

**Civilian Review and Complaints Commission
for the Royal Canadian Mounted Police**

**Re: Chairperson-Initiated Complaint and Public
Interest Investigation into the conduct of RCMP
members during an interaction in Kinngait, Nunavut
on June 1, 2020**

under section 45.76(1) of the *Royal Canadian Mounted Police Act*

**Complainant:
Chairperson of the Civilian Review and Complaints
Commission for the Royal Canadian Mounted Police**

Date of Interim Report: June 22, 2022

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Introduction

[1] In June 2020, the Commission reviewed a video recording showing an RCMP vehicle being driven in the direction of a man. The video recording then shows the driver-side door of the vehicle opening, hitting the man and knocking him down. The RCMP member who drove the vehicle, and several other members, then use force to arrest the man.

[2] The Commission received additional information indicating that, after the man was placed in a cell at the RCMP detachment, another detainee allegedly assaulted him. The man suffered injuries and was airlifted to Iqaluit for treatment.

[3] On August 18, 2020, the Chairperson of the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police (“the Commission”) filed a Chairperson-initiated complaint into the conduct of RCMP members involved in the incident, which occurred in Kinngait (formerly known as Cape Dorset), Nunavut, on the evening of June 1, 2020. The Commission conducted the investigation into the Chairperson’s complaint pursuant to section 45.66(1) of the *Royal Canadian Mounted Police Act* (RCMP Act).

[4] Following its investigation, the Commission found that the RCMP members had reasonable grounds to arrest the man and that the force used to conduct the arrest was reasonable. However, the Commission found that it was unsafe and unreasonable to drive the RCMP vehicle in such close proximity to the man, although the evidence revealed that the RCMP members had not intended to strike the man with the door.

[5] The Commission made a number of findings about the conditions of detention in the RCMP cells, including about the lack of space for detainees, which created an unsafe environment, ultimately leading to the man’s assault while in cells. The Commission also identified a number of deficiencies with the physical state of the Kinngait Detachment, which created health and safety risks for detainees and RCMP personnel.

[6] The Commission further made findings about the significant under-resourcing of services observed in this case. This included clearly insufficient staffing, difficulties in accessing timely medical care, inadequate facilities and supplies, and insufficient training. The Commission found that this under-resourcing was a factor explaining most of what happened to the man during the incident. The Commission also found that the under-resourcing rises to such a level as to raise significant concern about possible

systemic discrimination. However, the Commission found no evidence that the individual RCMP members involved in this case engaged in any discriminatory conduct.

[7] The Commission made several recommendations to address the issues identified, including operational guidance and training for the individual RCMP members involved and various measures to address the state of the detachment and the systemic issues identified.

Process

Other investigations

[8] Several other investigations have been undertaken with regard to this matter. Each had a different mandate and focused on different aspects of the incidents.

[9] The RCMP in “V” Division (Nunavut) and the Government of Nunavut have a Memorandum of Understanding¹ with the Ottawa Police Service (OPS) for the OPS to conduct independent external investigations in instances of major police incidents involving members of the RCMP. On June 3, 2020, the RCMP contacted the OPS,² and the OPS confirmed that they would conduct an “independent external investigation review” of the June 1, 2020, incident in Kinngait. On June 4, 2020, two OPS officers were assigned as investigators.

[10] The mandate of the OPS investigation was to determine whether any criminal or other charges should be laid against Constable Michael (Dan) Keeling (the driver of the police vehicle that struck the man) and/or the other RCMP members involved in the incident. The scope of the investigation related to the incident involving the police vehicle door, as well as the arrest and transport of the man until he was lodged in the RCMP detachment cell.

¹ In June 2021, the Legislative Assembly of Nunavut passed a bill to amend the *Royal Canadian Mounted Police Agreement Act* to add provisions about the independent investigations into serious incidents involving police officers. This would allow the Government of Nunavut to contract with an independent investigative body to investigate such incidents. Under the new bill, the Government of Nunavut may still contract with a police force to conduct these investigations. However, a civilian monitor or observer may be appointed. See Bill 53: <https://www.assembly.nu.ca/sites/default/files/Bill-53-Amend-RCMP-Agreement-Act-EN.pdf>

² The RCMP first contacted the Calgary Police Service, with whom they have a similar Memorandum of Understanding, but that police service was not able to undertake the investigation.

[11] On July 20, 2020, the OPS investigators submitted a report in which they concluded that no criminal or other charges should be pursued against Constable Keeling or the other RCMP members. The Crown attorney's office in Whitehorse reviewed the case and, likewise, they did not believe that charges should be laid.

[12] Simultaneously, the RCMP had commenced a Code of Conduct investigation into the actions of Constable Keeling. This investigation was conducted under the rules and regulations of the RCMP's internal disciplinary process. The allegation being investigated was that Constable Keeling had contravened the RCMP's Code of Conduct, in that he used a level of force that exceeded what was reasonable in the circumstances by striking the man with a police vehicle.

[13] An Investigation Report dated March 1, 2021, was submitted to Chief Superintendent Amanda Jones, who is the Commanding Officer of "V" Division. After reviewing the report, Chief Superintendent Jones amended the allegation against Constable Keeling. The new allegation was that Constable Keeling had contravened the RCMP's Code of Conduct by operating a police vehicle in a careless manner.

[14] A Code of Conduct meeting (proceeding) was held on April 16, 2021. At the conclusion of the meeting, Chief Superintendent Jones concluded that the allegation against Constable Keeling was not established, and as such, there would be no disciplinary measures taken. However, Chief Superintendent Jones did make negative conclusions about some aspects of Constable Keeling's actions, and she directed that performance improvement measures be undertaken.

[15] In addition, on June 15, 2020, Superintendent Peter Kirchberger, the Officer in Charge of Criminal Operations in "V" Division, ordered an Independent Officer Review (IOR) into certain issues related to the Cape Dorset (Kinngait) Detachment cell block. Specifically, the review would examine the handling and management of prisoners at the Kinngait Detachment cell block. Further, the review was to encompass all aspects relating to the processing and treatment of prisoners on the night of June 1, 2020, through to June 2, 2020. The review was to provide recommendations including, but not limited to, policy, procedures, training, officer safety, equipment, resources, and infrastructure.

[16] A senior RCMP officer from “G” Division (Northwest Territories) conducted the IOR. A Preliminary Report was completed on July 15, 2020, and the Concluding Report was issued on October 16, 2020. Numerous findings and recommendations were made. RCMP Criminal Operations in “V” Division then issued a response to the recommendations.

[17] One of the recommendations in the IOR Concluding Report was to have a use of force subject matter expert (SME) review two portions of the closed-circuit video recordings from the Kinngait Detachment cell block. The first portion involved RCMP members carrying the man involved in the incident with the police vehicle into a cell and searching him. The second portion involved RCMP members removing another man from the cell and placing him in a restraint chair.³

[18] The SME reviewed the recordings and issued a report dated December 7, 2021. He found no fault with any of the use of force observed in the recordings.

Conduct of the Commission’s Chairperson-initiated complaint and public interest investigation

[19] The Commission is an independent agency that impartially reviews complaints made by the public about RCMP member conduct. It is not part of the RCMP.

[20] Pursuant to section 45.59(1) of the RCMP Act, the Chairperson believed that there were reasonable grounds to investigate the conduct of RCMP members, or other persons appointed or employed under Part I of the RCMP Act, involved in this incident.

[21] As a result, the Commission’s Chairperson initiated the present complaint and public interest investigation on August 18, 2020. The terms of reference for the investigation specifically provided that the Commission would investigate the following issues:

- The circumstances leading up to the incident;
- Whether the conduct of the RCMP member driving the vehicle was reasonable in the circumstances;
- Whether the arrest of the man was reasonable in the circumstances;
- Whether the use of force employed by RCMP members during the man’s arrest was reasonable in the circumstances;

³ An assessment of the RCMP members’ use of the restraint chair with another prisoner did not fall within the terms of reference of this investigation.

- Whether the man required and received adequate medical care following the initial incident;
- The circumstances surrounding the man's alleged assault while in custody, whether reasonable steps were taken to ensure his safety, and whether the conditions of detention in the cell were adequate;
- Whether the man received adequate medical care following the incident in the cell;
- The actions taken by the RCMP in response to this matter;
- Whether racial bias and/or discrimination played a role in the man's arrest and subsequent treatment.

[22] The following RCMP members were notified that they were the subjects of this complaint and public interest investigation:

- Constable Michael (Dan) Keeling
- Constable Philippe Cholette
- Constable Cameron Smith
- Constable Kristy Sturge
- Sergeant Darrell Gill

[23] Constable Matthew Ferguson was later identified as a witness member.

[24] The Commission made numerous requests to the RCMP for relevant materials. These materials were reviewed and analyzed as received, and additional requests were sent to the RCMP over the course of the investigation. The RCMP generally responded to the Commission's requests for disclosure in a prompt and complete fashion.

[25] The Commission also reached out to the 22-year-old man who was involved in the incident in question. For privacy reasons, the man will be referred to in this report by the generic initials "A. B." Communications with A. B. were conducted via legal counsel, who was acting on his behalf.

[26] The Commission also sought to identify and contact other pertinent witnesses, as well as seeking and obtaining relevant information from various different sources. Commission staff analyzed a significant amount of documentation, photographs, and video and audio recordings. The relevant materials obtained from the RCMP, combined with the evidence gathered by the Commission, amounted to approximately 146 gigabytes of electronic material (about 8,850 separate electronic files).

[27] The Covid-19 pandemic, and particularly the travel restrictions in place in Nunavut, affected certain aspects of the investigation; for example, interviews were conducted via videoconference.

[28] Section 45.39(1) of the RCMP Act states:

Subject to sections 45.4 and 45.42, the Commission is entitled to have access to any information under the control, or in the possession, of the Force that the Commission considers is relevant to the exercise of its powers, or the performance of its duties and functions, under Parts VI and VII.

[29] As described above, the OPS completed a criminal investigation and sent its report to the RCMP. When the Commission requested that the RCMP disclose this report to the Commission, the RCMP indicated that the request for the report and the investigative file should be made to the OPS, not the RCMP. This surprising position was taken despite the fact that the RCMP was in possession of the report, and the report was relevant to the performance of the Commission's duties.

[30] To avoid seeing its investigation delayed, the Commission contacted the OPS and issued a summons under section 45.65(1) of the RCMP Act to obtain the OPS investigation report and the full investigative file. The OPS cooperated fully and provided the materials promptly.

[31] The Commission's investigators conducted interviews with various persons, including A. B., the guard who was on duty at the RCMP detachment on the night in question, and three nurses who were involved in the assessment of A. B.'s health. The person who made the video recording of A. B.'s arrest declined to be interviewed by the Commission's investigators.

[32] In June 2021, the Commission sent interview requests to the RCMP subject members. Constable Keeling provided the Commission with a written statement that he had prepared on June 17, 2020, during the OPS investigation. He declined to be interviewed, but he stated that he was open to taking any follow-up questions that the Commission may have after reviewing his written statement. The Commission did send him follow-up questions and Constable Keeling's legal counsel provided written responses on his behalf.

[33] Constable Cholette, Constable Smith, Constable Sturge, and Sergeant Gill initially indicated that they were prepared to give interviews. The Commission's senior investigator corresponded with them regarding their availability to schedule the interviews. The Commission then received a message on June 9, 2021, from Tim Pettit,

a National Police Federation (NPF)⁴ representative who was assisting Constable Smith. Mr. Pettit stated that, instead of an interview, Constable Smith would provide written responses to questions from the Commission. On June 10, 2021, Sergeant Gill informed the Commission that he would not give an interview but would provide a written statement in due course. On the same date, Constable Sturge wrote to let the Commission know that she had been in touch with a representative from the NPF and that she was “awaiting [*sic*] for further direction, etc. for this process.” On that date, Constable Cholette also indicated that he wanted to consult with his NPF representative before committing to a date for an interview. Four days later, Constable Cholette informed the Commission that he would be providing a written statement, instead of an interview.

[34] The Commission considered the requests of the RCMP members and the NPF representative and determined that, in the specific circumstances of this case, obtaining a written statement with possible follow-up questions in writing would be sufficient to ensure that the Commission obtained the information necessary for its investigation. On October 28, 2021, the Commission asked the RCMP members to provide all relevant information about their actions and observations with regard to the RCMP’s involvement with A. B. in the period in question. This would include the RCMP members’ actions and observations, as applicable, in:

1. The lead-up to A. B.’s arrest
2. The arrest itself, including (if applicable) an explanation of the grounds for arrest and any use of force
3. A. B.’s subsequent processing and detention at the detachment, including his interaction with another inmate that resulted in injuries to A. B., and the aftermath of that incident, including any healthcare offered or provided, and
4. A. B.’s release from custody

[35] The Commission asked the RCMP members to provide their written statements by November 15, 2021.

⁴ The National Police Federation is the bargaining agent that represents RCMP regular members and reservists below the rank of Inspector.

[36] The RCMP members did not respond. Despite the Commission having accommodated their requests to provide written statements as opposed to interviews, and despite three⁵ of the RCMP members having indicated that they would in fact provide written statements, the Commission did not receive any written statements, and no explanation was provided.

[37] The Commission considered the matter and determined that, even without interviews or written statements from most of the RCMP subject members, it had an abundance of evidence upon which to base findings and recommendations. This included information obtained from its own investigation; information disclosed by the RCMP; and information gleaned through the other proceedings. The available evidence included contemporaneous notes and reports authored by the subject members, as well as statements they provided in some of the other investigations and proceedings. In light of this, the Commission decided not to risk delaying its investigation and the issuing of its report by taking further steps to obtain statements from the subject members.

[38] The Commission does note that, by choosing not to cooperate with the Commission's investigation, the RCMP subject members effectively deprived themselves of the opportunity to provide detailed explanations about their conduct and about any relevant contextual factors that may have influenced it. In some cases, such explanations can shed a different light on the assessment of the individual subject members' conduct. Since the subject members chose not to provide these explanations, the Commission has assessed their conduct based on the evidence available.

[39] The Commission is committed to continuing to work with the RCMP, its members, and the NPF in good faith to accomplish the shared goals of accountability and improving policing.

⁵ Constable Sturge made no further contact with the Commission after stating that she would consult with her NPF representative.

Background

[40] Kinngait, Nunavut, is a community of approximately 1,400 people⁶ located on Dorset Island, immediately south of Baffin Island. It is about 400 kilometres northwest of Iqaluit by air. The community was formerly known as Cape Dorset. Approximately 93% of Kinngait's residents are Inuit.⁷

[41] Policing services in Nunavut are provided by the RCMP, which has 25 detachments in the territory, including one in Kinngait. At the time of the incident, the RCMP detachment in Kinngait was permanently staffed with a Sergeant (who was in charge) and two Constables. The remainder of the RCMP members working out of the detachment in Kinngait were "relief members": RCMP members from other locations who work in Kinngait on a rotational basis.

[42] On June 1, 2020, six RCMP members were in the community: the Sergeant and two Constables assigned to Kinngait, and three Constables who were relief members. Three RCMP members were assigned to work the night shift.

[43] On June 1–2, 2020, the RCMP detachment in Kinngait received an unusually high number of calls for service. There were 37 calls, including 27 calls that were received between 4:30 p.m. on June 1, 2020, and 3:56 a.m. on June 2, 2020. This high workload, as well as the seriousness of some of the calls, necessitated calling some of the day shift RCMP members back onto duty to assist. There were several reported domestic assaults, two firearms calls, several *Mental Health Act* calls, and a *Coroner's Act* sudden death investigation. There were alcohol-related calls including reports of disturbing the peace, mischief, and impaired driving.

[44] That night, 15 persons were lodged in the four cells at the Kinngait RCMP detachment. One cell was used only for female prisoners, leaving the other three cells to house nine male prisoners. The detachment cell block is staffed by one guard, who is not an RCMP member.

⁶ Statistics Canada, Census Profile, Census of Population 2021: <https://www12.statcan.gc.ca/census-recensement/2021/dp-pd/prof/details/page.cfm?Lang=E&SearchText=Cape%20Dorset&DGUIDlist=2021A00056204007&GENDERlist=1&STATISTIClist=1&HEADERlist=0>

⁷ Statistics Canada, Census Profile, Census of Population 2016: <https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/details/page.cfm?Lang=E&Geo1=CSD&Code1=6204007&Geo2=CD&Code2=6204&SearchText=Cape%20Dorset&SearchType=Begin&SearchPR=01&B1=All&TABID=1&type=0>

[45] Numerous persons who provided statements to the Commission and in various other proceedings highlighted the remarkably high number of incidents in the community that evening.

Analysis

The circumstances leading up to the incident

A. B.'s activities prior to interacting with the RCMP members

[46] In various interviews, the man (A. B.) who was hit by the police vehicle's door and later assaulted in cells by another detainee described that, on the night of June 1, 2020, he was at his father's house (House A⁸). He drank a considerable amount of alcohol and consumed shatter (high-potency cannabis extract).⁹ His father kicked him out of the house, and he left to go back to his own house (House B). A. B.'s father essentially confirmed this version of events.

[47] The father's neighbour, who lives at House C, recounted that the father and A. B. were causing a disturbance and that the father was beating up A. B. and kicking him out of the house. The neighbour saw the father kick A. B. in the back. The neighbour's children were scared because of the disturbance, so the neighbour called the RCMP to report it. The neighbour wanted the police to "come and get the father," but the neighbour later told investigators that he was also worried that A. B. "would try to do something to people – he was very drunk . . . he ran after a small Honda, he just ran after a little ATV, four-wheeler." It is unclear whether the neighbour expressed these concerns to the police dispatcher that night. The neighbour indicated that the man he observed (A. B.) was the same man that was subsequently hit by the police vehicle.

[48] A. B. told investigators that, about two months earlier, one of his friends had picked up a mickey that he had dropped, and drank it. This made him "kind of mad." A. B. thinks that, on June 1, 2020, he was chasing the friend, who was riding on a blue ATV (all-terrain vehicle), because of the previous incident between them. A. B. explained that, if he had caught up with the friend, he would have punched him.

⁸ The addresses of the houses have been replaced by letters to protect the privacy of the individuals involved.

⁹ In his interview with the Commission's investigators, A. B. said that, on that night, he had been drinking, smoking weed, and smoking shatter. He also said that he "had one magic muffin," and it was the first time he had ever tried that. He said that he had purchased three "mickeys" of alcohol and he had consumed almost two of them.

[49] Investigators interviewed the friend. He explained that A. B. is his best friend and they get along well. The friend stated that he owns a blue Honda ATV; on the night in question, another man was driving it. The friend watched a video recording of the incident involving A. B., and the friend identified his ATV as being in the background of the video footage.

RCMP members' activities prior to interacting with A. B.

[50] At approximately 10:46 p.m. on June 1, 2020, the RCMP received a call about an intoxicated man pointing a firearm out a window at House D. On duty for the night shift were RCMP members Constable Philippe Cholette, Constable Cameron Smith, and Constable Kristy Sturge. Although off duty at that time, Sergeant Darrell Gill and Constable Michael (Dan) Keeling were called in to assist in responding to the firearms call.

[51] The five RCMP members attended House D and learned that the man who had been pointing the gun had left the house before police arrived. He had reportedly been waving a gun around and had possibly been pointing it at people in the house. Family members had distracted him and taken the gun from him after he pointed it out the window. He had left on a snowmobile and was described as being grossly intoxicated. Sergeant Gill seized a shotgun at the house and secured it in a police vehicle.

[52] While on the scene at House D, the RCMP members received a report of an assault in progress at House E. Specifically, the caller had indicated that a father was "beating on" his young son. These houses were close together and the RCMP members attended House E. They found that the man in that house was not intoxicated and there were no signs of any violence or an assault. It appeared that either the RCMP members had been given the incorrect address or the person had fled the scene.

[53] A review of the 911 call from the neighbour indicates that the neighbour mistakenly reported the disturbance as occurring at House E, when it was in fact House A. Therefore, the RCMP members unknowingly responded to the wrong house.

RCMP members observe A. B.

[54] According to Constable Keeling's written statement, as he was making his way to the relevant area of Kinngait from his home, Constable Smith advised him that the subject of the firearm call had left the area on a snowmobile. Constable Smith also stated that he was watching a snowmobile head toward him and the other RCMP

members (who were at House D) from Malik Island, which is across from Dorset Island (where the community of Kinngait is located). Constable Keeling could also see the lights of a snowmobile crossing the sea ice toward the beach in the 1,000 block.

[55] Constable Keeling parked his truck and set up containment with his patrol carbine rifle. He was then able to visually confirm that the driver of the snowmobile was not the subject of the firearms complaint. The RCMP members met at House D and agreed to continue searching for the subject. They were then dispatched to the reported disturbance at House E.

[56] As Constable Keeling was putting his carbine rifle away, he heard a man yelling on the main street in the area. At 11:25 p.m., he turned and saw a man stumbling and shouting at someone down the street. According to Constable Keeling, the man had a bloody nose, and some small children in the area were trying to get the attention of police officers. The children were saying, more than once, "He is fighting people!" and they were pointing at the man. Constable Keeling observed that the man appeared to be very intoxicated. He and Constable Cholette were travelling in the same RCMP vehicle and they headed toward the man. Constable Keeling believed that the man was involved in the dispute complaint, because he came from the rear of the dwelling units containing House E.

[57] At 11:27 p.m., Constable Keeling drove the police vehicle onto the street and observed the man walking toward a person driving a small blue ATV. The ATV appeared to be driving away from the man, who was "pointing aggressively" at the driver of the ATV. Constable Keeling drove toward the man, who walked in between two houses, toward a baseball diamond. Constable Keeling told the other RCMP members by radio that the man was near the baseball diamond; he activated his vehicle's emergency lights to show the other RCMP members where he was, and to get the man's attention.

[58] As will be discussed in greater detail later in this report, Constable Keeling drove his police vehicle near the man; the door of the vehicle struck the man, causing him to fall to the ground. With the assistance of other RCMP members, Constable Keeling then arrested the man for causing a disturbance.

[59] In his written statement, Constable Keeling summarized the grounds he believed he had for arresting the man:

I arrested [the man] for causing a disturbance based on my observations of his highly intoxicated condition, my suspicion that he had been involved in the disturbance at [House E,] the aggressive behaviour he displayed towards the

operator of the blue ATV, the repeated statements of the children that he was fighting people, and my observations that he had a bloody nose.

[60] In Constable Cholette's supplementary occurrence report, he documented that he was the passenger in the RCMP police truck being driven by Constable Keeling. They were patrolling the area. Constable Cholette noted that the man who had been pointing a firearm had left the scene and had not yet been located, and that the subject(s) of the assault (disturbance) complaint had not been located.

[61] Constable Cholette observed a man wearing dark-coloured clothing, covered in mud, stumbling outside House F. The RCMP member wrote:

At this point in time it was unclear what [the man's] involvement in either file was and there were still suspects at large, one of whom was pointing a firearm earlier in the evening. [The male who] appeared to be heavily intoxicated would be arrested for causing a disturbance and determine his involvement, if any, in the other ongoing files.

[62] The OPS investigators interviewed the man who made video recordings of portions of the incident in question. The man lived at House F. He stated that he was bored and had nothing to do, so he decided to take videos of "drunk people." The man saw a "kid" (later identified as A. B.) lying on the ground. The man saw A. B. "running after kids and a Honda." After that, the incident with the police vehicle occurred and A. B. was arrested.

[63] As previously mentioned, A. B. told investigators that he was somewhat mad at his friend for previously taking his alcohol. To the best of his recollection, on the night in question he was chasing his friend who was on the ATV, and if he had caught up with the ATV, he would have punched the friend.

[64] The ATV driver did not wish to speak to investigators, but his brother did provide a statement to the OPS investigators in which he indicated that he had been riding on the ATV that night with his brother. He saw A. B. walking around so drunk that he could barely stand straight. A. B. then tried to hit his brother and gave him the finger.

[65] It should be noted that these witness statements were not available to Constable Keeling when he decided to arrest A. B.; however, the statements do provide independent accounts of the actions of A. B. prior to his interactions with police.

[66] The Commission reviewed the video recordings taken by the man in House F. One recording was seven seconds long, the other was two minutes and twenty-three seconds in length.

[67] In the first recording, A. B. is observed making obscene gestures (“giving the finger”) with both hands. It is unclear to whom he is gesturing. He then runs between two houses (House G and House F) and disappears from the camera’s view. He is only wearing one shoe.

[68] In the second recording, A. B. is seen rolling on the ground while an ATV drives nearby on a dirt road. The driver of the ATV stops and looks at A. B., who is now crawling on his knees. A. B. stands up and walks onto the dirt road. The ATV slowly moves forward. A. B. walks toward the ATV, stumbling and waving his arms. An RCMP vehicle can then be seen moving toward A. B., who looks at it. The ATV is moving away slowly.

Reasonableness of A. B.’s arrest

Finding #1	There were reasonable grounds to believe that A. B. had committed the offence of causing a disturbance, and it was reasonable for Constable Keeling to arrest him for that offence.
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[69] Police officers must establish that they have reasonable grounds to believe that an individual has committed an offence prior to arresting or charging that individual. Suspicious circumstances will not be enough to justify an arrest. Moreover, the grounds must be justifiable from an objective point of view; a reasonable person placed in the position of the officer must be able to conclude that there were indeed reasonable grounds for the arrest.

[70] When evaluating an RCMP member’s decision to make an arrest or lay charges, it is important to keep in mind that their role is not to determine a suspect’s guilt or innocence—RCMP members do not act as judge and jury. The fact that an accused is arrested but not convicted, or that charges are not proceeded with, is not determinative of the appropriateness of the arrest. The test at trial is “beyond a reasonable doubt,” and for proceeding with charges in Nunavut, it is a “reasonable prospect of conviction,” both of which create a higher threshold than that of reasonable grounds.

[71] Constable Keeling arrested A. B. for causing a disturbance. Section 175 of the *Criminal Code* defines the offence as follows:

175 (1) Every one who

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

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

(ii) by being drunk, or

(iii) by impeding or molesting other persons,

...

is guilty of an offence punishable on summary conviction.

(2) In the absence of other evidence, or by way of corroboration of other evidence, a summary conviction court may infer from the evidence of a peace officer relating to the conduct of a person or persons, whether ascertained or not, that a disturbance described in paragraph (1)(a) or (d) or an obstruction described in paragraph (1)(c) was caused or occurred.

[72] Section 495 of the *Criminal Code* provides that a police officer may arrest someone without a warrant if they find the person committing a criminal offence and if the police officer believes on reasonable grounds that the arrest is necessary to prevent the continuation or repetition of the offence, and/or to identify the person.

[73] With regard to the offence of causing a disturbance, it must be shown that the accused did one of the listed acts, that the accused was not in a dwelling-house, and that the accused's acts resulted in a disturbance.

[74] The Supreme Court of Canada has held that, to meet the definition of causing a disturbance, there must be proof of an "externally manifested disturbance of the public peace." This means that the disturbance must interfere, in some manner, with the public use of the area. It need not be a significant disturbance, so long as one is present. Further, an individual must intend to cause the underlying act that leads to the disturbance, and the disturbance must be one that may reasonably have been foreseen in the particular circumstances.¹⁰ Proof of disturbance requires that someone was affected or disturbed by the activity.

¹⁰ *R v Lohnes*, [1992] 1 SCR 167.

[75] The Commission finds that there were reasonable grounds to believe that A. B. had committed the offence of causing a disturbance, and that it was reasonable for Constable Keeling to arrest him for that offence. Constable Keeling heard a man yelling and then observed a man, later identified as A. B., stumbling and shouting at someone down the street. Some children in the area repeatedly informed the RCMP member that A. B. was “fighting people.” Constable Keeling then observed A. B. walking toward, and “pointing aggressively at,” a person driving an ATV. A. B. appeared to be very intoxicated.

[76] As described above, a witness subsequently confirmed that he saw A. B. “running after kids and a Honda,” and another witness described that A. B. “tried to hit [the ATV driver] and gave him the finger.” A. B. himself confirmed that he had been chasing the ATV driver and would have hit him if he had had the chance. Although Constable Keeling was not privy to these statements when he determined that A. B. would be arrested, the testimonies do confirm the RCMP member’s documented observations. Likewise, the video recordings reviewed by the Commission confirm that A. B. appeared to be highly intoxicated and was making obscene gestures while near the ATV driver.

[77] It was reasonable for Constable Keeling to conclude that A. B. had committed the offence of causing a disturbance. It was also reasonable for Constable Keeling to conclude that it was necessary to arrest A. B. to prevent him from continuing or repeating the offence. The Commission finds that it was reasonable for Constable Keeling to arrest A. B. for causing a disturbance.

[78] Although he was not apprehended on this basis, it also appeared that A. B. was committing the non-criminal offence of being intoxicated in a public place, as defined by section 80 of Nunavut’s *Liquor Act*:

80(1) No person shall be in an intoxicated condition in a public place.

[79] Section 81 of the *Liquor Act* permits a police officer to apprehend a person if they find that person in an intoxicated condition in a public place and, in the opinion of the peace officer, the person is likely to cause injury to himself or be a danger, nuisance, or disturbance to others.

Reasonableness of the conduct of the RCMP member driving the vehicle

Finding #2	It was reasonable for Constable Keeling and the other RCMP members to conduct the arrest of A. B. quickly.
Finding #3	The evidence does not indicate that Constable Keeling intended to strike A. B. with the police vehicle's door. Rather, the available information indicates that this was an accident that occurred as a result of the police vehicle lurching forward on poor road conditions in a failed attempt to stop near A. B.
Finding #4	It was unsafe and unreasonable for Constable Keeling to have driven his police vehicle in such close proximity to A. B. on an icy road that was in poor condition. Constable Keeling's risk assessment of the situation should have adequately taken into consideration the state of the roadway and all other relevant factors.
Finding #5	The Commission is satisfied that adequate remedial measures have been taken with regard to Constable Keeling's driving and that no further action is necessary.
Recommendation #1	The RCMP should develop and implement policy and training with regard to the use of police vehicles while pursuing suspects who are on foot.
Recommendation #2	The RCMP should consider developing and implementing specific policy and training with regard to driving on road conditions that are often encountered in northern regions.

[80] In his interview with the Commission's investigators, A. B.'s recall of events on the night in question was limited. He repeatedly answered that he did not know or did not remember certain things.

[81] A. B. told the OPS investigators that he got drunk and the police ran him over with a car, and that he does not remember anything after that. He remembers walking and then the police vehicle approaching him with its door already open; the left-side door hit him in the face and he blacked out. A. B. stated that "a few police strangled him" and the next thing he remembers is that he was in the cell sobering up.

[82] Someone later told him that he got beat up in the cell; he did not know if his injuries were because of his collision with the police vehicle door or the assault in cells. A. B. told the OPS investigators that he had seen the video recording of the police vehicle incident, and he thinks the video told him what happened (as opposed to him remembering it on his own accord). He said that his lawyer had shown him the video recording. He stated that he wanted to sue the police officers, and he asked the OPS investigators if he would have to charge the police for their conduct. He said that he felt sad and angry, and that his lawyer told him that the police would not get away with this.¹¹ He explained that he did not want his name to be released until he got back to his home community. When asked what he wanted to see happen as a result of this incident, A. B. said that it was difficult for him to describe but he wanted to see a protest about the actions of the police.

[83] In his written statement, Constable Keeling described that, after observing the man later identified as A. B. pointing aggressively at the ATV driver, he drove around the house on the corner and used an access road that runs alongside the baseball diamond, as A. B. was headed toward the baseball diamond. Constable Keeling activated the emergency lights on his police vehicle to get the man's attention and to show the other RCMP members his location.

[84] When Constable Keeling observed A. B. again, he appeared to be making his way back to the area where he had initially been observed. Constable Keeling described the subsequent events as follows:

I approached with my police truck and had my door open to make a quick exit out of the vehicle as I was not sure if the male was attempting to flee or return to where we were dispatched to.

As I was approaching where the male was walking, he was flailing his arms and taking wide steps. I drove up alongside the male and was attempting to park alongside his right side. As I was coming to a stop, the police truck slid on the ice and I the [*sic*] truck came to a sliding stop. The truck's front driver's side tire dipped down into a small body of water from ice melt and this pushed the truck ahead and to the left towards the male. The driver's side door I was holding opened fully with the forward motion of the truck and made contact with the male, knocking him to the ground. I had no intention of using my door to strike the

¹¹ The transcript of A. B.'s interview reads, "Because my lawyer told me the police want to get away with it," but the OPS Investigation Report summarizing the interview quotes A. B. as saying, "Because my lawyer told me that the police won't get away with it." The Commission reviewed the recording of the interview and it appears that A. B. said the latter ("Because my lawyer told me that the police won't get away with it.")

male. I had only wanted to park alongside him and exit my police truck quick to take him into custody.

[85] Constable Keeling then exited his police vehicle and told A. B. that he was under arrest for causing a disturbance.

[86] In response to the Commission's written follow-up questions, legal counsel representing Constable Keeling described A. B. as a "fleeing suspect as opposed to simply being a pedestrian in the area." Counsel explained that "while [Constable Keeling] felt some urgency to apprehend [A. B.] he was nonetheless cognizant of the road conditions and people in the area." Furthermore, counsel stated that the RCMP member's intention was to cut off A. B. before he got to the field; there was a legitimate concern that A. B. was intending to assault the ATV driver, or get back to the house where he had been causing a disturbance. Counsel also argued that Constable Keeling would have been judged far more harshly if he had not intervened quickly and A. B. had in fact had a weapon and shot at the ATV driver.

[87] Constable Cholette was in the passenger seat of Constable Keeling's vehicle. In his occurrence report, he wrote:

Members approached the male [A. B.] and Cst CHOLETTE was getting ready to exit the vehicle as quickly as possible as members still did not know the male's identity and state of mind.

As the vehicle approached [A. B.], both members (Cst CHOLETTE and KEELING) were getting ready to exit the vehicle. As the vehicle was coming to a stop, the front left side of the vehicle dipped into [a] pothole or puddle. Cst CHOLETTE heard the sound of the vehicle door and [A. B.] colliding but did not observe it.

[88] In his interview with the OPS investigators, Constable Cholette recounted the incident as follows:

As we approached, again I'm still thinking, like, I don't know who this guy is, we're still looking for a bunch of subjects, if he just assaulted someone, possibly armed, anything, we wanted to grab him quick so I was getting ready to get out of the vehicle.

So I had my hand on the door handle so as soon as the vehicle stopped I could jump out.

Constable Keeling had his – he was sort of doing the same thing. The door's, you know, partially opened, same thing, so when the vehicle came to a stop we could get out quick.

As we approached – there's really rough terrain there, melting snow, potholes, everything – we came to an abrupt stop and the front left side of the truck kind of dipped. Like it kind of – I don't know if it was a pothole or what but just a big dip. So it kind of gave us a little push forward. And I didn't see the actual impact but I heard something hitting against – which again I didn't see it but I'm presuming is the door. So I heard that impact.

[89] When asked about the speed at which the vehicle was travelling, Constable Cholette stated:

I mean, it was – it felt fine. I mean, I don't know, like, how else to explain it. Like we wanted to get there quick but it wasn't – it didn't feel excessive at any point or anything. And going around the corner here, I mean we had to slow down, the terrain was awful. . . . It didn't seem [like] anything out of the ordinary.

[90] Constable Smith was driving an RCMP vehicle behind Constable Keeling's vehicle. In his occurrence report, Constable Smith wrote that he observed Constable Keeling's vehicle "angle in the path of" A. B. Constable Smith recalled the following:

Cst. KEELING's vehicle tire (driver's side front) then dipped into a large pothole, causing the truck to lower on the left side. Simultaneously, the truck came to and [sic] abrupt stop and the driver[s] door opened. It appeared that the momentum from the vehicle stopping allowed the door to continue forward, striking the male, who had now advanced in close proximity.

[91] Constable Smith told the OPS investigators that, in Kinngait, "it is potholes galore." When asked about the speed of Constable Keeling's vehicle, Constable Smith said that the whole incident happened quickly but that the vehicle was not going very fast, "it was a regular rate of speed." Constable Smith also stated that "one of the big things about driving around here . . . is kids have absolutely zero road sense. They're all over the place. . . . And you have to be very careful. So you can't drive at a high rate of speed like you would" on a priority call "down south." The RCMP member noted that there were in fact children throwing rocks at his police vehicle as he drove back to the detachment after A. B.'s arrest. He explained that the numerous potholes also had the effect of reducing the speed of vehicles out of necessity. Constable Smith concluded that Constable Keeling's vehicle was doing about the same speed as his vehicle: a maximum of maybe 40 or 50 kilometres per hour.

[92] Sergeant Gill, the Detachment Commander, told the OPS investigators that Constable Keeling was probably his best member, and that he was smart, hard-working, and diligent. Sergeant Gill would often place his trust in Constable Keeling to have him act in his position as Detachment Commander when he was away. Sergeant Gill said that he knew that Constable Keeling would not intentionally hit someone with a vehicle. About the incident, Sergeant Gill said, "Did he [Constable Keeling] really need to get that close? Maybe not," but there were extenuating circumstances and maybe Constable Keeling was trying to cut A. B. off before he could get to the ATV driver.

[93] One of the nurses who was involved in A. B.'s care told the OPS investigators that Constable Keeling was one of the most honourable people she knows, and that she has always seen him treat people with respect. For example, she had seen him bring people to the health centre after armed standoffs, and he showed no ill will toward them and calmly explained that they were going to get the help they needed. A mental health nurse said that Constable Keeling was compassionate and kind, and was always caring with mental health patients.

[94] The Commission reviewed the video recording of the incident and observed the following:

- An RCMP vehicle appears from behind a man (A. B.) and is moving toward him. A. B. turns his head and appears to notice the vehicle. In the background, an ATV is moving away slowly.
- The RCMP vehicle appears to be about three to four feet away from A. B. Its emergency lights are activated.
- The front driver-side door is partially open and appears to be held by the driver (Constable Keeling).
- At this point, both A. B. and the vehicle are approaching a more elevated part of the road, due to snow/ice covering the ground. The vehicle appears to be approximately one to two feet away from A. B.
- The RCMP vehicle begins to go over the elevated part of the road, but the left tire comes off the snow and the vehicle dips to the left, moving toward A. B., into what could be described as a small trench.
- As the vehicle dips to the left, the front driver-side door opens wider; it is unclear from the recording whether Constable Keeling was still holding the door or if he had lost his grip.
- The door hits A. B.'s back and legs; his arms swing in the air from the impact, and he falls to his hands and knees.

- A. B. is on the ground near the front left tire of the RCMP vehicle; the RCMP vehicle stops and rocks somewhat.
- A. B. begins to crawl away from the RCMP vehicle, and Constable Keeling exits the vehicle.

[95] As a result of this incident, Constable Keeling was the subject of a Code of Conduct proceeding (the RCMP's internal disciplinary process). The original allegation against Constable Keeling stated that he had used a level of force that exceeded that which was reasonable in the circumstances against A. B. by striking him with a motor vehicle.

[96] After reviewing the Code of Conduct Investigation Report, Chief Superintendent Amanda Jones, in her role as Conduct Authority (the decision-maker in the Code of Conduct proceeding), "reworded" the allegation and determined that a *prima facie* finding existed that Constable Keeling contravened section 4.6 of the RCMP's Code of Conduct: misuse of Force (RCMP) vehicles. Specifically, it was alleged that Constable Keeling operated an RCMP vehicle in a careless manner.

[97] Constable Keeling was represented by legal counsel, who submitted written and oral arguments on his behalf. He also submitted a second written statement,¹² which detailed the negative impact this incident and its aftermath have had on him. Likewise, Constable Keeling's common-law partner submitted a letter¹³ detailing how difficult the situation has been for both of them. She had been working as a nurse in Kinngait and had to leave the community the day after the incident when Constable Keeling was reassigned to Iqaluit. Both Constable Keeling and his partner emphasized how disappointed they were at how the RCMP has handled the matter.

[98] Constable Keeling's legal counsel argued, among other things, that Constable Keeling was justified in driving the vehicle in the manner he did and that his conduct "in the heat of the moment" did not constitute a Code of Conduct violation. He argued that, if there was concern about Constable Keeling's driving, the facts and circumstances of his driving and the fact that he was immediately transferred out of the community and still remained on administrative duties 10 months after the incident are such that the matter should be treated as a performance issue, not a Code of Conduct violation.¹⁴

¹² Constable Keeling's second written statement, dated April 12, 2021, was disclosed to the Commission along with other evidence from the RCMP Code of Conduct proceeding.

¹³ Statement from Constable Keeling's common-law partner, dated March 17, 2021, and cover letter, dated April 1, 2021.

¹⁴ Code of Conduct violations can lead to disciplinary measures for RCMP officers up to and including dismissal.

[99] Ultimately, the Conduct Authority, Chief Superintendent Jones, found that the Code of Conduct allegation against Constable Keeling was unfounded; however, she also concluded that Constable Keeling's driving fell below the RCMP's acceptable standard and required measures to improve his performance.

[100] Having thoroughly reviewed the evidence, the Commission finds that it was unreasonable for Constable Keeling to have driven his RCMP vehicle in such close proximity to A. B., which resulted in striking A. B. with the vehicle's door. However, the Commission also finds that there is no evidence to suggest that Constable Keeling intentionally struck A. B. with the police vehicle's door; rather, the contact with A. B. was a result of the forward motion of the police vehicle as it lurched off the uneven road surface.

[101] The video recording—which was uploaded to Facebook by the neighbour who filmed it, and then widely reported in the media—was startling, particularly without additional context. An initial question to be addressed is why RCMP members dealt with A. B. in such a hurried manner. This issue is also relevant to a later section of this report discussing the use of force in A. B.'s arrest.

[102] The available information indicates that the RCMP members were “on the lookout” for two men who were the subjects of recent calls for service. The first was an intoxicated man who had allegedly been brandishing a firearm; the second was an intoxicated man who had allegedly been involved in a disturbance and possible assault. These calls came in moments before the police interaction with A. B., and at that time, neither of the men had been located.

[103] Although a firearm¹⁵ had been located and seized from the location of the first call, the fact that the subject of that call had recently been armed and acting in an aggressive and unpredictable fashion would understandably contribute to a heightened risk assessment by the RCMP members. Importantly, Constable Smith recounted to the OPS investigators that, when he was on scene at the gun call, witnesses told him that the man who had been in possession of the gun had gone out on the land and the witnesses were “unsure” as to whether he currently had a firearm. Constable Smith stated that he believed the man was intoxicated and walking around with a gun. It is also noted that the disturbance call involved a man “beating on” another male.

¹⁵ Some file materials state that “the” firearm was seized, and other documentation states that “a” firearm was seized.

[104] Additionally, as described above, Constable Keeling heard children repeatedly say that A. B. was fighting people, and the RCMP member witnessed A. B. pointing aggressively at the ATV driver, who was relatively close by. Given his unsteady gait, it was evident that A. B. was highly intoxicated.

[105] Taking into account all of these factors, it was reasonable for Constable Keeling and the other RCMP members to conduct the arrest of A. B. quickly.

[106] Constable Keeling stated that he “had only wanted to park alongside [A. B.] and exit [his] police truck quick to take him into custody.” Constable Cholette explained that, given the uncertainties surrounding the man they were approaching, he “wanted to grab [A. B.] quick, so [he] was getting ready to get out of the vehicle. . . . [Constable Cholette] had [his] hand on the door handle so as soon as the vehicle stopped [he] could jump out.”

[107] A review of the video recording supports the conclusion that the RCMP vehicle slid on the icy road surface and then lurched forward as the left tire fell into a small trench. This forward motion caused the front driver-side door, which had been opened and was being held by Constable Keeling, to swing open more widely, striking A. B. and knocking him over. There is nothing to indicate that Constable Keeling intended to strike A. B. with the police vehicle’s door. Rather, the available information indicates that the contact occurred as a result of the police vehicle lurching forward on poor road conditions in a failed attempt to stop near A. B.

[108] Although the Commission has concluded that it was reasonable for RCMP members to proceed with the arrest of A. B. in a timely fashion, and that A. B. was not knocked down intentionally, the Commission finds that, in the circumstances, it was unreasonable for Constable Keeling to drive in such close proximity to A. B. This action meant that the slightest miscalculation or external factor, such as poor road conditions, could result in a collision, potentially causing serious bodily harm or death to A. B.

[109] A review of the video recording shows that, even prior to the vehicle slipping into the trench, Constable Keeling was driving the vehicle very close to A. B. The front-left tire of the vehicle appeared to be approximately two feet or less away from A. B. before the vehicle slipped off the roadway. It does not appear that Constable Keeling drove the vehicle at an excessive or unreasonable speed; however, it is apparent that being struck and potentially run over by a pickup truck, even at a relatively low speed, poses risks to a person.

[110] The level of risk in this situation was indeed elevated, as previously discussed. That said, the situation could not reasonably be described as urgent. Given the circumstances of the other calls, it was possible that A. B. was in possession of a weapon, but the police had no specific information to that effect and they did not observe A. B. with a weapon. In explaining his grounds for arrest, Constable Keeling mentioned that he suspected that A. B. was involved in the disturbance call, not the gun call.

[111] There was reason to believe that A. B. may potentially attempt to harm others, given what the children had reported and how he was aggressively gesturing, but there was no one in his immediate vicinity at that time. The ATV driver appeared to be about 25 to 30 feet away.

[112] It should also be highlighted that A. B. appeared to be grossly intoxicated to the point where he could barely stand. At the Code of Conduct meeting, Constable Keeling's legal counsel pointed out that, in the first video taken by the neighbour, A. B. was seen running very fast, thus lending credence to the possibility that he may have attempted, and been able to, flee from police. However, there were five RCMP members in three police vehicles in the immediate vicinity, rendering the risk of flight more remote. A. B. was arrestable for the relatively minor offences of causing a disturbance and public intoxication, making it difficult to justify taking significant risks to apprehend A. B. Any flight risk would also have to be weighed against the risk of driving a vehicle in close proximity to the person.

[113] Poor road conditions were the proximate cause of the police vehicle door striking A. B. in this case. However, it is well-accepted and enshrined in law that drivers must operate their vehicles in accordance with road conditions, and modify their conduct accordingly. Simply put, the Commission finds that it was unsafe and unreasonable for Constable Keeling to have driven his police vehicle in such close proximity to A. B. on an icy road that was in poor condition. Constable Keeling's risk assessment of the situation should have adequately taken into consideration the state of the roadway and all other relevant factors.

[114] In her Code of Conduct decision, Chief Superintendent Jones directed that formal feedback be provided to Constable Keeling by way of a "1004," which is a Negative Performance Log document, and she arranged for Constable Keeling to undergo a one-on-one training session with a use of force expert. That training session was to focus on the operation of police motor vehicles and the creation of proper risk assessments that take into account environmental conditions as well as other tactical considerations when approaching suspects who are on foot.

[115] The Commission is satisfied that adequate remedial measures have been taken with regard to Constable Keeling's driving and that no further action is necessary.

[116] The Commission has dealt with other recent cases in which RCMP vehicles have come into contact with persons during arrests. This issue needs to be addressed more directly through policy and training to ensure that RCMP members receive the guidance they need.

[117] The Commission recommends that the RCMP develop and implement policy and training with regard to the use of police vehicles while pursuing suspects who are on foot. The Commission also recommends that the RCMP consider developing and implementing specific policy and training with regard to driving on road conditions that are often encountered in northern regions.

Reasonableness of the use of force during A. B.'s arrest

Finding #6	Given A. B.'s actively resistant and assaultive behaviour, it was necessary and reasonable for the RCMP members to use force during his arrest. The force employed by the RCMP members was proportionate to A. B.'s behaviour, and was reasonable in the circumstances.
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Arrest – Handcuffing A. B.

[118] The video recording of the incident shows that, after A. B. was struck by the police vehicle's door, the vehicle was brought to a stop and Constable Keeling exited. He then placed A. B. under arrest for causing a disturbance. Constable Keeling was quickly joined by Constable Cholette, and shortly thereafter by Constable Smith, Constable Sturge, and Sergeant Gill. All of the RCMP members assisted in securing A. B., who was physically resisting. Within 43 seconds of Constable Keeling beginning the arrest, A. B. was handcuffed and brought to his feet. Approximately one minute and twenty seconds after that, A. B. had been placed in the back seat of a police vehicle.

[119] A. B. told the OPS investigators that he blacked out after being hit by the police vehicle and that a "few police strangled him." He was not clear as to whether his memory of the incident was generated by viewing the video recording. In his interview with the Commission, A. B. recalled the police officers shouting and hitting him with their knees. When asked if he had been hurt, A. B. said no, explained that he was drunk and did not feel anything.

[120] A. B. told the Commission's investigator that, at some point, a police officer told him that he was under arrest because "[he] was chasing that teenager and because [he] was drunk." A. B.'s legal counsel pointed out that there may have been some ambiguity in the translation of A. B.'s answer; the question was put to A. B. as to whether that is what the police officer told him, or whether that was his current understanding of why he had been arrested. A. B. replied, "I don't know." In further questioning, A. B. stated that he did not remember a police officer telling him that he could speak to a lawyer.

[121] The witness who made the video recording told the OPS investigators that the struggle between the numerous police officers and the "kid" (A. B.) was "crazy" because the kid did not even have the strength to fight. The witness stated that the RCMP member who had been driving the vehicle kned A. B. a couple of times, and that the police officers had A. B. pinned to the ground. The witness stated that he uploaded a portion of the video recording to social media because police should not have "run that kid over" and should not have kned him, given that he was not fighting and was not resistant. The witness said, "At the end he might have looked like it [looked like he was resisting], but there were four cops."

[122] The brother of the ATV driver also witnessed the incident and told the OPS investigators that he saw the police "beating up the drunk guy." The police officers told them to leave and they did so. The ATV driver declined to provide an interview to the OPS investigators.

[123] In his written statement, Constable Keeling described that after exiting the vehicle, he told A. B. that he was under arrest for causing a disturbance. According to Constable Keeling, A. B. was clenching his fists and trying to get to his feet, so he (Constable Keeling) pushed his upper body to the ground and held his left arm in an effort to control him. Constable Cholette helped Constable Keeling roll A. B. over onto his stomach and tried to control his arms behind him. A. B. continued to pull his arms away. At this point, Constable Sturge, Constable Smith, and Sergeant Gill arrived.

[124] Constable Keeling stated that A. B. continued to twist and pull away while on his stomach, and the police officers could not gain control of his arms. Constable Keeling adjusted his stance from his knees, and struck A. B.'s back on the right shoulder blade with his knee to distract A. B. and gain control of his arms. A. B. was distracted by the strike and the RCMP members were able to apply the right handcuff, followed quickly by the other handcuff, without further resistance by A. B.

[125] In his occurrence report, Constable Cholette wrote that he ran around the back of the truck and could see that A. B. was not complying with Constable Keeling's commands. Constable Cholette knelt on A. B.'s leg and attempted to control his left arm. He told A. B. to stop resisting many times, but A. B. kept clenching his fist and pulling his arms under his body. Constable Smith arrived and assisted with the arrest. The RCMP members were able to handcuff A. B.

[126] With regard to his thoughts upon first observing A. B. (before the arrest was conducted), Constable Cholette explained that he was thinking about how the suspect who had been in possession of a firearm was still nowhere to be found; likewise, the two people (father and son) from the disturbance call were unaccounted for. Constable Cholette did not know A. B.'s involvement, if any, in the other calls, but thought that he might be "the one wanted," and if the person with a gun was controlled, that would be "one less stress" for the RCMP members, as they did not know where the suspects were at that time. As for the arrest itself, Constable Cholette told the OPS investigators that A. B. was flailing around, had his hand clenched, and repeatedly pulled his arm under his body.

[127] Constable Smith described in his occurrence report that he observed Constable Keeling and Constable Cholette as they "struggled" with A. B. on the ground. As he approached, Constable Smith could hear the two RCMP members shouting at A. B. to stop resisting. A. B. continued to resist and refused to give his hands to the police officers. Constable Smith knelt down and assisted in getting A. B. to put his hands behind his back. He could smell the "strong odour of digested alcohol" coming from A. B. as he "flail[ed]" on the ground. A. B. was shouting at the police officers but Constable Smith could not make out what he was saying, as it was "slurred and incoherent."

[128] In her occurrence report, Constable Sturge documented that she observed Constable Keeling on the ground with an unidentified male. She immediately exited her police vehicle and ran toward the scene, and she could see that Constable Keeling and Constable Cholette were struggling with the man. Constable Sturge went between the man and Constable Keeling's police vehicle to assist in gaining control of the man. She observed that the man was extremely intoxicated and covered from head to toe in dirt.

[129] Sergeant Gill described in his occurrence report that he observed Constable Keeling on top of a male, attempting to control him. Sergeant Gill was the last RCMP member to reach the scene. He noted that the man appeared to be extremely intoxicated and was resisting RCMP members who were trying to control him.

Sergeant Gill took his handcuffs out of his pouch but then noticed that another RCMP member already had their handcuffs out.

[130] The Commission reviewed the video recording of the incident and observed the following:

- Constable Keeling quickly walks toward A. B., who is sitting up on the ground. Constable Keeling reaches toward him and leans over him. A. B. is now on his hands and knees.
- A. B. is crawling away from Constable Keeling, who leans over and grabs onto A. B.'s shoulders. Verbal commands of "get down" can be heard.
- It appears that Constable Keeling kneels on A. B. for less than a second; it appears that, in doing so, Constable Keeling is trying to rotate A. B. to get to his hands (he is still on his own hands and knees at this time).
- A. B. rotates onto his right side and Constable Keeling turns, leaning over A. B. with his hands on A. B.'s side.
- The recording goes somewhat out of focus but it appears that Constable Keeling grabs and lifts A. B.'s left arm, which rotates A. B. onto his back with his arms held by Constable Keeling. Constable Cholette runs toward A. B. and Constable Keeling.
- Constable Keeling and Constable Cholette crouch down; they seem to both have their hands on A. B. and appear to be trying to get him to stop moving. It is difficult to see precisely what the RCMP members and A. B. are doing.
- Constable Smith runs toward A. B., Constable Keeling, and Constable Cholette.
- All three RCMP members are crouching or kneeling by A. B. Constable Sturge walks quickly toward the group.
- Constable Sturge puts her hands on the back of Constable Keeling, who is crouched on the left side of A. B. Constable Smith is crouching, still in the centre of the group. Constable Cholette is closest to the RCMP vehicle; he is still crouching or kneeling. Indecipherable yelling continues.
- Sergeant Gill enters the camera view from the top left corner. The other RCMP members are still struggling with A. B.
- Someone (later identified as the man who recorded the incident) yells, "Fuck youse [*sic*]."

- The RCMP members are in the same position, seeming to struggle with A. B., but again it is not clear what each RCMP member is specifically doing, except for Sergeant Gill, who appears to be continually standing and watching over as the other four RCMP members are crouched closer to the ground.
- All RCMP members stand up; A. B. is on the ground, handcuffed, and rolling around.
- Constable Keeling and Constable Cholette lift A. B. onto his feet; the other RCMP members standing are obstructing the view. It cannot be seen how A. B. was brought up to his feet.

Arrest – Placing A. B. in the police vehicle

[131] In his written statement, Constable Keeling recalled that A. B. refused to enter the police truck willingly. Constable Keeling and Constable Cholette held A. B.'s arms but A. B. "locked his feet in the berth of the door to prevent from being pushed in." From the passenger-side rear door, Constable Smith tried to pull A. B. into the vehicle by his coat, but A. B. was pushing his feet against the door such that it could not be closed. Constable Keeling and Sergeant Gill pushed the door but A. B. kept pushing back. Constable Keeling then opened the door and lifted A. B.'s feet up, timing it so that Sergeant Gill could close the door.

[132] The accounts of the other RCMP members, as documented in their police reports, are consistent with that of Constable Keeling. Constable Smith noted that A. B. was pulling away and kicking at officers while being escorted to the truck. Constable Sturge also documented that a group of youth approached the scene during the arrest. She recognized one of the youth as being a male who, in an earlier incident, had reportedly punched Constable Cholette in the back and spit on him, and had pretended to swing a stick at Constable Sturge. At the scene of A. B.'s arrest, Constable Sturge yelled at this youth and the others to get away, but they did not listen and were standing very close to where A. B. was being arrested.

[133] The Commission reviewed the video recording of the incident and observed the following:

- Constable Keeling, Constable Cholette, and Constable Smith have a hold of A. B. and they are walking him around the open driver-side rear vehicle door; A. B. does not appear steady on his feet.
- All of the RCMP members are looking to the right of the screen and Sergeant Gill points and yells, "Get away!"

- Constable Smith first opens the vehicle door and Constable Cholette pushes it open when it reaches him. Constable Smith, Constable Cholette, and Constable Keeling are trying to get A. B. into the vehicle, but A. B. appears to be struggling with them and pushing away from the vehicle.
- Two children appear, a few feet away from the RCMP members and the vehicle. Constable Sturge and Sergeant Gill yell at the children, "Get away!"; the children continue standing there and watching what is going on.
- There is some yelling from a bystander. Constable Sturge is standing by the front door of the vehicle. All other RCMP members are grouped by the back door of the vehicle; they are still struggling to get A. B. in. Constable Cholette is standing by the back door of the vehicle, Sergeant Gill is standing behind Constable Keeling and Constable Smith, who are at the entrance of the back door of the vehicle (the door is open).
- Constable Smith runs to the other side of the vehicle. Yelling continues from a bystander. Constable Keeling is struggling with A. B., who appears to be trying to come out of the vehicle.
- Constable Cholette moves in closer to the vehicle's door and seems to be trying to help Constable Keeling maintain A. B. in the vehicle.
- Constable Smith leans into the vehicle (on the right side); Constable Keeling and Constable Cholette are still on the left side of the vehicle trying to get A. B. in while Constable Sturge and Sergeant Gill stand behind Constable Keeling and Constable Cholette.
- Constable Cholette starts closing the door but it stops halfway; it looks like it is obstructed by A. B.'s legs or feet.
- Constable Keeling is leaning into the vehicle while Sergeant Gill holds the vehicle door in place.
- Constable Keeling moves away from the door, someone in their group is saying, "go, go, go" and Sergeant Gill and Constable Keeling are pushing the door; it is almost shut, but something is obstructing it.
- Constable Keeling fully opens the door and leans back into the door. Constable Keeling appears to be struggling with A. B. Constable Smith walks towards the back of the truck.
- Constable Cholette opens the back door of the RCMP vehicle on the other side.
- Sergeant Gill is holding the left back door of the vehicle open, in position to close it when ready. Constable Keeling is leaning into the open door and struggling with A. B. This struggle to maintain A. B. in the back of the police vehicle lasts approximately thirty seconds.

- Constable Cholette seems to be leaning into the vehicle while Constable Smith stands next to him.
- Constable Keeling successfully closes the back door of the RCMP vehicle.

Analysis of use of force during A. B.'s arrest

[134] When carrying out their duties, police officers may be required to use force. However, section 25(1) of the *Criminal Code* restricts the authority to use force as follows:

Every one who is required or authorized by law to do anything in the administration or enforcement of the law . . . (b) as a peace officer or public officer . . . is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

[135] RCMP policy and training supplement section 25 of the *Criminal Code* by explaining the RCMP members' obligations with respect to the use of force. RCMP policy and training is consistent with the requirements that the use of force in any circumstance must be reasonable. The principles of the RCMP's Incident Management/Intervention Model (IM/IM)¹⁶ are used to train and guide RCMP members based on situational factors to determine whether to use force, and what type and the amount of force necessary in the circumstances. RCMP members are required to assess the risk posed by a subject, followed by a determination of the appropriate level of response, which may include the use of force. The IM/IM conveys concepts of proportionality between a person's behaviour and the police response when considering all the circumstances.

[136] For the reasons set out above, the Commission has concluded that it was reasonable for Constable Keeling to arrest A. B., and to do so in a timely fashion, given the circumstances. The identity of the man in question was unknown at that time, and several men from recent calls, including a high-risk firearms call, were still unaccounted for. Combined with A. B.'s observed intoxicated and aggressive behaviour, a prompt arrest involving several RCMP members was reasonable in the circumstances.

¹⁶ RCMP *Incident Management / Intervention Model*, online: <http://www.rcmp-grc.gc.ca/en/incident-management-intervention-model-imim>.

[137] Two witnesses expressed that the police should not have used force against A. B. during the arrest. One witness (the man who made the recording) stated that A. B. had not been resisting, at least at the beginning of the interaction, and did not have the strength to fight. A. B. stated that a few police officers had strangled him.

[138] A. B. was on the ground while the RCMP members were attempting to handcuff him. On the video recording of the incident, for much of the time that A. B. is on the ground, the view of A. B. is blocked by the RCMP members crouching or standing near him. It is understandable that the witness viewing the incident from a distance in “real time” could have the impression that A. B. was not resisting the police officers, given that little of his conduct can be definitively observed in the video recording of the handcuffing portion of the incident.

[139] However, it is apparent that the RCMP members were struggling to control A. B. and place him in handcuffs. The RCMP members’ versions of events are generally consistent with the actions that were captured on the video recording. They reported that A. B. was trying to get up (which can be seen twice on the recording), clenching his fists, and pulling his arms away and putting them underneath his body. The police officers stated that A. B. repeatedly failed to comply with their commands.

[140] The recording shows that A. B. attempted to kick the RCMP members as he was being brought to the RCMP vehicle, and it is apparent that the police officers had difficulty placing him into the vehicle and closing the doors. The fact that A. B. was seen being assaultive and resistant while being brought to and placed into the vehicle lends credence to the police officers’ accounts that he had also been resistant while on the ground.

[141] The IM/IM describes various types of behaviour that police officers may encounter:

Active Resistant

The subject uses non-assaultive physical action to resist, or while resisting an officer’s lawful direction. Examples would include pulling away to prevent or escape control, or overt movements such as walking away from an officer. Running away is another example of active resistance.

Assaultive

The subject attempts to apply, or applies force to any person; attempts or threatens by an act or gesture, to apply force to another person, if he/she has, or

causes that other person to believe upon reasonable grounds that he/she has the present ability to effect his/her purpose. Examples include kicking and punching, but may also include aggressive body language that signals the intent to assault.¹⁷

[142] The IM/IM also describes, in general terms, different types of physical control that RCMP members may employ depending on the behaviour they encounter:

Physical Control

The model identifies two levels of physical control: soft and hard. In general, physical control means any physical technique used to control the subject that does not involve the use of a weapon.

Soft techniques may be utilized to cause distraction in order to facilitate the application of a control technique. Distraction techniques include but are not limited to open hand strikes and pressure points. Control techniques include escorting and/or restraining techniques, joint locks and non-resistant handcuffing which have a lower probability of causing injury.

Hard techniques are intended to stop a subject's behaviour or to allow application of a control technique and have a higher probability of causing injury. They may include empty hand strikes such as punches and kicks. Vascular Neck Restraint (Carotid Control) is also a hard technique.¹⁸

[143] The force used by the RCMP members during the arrest involved grabbing a hold of A. B., rotating his body, and holding and pulling his arms to place him in handcuffs. The RCMP members also pulled and pushed A. B. when trying to get him secured in the back of the police vehicle. These were relatively minimal applications of force and were consistent with "soft" physical force described in RCMP policy.

[144] Constable Keeling employed a "hard" application of force when he delivered a knee strike to A. B.'s upper back. Although it does have a higher risk of causing injury, such an action is consistent with RCMP policy, as it is "intended to stop a subject's behaviour or to allow application of a control technique." Constable Keeling stated that he used the knee strike to distract A. B., who was physically resisting in various ways and not complying with the police officers' commands, in order for the RCMP members to be able to apply the handcuffs, which they were subsequently able to do.

¹⁷ RCMP *Incident Management / Intervention Model*, online: <http://www.rcmp-grc.gc.ca/en/incident-management-intervention-model-imim>.

¹⁸ Ibid.

[145] The Commission finds that, given A. B.'s actively resistant and assaultive behaviour, it was necessary and reasonable for the RCMP members to use force during his arrest. The force employed by the RCMP members was proportionate to A. B.'s behaviour, and was reasonable. Under the circumstances, although A. B. was being arrested for a minor offence, it was not a viable option for the RCMP members to let him go free and to deal with the offence through other means.¹⁹ A. B.'s level of intoxication and conduct was such that he could pose a risk to others or himself if he was not stopped. Therefore, the use of force by the RCMP members was necessary in the broader context, as well as proportionate to the level of resistance encountered during a lawful arrest.

[146] There is no indication that A. B. suffered any injuries as a result of his initial interaction with the RCMP members. A. B. himself did not report an injury at the time or subsequently. The RCMP members did not report that A. B. had any injuries, and a guard told the Commission's investigators that A. B. was uninjured when he arrived at the RCMP detachment.

RCMP members take A. B. to the RCMP detachment

Provision of Charter rights

Finding #7	A. B. was not meaningfully informed of his right to consult legal and was not provided with the opportunity to consult legal counsel when sober at the detachment.
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[147] In Constable Keeling's written statement, he explained that, while transporting A. B. to the detachment, he told A. B. that he was under arrest for causing a disturbance and provided him with his Charter rights. A. B. did not answer when asked if he understood.

[148] When asked by the OPS investigators whether he or Constable Keeling read A. B. the police caution or advised that he had a right to legal counsel, Constable Cholette stated, "When [A. B.] was in the truck on the way to the detachment and given the subject's current state of advanced intoxication the rights weren't given at that time. I'm not sure that he even would have understood his rights – his Charter rights and to contact a lawyer."

¹⁹ Such as subsequently serving any charging documents on him, as can be done where the immediate arrest of the person is not necessary.

[149] Constable Cholette stated that he did not know if A. B. was provided with his rights later. He explained that “standard practice here is once they’re sober and can understand we’ll re-read them their rights to understand that they – to make sure they understand.”

[150] On A. B.’s Prisoner Report (C-13 form) document, the notation “too intoxicated” is written next to the boxes labelled “Charter Read,” “Warning Read,” and “Counsel Contacted.”

[151] It is unclear who completed A. B.’s Prisoner Report document. It is also unclear when the form was filled out, given that it contains the notation, “Was assaulted by another prisoner, Nurse Attended → became aggressive.”

[152] In response to the Commission’s follow-up questions, Constable Keeling’s legal counsel stated that it is not Constable Keeling’s practice to write “too intoxicated” on a document such as a Prisoner Report, and to Constable Keeling’s recollection, he did not write that on A. B.’s Prisoner Report.

[153] There is no other information in the materials available to the Commission to suggest that A. B. was read his rights later when at the detachment, nor is there any indication that he asked to contact legal counsel.

[154] Section 10 of the *Canadian Charter of Rights and Freedoms* states:

10. Everyone has the right on arrest or detention . . .

(b) to retain and instruct counsel without delay and to be informed of that right

[155] Section 10 imposes a duty of police officers. This duty consists of two components: an informational component and an implementational component. That is to say, police must inform a detainee of their rights and they must provide a reasonable opportunity for a detainee to exercise these rights. RCMP policy also stated that RCMP members must “[p]rovide the detainee with the opportunity to exercise their rights.”²⁰

[156] There was conflicting evidence as to whether Constable Keeling read A. B. his rights while in the police vehicle. However, the available information suggests that A. B. was not read or “re-read” his rights when he was sober, nor was he provided with the opportunity to contact legal counsel at any time during his 18-hour detention. It is true

²⁰ RCMP national *Operational Manual*, chap 18.1. “Arrest and Detention,” s 3.1.6.1.

that the police officers were planning to release A. B. when he was sober (as indicated on his Prisoner Report) and thus did not intend to charge him with any offence, but the law nonetheless stipulates that arrested persons be provided with the right to consult legal counsel.

Search of A. B.

Finding #8	While acknowledging that the safety of prisoners and RCMP members is of the utmost importance, the Commission reiterates that strip searches must not be conducted as a matter of routine.
Finding #9	In this case, it was reasonable, and in the best interests of the safety of A. B., for the RCMP members to remove A. B.'s wet clothing.
Finding #10	For the safety of all parties, it was reasonable to have a number of RCMP members participating in the search.
Finding #11	A. B. should have been provided with a blanket or gown, if this could be done safely, especially given that the reason for removing A. B.'s clothes was for his own safety to avoid him becoming hypothermic.
Finding #12	Overall, the RCMP members' use of force during A. B.'s search was not unreasonable. Nonetheless, the Commission cautions the RCMP members to use the minimum amount of force necessary in a given situation.
Recommendation #3	The RCMP members involved in the search of A. B. (Constable Keeling, Constable Smith, Constable Cholette, and Sergeant Gill as their supervisor) should receive operational regarding the provision of a blanket or gown to prisoners.

[157] In his interview with the Commission, A. B. had limited recollection of being brought to the detachment and searched. He stated that he recalled the police officers taking off his clothes and giving him some kind of white garment like a jacket. A. B. remembered kicking and punching the door, but did not recall if that was before or after he was searched.

[158] According to RCMP records, A. B. continued to be uncooperative when they arrived at the RCMP detachment in Kinngait. Reports indicate that, among other things, A. B. would not get out of the police vehicle and then purposely stiffened his legs to prevent walking. RCMP members had to carry A. B. into the detachment, which was challenging given that one must go up numerous stairs to enter the building.

[159] According to Constable Keeling's written statement, RCMP members brought A. B. into cell no. 3 "to be searched while under control." A. B. lay on his stomach and Constable Keeling maintained control of his arms while Constable Smith removed A. B.'s "excess wet clothing" and Sergeant Gill removed the handcuffs. A. B. was moving his legs and trying to twist during this process.

[160] Constable Keeling observed that A. B. had some dried blood under his nose but had "no visible injury from police contact and did not mention any pain during [the] search."

[161] In Constable Smith's report, he detailed that RCMP members took A. B. to the ground to remove his clothing and property safely. In his interview with the OPS investigators, Constable Smith explained that normally an arrested person would be booked in using a standard process, but in this case, A. B. was too agitated and it would have been dangerous for the RCMP members to follow the standard practice. As such, A. B. was brought directly into a cell and his clothes were removed. The police officers ensured that A. B. did not have any property that he was not allowed to have, and that he did not have any weapons or anything that could be used to harm himself or others. Constable Smith elaborated that there is a "high percentage of suicides here and a lot of mental health issues," and that people have hanged themselves with clothing in the past. He stated, "I know it's not the practice in every place, but up here it's an all too real thing that happens." Constable Smith elaborated that it is not standard practice in the Kinngait Detachment to remove the clothing of all intoxicated persons, but that they do remove, or ask prisoners to remove, things such as strings.

[162] Constable Smith also noted that, when viewing A. B. in the light, A. B. looked fine and he did not observe any injuries.

[163] In Constable Cholette's report, he noted that A. B. "kept being non-compliant" while being processed at the detachment, and that the RCMP members searched him and removed personal items "as per policy for safe lodging." He further told the OPS investigators that the police officers had to remove A. B.'s clothes because they were soaked and he was at risk of hypothermia if they left the clothes on. Constable Cholette

stated that the RCMP members can provide prisoners with a blanket or gown but not extra clothing.

[164] Sergeant Gill described in his report that A. B. was extremely intoxicated and had trouble walking. With regard to the search, Sergeant Gill stated that Constable Keeling and Constable Smith placed A. B. on the floor and disrobed him, given that his clothes were wet.

[165] Sergeant Gill explained to the OPS investigators that the Kinngait Detachment has four cells. At the time A. B. was brought in, there were four males in cell no. 1. Cell no. 2 housed a “very high risk individual who was intoxicated and was being very belligerent and [Sergeant Gill] would never put anybody with him.” There was a woman in cell no. 3 and another woman in cell no. 4. Earlier that evening, the two women had not been getting along so they had to be separated.

[166] RCMP members determined that they had no feasible options to house A. B.; according to Sergeant Gill, they decided to release the “more sober” woman, who had been in cells for six and a half hours. This made room to place A. B. in cell no. 3. Sergeant Gill said that it was not unusual for the cells to be busy “if there’s alcohol in town.” A few weeks earlier, there was a night when they had thirteen people in cells, and another night when they had ten.

[167] The Commission reviewed the video recording of the search, which was recorded on the detachment’s closed-circuit video system, and observed Constable Keeling and Sergeant Gill carry A. B., who is handcuffed, into the cell and place him face down on the floor. Constable Smith follows immediately behind the other RCMP members and appears to use his foot to pull A. B. toward him. Constable Smith then appears to grab A. B.’s leg and turn him such that A. B. is lying fully on his front side.

[168] Constable Keeling holds A. B.’s hands or arms while Constable Smith, now being assisted by Constable Cholette, attempts to remove A. B.’s pants. Sergeant Gill is also in the cell, standing to the side. Constable Smith holds on to A. B.’s underwear waistband to ensure that it does not come off while his pants are removed.

[169] Constable Keeling and Constable Smith then attempt to remove something, possibly a tee shirt, that appears to have been wrapped around or placed over the handcuffs. Constable Smith then holds down A. B.’s legs with the assistance of Constable Cholette, while Sergeant Gill and Constable Keeling appear to be attempting to remove the shirt and/or handcuffs. A. B. is then seen to be without handcuffs, and

Constable Keeling and Constable Smith are observed attempting to remove A. B.'s shirts (he appeared to be wearing a tee shirt and a long-sleeved shirt over the tee shirt). They pull the arms of the shirt somewhat forcefully and both shirts come off A. B.

[170] Three of the RCMP members leave the cell, with Constable Keeling still holding on to A. B., and then Constable Keeling also exits. A. B. is left lying on the floor of the cell in his underwear. He can be seen flailing around, kicking, rolling, and making the middle finger gesture with both hands in the direction of the surveillance camera. The search took approximately three minutes and twenty seconds.

[171] With regard to A. B.'s actions during the search, at one point he moved quickly and turned onto his right side, appearing to try to move away from Constable Keeling. This may have been what prompted Constable Smith to use his foot to pull A. B. toward him. At various times, A. B. could be seen moving his legs. He could be seen rotating his waist and rolling to his left side. For much of the search, A. B. did not appear to be moving, possibly due to him being restrained by the RCMP members.

[172] RCMP policy²¹ regarding personal searches stated:

2.3. Body searches will be conducted in a manner that interferes as little as possible with the privacy and dignity of the person being searched and does not infringe on Sec. 8, *Canadian Charter of Rights and Freedoms*.

2.4. A strip search is not considered routine police protocol.

NOTE: Should force be necessary to complete a strip search, the application of that force must be in accordance with the *Criminal Code* of Canada and the Incident Management/Intervention Model.

2.5. A strip search should only be conducted when there are reasonable grounds to believe:

2.5.1. That the detainee is concealing evidence relating to the reason for the arrest, or

2.5.2. That the detainee is concealing items that may aid them to escape or pose safety concerns to the police, public, or detainee.

2.6. In accordance with sec. 3.1.2, conduct a strip search on a person of the same gender, in private.

²¹ RCMP national *Operational Manual*, chap 21.2. "Personal Search," s 2.3. to 2.6.

EXCEPTION: Unless exigent circumstances require an immediate search for the preservation of evidence or to ensure the health and safety of members, the public, or detained persons.

[173] A strip search is defined as “the removal or rearrangement of some or all of the clothing of a person so as to permit a visual inspection of a person’s private areas, namely genitals, buttocks, and breasts (in the case of a female), or undergarments.”²² As explained above, a strip search is not considered routine police protocol and should only be conducted under the circumstances set out in policy,²³ and with the minimum use of force necessary.

[174] In this case, RCMP members removed A. B.’s clothes such that he was only wearing his underwear when the police officers exited the cell. According to case law and RCMP policy, this constitutes a strip search.

[175] The search was conducted by male police officers and was done in a cell with no one else present.

[176] The RCMP members explained that they removed A. B.’s clothing because it was soaking wet. Constable Cholette said that A. B. could have been at risk of hypothermia if he was left in his wet clothing. The video recording of the police vehicle incident and A. B.’s arrest showed that A. B. had been on the ground in a trench filled with water. Weather records show that the temperature in Kinngait at the time was approximately minus one degree Celsius with a wind chill factor of minus five degrees;²⁴ some of the RCMP members were wearing tuques.

[177] The removal of wet clothing was not listed as a reason for conducting a strip search in RCMP policy; however, in this case, the wet clothing could be considered an item that may pose a safety concern for the detainee. The Commission finds that it was reasonable, and in the best interests of the safety of A. B., for the RCMP members to remove A. B.’s wet clothing.

[178] Body searches must be conducted “in a manner that interferes as little as possible with the privacy and dignity of the person being searched and does not infringe on section 8 of the *Charter*” (unreasonable search and seizure). In this case, three and at times four RCMP members participated in the search of A. B. On its face, this

²² RCMP national *Operational Manual*, chap 21.2. “Personal Search,” s 1.4.

²³ RCMP policy specifically made reference to the Supreme Court of Canada’s decision in *R v Golden*, 2001 SCC 33, which sets out the law as it relates to police conducting strip searches.

²⁴ Environment and Climate Change Canada, Hourly Data Report for June 1, 2020, Kinngait, Nunavut.

number of police officers conducting a strip search may seem excessive at it relates to the protection of the detainee's privacy and dignity.

[179] However, A. B. had been almost continuously resistant in one way or another to the police officers since the beginning of his arrest, and he was highly intoxicated. This resistance continued as he was brought into the detachment and to a certain extent while he was being searched.

[180] Importantly, the detachment guard told the Commission's investigators that A. B. was displaying "rage" when he was brought into the detachment. When asked to elaborate about this, the guard stated, "Not just with [A. B.], but with a lot of inmates – once they are brought to our detachment, or in the detachment, then they are usually resisting. So the rage that he was in was more resistance." The guard explained that he was familiar with A. B. from previous interactions at the detachment and knew what his behaviour was like when he was intoxicated.

[181] For the safety of all parties, it was reasonable to have a number of RCMP members participating in the search. It is also noted that Constable Smith took care to hold on to A. B.'s underwear waistband while the police officers were trying to remove his pants, such that the underwear was not pulled down. At no time were A. B.'s private areas exposed.

[182] However, A. B. was left on the floor in his underwear and no one, including the RCMP members or the detachment guard, provided him with a blanket or gown. It is unknown if A. B. asked for anything to cover himself before the next morning, when he asked for and was provided a blanket. In any event, in the circumstances, A. B. should have been provided with a blanket or gown, if this could be done safely, especially given that the reason for removing his clothes was for his own safety to avoid him becoming hypothermic.

[183] A. B. remained clad in only his underwear until about 7:25 a.m. the next morning. This was almost eight hours after his arrest, and after another detainee had seriously assaulted him. It should be noted that, prior to A. B.'s release, Constable Keeling attended the house of A. B.'s mother and picked up some clean clothes for A. B. to wear upon release.

[184] One of the RCMP members involved in the search of A. B. (Constable Keeling, Constable Smith, Constable Cholette, or Sergeant Gill as their supervisor) should have ensured that A. B. was provided with a blanket or gown in a timely fashion if it could have been done safely. The Commission recommends that these RCMP members

receive operational guidance to that effect. This is consistent with the Commission's recommendation in a recent report that the RCMP amend its national policy to require that prisoner mattresses or blankets be provided in all cases except where there is an objective risk to police or prisoner safety. The RCMP Commissioner agreed to take action on that recommendation. As such, no additional recommendation on this subject is necessary in this report.

[185] In the RCMP's SME review of the search, the SME stated that the search was conducted because A. B. had expressed suicidal ideation. It is unclear how this conclusion was reached, as there is no information available to the Commission indicating that A. B. made any remarks about suicide prior to being detained in the cell.

[186] Constable Smith did mention that there is a high rate of suicide in the region and that, although "it's not the practice in every place," it is common for police there to remove items such as drawstrings that may be used for self-harm. He then clarified that it was not a general practice at the Kinngait Detachment to remove the clothing of all intoxicated detainees. While acknowledging that the safety of prisoners and RCMP members is of the utmost importance, the Commission has repeatedly found in previous reports²⁵ that strip searches must not be conducted as a matter of routine. The Commission re-emphasizes this finding. In this case, the safety risk caused by the wet clothes justified the strip search.

[187] With regard to the use of force during the search, it was evident that A. B. was twisting and pulling away to a certain extent, and that RCMP members held him down to facilitate the removal of his shirts and pants. In general, the force used was minimal and necessary to complete the search.

[188] Some aspects of the search were of more concern to the Commission; specifically, the instances where Constable Smith used his foot to pull A. B. toward him, then appeared to grab A. B.'s leg and turn him such that A. B. was lying fully on his front side. This manoeuvre caused A. B.'s midsection to strike the ground. In addition, Constable Smith and possibly Constable Keeling appeared to pull A. B.'s shirts off by the sleeves with a considerable amount of force. This action had the potential of leading to an injury to A. B.

²⁵ See, for example, the Commission's Review of the RCMP's Policies and Procedures Regarding Strip Searches: <https://www.crc-cetp.gc.ca/en/review-rcmps-policies-and-procedures-regarding-strip-searches>.

[189] That said, when assessing the specific application of force, the Commission is cautious not to analyze the situation in exacting detail and takes guidance from the courts, who tend to rule against measuring the use of force “to a nicety:”

In assessing the evidence in this regard, I must bear in mind that the degree of force must be viewed from the subjective view of the police officers as well as the objective circumstances. I must also make due allowance for a police officer in the exigencies of the moment misjudging the degree of force needed, and avoid holding a police officer to a standard of conduct that one sitting in the calmness of a courtroom later might determine was the best course.²⁶

[190] Overall, the Commission finds that the RCMP members’ use of force during A. B.’s search was not unreasonable. Nonetheless, the Commission cautions the RCMP members to use the minimum amount of force necessary in a given situation.

Medical care provided to A. B. following the initial incident

Finding #13	It was reasonable for the RCMP members not to seek medical care for A. B. after his arrest, because there was nothing to indicate that he was in need of medical care at that time.
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[191] There is no information available to the Commission to suggest that A. B. had suffered any injuries as a result of the police vehicle incident or the search. The guard told the Commission’s investigators that, after AB was searched and left in the cell, A. B. was making “happy drunk noises” that are very commonly heard in cells, and he was moving around the cell very fast. It was reasonable for the RCMP members not to seek medical care for A. B. after his arrest, because there was nothing to indicate that he was in need of medical care at that time.

A. B.’s assault while in custody and the conditions of detention in the cells

Another man is arrested and placed in cell no. 3

[192] After A. B. was housed in the cell, Sergeant Gill and Constable Keeling—both of whom had been called in from home while off duty to assist with the gun call—decided that they would stay on duty to help respond to the high number of calls for service that were still outstanding.

²⁶ *Stewart v Canada* (1999), 180 FTR 100 (FC), aff’d (2001), 271 NR 14 (FCA) at para 90.

[193] One of these calls involved a domestic dispute in which a 35-year-old man, who will be referred to in this report as J. J., was arrested for assault and breach of conditions. Several RCMP members attended the call at 12:05 a.m. Police records indicate that J. J. was “severely intoxicated by alcohol and very aggressive toward police” at the time of his arrest. A woman at the scene had scratches on her face and a bloody mouth. Constable Smith described that J. J. was arrested in his bedroom and when he was brought out of the residence, he attempted to lunge at a woman, and Constable Keeling had to hold him back. J. J. was very agitated and yelling. Constable Smith remembered thinking, “this guy’s going to be a problem when we get back [to the detachment].”

[194] J. J. was transported to cells at the Kinngait Detachment to be lodged. Constable Keeling wrote in his statement that he pepper-sprayed J. J. after he was “attempting to damage the police truck during transport and kicking towards [Constable Keeling] when attempting to restrain him further.” Constable Smith described that, upon arriving at the detachment, J. J. was still resisting, pulling away, and foaming at the mouth. Constable Smith and Constable Keeling carried him up the stairs into the detachment.

[195] The police officers were once again faced with the capacity challenges in the Kinngait Detachment cells that night. Constable Smith reiterated to the OPS investigators that cell no. 1 housed four men, which he described as “way too much for that” cell. Cell no. 2 had two men, one of whom was a “violent offender” who did not like J. J. and was always gearing up for a fight. Cell no. 3 housed two women, so they could not lodge J. J. there either. Constable Smith explained:

So we thought, by law of deduction, the best one would be to – we ran out of cells. I mean, it would have been great to have him [J. J.] in his own cell, but it wasn’t going to happen, so we put him into cell #3 with [A. B.], who was already in there.

[196] J. J. was placed into cell no. 3 with A. B.

[197] As mentioned above, J. J. had been pepper-sprayed after his arrest. RCMP policy²⁷ stated:

A person who has been sprayed should be encouraged to relax and breathe normally. The affected area should be exposed to fresh air, and if possible

²⁷ RCMP national *Operational Manual*, chap 17.5. “Less Lethal Use of Force,” s 2.5.

flushed with cool water. If symptoms persist or if it is believed that the person is asthmatic or in distress, medical attention should be sought.

[198] In Constable Keeling's written statement, he recounted that, after J. J. was lodged in cell no. 3, "the guard was made aware that [J. J.] had been pepper sprayed and he could be provided water in cups." In his interview with the Commission's investigators, the guard stated that he did not remember what the RCMP members told him about J. J. when he was being processed; specifically, he did not remember anyone telling him that J. J. had been pepper-sprayed, or that J. J. might need to be provided with water.

[199] The guard explained that he drew the conclusion that J. J. had likely been pepper-sprayed when he saw J. J. in the cell rubbing his eyes and making comments about his eyes. He also observed J. J. trying to turn on the taps above the sink, and when he was unsuccessful, he splashed water out of the toilet bowl onto his face. The guard explained that "the water in the sink [in cell no. 3] wasn't working and it wasn't working prior to that night. It wasn't working since I started working there." The guard, who also had an unrelated full-time day job in the community, had been working at the detachment for about six months. The guard further mentioned that, in the past, he had seen prisoners have their eyes decontaminated using the taps. He also commented that he could have given J. J. water through the opening in the door if J. J. had been calmer.

[200] In response to the Commission's written follow-up questions, Constable Keeling's legal counsel reiterated that the guard had been instructed to hand J. J. cups of water to assist in decontaminating his eyes. Counsel further explained that "[w]hen dealing with an uncooperative suspect who has been pepper sprayed, officers are limited in what they can do. Ultimately the decontamination simply takes time."

[201] Internal RCMP e-mails following the incident demonstrate that Sergeant Gill advised senior officers that he had just learned that the water in both cell no. 3 and cell no. 4 was not working. Sergeant Gill spoke about this with Constable Ferguson, who reportedly said that the sinks were not working when he arrived in Kinngait two and a half years earlier. Sergeant Gill explained that "property management" knew about this, as Constable Ferguson had to take pictures for them in May 2018 to get the cell toilets and sinks replaced; this was scheduled to happen in 2020 but was delayed due to the Covid-19 pandemic. Sergeant Gill asked, "However my question is why did it take two years to replace the toilets and sinks?"

[202] The Commission reviewed the video recording from cell no. 3 and observed that after being placed in the cell, J. J. tried to turn on the taps above the sink several times. After evidently not being able to get any water from the taps, he repeatedly splashed

water from the toilet bowl onto his face. J. J. did this on numerous occasions over approximately twenty minutes. At one point, J. J. removed his shorts and underwear, and wiped his face with them.

[203] During the RCMP's IOR of cell block operations, the investigating officer attended the Kinnigait Detachment and noted that there was an eyewash bottle to be used for decontamination at the detachment, but it was located in the confined space of the guard's washroom. Also, the bottle was empty.

Steps taken to ensure the safety of A. B. and other detainees

Finding #14	The lack of space for prisoners created an unsafe environment for detainees, RCMP members, and detachment staff.
Findings #15	The fact that J. J. was not decontaminated prior to being placed in the cell was exacerbated by the lack of tap water in the cell due to a broken sink, leading to an unacceptable situation in which the prisoner repeatedly used water from the toilet bowl to relieve his discomfort. This raised serious health and safety concerns, and contributed to increasing the risk posed to A. B. by having him share a cell with J. J.
Finding #16	In accordance with RCMP policy, J. J. should have been provided with water for decontamination, particularly when it was evident that he was in discomfort.
Finding #17	It was unreasonable for the eyewash decontamination bottle to be left empty and to be located in an impractical location.
Finding #18	It was unreasonable for the sink in cell #3 to be left in a non-functional state, apparently for as long as two years.
Finding #19	It was reasonably foreseeable that placing J. J. and A. B. in the same cell could result in a negative outcome. Housing J. J. with A. B. did create an environment in which a serious assault was committed.
Finding #20	The decision to place J. J. and A. B. in the same cell was a direct result of the lack of acceptable options available to the RCMP members as a result of the lack of space for prisoners.

Recommendation #4	The Kinngait detachment should be expanded to increase cell space up to ten cells.
Recommendation #5	Constable Keeling and Sergeant Gill should receive operational guidance regarding the importance of decontaminating prisoners.
Recommendation #6	The sinks and toilets in the Kinngait detachment cells should be repaired and maintained in accordance with RCMP policy.
Recommendation #7	The eye wash decontamination bottle in the Kinngait detachment should be moved to an accessible location and be filled on a regular basis.

[204] RCMP national policy²⁸ stated, “A person in RCMP custody will be treated with decency and provided with all the rights accorded to him/her by law,” and “The RCMP is responsible for the well-being and protection of persons in its custody.” RCMP policy in “V” Division (Nunavut) further stated, “All persons detained in custody will be treated with fairness and dignity,”²⁹ and “All members shall ensure the comfort and safety of persons in custody at all times.”³⁰

[205] It is evident that no efforts were taken to decontaminate J. J. after his arrest. The eyewash bottle was located in an impractical and inconvenient location, and in any event, it was empty. Neither the guard nor the RCMP members provided J. J. with water in any other manner, such as in a cup. There is differing testimony between the parties as to whether the guard was told to provide J. J. with water. Constable Keeling stated that he did tell the guard that J. J. had been pepper-sprayed and that he could be provided water in cups. However, the guard stated that he did not remember anyone telling him this and that he deduced on his own that J. J. must have been pepper-sprayed, based on his observations of the man in the cell. The guard did not provide water or any other assistance, explaining that he could have done so if J. J. had been calmer.

[206] Ultimately, according to policy, RCMP members are responsible for the well-being of persons in RCMP custody. Either Constable Keeling, as the arresting officer who lodged J. J. and briefed the guard, or Sergeant Gill, who was the guard’s

²⁸ RCMP national *Operational Manual*, chap 19.3. “Guarding Prisoners and Personal Effects,” s 1.2. and 1.3.

²⁹ RCMP “V” Division *Operational Manual*, chap 19.2. “Assessing Responsiveness and Medical Assistance,” s 1.2.

³⁰ RCMP “V” Division *Operational Manual*, chap 19.1. “CPIC Checks and Cell Block Security,” s 1.3.

supervisor, should have ensured that J. J. was provided with decontamination. The fact that J. J. was not decontaminated prior to being placed in the cell was exacerbated by the lack of tap water in the cell due to a broken sink, leading to an unacceptable situation in which the prisoner repeatedly used water from the toilet bowl to relieve his discomfort. This raised serious health and safety concerns, and contributed to increasing the risk posed to A. B. by having him share a cell with J. J.

[207] The Commission finds that, in accordance with RCMP policy, J. J. should have been provided with water for decontamination, particularly when it was evident that he was in discomfort. There is conflicting information as to whether Constable Keeling or any other RCMP member told the guard about J. J. having been pepper-sprayed or directed him to provide J. J. with decontamination. Ultimately, though, RCMP members are responsible for the well-being of persons in their custody. The Commission recommends that Constable Keeling and Sergeant Gill receive operational guidance regarding the importance of decontaminating prisoners.

[208] The Commission also finds that it was unreasonable for the eyewash decontamination bottle to be left empty and to be located in an impractical location. It was also unreasonable for the sink in cell no. 3 to be left in a non-functional state, apparently for as long as two years.

[209] The Commission recommends that the sinks and toilets in the Kinngait Detachment cells be repaired and maintained in accordance with RCMP policy, and that the eye wash decontamination bottle be moved to an accessible location and be filled on a regular basis.

The assault on A. B.

[210] Approximately twenty minutes after being placed into cell no. 3, after A. B. bumped into J. J. several times and threw a punch at him, J. J. violently assaulted A. B. by punching, kicking, and stomping him in two separate incidents. This included numerous forceful blows to the face, while A. B. was lying on the ground.

[211] As per his training, the guard did not open the cell to intervene; he called RCMP members, who were out of the detachment responding to calls, to return for assistance. After the assault, A. B. was lying on his side, his face bloodied, as a significant amount of blood accumulated on the floor, mixing with water that had splashed out of the toilet bowl when J. J. had previously been washing his face. Less than two minutes after the assault began, RCMP members reached the cell and removed J. J. He was arrested for and charged with aggravated assault, and later found guilty. He was sentenced to nine

months in custody. He was released on “time served,” given that he had been incarcerated awaiting trial.

[212] It has been alluded to several times in this report that there were serious capacity issues in the cells at the Kinngait RCMP Detachment on the night in question. The Commission finds that the lack of space for prisoners created an unsafe environment for detainees, RCMP members, and detachment staff.

[213] The RCMP member who conducted the IOR after this incident consulted with a staff member from the RCMP’s Asset Management unit, who explained that the number of prisoners being housed at the Kinngait Detachment had significantly increased over the previous two years. In the staff member’s view, “[t]his increase equates to the detachment requiring ten cells versus the current four to properly manage the number of prisoners.”

[214] With the high volume of calls on the evening of June 1, 2020, the RCMP members had to make numerous difficult decisions to make room for incoming detainees. For example, one prisoner was relocated from cells to the detachment interview room, and another was placed in the back seat of a police vehicle when RCMP members left the detachment to respond to calls.³¹ Records also indicate that at least one prisoner was released although they were still intoxicated. This was done to make room for higher-risk prisoners. In addition, two prisoners had notes on their intake documents about *Mental Health Act* concerns; however, contrary to RCMP policy, neither of these prisoners were housed on their own due to capacity issues. Any of these situations could have resulted in safety concerns for the detainees or others.

[215] RCMP policy³² stated that RCMP members must “[s]eparate prisoners when it is necessary to do so, e.g., the prisoner is suicidal, a threat to the health and safety of others, engaging in sexual activity.”

[216] The present case involving A. B. is, unfortunately, an example of the cell capacity issues creating an environment where conflict, leading to a serious assault, occurred. While the offender, J. J., must bear full responsibility for committing the criminal offence, it was reasonably foreseeable that placing J. J. and A. B. in the same cell could result in a negative outcome.

³¹ From the information available to the Commission, it is unclear how long this person was in the back seat of the police vehicle, or where they were taken.

³² RCMP national *Operational Manual*, chap 19.3. “Guarding Prisoners,” s 3.1.11.

[217] A. B. was highly intoxicated to the point where he was very unsteady on his feet and acting in unpredictable ways. He had been involved in a dispute at his father's home and had continuously resisted police. J. J. was arrested for an alleged domestic assault and was so aggressive and resistant with the police that he was pepper-sprayed. J. J. was also intoxicated and appeared to be in discomfort from the pepper spray. When housed together, A. B. constantly stumbled around the cell, sometimes bumping into J. J. A. B. eventually made a "roundhouse" punch at J. J., which set in motion the assault by J. J. in response.

[218] The RCMP members had considered the alternatives available to them and essentially determined that placing J. J. in cell no. 3 with A. B. was the "least worst" option. With very limited options, it is difficult to fault the RCMP members for making this decision. Nonetheless, housing J. J. with A. B. did create an environment in which a serious assault was committed.

[219] In addition, after J. J. committed a violent assault against A. B., he was eventually placed in cell no. 1 with four other men. Constable Keeling explained in his written statement that J. J. agreed to go into that cell willingly, and the men who were already in the cell said that they were okay with J. J. joining them. Nonetheless, this arrangement was far from ideal, particularly given that the RCMP members had initially determined that it was undesirable to house J. J. in that cell because it was already overcrowded.

[220] To address the significant cell capacity issues observed in this case, the Commission recommends that the Kinnigait Detachment be expanded to increase cell space up to ten cells, as discussed in the IOR preliminary and concluding reports.

Condition of the cell block and the detachment

Finding #21	There were significant deficiencies with the physical state of the Kinnigait Detachment, posing health and safety risks. It was unreasonable for the detachment to be in this condition. The RCMP as an institution was responsible for keeping the detachment and the cell block in a condition that would not pose unacceptable health and safety risks for RCMP members and detainees.
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Recommendation #8	The RCMP should fully implement the recommendations in the RCMP's Independent Officer Review Concluding Report related to the physical state of the Kinngait Detachment.
Recommendation #9	The RCMP should consider completely replacing the Kinngait Detachment building.

[221] The staff member from Asset Management who was consulted during the RCMP's IOR concluded that "the cell block consisting of four cells is almost entirely non-compliant with current Property Management Manual Fit-Up Standards." Among other things, the RCMP member who conducted the IOR observed:

- The sinks/taps were not working in cells no. 3 and no. 4.
- The benches in cell no. 1 and cell no. 3 had sharp metal edges, posing a safety risk.
- The door handle to one of the plumbing closets was broken, causing the door to remain open and act as an obstruction in the booking area.
- The toilets in each of the four cells were not compliant with RCMP policy.

[222] With regard to the entrances to the detachment, the RCMP member noted that the back door was not functioning. The ground had heaved and the door had been stuck in a closed position for a "lengthy period of time." This obviously presents a fire hazard.

[223] Therefore, the front door was always used for entering and exiting the building, including for all prisoner transport. This posed its own problems because the front door was accessed by a long, steep staircase that is made of metal and is exposed to the elements, which can be particularly extreme in Nunavut. Several of the RCMP members involved in the present case mentioned how difficult it was to bring arrested persons into the Kinngait Detachment, given the steep staircase. This was especially true with regard to prisoners who were intoxicated and/or resistant. Another complicating factor identified in the IOR was that the front door of the detachment had two sets of locked doors, each of which had to be unlocked by RCMP members to enter the building, which could be challenging when also trying to control and/or carry a detainee.

[224] The IOR Concluding Report further found that a Physical Security Review of the Kinngait Detachment had been completed in 2012, and that, as of the site review in June 2020, "many of the deficiencies identified in 2012 remain outstanding." The report also noted, among other things, that the cell doors had been recommended for

replacement in 2007. A plan (the 2020 Cell Refresh Project) was implemented, but the report noted that this plan would not change the current capacity issues.

[225] It was identified in the IOR report that the Kinngait Detachment is one of nine remaining “bubble” style, or trailer, detachment buildings left in Nunavut out of the twenty-five RCMP detachments in the territory. The bubble style buildings were built in the 1980s; the Kinngait Detachment was built in 1989.

[226] The Commission finds that there were significant deficiencies with the physical state of the Kinngait Detachment, posing health and safety risks. It was unreasonable for the detachment to be in this condition, particularly when some deficiencies were identified years earlier. The RCMP as an institution was responsible for keeping the detachment and the cell block in a condition that would not pose unacceptable health and safety risks for RCMP members and detainees.

[227] The IOR concluded that “[t]he infrastructure in the North, specifically Nunavut, is dated and in need of much attention. The Cape Dorset [Kinngait] Detachment has safety deficiencies in many areas. . . . The building needs to meet the demands of this busy detachment and requires more space.” The IOR made recommendations that included the following:

- continuation of the 2020 Cell Refresh Project to address non-compliance and safety concerns;
- having an onsite occupational health and safety inspection by an Occupational Safety Officer;
- repairing or replacing the exterior door to the cell block to limit the use of that door for prisoner handling;
- repairing the interior door to the cell plumbing closet; and
- installing a landline telephone in the cell block area to avoid guards having to leave the area to make calls and to limit the use of personal cell phones.

[228] To address the deficiencies observed in this case, these recommendations should be implemented, along with the specific recommendations made by the Commission above. Therefore, the Commission recommends that the RCMP fully implement the recommendations in the RCMP’s IOR Concluding Report related to the physical state of the Kinngait Detachment.³³

³³ File information indicates that “V” Division has already taken certain steps in response to recommendations in the IOR reports.

[229] In light of all the changes necessary to implement this recommendation and the above recommendation concerning cell capacity, the RCMP should consider completely replacing the Kinngait Detachment building.

Condition of A. B.'s cell

Finding #22	It was unreasonable to leave the cell floor covered with various bodily fluids for more than ten hours.
Recommendation #10	All of the RCMP members present in the cell block that night (Constable Keeling, Constable Smith, Constable Cholette, Constable Sturge, and Sergeant Gill) should receive operational guidance regarding the importance of cleaning cells in a timely fashion.

[230] The video recording from the cell block reveals that the floor of cell no. 3 remained covered in blood and water (and later, urine and vomit) from shortly after midnight (when the assault on A. B. took place) until 10:15 a.m., when A. B. was removed from the cell and RCMP members cleaned the floor.

[231] It is acknowledged that the RCMP members were almost constantly occupied with tasks that night, but in any case, the health and safety concerns of leaving the floor in that condition when a prisoner occupied the cell are apparent. It was unreasonable to leave the cell floor covered with various bodily fluids for more than ten hours.

[232] The Commission recommends that all of the RCMP members present in the cell block that night (Constable Keeling, Constable Smith, Constable Cholette, Constable Sturge, and Sergeant Gill) receive operational guidance regarding the importance of cleaning cells in a timely fashion.

Staffing of the Kinngait Detachment

Finding #23	It was unreasonable for the RCMP to understaff the Kinngait Detachment by more than half of the number of police officers needed.
Recommendation #11	The RCMP should ensure adequate staffing of all its detachments, including the Kinngait Detachment.

[233] The RCMP's IOR touched on the issue of staffing at the Kinngait Detachment. At the time of the incident, according to the RCMP's organizational chart and funding arrangement, the Kinngait Detachment was supposed to be led by one Corporal as Detachment Commander with four Constables. However, the detachment's staffing was considered "over-ranked," with a Sergeant in charge and two Constables posted there on a permanent basis. The rest of the positions were being filled with relief members on a rotational basis.

[234] According to the IOR's analysis, the one Corporal/four Constables complement was equivalent to 4.5 "Uniformed First Responders" (UFR). However, a crime statistics analysis from 2019 indicated that the Kinngait Detachment's "needs and workload hours have increased to that of requiring 10.6 UFR or regular members." By the RCMP's own figures, the Kinngait Detachment was understaffed by more than half of the number of police officers needed. The IOR also noted that there was no Detachment Services Assistant employed in Kinngait, so all of the administrative tasks fell to the Sergeant.

[235] The fact that the RCMP's IOR was able to identify all of these deficiencies with the condition and staffing of the detachment shows that some internal review mechanisms can function as intended and bring about needed change. However, it is unfortunate that an incident like this one had to happen to prompt the review. The Commission can only observe that things should not have needed to get to this point before the RCMP did something to address the situation.

[236] The Commission recommends that the RCMP ensure adequate staffing of all its detachments, including the Kinngait Detachment.

Actions of the cell block guard

Finding #24	Sergeant Gill provided inadequate supervision of the guard. Although the guard was earnest and appeared to be committed to doing the best job possible in challenging circumstances, it is apparent that there were numerous violations of RCMP policy in relation to record-keeping and other tasks performed by the guard.
Finding #25	The training provided to the guard by the RCMP was inadequate. It appeared to impart a basic understanding of the roles and responsibilities of a guard, but did not adequately address RCMP policy requirements.

Recommendation #12	The RCMP should fully implement the recommendations in the RCMP's Independent Officer Review Concluding Report related to guard practices and training.
Recommendation #13	Sergeant Gill should receive operational guidance concerning the adequate supervision and training that he is required to provide to detachment guards in accordance with RCMP policy.

[237] Given that he is not an RCMP member or a person employed under Part I of the RCMP Act, the guard is not subject to the Commission's jurisdiction. However, he was supervised by an RCMP member, Sergeant Gill. Since oversight of the guard's performance was the responsibility of Sergeant Gill, the Commission will review the guard's actions to assess whether this oversight was adequate and sufficient.

[238] The guard was required by RCMP policy to continuously monitor prisoners in RCMP custody. In the Kinngait Detachment, that is done both by visual checks through the opening in the cell door and monitoring by closed-circuit television (CCTV). Entries about the status of each prisoner had to be made in the guard's logbook.

[239] The guard told the Commission that he observed A. B. step on J. J. several times. The RCMP members had left the detachment to answer another call when the guard realized that A. B. and J. J. were "in a tussle on the floor." He then observed via the CCTV that the two men were "actually fighting." The guard ran down to cell no. 3 and banged on the door very hard in an attempt to get the men to stop. J. J. did not let go of A. B. for several minutes. The guard realized that he needed to "get the cops involved," so he called them.

[240] He did not recall whether he called the dispatcher or used his radio to contact the RCMP members directly. The guard explained that he usually uses his personal cell phone to call the dispatcher in emergencies, because he has the emergency number on speed dial and it is simpler than using the detachment phone. He also explained that, on occasion, the guards from previous shifts forget to change the battery in the radio, so it does not work.

[241] The guard explained that, during his orientation as a guard, he was told that he was not to intervene if there was a fight in cells. Rather, he was supposed to call the police officers for them to intervene. The guard also recounted that, the majority of the time, there are RCMP members in the detachment at all times, so they can respond immediately to any emergency. The evening of June 1, 2020, was exceptional because of how busy it was and how the RCMP members were "constantly on the go."

[242] In his interview with the OPS investigators, the guard stated that, when the altercation between prisoners broke out, he had so much adrenaline that he was not able to work the radio to call the RCMP members, so he called the emergency number instead.

[243] Sergeant Gill's police report indicates that the RCMP members received a call from the dispatcher that a fight had broken out in cells. Sergeant Gill told the RCMP's IOR investigator that the guard "became flustered" and forgot how to use the radio; as such, the guard called the dispatcher and was put on hold.

[244] In his interview with the OPS investigators, Sergeant Gill explained that the guard is not allowed to enter the cell on his own initiative. The wording of RCMP policy was as follows, "A guard may open or enter a prisoner's cell only in an emergency or when accompanying a member."³⁴

[245] The RCMP's IOR Concluding Report determined that there were numerous deficiencies with the record-keeping in cells that night. With regard to the Prisoner Log Record Book (logbook), the guard erroneously listed two pages as having entries for the same periods (00:30 to 1:30, and 00:15 to 2:00). It appeared that notes were not made regarding the booking in and movement of all prisoners. For example, in the logbook, A. B. was not noted as being booked in. The notations regarding J. J. were not detailed, considering the significant activity that occurred involving him. In general, there was a lack of detail in the logbook, with little indication of A. B.'s assault, injury and symptoms, or the state of the cell.

[246] Additionally, the guard did not document physical or CCTV checks at irregular intervals, as required by RCMP policy (physical checks of prisoners must be done at irregular intervals, no less than every fifteen minutes; physical checks must only be augmented by CCTV checks, not replaced by them).³⁵ RCMP policy also provided that an intoxicated prisoner must be awake, or awakened, and responsive a minimum of once every four hours.³⁶ Contrary to RCMP policy, there were no entries made in the logbook about the guard checking prisoners' responsiveness. There were no entries made in the logbook by the supervisor, Sergeant Gill, on June 1–2, 2020, which is also contrary to RCMP policy.³⁷

³⁴ RCMP national *Operational Manual*, chap 19.3. "Guarding Prisoners and Personal Effects," s 4.1.4.

³⁵ *Idem*, s 4.5.1.

³⁶ *Idem*, s 4.5.2.

³⁷ *Idem*, s 5.2.

[247] Numerous problems were also identified in a review of Prisoner Reports (C-13 forms) from the night in question. For example:

- The C-13s were not signed off by a supervisor.
- One prisoner had medication listed on their C-13, but no further entries about its dispensation were made on the C-13 or in the logbook.
- Charter obligations were not consistently initialled.
- Many boxes on the C-13s were left blank.
- The “Conditions of Release” and “Details/Actions” sections were vague and missing information.
- Details were consistently lacking with regard to medical and prescription fields on the C-13s.
- A nurse was noted as attending the cells to assess two prisoners and signing off on the C-13s that the prisoner was fit for incarceration; however, there was little detail on the C-13s as to the circumstances around medical attendance times and the reason for treatment. The logbook was also lacking detail on these topics.
- Two prisoners were lodged with notations “S” (suicidal) or “MHA” (*Mental Health Act*) at the top of their C-13s, but the details/actions listed were vague and there was nothing to indicate that the guard had to perform constant watch of the prisoners.

[248] With regard to training, the guard told the Commission’s investigators that Sergeant Gill gave him a “semi-casual, semi-formal” orientation when he started the job. The guard described:

I was given a tour of the detachment. I was shown where stuff were [*sic*]. I was told what the rules were. I was told what we can and what we cannot do. I was told – I was shown how to record in the logbook and how to record in my timesheet, what cleaning the cells looks like. I was shown where to do the laundry, where the staff washroom was. I was shown the signs in there that has [*sic*] the rules on them. I was also shown – I was also given a manual that we are required to read.

...

And then as I progressed through there, like, the radio and stuff like that, then I was shown by different [RCMP] members.

[249] With regard to the rules he was taught, the guard mentioned that they could not give the prisoners any of their personal belongings, and that the guards could not open the cell doors at any time, unless there was a fire.

[250] The guard explained that he was not specifically instructed in detail about RCMP policies and procedures, but he learned about them over time as he worked. The guard explained that the detachment seemed to be “very, very short staffed” when he was hired, as it was the week of Christmas.

[251] The guard explained that he was given the option of asking questions as necessary. While working, he would ask the RCMP members on duty if something came up that he did not understand. The guard stated that the detachment has always been a very relaxed environment where he felt comfortable asking questions and taking direction from the RCMP members.

[252] The RCMP’s IOR investigator reviewed the Kinngait Detachment’s PowerPoint presentation, “V Division – Cape Dorset, NU Guard & Matron Training Course,” and determined that it appeared to be a somewhat updated version of the national course, “National Course Training Standard (CTS) – Guards Training Course (2004),” which is now dated. It is unclear whether the guard in this case reviewed that PowerPoint training course, although he did mention being provided with a manual.

[253] The RCMP’s investigator also determined that four of the eight guards on strength at the detachment had personnel files. There was nothing in the files about training or policy reviews, and no record of first aid/CPR (cardiopulmonary resuscitation) training or recertification. A previous review in 2011 also identified the lack of first aid/CPR training of guards.

[254] On the topic of guards, the RCMP’s IOR Concluding Report recommended that the RCMP take the following action:

- Implement a Divisional Training Standard for guards to ensure consistency.
- Implement a mentorship program with a senior guard mentoring more junior guards to ensure consistency in guard duties and support.
- Implement a tracking system for six-month reviews of unit/division/national directives and policies for guards and regular members.
- That guards receive training on portable radios and the proper procedure for calling the members on duty and/or the Operational Communications Centre for cell block emergencies.

- As per the 2011 review, “. . . the Detachment Commander, in consultation with District Management, will ensure guards and matrons receive any required First Aid and CPR training.” Guards at the Kinngait Detachment do not have valid certification in this area. It is recommended that guards receive this training.

[255] Although the guard was earnest and appeared to be committed to doing the best job possible in challenging circumstances, it is apparent that there were numerous violations of RCMP policy in relation to record-keeping and other tasks performed by the guard, who was under the supervision of Sergeant Gill. The Commission finds that, considering all the circumstances, Sergeant Gill provided inadequate supervision of the guard.

[256] It is undisputed that this was a much busier than usual night at the Kinngait Detachment with numerous competing priorities, but some of the deficiencies could have had significant negative consequences, such as the apparent failure to conduct physical checks and to check responsiveness of prisoners. Deficiencies on Prisoner Reports, particularly in relation to medications, medical conditions, and medical treatment, could also have led to negative outcomes for prisoners. It is also highlighted that Sergeant Gill did not sign off on the Prisoner Reports.

[257] It would have been preferable if there had been at least one RCMP member present in the detachment at the time of the incident involving A. B. and J. J. so they could provide almost immediate emergency response; the guard explained that this was usually the case. However, some of the RCMP members were responding to another call about the man who had been pointing a firearm; some RCMP members were responding to a call involving intoxicated persons with children in the home; and the other member was responding to a call about a man lying on the ground near the metal dump. All of these calls required prompt attention.

[258] It is also noted that, although the guard’s lack of use of the radio was unfortunate, it did not appear to cause any significant delay in the RCMP members’ response. The video recording shows that RCMP members arrived at the door of cell no. 3 less than two minutes after the assault began.

[259] The Commission also finds that the training provided to the guard by the RCMP was inadequate. It appeared to impart a basic understanding of the roles and responsibilities of a guard, but did not adequately address RCMP policy requirements.

[260] The IOR made recommendations to address the deficiencies observed in this case with respect to guard practices and training. These recommendations included the following:

- That the detachment comply with policy such that guards conduct checks regularly and correctly.
- That the senior RCMP member and the guard assess prisoners at the beginning and end of the guard's shift and document those assessments.
- That the Detachment Commander establish clear expectations and responsibilities regarding cell block management.
- That guard duties and emergency contact numbers be posted or placed in a binder on the guard's desk for easy reference.
- That advertising processes to hire more guards be attempted.

[261] As these recommendations address the issues identified in this report, the Commission recommends that the RCMP fully implement the recommendations in the RCMP's IOR Concluding Report related to guard practices and training.

Medical care provided to A. B. following the incident in the cell

Finding #26	The RCMP members promptly sought medical assistance for A. B. after he was assaulted.
Finding #27	Given that A. B. was still acting in an unpredictable manner, it was reasonable for Sergeant Gill to decide to have the Nurse Attend the detachment instead of bringing A. B. to the health centre.
Finding #28	It was reasonable for the RCMP members to rely on the opinion of Nurse A that A. B. could continue to be housed in cells until being assessed later.
Finding #29	It was unreasonable for the RCMP members who were present during Nurse A's visit (Constable Sturge, Constable Cholette, Constable Smith, and Sergeant Gill) not to have clearly passed along the healthcare plan involving A. B. that had been recommended by Nurse A and agreed to by RCMP members and not to have documented this plan in the Prisoner Report. This lack of continuity of care could have resulted in a risk to the health of A. B.

Finding #30	Once the RCMP members on duty the next day were made aware of the need for a physical assessment of A. B., they took steps to have the assessment carried out shortly after.
Finding #31	The guard and the RCMP members should have attempted to provide first aid to A. B., if this could be done safely.
Recommendation #14	Constable Sturge, Constable Cholette, Constable Smith, and Sergeant Gill should receive operational guidance regarding the importance of clearly documenting and communicating information about a prisoner’s necessary medical treatment.
Recommendation #15	The RCMP should issue a bulletin emphasizing that potential head injuries to prisoners must be approached with the utmost seriousness, that RCMP members should err on the side of caution in seeking prompt healthcare assessments in such situations, and that RCMP members must be cognizant that intoxication may mask the symptoms of an underlying head injury.

[262] Sergeant Gill’s police report indicated that, after J. J. was removed from cell no. 3, A. B. was moving around but it was evident that his face had been badly beaten, and there was blood all over the cell floor. However, Sergeant Gill also observed that A. B. was “still very agitated” and Sergeant Gill “did not feel it was safe to take [A. B.] to the Health Centre.” Instead, Sergeant Gill told the other RCMP members to call the health centre to have a nurse attend cells and tend to A. B.

[263] In Constable Smith’s report, it is also documented that A. B. continued to act aggressively despite his obvious injury. Constable Smith contacted the dispatcher and requested that they contact the health centre to have a nurse attend the detachment to examine A. B. The on-call nurse advised that she would attend after she had completed a call to which she had previously been dispatched.

[264] Having reviewed the video recording, the Commission notes that after the assault, A. B. was continuously moving around the cell, stumbling and occasionally falling and getting back up. The floor of the cell remained covered in blood and water.

[265] The Commission interviewed the on-call nurse, who will be referred to in this report as Nurse A. She explained that she had been a registered nurse for 23 years and her specialty was working in intensive care units. She had been working in Nunavut for five years. She had been in Kinngait for several years.

[266] Nurse A explained that the Community Health Nurses such as herself were the only healthcare provider in the community. If a patient was in need of additional care, the nurse would consult with a physician located in Iqaluit, and if it was deemed necessary, the patient would either be flown to Iqaluit or elsewhere by medevac (medical evacuation – air ambulance flight) or a regularly scheduled flight, depending on the severity of the condition. The health centre could not do tests such as a CT scan, and could only X-ray certain parts of the body. Put simply, there are limited healthcare resources in Kinngait.

[267] Nurse A said that it was relatively rare for the nurses to attend the cells in the RCMP detachment to assess patients, as opposed to police officers bringing the person to the health centre. She explained, “[But it is] our choice if we go up or not – and if we’re there and we decided they need more care, then we will bring them down [to the health centre].”

[268] With regard to evening in question, Nurse A stated that she received a call from dispatch with a request from the RCMP to attend the detachment to assess a patient. She had just received a call from a mother whose child was having abdominal pain; Nurse A was on the way to the clinic to see that child, so she advised the dispatcher that she would be more than willing to see the patient in cells after she was done with the other patient. The dispatcher reportedly replied, “Well, whatever your policy is,” to which Nurse A said, “Well, because [A. B. is] already in a safe place, if he can – soon as I’m finished, I’ll probably go up.” She also said that she would be in contact with the police officers to see what further information she would need before attending.

[269] Nurse A was finished treating her child patient at 1:15 a.m. She called to speak to the police but, because they were extremely busy that night, she did not receive a call back until 1:40 a.m. She then arrived at the RCMP detachment at 1:45 a.m. This was approximately one hour and forty-five minutes after A. B. had been assaulted.

[270] Simply by looking at A. B., it was apparent to the RCMP members that he required medical assessment and care. The guard had also told them about what had happened. The only healthcare option available was an assessment by one of the Community Health Nurses. This would normally be done at the health centre, which had limited diagnostic and treatment tools.

[271] Given that A. B. was still acting in an unpredictable manner, Sergeant Gill made the decision to have nurse attend the detachment instead of bringing A. B. to the health centre. The Commission finds that this decision was reasonable in the circumstances. The evidence shows that the RCMP members promptly called for medical assistance after A. B. was assaulted. A. B. was going to be assessed by the nurse whether it was in cells or at the health centre. Considering the difficulties that the RCMP members had in controlling A. B. during his arrest and processing at the detachment, and the fact that he was still in an agitated and intoxicated state after the assault, it was reasonable to have him stay at the detachment and for the nurse to come to him.

[272] The one-hour-and-forty-five-minute period between the incident and the nurse arriving at the detachment was not ideal, given that A. B. had suffered a serious assault. That said, Nurse A was the only healthcare professional on call that night, and she had received a call for service relating to an unwell child prior to the call about A. B. It is beyond the Commission's mandate to assess how healthcare professionals make healthcare service decisions.

[273] In the meantime, though, it appeared that neither the guard nor the RCMP members attempted to provide any first aid to A. B. They should have attempted to do so, provided that this could be done safely.

Nurse A attends the detachment to assess A. B.

[274] Nurse A told the Commission's investigators that, when she arrived at the RCMP detachment, she observed A. B. on the bench in the cell, lying in a fetal position on his right side. The cell had blood and urine on the floor.

[275] Prior to attending the detachment, Nurse A had checked A. B.'s immunization history and learned that he was due for a tetanus shot. After introducing herself to A. B. and telling him that she was going to check his injuries, she told him that she was going to give him a tetanus shot. She did so. Nurse A then told A. B. that she was going to start washing the wounds on his face so that she could see where the blood was coming from. She noticed a significant amount of swelling throughout his face.

[276] Nurse A was trying to clean the left side of A. B.'s face, and every time she would ask if she could clean the right side (which he was lying on) A. B. would pull away. When she was eventually able to see his whole face, she observed that he had a lot of swelling on his lips. She asked if he could open his mouth for her to examine it; in response, A. B. made the middle finger gesture with both hands and said, "I'm not

fucking opening my mouth,” in what Nurse A described as “this very demonic voice.” A. B. then leapt up into a standing position with his hands and arms in a fighting position. At this point, Constable Smith, who was outside the cell, said, “I think it’s time to gather your stuff.” Nurse A did so and exited the cell. A. B. leapt toward her and “bounced off” the cell door.

[277] Nurse A stated that, for the next fifteen minutes, A. B. continued making unintelligible sounds in a “demonic voice,” running back and forth from one side of the cell to the other, banging into the cell door. She said that it was like nothing she had ever experienced before. In her previous interactions with A. B., he was a very quiet person who spoke almost in a whisper. However, on that night, she was “very fearful of him.” She said that he would have harmed her if she stayed in the cell any longer than she did. Nurse A also noted that, given the behaviour she observed from A. B., it was difficult to tell which injuries that were documented at the health centre the next evening were from the assault and which may have stemmed from self-harm in the cell.

[278] Upon leaving the cell, Nurse A told Constable Sturge that she did not get a “good assessment” of A. B., in that she was not able to listen to his chest, look in his ears, assess his eyes, or palpate his injuries. She told the RCMP member that, once A. B. was completely sober and clear-headed, he needed to come down to the health centre to get a full assessment “just to make sure there was nothing else that was seriously going on” and so that he could verbally tell them if he was having any problems arising from his injuries. Nurse A recounted that the RCMP member agreed to that plan of action.

[279] Nurse A further explained that, in any event, A. B. was not safe to be transported in his current intoxicated state. He would have to be “chemically restrained” for any flight.

[280] The Commission’s investigator asked Nurse A, “So it was implicit in that communication with [Constable Sturge] then that you felt [A. B.] was fit to be incarcerated? There was no need to get him out on an emergency basis, in other words?” Nurse A replied, “Yes. No.” She added that she would not have felt safe with A. B. coming down to the health centre in those circumstances anyway, and that he would have had to be physically restrained, which would have likely caused him more harm, given how aggressive he was at that time.

[281] Entries in Nurse A's records about her assessment of A. B. state in relevant part:

- [A. B.] was intoxicated and under the influence of illegal substances
- Clear bilateral breath sounds
- Bruising and swelling to the right eye, left ear, right cheek
- Evidence of dried blood with no active bleeding
- Bruising to lips
- No lacerations to the scalp
- No full assessment completed due to [A. B.'s] aggressive behaviour

[282] The Commission reviewed the video recording of Nurse A's visit with A. B., and it is consistent with Nurse A's account. The police reports authored by Constable Sturge and Constable Smith are also consistent with the account of Nurse A. In his interview with the OPS investigators, Constable Cholette recounted that the RCMP members had asked Nurse A if A. B. was fit for incarceration; she said that he was "all right but that he would probably have to [be] checked the following day when he's sober."

[283] Nurse A conducted a preliminary assessment of A. B. and provided him with some limited treatment. She was unable to complete a full assessment because A. B. became aggressive and Nurse A had to leave the cell for her own safety. She advised the RCMP members that A. B. should be brought to the health centre once he was completely sober, "just to make sure there was nothing else that was seriously going on." Importantly, Nurse A was not of the opinion that A. B. was in need of any emergency medical care at the time. She essentially advised the RCMP members that A. B. was fit for incarceration until he could be further assessed later. The Commission finds that it was reasonable for the RCMP members to rely on the opinion of Nurse A that A. B. could continue to be housed in cells until being assessed later.

A. B. remains in cell no. 3 overnight

[284] The video recording from cell no. 3 shows that A. B. continued to act aggressively for about fifteen minutes after Nurse A left the cell. After that, A. B. lay down on the floor and appeared to sleep for about an hour, before waking and walking over to the bench, where he lay down again and appeared to go back to sleep. He shifted positions in his sleep for about two hours and forty-five minutes. At 6:06 a.m., he got up and knocked on the cell door. The guard then gave him several cups of water. A. B. went back to sleep until 7:32 a.m., when he appeared to ask for and receive a blanket.

[285] At about 7:42 a.m., while lying on his side on the bench, A. B. began vomiting onto the floor of the cell. He vomited again at about 8:35 a.m.; this time he got up into a kneeling position on the bench. At about 10:08 a.m., he got up and went to the toilet to vomit. An RCMP member then gave A. B. some clothes. A. B. continued to vomit into the toilet before putting on a new shirt, underwear, and jeans. At 10:15 a.m., A. B. was let out of the cell and then returned at 10:17 a.m. He was then let out of the cell again at 10:19 a.m.; Constable Matt Ferguson and Constable Keeling, wearing protective face masks, entered the cell and cleaned the floor and benches. A new mattress was placed in the cell. A. B. returned to the cell at about 10:37 a.m. He slept and periodically vomited into the toilet. He was then provided with what looked like toast and water.

[286] Constable Keeling describes in his written statement that he began his day shift at 9 a.m. on June 2, 2020 (after having come in while off-duty hours earlier to assist). At around 10:40 a.m., he and Constable Ferguson were preparing to release A. B., so Constable Keeling went to the house of A. B.'s mother to collect a full set of clothing so that A. B. would have something dry to wear upon his release.

A. B. expresses suicidal ideation

[287] When Constable Keeling gave the clothes to A. B., A. B. asked where he had been arrested the night before. The RCMP member told A. B. that he had been arrested in "the valley." Constable Keeling then asked A. B. if he wanted to go to the health centre. A. B. reportedly said that he just wanted to go home and sleep, and then he wanted to commit suicide. Constable Keeling asked why, and A. B. said, "Life is boring."

[288] Constable Keeling asked if A. B. wanted to speak with a mental health worker, and A. B. said yes. Constable Keeling contacted the mental health nurse, who will be referred to in this report as Nurse B, to inform her that there would be another prisoner for her to speak with that morning, as she was already scheduled to attend the detachment to speak to a female prisoner.

[289] RCMP divisional policy³⁸ stated:

Should a prisoner indicate any suicidal intentions . . . the supervisor on shift is to be immediately notified so that preventative measures can be employed including:

removal of all clothing and providing the prisoner with a high-risk security blanket and/or high-risk security gown;

³⁸ RCMP "V" Division *Operational Manual*, chap 19.3. "Guarding Prisoners and Personal Effects," s 4.1. and 4.2.

request additional guard to conduct suicide watch where possible; and/or transport to hospital if required.

Immediately enter on CPIC as suicidal if prisoner is suicidal.

[290] There is nothing in the information available to the Commission to indicate that these steps were taken. However, Constable Keeling was removed from duty shortly after his conversation with A. B. and his call to the mental health nurse.

[291] It is unclear from the information available to the Commission if the healthcare plan that had been arranged by Nurse A and the RCMP members who were at the detachment during her visit was passed along to the RCMP members who were on duty the next morning. There is nothing on A. B.'s Prisoner Report document indicating that he was to be taken to the health centre when sober. There is also no mention in police reports of this information having been passed on by Constable Sturge, Constable Smith, and Constable Cholette. Constable Keeling's written statement mentioned that he and Constable Ferguson were preparing to release A. B.; there was no mention of taking him to the health centre. Constable Keeling did ask A. B. if he wanted to go to the health centre, but this implies that it was up to A. B. and not at the recommendation of Nurse A the previous night. In response to the Commission's written follow-up questions, Constable Keeling's legal counsel reiterated that Constable Keeling "understands that the officers on duty had arranged for a registered nurse to attend cells and examine" A. B. This appears to be in reference to Nurse A's visit to cells the previous night.

[292] RCMP policy³⁹ stated that RCMP members must "[d]ocument any medical recommendations made by the medical practitioner while the prisoner is in custody on Form C-13-1, and advise the guard."

[293] The Commission finds that it was unreasonable for the RCMP members who were present during Nurse A's visit (Constable Sturge, Constable Cholette, Constable Smith, and Sergeant Gill) not to have clearly passed along the healthcare plan involving A. B. that had been recommended by Nurse A and agreed to by RCMP members and not to have documented the plan in the Prisoner Report. This lack of continuity of care could have resulted in a risk to the health of A. B. The Commission recommends that Constable Sturge, Constable Cholette, Constable Smith, and Sergeant Gill receive operational guidance regarding the importance of clearly

³⁹ RCMP national *Operational Manual*, chap 19.3. "Guarding Prisoners and Personal Effects," s 3.1.7.2.

documenting and communicating information about a prisoner's necessary medical treatment.

The mental health nurse assesses A. B.

[294] In her interview with the Commission's investigators, Nurse B described that she had been a registered psychiatric nurse for eleven years. She had been working in Nunavut for four years, and Kinngait was her primary work location.

[295] Nurse B recounted that the RCMP⁴⁰ called her at around 10 a.m. on June 2, 2020. She was told that the patient (A. B.) was still intoxicated, that he had been in some sort of physical altercation the night before and had been hit by a truck, and that he was expressing some suicidal ideation. The RCMP member also said that Nurse A had seen A. B. the night before. Nurse B and the RCMP member decided that she would go up and see A. B. that afternoon; Nurse B said that it was a very busy day for mental health calls in the community.

[296] The video recording from cell no. 3 indicates that Nurse B attended the detachment at about 3:48 p.m. This was about five hours after being called by Constable Keeling. The explanation for this length of time appears to be that Nurse B was very busy with calls that day. She stated that, when alcohol is present in the community, there is often an increase in calls for risk assessments.

[297] When asked about mental health resources in Kinngait, Nurse B explained that there is one mental health nurse in the community. She added:

Sometimes they try to accommodate having another mental health nurse⁴¹ or a mental health consultant in the community to help support [them] with the caseload. But typically, that's all the mental health services aside from elders or any mental health services that are not in the community.

⁴⁰ Nurse B did not recall which RCMP member called her, but Constable Keeling said in his written statement that he called Nurse B about A. B.

⁴¹ Nurse B also explained that her co-worker at the time, another mental health nurse, was the girlfriend of one of the RCMP members. Other file information indicates that this was Constable Keeling's common law partner. As a result of the police vehicle incident, Constable Keeling was recalled from duty at around noon on June 2, 2020, and sent to Iqaluit. His partner accompanied him.

[298] Nurse B stated that, when she saw A. B., he did not present as he usually does; he is normally very quiet but this time he was a bit more agitated. She could see that he had substantial bruising all over his face. He was “not doing well” and she made a “very quick assessment” that he should be referred for a medical assessment before a mental health assessment could be conducted. She said that he had difficulty concentrating and that he still showed some signs of being intoxicated. He was pacing around and repeating that he wanted to get out of the cell. At no time did he specifically request medical care. In short, Nurse B did not believe that she would be able to assess whether his agitation was due to A. B.’s physical ailments or to a mental health concern, without first having a medical assessment done.

[299] Nurse B confirmed that she checked the “fit to be incarcerated” box on A. B.’s Prisoner Report, in that she believed he was able to remain in cells. Although she did believe that he needed a prompt medical assessment, it did not constitute an emergency such that he needed to be transported immediately to the health centre.

RCMP members take A. B. to the health centre

[300] In her police report, Constable Sturge explained that she called the health centre at approximately 4:30 p.m. and spoke with a nurse (who will be referred to in this report as Nurse C), who told her that the RCMP members should bring A. B. to the health centre “after the 5:00 p.m. rush” when the centre would be less crowded. Constable Sturge and Constable Smith transported A. B. to the health centre at about 5:48 p.m. At that point, he had been held in cells for approximately seventeen and a half hours. In his police report, Constable Smith documented that, at this time, A. B. was sober and calm.

[301] Nurse C provided an interview to the Commission. She had been a registered nurse for fifteen years and had worked at various location in the North. She had been in Kinngait since May 18, 2020.

[302] In her recollection of events, the mental health nurse (Nurse B) had spoken to her at the health clinic at around 4:30 p.m. or 5 p.m., reporting that there was a patient in the RCMP cells who would have to be assessed because he was suffering from nausea and vomiting. Nurse C thought that a case of nausea and vomiting would be too complex to be assessed in cells and that the person would have to be seen in the health centre (given the variety of different causes of those symptoms, and the different treatment options).

[303] Nurse B reportedly told Nurse C that the patient (A. B.) should not be brought to the health centre during regular business hours. Nurse C was to be on call that night, beginning at 5 p.m.; the health centre's regular hours ended at 5 p.m., but she was fine with seeing the patient after that time. She had also worked the day shift and, in their morning staff meeting, had heard in general terms about Nurse A's assessment of A. B. the previous night.

[304] With regard to her examination of A. B., Nurse C stated, "When I took one look at him I automatically knew that his nausea and vomiting was probably from his head injury." She said that she then conducted a head-to-toe assessment. Among other things, her records indicate the following observations:

- No trauma palpated or visualized to skull
- Right eye swelling over eye brow, lacerations to forehead
- Swelling to lips
- Left eye swollen and bruised but can open pupils
- 2 mm brisk and round sclera, no white edema
- Left [*sic*] eye unable to open even with assistance from writer
- RCMP say [patient] has a staggered gait at times post injury
- Raccoon eyes
- ...
- 1840: [patient] on floor in front of toilet retching ++forcefully ...
- ...
- 1900: spoke with [doctor] on phone who ordered medivac for [patient].

[305] Nurse C decided to seek the opinion of an on-call physician in Iqaluit. Nurse C took a photograph of A. B. and e-mailed it to the doctor, along with her assessment notes. The doctor called Nurse C and stated that it was imperative that A. B. come to Iqaluit, where he could have a CT scan of his head. He would be transported there by means of a medevac flight.⁴²

[306] Nurse C reiterated that there are any number of potential causes of symptoms such as nausea and vomiting, and that they had limited diagnostic tools at the health centre in Kinngait: no CT scanner, no ultrasound, no extensive bloodwork available. She explained, "You get this instantaneous gut feeling sometimes. Sometimes the gut feeling is wrong, but sometimes it's right. . . . But when I looked at him I was like, his

⁴² In his police report, Sergeant Gill wrote, "On June 3rd, 2020 at 0908 Sgt Gill called the Head Nurse of the Health Centre [name redacted by the Commission] who told Sgt Gill that [A. B.] was taken to Iqaluit to be scanned for his injuries from the fight in cells. As [the Head Nurse] put it, it was a 'soft medevac' and was done as a precaution."

nausea is from his head injury.” Nurse C explained that it is still incumbent on her to conduct a full physical assessment and interview. In this case, she also noted that nausea and vomiting could have been from the ingestion of alcohol and drugs the previous night; she could not definitively say one way or another if he was suffering from a head injury or intoxication, or both.

[307] A. B. was sent by medevac flight to Iqaluit, where he was treated at Qikiqtani General Hospital. A CT scan revealed that he had suffered a broken nose, but there was no evidence of a head injury.⁴³ He had a “suspected . . . small pneumothorax” (collapsed lung) on the right side, as well as bruising, swelling, and small abrasions. A. B. was admitted overnight for monitoring, but the doctor stated his belief that A. B. would likely be medically stable for discharge the next morning.

[308] The RCMP owes a duty of care to those in its custody, and its policies provide direction to RCMP members regarding assessing responsiveness, when to obtain medical assistance for prisoners, and the requirements for the monitoring of prisoners by guards. RCMP policy emphasizes the RCMP’s responsibility for the well-being and protection of prisoners.

[309] RCMP policy directed that medical assistance is required when a prisoner:

- appears to be unconscious or not fully conscious;
- displays symptoms of a head injury or is reported to have sustained a head injury;
- is suspected of having alcohol and/or drug poisoning;
- is suspected of concealing drugs internally;
- vomits excessively; or
- displays any other injury or illness for which medical attention should be sought.⁴⁴

[310] In addition, RCMP policy in “V” Division stated, “No chances are to be taken with the medical health and welfare of a person held in RCMP custody. If there is any doubt at all, call/seek medical aid. Document all action taken on a C-13 and notebook.”⁴⁵ It

⁴³ Specifically, the relevant findings of the CT scan were, “No evidence of acute intracranial posttraumatic lesion. No evidence of acute C-spine posttraumatic lesion. Possible small free air on the right supraclavicular area. Suspected small right apical pneumothorax.”

⁴⁴ RCMP national *Operational Manual*, chap 19.2. “Assessing Responsiveness and Medical Assistance,” s 2.1.2.

⁴⁵ RCMP “V” Division *Operational Manual*, chap 19.3. “Guarding Prisoners and Personal Effects,” s 2.1.

further stated, “Never assume a prisoner is ‘sleeping it off.’ Assess responsiveness according to [policy].”⁴⁶

[311] There can be considerable overlap between symptoms of severe intoxication and a head injury. It is also possible that a person will be suffering from both conditions at the same time. There is potential for a dangerous or even life-threatening situation to develop in such circumstances.

[312] The Commission has addressed this topic in previous reports, and a recent jury verdict in a coroner’s inquest in Kugluktuk, Nunavut, also considered the issue. In that case, a man jumped out of a bylaw officer’s truck after being arrested for impaired driving. He was then housed in cells for approximately five hours before being brought to the local health centre and then transferred to hospital in Yellowknife, where he died.

[313] Among other things, the jury recommended that the RCMP:

. . . review and revise training to ensure officers and civilian guards seek medical assistance when dealing with persons who are minimally responsive, regardless of whether intoxication is a factor. Also, it should revise its policy to require medical assessment when there are signs of a person having sustained a head injury.

The jury also made several recommendations directed at the Government of Nunavut on the topics of health services and emergency response.⁴⁷

[314] In the present case, A. B. had reportedly been involved in a disturbance with his father, hit by the door of a police vehicle, arrested by force, and badly beaten by another prisoner, which involved multiple blows to the face. He also engaged in aggressive behaviour in the cell, coming into contact with the walls and the door.

[315] Although A. B.’s symptoms such as unsteadiness, aggression, and vomiting could have been a result of his extreme intoxication (and indeed this appears to have been the case, as no head injury was diagnosed by medical staff in Iqaluit), this could not have been known with any degree of certainty at the time he was in cells. The Commission recommends that the RCMP issue a bulletin emphasizing that potential head injuries to prisoners must be approached with the utmost seriousness, that RCMP

⁴⁶ RCMP “V” Division *Operational Manual*, chap 19.3. “Guarding Prisoners and Personal Effects,” s 4.3.1.2.

⁴⁷“Jury rules death of Kugluktuk man ‘accidental,’ offers recommendations.” *Nunatsiaq News*, online: <https://nunatsiaq.com/stories/article/jury-rules-death-of-kugluktuk-man-accidental-offers-recommendations/> (accessed May 17, 2022).

members should err on the side of caution in seeking prompt health care assessments in such situations, and that RCMP members must be cognizant that intoxication may mask the symptoms of an underlying head injury.

[316] To summarize, the RCMP members in this case did promptly seek a healthcare assessment for A. B. after he was assaulted. It was reasonable for the RCMP members to rely on Nurse A's recommendation that A. B. could stay in cells until he was "completely sober and clear-headed," when a full assessment would be completed. The day shift RCMP members did not directly follow up on this, seemingly because of a lack of "pass along" instructions from the night shift members. This failure to arrange a physical assessment the next day was unreasonable. However, the RCMP members did call upon Nurse B to conduct a mental health assessment. Nurse B then reiterated the need for a physical assessment, which was carried out shortly thereafter by Nurse C at the health centre. While there were some delays in obtaining care after the RCMP members requested it, these were caused by issues surrounding the availability of the medical care services and not by the actions of the RCMP members.

Other issues related to RCMP involvement in healthcare and emergency response in Kinngait

[317] Nurse C also told the Commission's investigators that there is no way to properly or safely transport patients requiring medical care in Kinngait. She said that the RCMP is expected to transport patients to the health centre, without proper resources or training to do so. This is not the case in other communities in which she has worked, where there are medical responders to provide this service.

[318] In Kinngait, Nurse C was told from the beginning of her employment that she was not to go out on medical calls to transport patients; they are not insured to drive a vehicle with a patient in it, nor are they trained to provide paramedic care. Nurse C explained that people would call the health centre to report a family member having a medical crisis, and health centre staff would tell them to call the RCMP, and the RCMP are expected to transport the person to the health centre. She said that it is "disgusting" that RCMP members are expected to perform this service. She has seen a patient being brought into the health centre by RCMP members with "no backboard, no stretcher, no anything, by their arms and legs, who are actively having a seizure." Nurse C said, "How is that – that's not [acceptable] anywhere else in Canada. Why is it okay in the North, and why has it been okay up until this point?" She also stated that RCMP members sometimes volunteer to drive people back home from the health centre because there is no taxi service in the community.

[319] In the opinion of Nurse C, the RCMP in Kinngait were under-resourced. She said that she has been in communities with far fewer calls for service and twice the number of RCMP members. Nurse C stated that there is historical generational trauma in the community and there are reasons for the high level of violence. In her view, “the Government of Nunavut really needs to take a look at the resources provided to the RCMP to provide appropriate policing. Something bad is going to happen when you don’t have enough resources to work with.”

[320] Nurse C explained her view that when mistakes are made, the focus usually falls on individuals, as opposed to structural or systemic issues. She stated:

I just really felt bad for the RCMP officers in general in that community. . . . And not just in this incident, all my entire time there. I have never felt so sorry for a group of individuals in my whole career, ever, as I did when I was in [Kinngait], as I did for those RCMP members . . . all of them.

[321] This illustrates once more the issue of the serious lack of resources in Kinngait, and the real impact it has on RCMP operations. As explained in the section of this report discussing possible systemic discrimination, gross under-resourcing could be observed in every aspect of this case, and it was a common factor in all of the risky situations A. B. was put in. For this reason, it is urgent that the RCMP enter into immediate discussions with the Government of Nunavut and other partners to ensure that sufficient funding is available for an adequate level of service to be provided to the people of Kinngait, as is recommended in this report.

The actions taken by the RCMP in response to this matter

Finding #32	There is no information to suggest that A. B. was being intimidated or coerced into accepting a settlement. The manager who contacted him on behalf of the RCMP appeared to be following the Treasury Board Secretariat policies that govern the handling of claims against various government agencies, and repeatedly suggested that A. B. take the time to consult with a lawyer before further discussing any settlement.
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Finding #33	Because there are concerns that a person in A. B.'s situation may be vulnerable and could potentially be treated in an unfair manner, and/or lack capacity to make an informed decision about any proposed settlement, safeguards need to be put in place through policies, practices and training.
Finding #34	It is of concern to the Commission that there were no national, regional or divisional policies in place specific to the RCMP's handling of claims. It is also of concern that the North West Claims, Litigation and Advisory Services Unit did not have a policy governing its operations, nor was there a specific training program for their employees about how to handle claims.
Recommendation #16	The RCMP should develop policies at the national, divisional and unit levels, as necessary, to govern the handling of claims against the Crown and ex gratia payments.
Recommendation #17	The policies on the handling of claims against the Crown should contain provisions to safeguard potentially vulnerable persons, including a requirement that persons obtain independent legal advice before signing a settlement agreement, or that they expressly waive this right. The policies should also include provisions to guide managers and analysts in ensuring that persons have the capacity to fully understand the process and the terms of the proposed settlement.
Recommendation #18	Training should be developed and implemented for employees responsible for handling claims.

[322] On June 4, 2020, A. B. was discharged from Qikiqtani General Hospital in Iqaluit. For several days, he stayed at the Tammaatavvik Boarding House, which is a non-medical facility near the hospital. He experienced suicidal ideation and was readmitted to the hospital on June 7, 2020. On June 9, 2020, he checked himself out and returned to the boarding house. On June 11, 2020, A. B. was admitted to the Akausisarvik Mental Health Treatment Centre.

[323] RCMP records indicate that internal discussions were underway as to whether the incidents involving A. B. may result in legal claims against the RCMP. The decision was made to reach out to A. B. to see if the matter could be resolved informally without any lawsuit being filed; A. B. would be contacted to see if he would be willing to accept a financial settlement.

[324] To that end, the Regional Manager of the North West Claims, Litigation and Advisory Services Unit in “K” Division (Alberta)⁴⁸ called A. B. on June 18, 2020. A. B. then called the manager back to further discuss the issue on June 24, 2020. Through these discussions, the manager offered A. B. a \$7,000 payment to settle the matter.

[325] This outreach to A. B. by the RCMP raised concerns for A. B.’s current legal counsel. Specifically, she was concerned about the manner in which the RCMP approached A. B. (i.e. with legal counsel absent), as well as about his capacity at the time. The Commission looked into the issue to ensure that current RCMP policies and practices do not risk taking advantage of vulnerable persons who may have claims against the RCMP.

[326] A. B.’s legal counsel stated that settlement discussions between A. B. and the RCMP were still ongoing at the time of the Commission’s investigation.

[327] The manager told the Commission that she called A. B. on June 18, 2020, when he was at “a facility.” She asked the individual who answered the phone about whether A. B. needed an interpreter. The person at the facility said that A. B. spoke English well but she would tell him to ask for an interpreter if he needed one. The manager recounted that A. B. did not ask for an interpreter during their conversation, and that he seemed to understand the discussion. On the advice of legal counsel from the Department of Justice, the manager declined to tell the Commission about the content of her first discussion with A. B.

[328] In his interview with the Commission, A. B. said that he did not recall the first conversation with the manager.

[329] Medical records provided to the Commission show that, on several occasions in the days after the first call, A. B. mentioned the topic to staff. On one occasion he asked a nurse, “What’s compensation?” and told her that the RCMP was going to give him money for what happened to him. The nurse said compensation usually means money,

⁴⁸ This unit in Alberta is responsible for handling potential claims against the RCMP in Nunavut. There is no formal memorandum of understanding or agreement detailing this arrangement.

and she asked him if that would be enough for him; A. B. reportedly said yes, it would be sufficient.

[330] Over the next few days, A. B. asked staff several times to contact the manager, who had previously called him and said that she would call him back in a week. Records appear to indicate that a nurse did call the manager, who told her that A. B. had indicated that he has a lawyer, and therefore no further discussions had been held. Another nurse called A. B.'s lawyer (the counsel he had at the time, not his current lawyer) but no one answered. That nurse then called the manager, who reportedly told her that A. B. should speak with his lawyer before proceeding any further.

[331] At the same time, the RCMP had begun an investigation into allegations that A. B. had raised about certain incidents. These allegations are unrelated to the present incident. An investigator, Constable Nancy Roe, interviewed A. B. on June 11, 2020. She determined that a second interview would be necessary to obtain more detail from A. B.

[332] A. B. called Constable Roe on June 24, 2020, and asked her to meet him at the Akausisarvik Mental Health Treatment Centre. The RCMP member attended and she and A. B. discussed various topics. A. B. mentioned that he was interested in compensation and that he wanted to make a claim. He asked Constable Roe if she could be his lawyer. He wanted to speak with the manager from the RCMP; he had sticky notes with various phone numbers, including the number of a lawyer.

[333] A. B. then used Constable Roe's cell phone to call his aunt, leaving the call on speakerphone. After the call, he took out his own phone and watched a movie on it, asking the RCMP member if they could watch it together.

[334] The conversation again turned to the topic of compensation. A. B. told Constable Roe that he would like to purchase a red, four-door Dodge vehicle when he received his payout. He wanted to call the manager, so he asked Constable Roe if he could borrow her phone again. She agreed. A. B. dialed one of the numbers on the sticky note, and the manager answered. A. B. left the call on speakerphone.

[335] According to Constable Roe, the manager asked A. B. how he was doing physical and mentally, whether he was enjoying his time at the facility, and if he was feeling better. She asked if he had spoken to a lawyer, and A. B. said that he had not but he wanted to proceed with the claim. The manager asked if A. B. had thought of an amount and he said that he had not. The manager said that the claim would cover the RCMP incident as well as the incident in cells; A. B. said that he understood.

[336] The manager explained that, based on A. B.'s injuries and the complaint, she was willing to give him \$5,000. According to Constable Roe, A. B.'s "eyes lit up" and he said that he was willing to take that amount. The manager then encouraged A. B. to speak with a lawyer, but that she could forward the documents to him with the understanding that he could not make any further claim once the documents were signed. A. B. said that he understood, and asked if he could get something more like \$10,000. The manager agreed to \$7,000 and stated that A. B. should have his lawyer call her. The manager provided the phone number of the Legal Services Board of Nunavut (Legal Aid), which Constable Roe wrote on the sticky note.

[337] Upon completion of the call between A. B. and the manager, Constable Roe strongly encouraged A. B. to seek advice from a lawyer. He requested that the lawyer who was representing him at that time be called. Constable Roe described that A. B.'s demeanour seemed to brighten up and he stated that he was looking forward to tomorrow.

Claims process

[338] The Treasury Board Secretariat policy entitled *Guide to Claims* governed claims against the Crown involving the RCMP. It stated that managers who have been delegated authority to issue payments for claims should, among other things, "make every reasonable effort to obtain value for money when resolving the claim" and "consider the administrative expediency and cost-effectiveness of making or settling the claim."⁴⁹ The policy further stated that the manager "is responsible for managing the risk associated with dealing with any claim."⁵⁰ Managers should always seek advice from departmental legal services, but if the claim involves legal proceedings or a payment greater than \$25,000, the manager must consult legal services.⁵¹

[339] If a legal opinion is sought, it should address:

- whether the Crown has any potential legal liability;
- the steps, if any, to be taken to resolve the claim; and
- the terms and conditions on which it would be advisable to resolve the claim, when it is advisable to settle.⁵²

⁴⁹ Treasury Board Secretariat, *Guide to Claims*, May 29, 2018, "Manager's responsibilities," s 3.2.

⁵⁰ *Idem*, s 3.2.1.

⁵¹ *Ibid.*

⁵² *Idem*, s 5.1.3.

[340] The policy stated that, if the legal opinion identifies a potential legal liability for the Crown, the manager should take the following steps to settle the claim, in accordance with the *Directive on Payments*:

- determine the amount(s) to be paid [see section 6.6. of this guide for more information]; and
- assess the administrative expediency and cost effectiveness of making the payment.⁵³

[341] The manager must also obtain a signed release from the claimant.

[342] Appendix A of the Treasury Board Secretariat's *Directive on Payments* further stated that the Chief Financial Officer of a department must establish standards for claims against the Crown that address, among other things, the process for internally reporting incidents that could result in a claim and the process for conducting investigations.⁵⁴

[343] The RCMP's *Delegation of General Financial Signing Authorities Matrix* indicated that a divisional Claims Manager has "expenditure initiation authority" for claims against the Crown of up to \$50,000. A divisional Claims Analyst may authorize payment of a claim up to \$25,000.⁵⁵

[344] In her responses to the Commission's questions, the manager in the present case confirmed that she can settle a claim up to \$50,000. Such a payment does not require further approval, but if the payment is above \$25,000, it would require a supporting legal opinion from the Department of Justice. In situations where consultation with departmental legal services is not required by policy (i.e. cases with payments under \$25,000), it is done on a case-by-case basis.

[345] With regard to the North West Claims, Litigation and Advisory Services Unit's process for handling potential claims, the manager explained that matters are typically brought to her unit's attention by someone in the division who alerts them to a situation in which a claim against the RCMP may be made. The details are then reviewed to assess the level of risk against the RCMP to determine how to proceed. A Claims Analyst within the unit conducts this assessment. Based on the analyst's conclusion, settlement discussions may take place.

⁵³ Treasury Board Secretariat, *Guide to Claims*, May 29, 2018, "Manager's responsibilities," s 5.1.4.

⁵⁴ Treasury Board Secretariat, *Directive on Payments*, amended April 1, 2017, "Appendix A: Standard on Payment of Claims Against the Crown and Ex Gratia Payments," s A.2.2.1.1.

⁵⁵ RCMP, *Delegation of General Financial Signing Authorities Matrix*, October 11, 2017, p 3.

[346] The manager told the Commission that there is currently no RCMP national, regional, or divisional policy specifically related to handling claims; the policy that was previously in effect was cancelled. There is also no policy governing the work of the North West Claims, Litigation and Advisory Services Unit in “K” Division. The manager stated that training is being developed for the manager and analysts within the unit with regard to the handling of claims.

[347] The manager confirmed that she was the decision maker with regard to the settlement offer made to A. B. The manager is a public servant who is not an RCMP member, nor is she appointed or employed under Part I of the RCMP Act; therefore, her conduct is not subject to the Commission’s jurisdiction. However, the manager’s supervisor was an RCMP member at the rank of Superintendent.

[348] In this case, A. B. was an in-patient at a mental healthcare centre when the manager first contacted him on behalf of the RCMP.⁵⁶ He had recently been the victim of the serious assault and had been hit by the door of a police vehicle in a video-recorded arrest that had received considerable media attention. He had expressed suicidal ideation and was experiencing various personal challenges. Additionally, although A. B. does speak and understand English, it is not his first language.

[349] On its face, there are concerns that a person in such a position may be vulnerable and could potentially be treated in an unfair manner, and/or lack capacity to make an informed decision about any proposed settlement.

[350] However, on the facts of this case, it is evident that the manager told A. B. on numerous occasions to consult legal counsel before agreeing to any settlement. Three independent witnesses (two nurses and Constable Roe, who was present for the second conversation between the manager and A. B.) confirmed this fact. The manager told one of the nurses that she would not proceed with the agreement until A. B. had consulted with a lawyer, and in their second conversation, the manager provided the phone number of the Legal Services Board of Nunavut to A. B. In fact, a lawyer from that agency was already advising A. B. Constable Roe also strongly encouraged A. B. to speak with a lawyer, and A. B. did ask that his lawyer be called. Ultimately, A. B. obtained legal representation and his counsel was still in the process of negotiating a possible settlement on his behalf when the Commission interviewed A. B.

⁵⁶ A. B. was at the mental healthcare centre when the Commission interviewed him as part of this investigation. A. B.’s legal counsel was also present for the interview, as well as a mental health nurse from the centre, a support worker, and an interpreter. It was confirmed prior to the interview that A. B. was medically fit for the interview, and that he was comfortable proceeding with it. The Commission’s investigators also emphasized that A. B. could take frequent breaks as necessary.

[351] There is no information to suggest that A. B. was being intimidated or coerced into accepting a settlement. Although he may have had limitations as to his understanding of the process or terminology (for example, asking a nurse what “compensation” means), he was an eager participant in the discussion, asking the nurses and Constable Roe several times to call the manager to further discuss the matter.

[352] The evidence indicates that the manager did not seek to take advantage of A. B.’s apparent eagerness to obtain the sum of money discussed, but instead insisted that he take the time to consult with a lawyer. If there had been any attempt to pressure A. B. under the circumstances of this case, the Commission would have been concerned. Because such matters should not be left solely to the good faith of the individuals involved, the Commission sought to examine the applicable policies and procedures to ensure that appropriate safeguards are in place.

[353] The manager appeared to be following the Treasury Board Secretariat policies that govern the handling of claims against various government agencies. However, it is of concern to the Commission that there were no national policies in place specific to the RCMP’s handling of claims, nor were there policies at the regional or divisional level.⁵⁷ A previous national policy had apparently been cancelled and not yet replaced. Likewise, the North West Claims, Litigation and Advisory Services Unit did not have a policy governing its operations, nor was there a specific training program for their employees about how to handle claims. In light of the potential issues that can arise while negotiating with individuals who may have claims as a result of their interactions with the RCMP, specific policies are necessary.

[354] The Commission recommends that the RCMP develop policies at the national, divisional and unit levels, as necessary, to govern the handling of claims against the Crown and ex gratia payments.

[355] The Commission also recommends that these policies contain provisions to safeguard potentially vulnerable persons, including a requirement that persons obtain independent legal advice before signing a settlement agreement, or that they expressly waive this right. The policies should also include provisions to guide managers and analysts in ensuring that persons have the capacity to fully understand the process and the terms of the proposed settlement. Training should also be developed and implemented for employees responsible for handling claims.

⁵⁷ The Commission specifically enquired as to whether there were any such policies, and the RCMP indicated that there were none.

Gross under-resourcing and possible systemic discrimination

Finding #35	There was no evidence indicating that the individual RCMP members’ actions were influenced by racial bias or that any of the individual RCMP members were involved in discriminatory conduct towards A. B.
Finding #36	The level of service being provided at the Kinngait Detachment was grossly inadequate. The level of under-resourcing observed is such that it raises concerns about possible systemic discrimination.
Recommendation #19	The RCMP should conduct a comparative analysis of the resourcing and funding levels for its detachments in Nunavut relative to its comparable detachments in other regions and communicate the results of this analysis to the Commission.
Recommendation #20	The RCMP should enter into immediate discussions with the Government of Nunavut and other partners to ensure that sufficient resourcing and funding is provided to its Nunavut detachments so that an adequate level of service is provided at the Kinngait Detachment and in any other Nunavut detachments facing similar circumstances.

[356] RCMP interactions with Inuit persons take place in the context of an often-fraught historical relationship in Nunavut and other regions of the Inuit homeland. This includes, among other things, the RCMP’s role in carrying out government policies involving forcibly relocating Inuit persons to the High Arctic, the removal of Inuit children to residential schools, and the killing of sled dogs. More recently, there have been allegations of systemic problems and individual misconduct in the RCMP’s policing of Nunavut communities, some of which have been the subject of reports by the Commission.

[357] The Commission, with its mandate for the independent review and investigation of public complaints against RCMP members, as well as systemic reviews of RCMP activities, is committed to robust outreach and engagement with communities in Nunavut. Among other things, the Commission worked together with the Government of Nunavut to make available in the Inuktitut language the Commission’s public complaint intake form and educational materials about the Commission’s role and process.

[358] In late April 2022, the Commissioner of the RCMP and the President of the Inuit Tapiriit Kanatami (ITK), which is a non-profit organization that represents more than 65,000 people across Inuit Nunangat⁵⁸ and the rest of Canada, agreed on a plan to improve the relationship between the police force and Inuit communities.

[359] In a joint statement, the ITK President wrote:

Inuit have long faced discrimination, neglect and violence within the criminal justice system. Our communities' interactions with police have been strained. With this new workplan in place, we hope to build a new relationship based on respect and mutual trust.

[360] The RCMP Commissioner indicated that the RCMP will work with ITK in "implementing this workplan to repair, rebuild and enhance our relationships with communities in Inuit Nunangat." The RCMP has committed to regular consultation with Inuit leadership to monitor progress on the stated agreement. The RCMP has also agreed to focus on increasing Inuit representation and improving access for Inuktitut speakers. There is also an intention for the Force and ITK to collaborate on input for the federal Indigenous justice strategy.⁵⁹

[361] The Commission considered whether racial bias and/or discrimination played a role in the events investigated in this case. The Commission has already determined that A. B.'s arrest and the use of force employed to arrest him were reasonable. The Commission has made negative findings regarding aspects of the RCMP members' conduct, including the manner in which the RCMP vehicle was driven and various issues related to A. B.'s detention and cell conditions. Nevertheless, there was no evidence indicating that the individual RCMP members' actions were influenced by racial bias or that any of the individual RCMP members were involved in discriminatory conduct toward A. B.

[362] Viewing the situation as a whole, however, the Commission reaches an inescapable conclusion that the level of service being provided at the Kinngait Detachment is grossly inadequate. This concern ranges from the number of RCMP members assigned to the community, to the number of cells in the detachment and the general condition of the detachment, and deficiencies in training.

⁵⁸ Inuit Nunangat means "the place where Inuit live" and it is comprised of four regions: Inuvialuit, Nunavik, Nunatsiavut and Nunavut.

⁵⁹ "RCMP, national Inuit organization agree on reconciliation plan," *The Globe and Mail*, April 28, 2022, <https://www.theglobeandmail.com/politics/article-rcmp-national-inuit-organization-agree-on-reconciliation-plan/> (accessed May 14, 2022).

[363] Significant under-resourcing was a factor in every aspect of what happened to A. B. on June 1–2, 2020. From the start, the impact of under-staffing resulting in the RCMP members working overtime in insufficient numbers to address a large number of incidents and volatile situations was evident in the hurried manner in which the RCMP approached A. B. with their vehicle. The lack of cells, equipment and sufficient training for the detachment guard all contributed to A. B. being placed in the dangerous position that resulted in the serious assault on his person while in cells. This also contributed to the failure to record and pass on critical information about the plan to obtain a medical assessment for A. B. Further, resource constraints were at play in the timing and nature of the medical care available at the time the RCMP members did seek it for A. B. The available information indicates that the RCMP members in this case were often making considerable efforts to manage a high workload within the constraints that they faced. Despite their efforts, they could not fully mitigate the impact of the lack of resources on A. B. and other detainees at the detachment.

[364] Residents of Canada are entitled to a reasonable level of service, regardless of where they reside. The shocking level of under-resourcing observed in this case raises concerns about possible systemic discrimination.

[365] Under the *Canadian Human Rights Act* (CHRA), it is prohibited to discriminate against individuals on the basis of race, or national or ethnic origin.⁶⁰ These provisions in the CHRA have been found to apply to law enforcement officials.⁶¹

[366] The Supreme Court of Canada in *Moore v British Columbia (Education)* established a test for assessing allegations of discrimination based on which the person affected must first show that they were adversely affected based on a prohibited ground of discrimination.

⁶⁰ *Canadian Human Rights Act*, RSC 1985, c H-6:

“3 (1) For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

...

5. It is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public

(a) to deny, or to deny access to, any such good, service, facility or accommodation to any individual, or

(b) to differentiate adversely in relation to any individual, on a prohibited ground of discrimination.”

⁶¹ See, for example, *Phipps v Toronto Police Services Board*, [2009] OHRTD No. 868 and *Davis v Canada (Border Services Agency)*, 2014 CHRT 34.

[367] For an allegation of discrimination to be proven, the evidence must show, on a balance of probabilities, that:

- i) the person affected possesses one or more of the characteristics that are protected grounds against discrimination;
- ii) they experienced an adverse impact; and
- iii) the protected characteristic was a factor in the adverse impact.

[368] If the three factors above are established on a balance of probabilities, a *prima facie* case of discrimination will be established. This means that, unless a non-discriminatory explanation is provided to justify the RCMP member's actions, a finding of discrimination will ensue.

[369] Once the individual has brought forward a *prima facie* case, the evidentiary burden then shifts to the service provider to justify the differential treatment. If no reasonable explanation is provided or the evidentiary burden is not met, the trier of fact may draw an inference of discrimination and find accordingly.

[370] For the purposes of the test above, circumstantial evidence can be relied upon to draw an inference from the impugned conduct.⁶² There is no need to prove that the conduct was only consistent with discrimination,⁶³ and proof of intention to discriminate is not necessary.⁶⁴ Courts have stated that the focus should be on the effect of the treatment, rather than the motivation or intention.⁶⁵

[371] Evidence to support a finding that differential treatment amounts to discrimination can derive from a failure to provide a reasonable, rational, or consistent explanation to the conduct.⁶⁶ A critical consideration when assessing whether a protected characteristic was a factor in an adverse impact observed in the context of policing is whether there is evidence of a marked departure from standard police practice.⁶⁷

⁶² *Moore v British Columbia (Education)*, 2012 SCC 61 at para 184.

⁶³ *Shaw v Phipps*, 2012 ONCA 155 at para 31.

⁶⁴ *Idem* at para 34: "There is seldom direct evidence of a subjective intention to discriminate, because '[r]acial stereotyping will usually be the result of subtle unconscious beliefs, biases and prejudices' and racial discrimination 'often operates on an unconscious level.' For this reason, discrimination is often 'proven by circumstantial evidence and inference'" See also *Radek v Henderson Development (Canada) Ltd. (No. 3)*, [2005] BCHRTD No. 302 at para 482.

⁶⁵ *Peel Law Assn. v Pieters*, 2013 ONCA 396 at para 60.

⁶⁶ There is no need to prove that the conduct was only consistent with discrimination; see *Shaw v Phipps*, 2012 ONCA 155 at para 31.

⁶⁷ For example, citing from *Johnson v Halifax Regional Police Service (No. 1)*, (2003) 48 CHRRD/307 (NS Bd Inq), the Quebec Human Rights Tribunal offered the following (*CDPDJ v Service de police de la Ville de Montréal*, 2012 QCTDP 5 at para 181): "The Tribunal must focus on the factual and circumstantial evidence in order to determine whether improper behaviour such as the police officer's lack of courtesy or

[372] Applying this legal test to the facts of this case, the Commission notes that approximately 93% of Kinngait's residents are Inuit, including A. B. A. B. clearly experienced a number of adverse impacts on the night of the events. It is likely that other members of the community who interact with the RCMP do as well, in light of the gross inadequacies in staffing and physical resources revealed by the evidence. The link between the protected characteristics and these adverse impacts is, of course, difficult to prove. At a minimum, the inadequate level of service that the RCMP is able to provide in Kinngait raises serious concerns about systemic discrimination.

[373] Because it is difficult to imagine this level of under-resourcing being accepted in any other community, there is a real possibility that systemic discrimination is at play. To ascertain the extent of the problem and to assess whether non-discriminatory explanations exist for this situation, more information is needed.

[374] The Commission recommends that the RCMP conduct a comparative analysis of the resourcing and funding levels for its detachments in Nunavut relative to its comparable detachments in other regions and communicate the results of this analysis to the Commission.

[375] In the meantime, immediate action is necessary to address the dire situation in Kinngait and any other Nunavut communities facing similar issues. The Commission understands that the RCMP does not have unilateral capacity to act on the issue of resources. Therefore, it recommends that the RCMP enter into immediate discussions with the Government of Nunavut and other partners to ensure that sufficient resourcing and funding is provided to its Nunavut detachments so that an adequate level of service is provided at the Kinngait Detachment and in any other Nunavut detachments facing similar circumstances.

his intransigence allows the finding of differential or unusual treatment as compared with usual practices in similar circumstances A board of inquiry must try to establish how events usually unfold in a given situation. Deviations from normal practice and evidence of discourtesy or intransigence are grounds for finding differential treatment.” See also *Davis v Canada (Border Services Agency)*, 2014 CHRT 34 at para 206 for its application in the CHRA context.

Conclusion

[376] Having considered the complaint, the Commission hereby submits its Interim Report Following a Public Interest Investigation in accordance with section 45.76(1) of the RCMP Act.

Micheline Lahaie
Chairperson