

Royal Canadian Mounted Police
Commissioner



Gendarmerie royale du Canada
Commissaire

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JAN 03 2017

Protected "A"

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

Dear Mr. McPhail:

I acknowledge receipt of the Commission's interim report on the Chair-Initiated Complaint regarding the shooting death of Mr. Gregory Matters in Prince George, British Columbia, your file number PC-2013-1309.

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

I agree with Finding No. 1, that Constables Poyzer and Dickinson responded to the scene of the vehicle collision in a timely fashion.

I agree with Finding No. 2, that Constable Poyzer's stated priority at the time to locate and confirm the welfare of Trevor Matters was reasonable, and necessarily delayed his ability to secure the scene of the alleged criminal offence.

I agree with Finding No. 3, that statements were taken from the involved parties and witnesses in a timely manner and were reasonably thorough in the circumstances.

I agree with Finding No. 4, that basic investigative techniques relating to the securing and collection of physical evidence were not reasonably employed and left evidence vulnerable to contamination, however I find that it applies to only one aspect. I find that Constable Poyzer reasonably acted in obtaining as much

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evidence as possible at the time, given the circumstances, with one exception: documenting the scene and the damage to Mr. Trevor Matters' vehicle. Considering that the darkness would have made scene pictures difficult, I find that Constable Poyzer could have attempted to take pictures of the damage to Mr. Trevor Matters' vehicle specifically or at least document the damage and the scene in writing. A pass-on request for such could also have been made.

I generally support Recommendation No. 1, that a supervisor review this report with Constable Poyzer and provide operational guidance with respect to the securing and collection of relevant evidence. As already mentioned, Constable Poyzer did not document or photograph the damage to Mr. Trevor Matters' vehicle. However, I find that Constable Poyzer undertook some evidence-gathering steps or requested that evidence-gathering steps be done: he spoke with the initial complainant, Mr. Greg Matters, he took steps to locate Mr. Trevor Matters, he ensured that his colleague took a statement from Mr. Trevor Matters and that pictures of his injuries were taken, he documented his observations of marks left on the road by the vehicles and he conducted police records checks. Constable Poyzer also made a pass-on request to have pictures of tire marks in Mr. Greg Matters' yard taken in daylight, as well as pictures of any damage to Mr. Greg Matters' vehicle. In light of this, I will direct that Constable Poyzer be provided with a copy of the Interim Report and my Response, for his awareness.

I do not agree with Finding No. 5, that Constable Poyzer did not reasonably consider and account for the discrepancies in the evidence as it was received.

I note that the Interim Report finds that Constable Poyzer did not report alleged discrepancies between witness statements and physical evidence to his supervisors and failed to properly review and assess all of the evidence. More specifically, the Interim Report mentions that Constable Poyzer failed to "*accurately report all of the evidence that had been received*" and failed to "*attempt to reconcile the physical evidence with the witness statements*" and that this "*could compromise the credibility of the entire investigation*" [Interim Report, para. 104]. Much emphasis in support of this assertion stems from an alleged discrepancy between Mr. Trevor Matters' version of events pertaining to being rammed off the road by his brother, Mr. Greg Matters, and the physical evidence on Mr. Trevor Matters' vehicle, which supposedly does not support Mr. Trevor Matters' version. It is asserted in the Interim Report that Mr. Trevor Matters reported that Mr. Greg Matters "*had struck the driver's side door of his vehicle during the incident; however, there was*

no physical damage located on that portion of his vehicle, as demonstrated by the photographs taken on September 10, 2012." [Interim Report, para. 103, emphasis added]. This appears to be the only discrepancy allegedly missed by Constable Poyzer under this finding of the Interim Report.

I respectfully submit that there is no such discrepancy: Mr. Trevor Matters only ever stated that Mr. Greg Matters' vehicle hit his driver-side door in a statement given to the Commission's investigator on December 4, 2013, almost 15 months after the incident. In a statement given shortly after the incident, on September 9, 2012, Mr. Trevor Matters stated: "*And then the second time he hit me right in the side and pushed me right in the ditch.*" [Transcript of Mr. Trevor Matters' statement with Constable Dickinson, page 3, emphasis added]. So in this statement given contemporaneously and at the scene of the incident, in the presence of Constable Poyzer, Mr. Trevor Matters does not mention his vehicle being hit on the driver side door, simply that he was hit "in the side". Later on that day, another Constable attends the residence of Mr. Greg Matters and observes damage to his vehicle to be on the driver-side, from the headlight to the driver door, as well as in the middle of the front bumper with the front license plate missing. This information is put in a report and included in Constable Poyzer's report. The following day, on September 10, 2012, Constable Poyzer attends the residence of Mr. Trevor Matters with an FIS member to observe in daylight the damage to Mr. Trevor Matters' vehicle and take pictures of it. The damage to Mr. Trevor Matters' vehicle was observed to be on the passenger-side, in the front quarter-panel and the rear quarter-panel. This included observation of paint transfer from Mr. Greg Matters' vehicle onto Mr. Trevor Matters' vehicle. This was recorded by Constable Poyzer in his report.

In conclusion, Mr. Trevor Matters never stated at the time of the incident that his vehicle had been hit on the driver-side door, but simply that it had been hit "in the side"; this is the information that Constable Poyzer was made aware of. It was therefore quite reasonable for Constable Poyzer to not find any discrepancy between Mr. Trevor Matters' statement and the physical damage to Mr. Trevor Matters' vehicle when no damage to the driver-side was seen upon inspection, as no contact on the driver-side door was ever reported at the time. Furthermore, it was quite reasonable for Constable Poyzer to find no discrepancy, when the physical evidence of damage on Mr. Trevor Matters' vehicle and on Mr. Greg Matters' vehicle could reasonably be perceived to show contact "in the side" as initially reported by Mr. Trevor Matters. Therefore, I find that the supposition made in the Interim Report that there is a discrepancy between Mr. Trevor Matters' statement and the physical evidence of damage on the vehicles involved does not stand.

Upon review of the investigation report produced by the Commission's investigator, an attempt was made at locating other potential discrepancies that were allegedly missed by Constable Poyzer. The Commission's investigator claimed that there was a discrepancy between Mr. Trevor Matters' statement of events and that Constable Poyzer failed to note this discrepancy: the Commission's investigator indicates that Mr. Trevor Matters' claim that his vehicle went into a 360° rotation before entering the ditch was discredited by the tire marks left on the road by his vehicle and that Constable Poyzer should have realized such discrepancy and should have reported it [Investigation Report, pages 132, 134 and 141.] However, once again, Mr. Trevor Matters only ever reported that his vehicle did a 360° turn in his statement to the Commission's investigator, almost 15 months after the incident. At the time of the incident, Mr. Trevor Matters never mentioned in his statement that his vehicle did a 360°. I therefore find that it was reasonable for Constable Poyzer to make no observation whether the tire marks prove or disprove Mr. Trevor Matters' statement.

Constable Poyzer, in his report, wrote: "*...it appeared that the vehicle had done a 360 degree spin on the pavement before leaving the roadway into the ditch. Those marks appeared consistent with being forced off the road as there was no curve or corner.*" [Constable Poyzer's Occurrence Report "RCC Narrative", page 2.] However, I do not find that this proves or disproves Mr. Trevor Matters' statement, and that they are merely personal observation^f made from an untrained eye, just as the Commission's investigator indicates that the tire marks do not show the vehicle going into a 360° rotation. There is however no evidence on file from an expert (Collision Reconstructionist) and the Independent Investigation Office (IIO) of British Columbia, in the context of their extensive criminal investigation, did not seek an expert opinion on the collision scene.

I generally support Recommendation No. 2, that a supervisor review the findings in this report with Constable Poyzer and provide operational guidance with respect to appropriately accounting for all evidence and dealing with discrepancies when preparing notes and reports.

As mentioned, I find that the finding made in the Interim Report in relation to this recommendation was based on an erroneous appreciation of the evidence available to Constable Poyzer at the time; as I have under Finding No. 5, Constable Poyzer cannot be faulted for not noting discrepancies in evidence in his report and notes when discrepancies did not exist at the time.

As for accounting for all evidence , I find that in his report, Constable Poyzer made, among other things, entries regarding the following: observations regarding tire marks on the road; noted injuries to Mr. Trevor Matters' person; summarized the statement provided by Mr. Trevor Matters' to a colleague; detailed his checks of police databases; detailed his phone conversations with Mr. Greg Matters; included colleagues' attendance at Mr. Greg Matters' residence to obtain a written statement, observe damage to the yard and damage to Mr. Greg Matters' vehicle; detailed his observation of the damage to Mr. Trevor Matters' vehicle. So overall, although some of the above-mentioned entries could be more detailed, Constable Poyzer has provided details on most, if not all, the information he was aware of. What I find is perhaps missing is a summary of Mr. Greg Matters' written statement, and some form of descriptive analysis of the physical evidence observed (notably the damage to the vehicles). In light of all this, I will direct that Constable Poyzer be provided with a copy of the Interim Report and my Response, for his awareness.

I agree with Finding No. 6, however for a different reasoning, that Constable Poyzer should have included in his notes and reports any observations he made with respect to signs of intoxication when he encountered Trevor, and not doing so calls into question his later statements.

Two other members, Constables Pelletier and Dickinson, had dealings with Mr. Trevor Matters the night of the vehicle collision. Neither of them made any entries in their notes or report regarding any signs of intoxication or consumption of alcohol by Mr. Trevor Matters, nor did they provide any information to that effect in their statements. Staff Sergeant Brad Anderson, in his report and his statement, indicated that he questioned Mr. Trevor Matters whether he had been drinking the night of the collision and that Mr. Trevor Matters answered that he had not. The audio statement provided by Mr. Trevor Matters to Constable Dickinson on the night of the collision does not indicate signs of intoxication i.e. no slurred speech, as recognized in the Interim Report. In his occurrence report/narrative and notes produced contemporaneously to the incident, Constable Poyzer makes no observations regarding consumption of alcohol or intoxication in regards to Mr. Trevor Matters. However, the PRIME file, in the portion where Mr. Trevor Matters is linked as an entity, contains secondary linkage entries showing him as having "consumed alcohol" and as being "intoxicated"; PRIME does not show who made these linkage entries.

I find it is reasonable for members to assume sobriety in the people they deal with and only make annotations regarding alcohol consumption, impairment or intoxication when such is observed. Based on all of the above-noted

information, I find it was reasonable to believe that Mr. Trevor Matters was not intoxicated. I find it would therefore not be expected of Constable Poyzer to make any annotation regarding alcohol consumption, impairment or intoxication if no signs of such were observed. However, I find that it becomes problematic when Constable Poyzer, at a later time in statements provided to the IIO and to the Commission's investigator, states that Mr. Trevor Matters had consumed alcohol and showed signs of impairment when no notes or report he penned indicate such.

I agree with Finding No. 7, that the initial focus of the investigation was on Mr. Matters not because of his history, but rather because of his admitted role in the incident and the seriousness of his actions. There is no evidence that the RCMP investigation focused on Mr. Matters as a result of bias, or for any other improper motive.

I do not agree with Finding No. 8, that Staff Sergeant Anderson assumed responsibility for too many roles and should have delegated direct supervision of the criminal investigation and preparation of the warrants to another member.

The Interim Report makes reference at paragraph 119 to the fact that Staff Sergeant Anderson, because of his involvement in various aspects of the matter, bore the responsibility for the investigation and quality assurance for the investigation. However, I find that there is no indication that the quality of the investigation suffered, nor do I find that the multiple roles assumed by Staff Sergeant Anderson had any bearing in the unfortunate conclusion of this matter. The Interim Report also relates a conclusion at paragraph 122 that Staff Sergeant Anderson "*...was unable to properly supervise and assess the investigation due to the number of roles he had taken on...*", however no evidence is offered to support this conclusion.

I also note that the Interim Report makes reference to the Independent Officer Review (IOR) report conducted by Superintendent Tim Head. While I recognize that in the IOR report a conclusion is made that Staff Sergeant Anderson had assumed too many roles, I find that the mandate of the IOR pertains generally to the inner functioning of the RCMP during the incident, which included aspects that touched on thoroughness of investigation and supervisory quality. In contrast, the stated mandate of the Commission's Public Interest Investigation in a letter dated May 1, 2013, was to inquire whether RCMP members and their actions complied with training, policies, procedures, guidelines and statutory requirements, and there is no breach of such offered in the Interim Report to support the finding against Staff Sergeant Anderson.

I agree with Finding No. 9, that at all relevant times RCMP members had reasonable grounds to believe that Mr. Matters had committed the alleged offences and that he was arrestable without a warrant pursuant to subsection 495(2) of the *Criminal Code*.

I agree with Finding No. 10, that (1) members made reasonable attempts to have Mr. Matters attend the Prince George RCMP Detachment for the purpose of making the arrest and obtaining a statement; and that (2) upon attending the residence, members reasonably determined that a physical confrontation was likely if they attempted to arrest Mr. Matters at that time, and their decision to delay the arrest was reasonable.

I agree with Finding No. 11, that (1) Staff Sergeant Anderson made significant efforts to gain Mr. Matters' trust throughout the negotiations and spoke to Mr. Matters in a calm and professional manner; that (2) Staff Sergeant Anderson's negotiations with Mr. Matters prior to the involvement of the emergency response team were reasonable and appropriate in the circumstances; and that (3) negotiations with Mr. Matters may have been furthered by clearer communication with him regarding the status of the peace bond against Trevor.

I agree with Finding No. 12, that Staff Sergeant Anderson acted reasonably in meeting with Trevor and deciding that there were no appropriate charges to pursue in the circumstances.

I agree with Finding No.13, that Staff Sergeant Anderson took a measured and reasonable approach to containment at the Matters property given the challenges created by the size and topography of the property and the availability of resources.

I agree with Finding No. 14, that Superintendent Stubbs was trained and qualified as a Critical Incident Commander at the time of the incident.

I agree with Finding No. 15, that Superintendent Stubbs' decision to activate and deploy the NDERT was reasonably based and consistent with RCMP policy.

I agree with Finding No. 16, that the NDERT briefing was reasonably thorough and accurate.

I agree with Finding No. 17, that Superintendent Stubbs took appropriate action to ensure that all available ERT personnel were deployed to the incident.

I agree with Finding No. 18, that RCMP members had reasonable grounds to enter onto the Matters properties without a warrant.

I agree with Finding No. 19, that Staff Sergeant Anderson continued to negotiate with Mr. Matters in an appropriate and professional manner under the supervision of the CNT.

I agree with Finding No. 20, that CNT members reasonably determined that it was appropriate for Staff Sergeant Anderson to continue negotiations with Mr. Matters given the rapport he had built and their understanding of his abilities.

I agree with Finding No. 21, that CNT members conducted themselves reasonably throughout the negotiations and information-gathering process.

I agree with Finding No. 22, that Staff Sergeant Anderson made significant efforts to facilitate Mr. Matters' peaceful surrender through his mother, Lorraine Matters.

I agree with Finding No. 23, that at the time of the decision to deploy the NDERT, members reasonably believed that Lorraine Matters may no longer be helpful in their efforts to negotiate Mr. Matters' surrender.

I agree with Finding No. 24, that RCMP members did not act unreasonably when they prevented Ms. Pinko from entering the Matters property to pick up Mr. Matters.

I agree with Finding No. 25, that Corporal Garcia made extensive and reasonable efforts to locate and speak with Dr. Passey.

I agree with Finding No. 26, that Corporal Garcia passed along the information and suggestions she learned from Dr. Passey in a timely and detailed manner.

I agree with Finding No. 27, that the CNT reasonably considered and employed the suggestions put forward by Dr. Passey.

I agree with Finding No. 28, that there was insufficient time during the incident to consider or evaluate the use of Dr. Passey as a TPI given the events that unfolded shortly after he was contacted.

I agree with Finding No. 29, that the RCMP members involved in the incident engaged those persons closest to Mr. Matters in a reasonable manner.

I agree with Finding No. 30, that it was reasonable for members not to "back off" as Staff Sergeant Anderson was negotiating with Mr. Matters to surrender and they had yet to confirm Mr. Matters' location.

I agree with Finding No. 31, that Corporal Arnold and Superintendent Stubbs complied with policy requiring them to consider and ensure the presence of less-lethal weapons.

I agree with Finding No. 32, that Corporal Arnold and Superintendent Stubbs' decision to deploy members with a bean bag shotgun was reasonable in the circumstances.

I agree with Finding No. 33, that NDERT members received training on the bean bag shotgun following this incident.

I support Recommendation No. 3, that the RCMP consider acquiring an ARWEN gun for use by the NDERT, and ensure that those members receive appropriate training. The RCMP is currently in the process of attempting to procure a 40mm Extended Range Impact Weapon (ERIW) for ERT and General Duty use. While procurement is underway, all ERT's have access to Less Lethal munitions in the form of the "sock round" fired through a modified shotgun.

I agree with Finding No. 34, that Superintendent Stubbs' decision to use the police helicopter to attempt to locate Mr. Matters was reasonable in the circumstances.

I agree with Finding No. 35, that RCMP members took immediate and reasonable action to remove the helicopter when it appeared to disrupt their negotiation of a surrender with Mr. Matters.

I support Recommendation No. 4, that the RCMP consider making unmanned aerial vehicles available to all ERTs for deployment where a person in crisis, or their vehicle, must be located on a large rural property. RCMP ERTs currently do have access to Unmanned Aerial Vehicles (UAV); several teams possess this operational capacity within the team's structure. Other teams can access UAV's through a request for Divisional Operational Support or their respective radio technicians. NDERT has two UAVs.

I do not support Recommendation No. 5, that the RCMP prioritize its research of body-worn recording equipment and determine how and when it can be best used, particularly during ERT deployments, as such has already been

undertaken. The RCMP has conducted extensive research into the acquisition of Body Worn Video (BWV) dating back to 2013 and pilot-projects were completed in "E" Division in 2009 and 2010. Several issues have been identified with the BWV. The RCMP does possess BWV capability however it is not presently utilized for ERT deployments in order to protect sensitive techniques. The RCMP employs BWV on a limited basis for high profile incidents (for example, public order issues).

I agree with Finding No. 36, that the inscription on the rifles used by ERT members is a marking made by the manufacturer of the product to which it was affixed and not the result of any action taken by the members involved in this incident.

I agree with Finding No. 37, that it was reasonable for NDERT members not to "back off" once they confronted Mr. Matters.

I do not support Recommendation No. 6, that the RCMP consider how to better ensure that NDERT is deployed with sufficient and appropriately trained personnel to facilitate all planning options. I find that NDERT is deployed with sufficient and appropriately trained personnel to facilitate all planning options. Team Leaders and Assistant Team Leaders are present at all ERT deployments and they have received specialized training in relation to option planning. Also, NDERT now has 18 trained members, up from 10 at the time of the incident.

I agree Finding No. 38, that Constable Reddeman reasonably believed that deploying the CEW would facilitate the safe arrest of Mr. Matters, who was armed with a hatchet and posed a threat to members.

I agree with Finding No. 39, that Constable Merriman issued a warning to Mr. Matters to stop or the CEW would be deployed.

I support Recommendation No. 7, that all ERT part-time members receive CEW training to ensure that ERT deploys with the range of less-lethal options appropriate to the situation. All NDERT members are trained in the use of the CEW with the exception of one. Numerous less lethal devices are incorporated in the planning of all ERT operations, including CEW, ERIW, OC Spray and Defensive Batons.

I agree with Finding No. 40, that Constable Hipkin did not have a reasonable opportunity to deploy the bean bag shotgun as events unfolded.

I agree with Finding No. 41, that Corporal Warwick's use of lethal force against the threat posed by Mr. Matters was reasonable in the circumstances and in accordance with RCMP policy and training.

I agree with Finding No. 42, that Corporal Warwick reasonably determined that his police service dog was not an appropriate tool for disarming Mr. Matters, or attempting to apprehend him once he produced the hatchet.

I do not support Recommendation No. 8, that the RCMP explore whether or not police service dogs can be successfully trained to disarm subjects. It remains at the discretion of the Police Dog Handler on where and when it is most appropriate to deploy their Police Service Dog (PSD); this is based on their own risk assessment, tactical considerations, officers perceptions, situational factors and the subject's behaviour. There have been occasions in the past where the deployment of a PSD against someone armed with an edged weapon has proven ineffectual and resulted in the needless death of the animal. The deployment of a PSD toward a person armed with an edged weapon would likely result in the death of the PSD and the suspect retaining their weapon system; consequently, the only means of tracking the suspect in a rural setting would either be maimed or deceased as a result.

I agree with Finding No. 43, that Constable Reddeman's handcuffing of Mr. Matters immediately following the shooting was reasonable in the circumstances and in accordance with policy and his training.

I agree with Finding No. 44, that while the efforts of the negotiators to facilitate a surrender were not fully coordinated with the NDERT, members acted reasonably in light of the adverse circumstances.

I agree with Finding No. 45, that telephone negotiations with Mr. Matters were not fully audio recorded.

I do not support Recommendation No. 9, that the RCMP look into and make available at each detachment digital recording devices capable of recording telephone conversations. Portable digital recording devices are commonly available at detachments, which allow the recording of phone conversations via speakerphone. A Detachment Commander has the discretion of equipping a detachment with specialized devices that allow the recording of phone calls if a need for it is identified. Furthermore, all communication undertaken by the CNT are monitored and fully recorded. The shooting of Mr. Greg Matters was a

unique set of circumstances whereby Staff Sergeant Anderson initiated contact with Mr. Matters via several phones and based on his rapport with Mr. Matters he was allowed to continue to negotiate with Mr. Matters despite not being a trained CNT.

I agree with Finding No. 46, that there were miscommunications between the NDERT members and the Team Leader, Corporal Arnold.

I agree with Finding No. 47, that NDERT members did not take a coordinated approach to communicating with Mr. Matters when the confrontation occurred.

I agree with Finding No. 48, that Superintendent Stubbs and Corporal Arnold were in compliance with RCMP policy with respect to finalizing the written operational plan, as they did not know Mr. Matters' precise location until the confrontation with NDERT members occurred.

I agree with Finding No. 49, that the NDERT did not emphasize show of force and use of firearms over planning.

I agree with Finding No. 50, that RCMP members adequately discharged their duty of care in the obtaining and provision of medical attention to Mr. Matters following the shooting.

I agree with Finding No. 51, that RCMP members promptly notified the IIO regarding the incident.

I agree with Finding No. 52, that Superintendent Stubbs provided reasonable direction to members regarding their obligations not to discuss the incident prior to speaking with IIO investigators.

I agree with Finding No. 53, that Superintendent Stubbs took reasonable steps to ensure that the scene and evidence was secured prior to the IIO's arrival.

I agree with Finding No. 54, that Mr. Matters' next of kin were not notified as soon as possible following his passing; however, appropriate arrangements were made for notification upon discovery of the miscommunication.

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

Yours sincerely,

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

Bob Paulson
Commissioner