submitted. Based on the recommendation of the Crown counsel concerning the unlikelihood of a successful prosecution, the files against Mr. Toft and Mr. Raymond were concluded.

Appendix B: Staff Sergeant McCann Investigations

There were three separate RCMP investigations into the activities of Staff Sergeant Clifford McCann. A lead investigator headed each investigation with support from other investigating officers. The following table provides information about the investigations, including the lead investigator, any other officers who were helping with the investigation, and senior officers providing oversight of the investigation. It also summarizes the outcome.

Lead Investigator	Other Investigating Officers	Senior Officers	Outcome
Investigation Phase: January 1992–December 1993			
Sergeant Doug Lockhart	Constable James McAnany	<p>Superintendent Herman Beaulac (replaced by Assistant Commissioner Roy Berlinquette in April 1993)</p> <p>Superintendent Giuliano Zaccardelli, Officer-in-Charge (OIC) Criminal Operations (CROPS) (replaced by Superintendent Pierre Lange in September 1993)</p> <p>Superintendent Ford Matchim, OIC, Fredericton Subdivision (replaced by Superintendent Wayne Wawryk in February 1993)</p> <p>Superintendent Al Rivard, OC, Moncton Subdivision</p>	Investigation was closed in the absence of reasonable and probable grounds for laying a criminal charge.
Investigation Phase: February 1998			
Constable Pat Cole	<p>Staff Sergeant Jacques Ouellette</p> <p>Sergeant Dave Dunphy</p>	Chief Superintendent Michel Seguin, OIC CROPS	<p>Staff Sergeant McCann was interviewed but no charges were laid against him.</p> <p>File was closed because the Crown was not willing to proceed.</p>

Lead Investigator	Other Investigating Officers	Senior Officers	Outcome
Investigation Phase: February 2000–November 2003			
Staff Sergeant Dunphy (October 2000–November 2003)	<p>Sergeant Mac Eaton</p> <p>Constable Al Rogers (File Coordinator)</p> <p>Constable Pierre Gervais</p> <p>Constable Kathy Long</p> <p>Corporal Clive Vallis</p> <p>Constable Denise Potvin</p> <p>Corporal Paulette Delaney-Smith</p>	<p>Deputy Commissioner Terry Ryan, Atlantic Region</p> <p>Assistant Commissioner Tim Quigley, Commanding Officer (CO) “J” Division</p> <p>Chief Superintendent Michel Seguin, OIC CROPS (replaced by Chief Superintendent Jim Payne in December 2000)</p>	<p>File was reopened because of the persistence of a complainant.</p> <p>In September 2002, Staff Sergeant McCann was arrested and released shortly thereafter.</p> <p>Following consultation with the Crown’s office in 2003, Staff Sergeant Dunphy informed the complainants in November 2003 that no charges would be laid.</p>