

Royal Canadian Mounted Police
Commissioner



Gendarmerie royale du Canada
Commissaire

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le professionnalisme, la compassion, le respect et la responsabilisation

Protected "A"

FEB 12 2016

Mr. Ian McPhail, Q.C.
Chair
Civilian Review and Complaints
Commission for the RCMP
P.O. Box 1722, Station "B"
Ottawa, Ontario
K1P 0B3

Dear Mr. McPhail:

I acknowledge receipt of the Commission's interim report on the public interest investigation into the RCMP Seizure of Firearms in High River, Alberta, file number PC-2013-2013.

I have completed a full review of this matter, including the findings and recommendations set out in the Commission's report.

At the outset, I must acknowledge that the Commission released its interim report before my response, despite the fact that I had formally stated my concerns to the Commission at the time of the report's pending release. This has affected the right of the members to a fair process, and it has equally had an adverse impact on my ability to account to the Canadian public for the actions of RCMP members involved in the emergency response to the flood crisis.

The High River flooding was an unexpected and unprecedented natural disaster. Despite the many challenges faced, the overall response by members was appreciated by the majority of impacted persons. Members should feel proud of the work they completed, including the rescue of numerous High River residents in the midst of an unpredictable and trying environment.

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The RCMP recognizes that there were shortcomings in the emergency response. Thankfully, these shortcomings did not result in death or injury, but nonetheless represent a breakdown on the part of the RCMP in providing adequate support to local and divisional commanders and in providing sufficient internal and external communication. These lessons learned will prove important for future RCMP large-scale emergency planning.

I will now turn to addressing the Commission's individual findings and recommendations.

I agree with Finding No. 1, that, pursuant to the *Alberta Emergency Management Act*, High River was under a state of local emergency on June 20, 2013, and later, a provincial state of emergency on June 27, 2013.

I agree with Finding No. 2, that, pursuant to the *Emergency Management Act*, the Emergency Operations Centre prepared and authorized the implementation of four emergency plans requiring rescue and recovery, security, search and re-entry of residents.

I agree with Finding No. 3, that, pursuant to the *Emergency Management Act*, the Emergency Operations Centre authorized and instructed the RCMP's entry without warrant and search of every High River building as part of the Emergency Operations Centre's emergency plans.

I agree with Finding No. 4, that RCMP members participating in the emergency response were acting as peace officers pursuant to the authorities and duties derived from the *Alberta Police Act* and the *Royal Canadian Mounted Police Act*.

I agree with Finding No. 5, that RCMP members participating in the emergency response were acting pursuant to a duty derived from the *Emergency Management Act*.

I agree with Finding No. 6, that RCMP members participating in the emergency response were under a common law duty to protect life and preserve public safety.

I agree with Finding No. 7, that forcible entry was implicitly permitted for the purpose of effecting the searches to protect life, to the extent that the minimum amount of damage necessary was caused.

I agree with Finding No. 8, that, while inadequate records were kept, it is reasonable to conclude that, given their role in the emergency plans, RCMP members determined the means used to gain entry to the buildings.

I agree with Finding No. 9, that, given the emergency circumstances which existed during the 72 hours of the searches to protect life, the entry of homes without a warrant by the RCMP was a justifiable use of police powers in furtherance of their common law duty to protect life.

I agree with Finding No. 10, that, given the emergency circumstances which existed at the time, the reasonable use of force to enter buildings to protect life was justified.

I agree with Finding No. 11, that it was reasonable for the RCMP members to secure buildings after completing their search.

I agree with Finding No. 12, that the decision not to bring in equipment and extra resources to secure buildings which had been damaged by entry was reasonable in the circumstances.

I agree with Finding No. 13, that, given the emergency circumstances which existed during the time of the initial entries to protect life, the entry of all buildings in furtherance of the EOC order was appropriate.

I agree with Finding No. 14, that the RCMP conducted entries for the retrieval of personal property at the request and with the consent of residents.

I agree with Finding No. 15, that RCMP members were present during entries for the purpose of rescuing pets mainly at the request and with the consent of residents.

I agree with Finding No. 16, that RCMP members entered homes to escort pet rescue personnel and ensure their safety.

I agree with Finding No. 17, that the Emergency Operations Centre authorized the inspections of buildings in the Town of High River as part of the emergency plan.

I agree with Finding No. 18, that, pursuant to the *Emergency Management Act*, the Emergency Operations Centre authorized and instructed the RCMP's entry of High River buildings without warrant to escort home inspection teams as part of the emergency plan.

I agree with Finding No. 19, that the Emergency Operations Centre did not direct how buildings were to be entered but did assign the RCMP to supervise the entries.

I agree with Finding No. 20, that RCMP members failed to maintain proper notebook entries during their escort of home inspection teams, in particular with respect to the use of force to gain entry into buildings.

I agree with Finding No. 21, that, pursuant to the direction of the Emergency Operations Centre that the RCMP supervise the entries of the home inspections, the use of force to enter buildings was authorized by the *Emergency Management Act*.

I agree with Finding No. 22, that RCMP members' entries of buildings unaffected by the flood to facilitate home inspections were directed by the EOC, and the RCMP's forcible entries were authorized by the emergency plan only insofar as minimal damage was caused.

I generally agree with Finding No. 23, that, in a number of cases, RCMP members' forcible entries to facilitate home inspections caused significant damage and were not reasonable in circumstances where buildings were unaffected by the flood. Although my review of the available information does not permit me to conclude the precise number of such cases, I acknowledge that the relevant material reveals that there were some instances where there was significant damage caused to unaffected homes that were forcibly entered. In those cases, the damage was unreasonable. I recognize that the RCMP took complaints with respect to property damage seriously and implemented procedures to process complaints and claims.

I agree with Finding No. 24, that the secondary entries for the specific purpose of seizing unsecured firearms were not authorized by the *Emergency Management Act*. There are no express provisions under the *Emergency Management Act* directly on point that apply to the circumstances. With that said, I must acknowledge the exigent circumstances that the members faced. Specifically, there was a clear issue of public safety leading the members to make the

secondary entries to seize the unsecured firearms. As the Commission acknowledged in its report, not all the homes that were entered were left secured. Accordingly, I do find support for the RCMP's reference to public safety. If the firearms were discovered during an initial entry (to protect life), and the home in question was then left unsecured, then the concern for public safety in leaving the unsecured firearms in that home is clear and ongoing for the duration of the state of emergency. I rely on Staff Sergeant Fuller's comments as described in the Commission's report, namely, that many homes were left unsecured, and he did not think it was possible to secure them all. He indicated that, from a logistics point of view, the members did not have the equipment to secure the doors, and this could have meant having to bring outside parties into the area with equipment. Bringing outside parties into the area with equipment could have necessitated the procurement of more boats and transport personnel. I agree with Staff Sergeant Fuller's view that this would have slowed the search teams down in terms of their primary goal of saving lives. I also agree with Staff Sergeant Fuller's assessment that the accessibility of the unsecured firearms was a major concern and that there were not enough members to maintain closed access to the security zone.

I generally agree with Finding No. 25, that the seizure of firearms was not initially planned. The seizure of firearms was ancillary to, and an unintended consequence of, the RCMP rescue/recovery and search plan operations. The seizure of the unsecured firearms that were observed resulted in the objective of the search and assist actions being altered to include securing such firearms in the interest of broader public safety.

I agree with Finding No. 26, that, when unsecured firearms were located, individual members of the search teams made the decision to seize them.

I generally agree with Finding No. 27, that, upon being notified of the seizures, the Special Tactical Operations command approved the action. As mentioned in the Commission's report, Staff Sergeant Fuller acknowledged being informed of the seizures and agreeing with them.

I generally agree with Finding No. 28, that RCMP members were authorized to seize unsecured firearms pursuant to section 489 of the *Criminal Code*. Although my review of the relevant material reveals inconsistent accounts on the part of the members about what authority was relied upon in seizing the unsecured firearms, the members who did state having seized them pursuant to the *Criminal Code* did in fact have that authority.

I generally agree with Finding No. 29, that, in a number of cases, the RCMP seized firearms which were lawfully secured. Specifically, I conclude from my review of the information available that lawfully secured firearms were seized from three residences.

I agree with Finding No. 30, that RCMP members were not authorized by the *Criminal Code* to seize secured firearms.

I generally agree with Finding No. 31, that there is no information to support the claim that RCMP members breached any gun safes. I acknowledge, however, that there is one case involving members breaching a locked box and seizing two firearms.

I agree with Finding No. 32, that RCMP supervisors failed to provide sufficient guidance to members involved in the seizure of firearms.

I agree with Finding No. 33, that RCMP members were reasonably justified in seizing unsecured firearms pursuant to the common law plain view doctrine.

With respect to Finding No. 34, that, where a secondary entry into a building was not authorized under the *Emergency Management Act* or the common law, the seizure of unsecured firearms was also unauthorized, I disagree with the Commission's analysis related to this finding. I note that the Commission acknowledges that it "cannot reconstruct the circumstances of each case" and "has little guidance from either statutes or the courts." I agree with this assessment; however, my conclusions depart from the Commission's from there. I do not conclude, as the Commission seems to have, that the members essentially did not have the legal authority to re-enter homes after seeing the unsecured firearms on the initial entries. The initial entries and searches were conducted within appropriate legal parameters. Unlike a situation where a second entry would require obtaining a warrant for the purpose of conducting a search as part of a criminal investigation where urgent or exigent circumstances do not exist, re-entry during a state of emergency occurs in an entirely different context. I view the purpose of re-entering unsecured buildings in a state of emergency to seize unsecured firearms found on an initial entry as a continuation of the EOC plan. In a sense, the re-entry into the buildings (including private residences) was the continuation of a single entry, given that the state of emergency was still in place and the entry constituted part of that ongoing situation, and not the initiation of a criminal investigation. As the Commission concluded, the initial entries were to locate people in need of

assistance, and the members lacked the time and resources at that point to attempt pet rescues. Along a similar line, the same exit and return was required in the case of the unsecured firearms. As I noted above, it is clear that there was a legitimate public safety concern on the part of the members considering the homes that were left unsecured, with the unsecured firearms remaining inside.

I agree with Finding No. 35, that, in some cases, RCMP members were authorized to seize carelessly stored ammunition pursuant to subsection 489(2) of the *Criminal Code* and the plain view doctrine.

I agree with Finding No. 36, that there is insufficient evidence to conclude that every ammunition seizure was authorized by law.

I agree with Finding No. 37, that, in several cases (as described in the interim report), the searches exceeded their authorized scope by expanding from a search for people or pets to a search for firearms or contraband.

I agree with Finding No. 38, that RCMP supervisors failed to provide sufficient guidance to members in relation to the scope of their authorities to search buildings.

I agree with Finding No. 39, that RCMP members failed to report to a justice to show that they had reasonable grounds to undertake warrantless seizures pursuant to paragraph 489.1(1)(a) of the *Criminal Code*.

I agree with Finding No. 40, that the RCMP failed to provide adequate supervision with respect to the duties of members pursuant to paragraph 489.1(1)(a) of the *Criminal Code*.

I agree with Finding No. 41, that it was reasonable for the RCMP to search police databases to determine if seized firearms had been stolen, to ensure they were returned to their lawful owners.

I agree with Finding No. 42, that seized firearms were returned in as orderly and timely a manner as was possible in the circumstances.

I agree with Finding No. 43, that lead RCMP members failed to integrate a strong communications strategy into the emergency response.

I agree with Finding No. 44, that divisional RCMP members with communications expertise were not available in sufficient numbers at the outset of the emergency.

I agree with Finding No. 45, that national RCMP communications staff had limited involvement in the emergency response.

I agree with Finding No. 46, that, overall, the RCMP's communications approach to the High River flooding crisis was ineffective and resulted in a negative impact on RCMP emergency operations and reputation.

I agree with Finding No. 47, that the ineffectiveness of RCMP public communications during the High River flood was the direct result of:

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

I agree with Finding No. 48, that, at the time of the flood, the RCMP lacked a comprehensive policy on emergency response management that outlined the legal authorities and duties of members in emergency situations with respect to:

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

I agree with Finding No. 49, that Sergeant Powers, the Acting Detachment Commander of the High River Detachment, should have acted as the RCMP representative at the High River Emergency Operations Centre.

I agree with Finding No. 50, that the RCMP had not fully implemented the Incident Command System into its emergency preparedness framework.

I agree with Finding No. 51, that note-taking by search teams lacked consistency and sufficient detail. I acknowledge, as the Commission has, that the deficiencies and lack of notes may have been a natural consequence of the urgency with which members needed to proceed.

I agree with Finding No. 52, that there were several instances in which note-taking by members not engaged in the original emergency response lacked sufficient detail.

I support Recommendation No. 1, that "K" Division RCMP should conduct a comprehensive review of its communications function to address the shortcomings exposed during the High River crisis communications response, ensure proper alignment of communication and operational priorities, and address resourcing of the communications function in the Division. Such a comprehensive review was in fact done as commissioned by the Commanding Officer in 2013. "K" Division RCMP has implemented a Strategic Communications Plan that includes the objectives of aligning communications and operational priorities, as well as staffing actions related to increasing resourcing of the communications function.

I generally support Recommendation No. 2, that the RCMP should develop a national crisis communications handbook to identify the objectives, policies, and procedures to be followed during emergency operations. The RCMP has developed an Emergency Response Operations Guide (EROG) Application to be downloaded on smartphones, tablets and desktop computers. I can indicate to the Commission that the Application is in the stages of being field-tested in different divisions nationally. This response guide includes a communications portion that serves the same purpose as the type of handbook contemplated by the Commission. The response guide speaks to communications objectives, policies and procedures to be followed during emergency operations.

I support Recommendation No. 3, that the RCMP should ensure that emergency management policies and procedures recognize the close integration of communications and operations. I also support Recommendation No. 4, that the RCMP should work with its key partners to ensure that coordinated communication is recognized as essential to a successful emergency response and must form part of any future emergency response. The RCMP has adopted the Incident Command System as its standard for managing and coordinating responses to emergencies and disasters. The Incident Command System is designed to allow for the efficient management of an emergency response operation. The close integration of communications and operations is a core principle of the Integrated Command System. This includes an Information Officer who reports directly to the Incident Commander for all operational communications. RCMP policies, Emergency Operations Plans and procedures are currently in place and under development that instruct the RCMP to use the Incident Command System.

With respect to Recommendation No. 5, that the RCMP should review its emergency management policies at the national and divisional level to ensure that they provide clear and comprehensive direction with respect to the legal authorities and duties of its members in emergency situations, taking into consideration the specific authorities and duties set forth in provincial or territorial legislation, I note that the EROG application (described above) includes the legal authorities for evacuation. A process to ensure that members contact the EOC during an emergency response to ensure that they have and are using the correct authorities for any seizure of property will be implemented in the EROG. I conclude that different circumstances would dictate the legal authorities and duties for that specific incident, and policies would be unable to cover every eventuality. Accordingly, it may not be feasible to include such a great level of detail in the RCMP's national and divisional policies, since they would be rendered unnecessarily complex in terms of members attempting to apply them in the middle of an active emergency situation.

I generally support Recommendation No. 6, that the RCMP should create procedures or guidelines with respect to the seizure of firearms, ammunition and contraband in disaster response situations like the High River flood. The EROG application is currently implementing procedures and guidelines for the seizure of property in the Evacuation Plan template. Although the application does not detail procedures related to the seizure of firearms, ammunition and contraband specifically, it does include a step whereby members would be directed to contact the EOC for the proper authorities to effect such seizures.

I generally support Recommendation No. 7, that the RCMP should develop guidelines for members that respect their health and safety needs when responding to such emergencies within their own communities, with consideration given to how their conduct will affect the response of other residents. While any guidelines that are made cannot contemplate perceptions that residents in a community may develop, I recognize that the members were experiencing personal struggles in addition to handling the pressures associated with the performance of their operational duties. Guidelines that respect their health and safety needs when responding to emergencies within their own communities would serve to support them in such operations.

I generally support Recommendation No. 8, that RCMP policy or guidelines should direct that, insofar as possible, RCMP emergency responders whose homes are located in an evacuation zone should vacate their homes in accordance with evacuation orders. I will direct that this be done. My review of the available information does not permit me to conclude that the members

were in actual fact favoured, although I do acknowledge the reasonable perception of the residents of High River. I accept the fact that the members remaining in their homes contributed to the anger felt in the community because they perceived that they were at a disadvantage in that they were not spared damage caused to their homes. I also acknowledge that an emotional impact was felt by the responding members experiencing not only devastation to their homes, but also the added pressure of working in extremely trying conditions to protect lives. Insofar as possible, RCMP emergency responders whose homes are located in an evacuation zone should vacate their home in accordance with evacuation orders. With that said, the underlying need to put in place guidelines that respect the members' health and safety needs must be addressed, as discussed above.

I support Recommendation No. 9, that the RCMP should develop a policy requiring Incident Command System training for key positions, including Detachment Commanders, at a level commensurate with their responsibilities in an emergency response situation. I will direct that this be done.

I generally support Recommendation No. 10, that the RCMP should develop national practice guidelines requiring the creation and use of neighbourhood inquiry sheets or similar documentation for emergency responders. The RCMP is currently researching the creation of neighbourhood inquiry forms for inclusion into the EROG application. Additionally, the EROG application contains a "Damage Assessment" tab, which allows the member to make notes with respect to damages caused during an emergency response.

I look forward to receiving your final report on this matter.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Bob Paulson", with a long horizontal flourish extending to the right.

Bob Paulson
Commissioner