RCMP members involved in the enforcement of the civil injunction at Fairy Creek acted unreasonably when they arrested a man for refusing to submit to a warrantless search, and when they unreasonably wore the “Thin Blue Line” patch on their uniform

Background:

In 2020, Teal Cedar Products Ltd. obtained permits to build forest service roads and conduct logging on the southwest of Vancouver Island, British Columbia. The permits included 12 hectares of old growth forest in an area called the Fairy Creek watershed. Many people opposed this logging because the trees were up to 1,000 years old and irreplaceable. An organized group of protesters began to set up camps and erect obstacles and barricades on forest service roads to prevent any old growth logging in the area.

The Supreme Court of British Columbia granted a civil injunction to Teal Cedar on April 1, 2021, that prohibited anyone from obstructing access to the forest service roads (among other things). The injunction permitted anyone to participate in lawful, peaceful, and safe protest if they complied with the injunction. The injunction authorized any RCMP member “to arrest and remove any person who has knowledge of this Order and who the Police have reasonable and probable grounds to believe is contravening or has contravened any provision of this Order.”

The RCMP began to enforce the injunction, primarily through its Community-Industry Response Group (“C-IRG”), which responded to protests and other public order events about resource-based industrial projects like logging and pipeline construction.

One of the measures that the C-IRG used was what the RCMP called “temporary exclusion zones,” which were areas with tightly controlled access. The RCMP set up “access control points” outside the exclusion zones to restrict entry to people who met certain conditions. People who entered an exclusion zone without police permission were arrested.

In September 2021, a man was hiking along a forest service road in the Fairy Creek area with a group of friends. They came up to an RCMP access control point, where two RCMP members told the group that they had to submit to searches of their backpacks and provide identification before they could go any further. The man said that this violated his rights against unreasonable search and seizure under section 8 of the *Canadian Charter of Rights and Freedoms* (Charter). The man said that the British Columbia Supreme Court had recently declared the RCMP’s use of exclusion zones for enforcing the injunction to be unlawful. He also said that he had the right to use a public road, and he refused to leave when the RCMP members ordered him to do so. The RCMP members arrested the man and one of his friends for the criminal offence of obstructing a peace officer in the execution of their duty and transported him out of the area for processing.

Complaint:

The man complained that he had been blocked from hiking along a public road even though the courts had declared the RCMP exclusion zones and access control points to be unlawful. He also complained that the RCMP members had made an unreasonable search demand when they wanted to see his identification and search his backpack without grounds. The man was concerned that this violated his Charter rights. Additionally, the RCMP members had removed

their name tags from their uniforms, and one of the RCMP members wore a “Thin Blue Line” patch (an image of the Canadian flag in black and crossed with a blue line to represent the police) on his uniform. The man believed that these actions violated RCMP policy.

RCMP’s investigation and decision:

The RCMP investigated the man’s complaint and concluded that the RCMP members were acting within their legal authority when they blocked his way and demanded to search him. The RCMP also concluded that the RCMP members did not have to wear name tags. However, the RCMP concluded that one of the RCMP members was in breach of RCMP policy by wearing the “Thin Blue Line” patch on his uniform. The man asked the Commission to review his public complaint.

Commission’s review:

The Commission reviewed a video recording of the encounter and the arrest that had been made by one of the man’s friends. The recording showed that the RCMP members told the group that they would need to provide photo identification and agree to searches of their bags before they could go any further. The man asked the RCMP members whether this was legal, and he asked them to identify themselves. The RCMP members quickly read out their regimental numbers (sometimes called “badge numbers”) but they would not repeat them when asked, and they refused to tell the group their names.

The man stated that he would not allow the police to search his bag, and he said, “I think you’re going to have to arrest me.” The RCMP members told the man that he could just leave, but the man said that his constitutional rights were at stake. The RCMP members said that the matter was not up for debate and that the man could not go any further. The RCMP members gave the man a final chance to leave the injunction area, and the man said that he would not. The RCMP members told him that he was under arrest.

A. The RCMP access control points, exclusion zones, and searches were unreasonable

The evidence established that the RCMP’s practice was to search all bags and backpacks of anyone trying to enter the area, and to require everyone to provide their identification. The RCMP’s explanation was that access control points were necessary to prevent protesters from parking vehicles on the road as obstructions, and from bringing materials and equipment into the injunction area to construct obstacles. RCMP members checked identification to ensure that protesters who had previously been arrested for breaching the injunction did not return.

The evidence also established that the man had never tried to cross through the access control point. The RCMP members had told the man that they would arrest him if he entered.

The Commission reviewed the law to determine the potential grounds for the police to demand to search someone. The man had been hiking but he also wanted to protest the RCMP’s restrictions. Accordingly, the access control point and the exclusion zone engaged several of the man’s rights, including the common law right to move freely, as well as freedom of expression and freedom of peaceful assembly under the Charter.

The police do not have the authority to conduct physical searches in the absence of Charter-compliant legislation or a search warrant. Warrantless searches or seizures are presumptively unreasonable, but there are some exceptions that come from the common law.

These include searches following an arrest, or a safety search (a pat-down search) for weapons during an investigative detention (which is where police may briefly detain someone to investigate when they have a reasonable suspicion that the person is connected to a criminal offence).

Another exception is where the person provides informed, voluntary consent to the search. The police may also conduct warrantless searches in "exigent circumstances" where the delay caused by obtaining a search warrant would result in danger to human life or safety, or where there is an "imminent danger of the loss, removal, destruction, or disappearance of the evidence if the search or seizure is delayed."

The Commission concluded that none of those exceptions applied here. There was no evidence that there was a serious risk of violence or even that weapons were being brought into the exclusion zone—instead, the RCMP was worried about letting in any construction materials that some protesters could use to create more obstacles. Additionally, the man had not been arrested before the RCMP decided to search him, and he was not being held through the common law power of investigative detention. People who did not agree to the search were turned away from an area where they otherwise had the lawful right to be, and so any claim that they were voluntarily consenting was illusory.

The remaining source of a police power to stop people and demand their identification and submission to a search is what is called an "ancillary power" under the common law. The ancillary powers doctrine means that the common law (through the courts) will permit police actions that interfere with individual liberty "if they are ancillary to the fulfillment of recognized police duties . . . [and] they are reasonably necessary . . . in order for the police to fulfill their duties."

The RCMP argued in court that the exclusion zones and access control points were necessary because the remoteness and size of the injunction area created special challenges, including for communications and emergency responses. Additionally, the forest service roads were narrow, and it was relatively easy for protesters to block them with parked vehicles and constructed obstacles. The RCMP concluded that access control points were necessary to control the movement of people, vehicles, and materials into the area and prevent further breaches of the injunction. The RCMP stated that it did not control access to areas in the injunction zone where enforcement operations were not occurring.

The Commission discussed police exclusion zones (sometimes called "buffer zones") as an ancillary police power when the Commission considered the RCMP's response to protests against shale gas testing/hydraulic fracturing ("fracking") that took place in Kent County, New Brunswick, in 2013. The Commission reviewed the law, beginning with a 1973 pre-Charter decision of the Supreme Court of Canada (SCC) called *Knowlton v R*, where the principle of setting up a perimeter using common law powers was established.

The SCC observed that police duties included preserving the peace and preventing crime. Where the police are responding in a reasonable way to the specific circumstances known at the time, they may be able to rely on ancillary powers under the common law to carry out their duties—in this case by setting up a small, brief perimeter to protect a dignitary who had been assaulted recently.

As the law has developed in this area (especially after the Charter came into effect), the courts have stressed that any purported exercise of ancillary police powers should be responsive to the circumstances, and tailored to those circumstances, and that the powers conferred to the police are not as broad as the duties imposed on the police.

The Commission also considered a much more recent decision of the Court of Appeal for Ontario (ONCA) about police exclusions and search demands called *Figueiras v Toronto (Police Services Board)*. That case was about whether the police had acted within the scope of a common law power when, during the 2010 G20 Summit in Toronto, they required demonstrators walking down a public street to submit to a search of their bag if they wished to access a protest site. The day before, the G20 demonstration had been violent, and the police officers wanted to prevent more incidents. Mr. Figueiras refused to submit to such a search and a police officer denied him the right to proceed further toward the protest site.

Even without specific statutory authority, police do have the power to restrict access to certain areas that are normally open to the public, but this is not a general power. Rather, it is "confined to proper circumstances, such as fires, floods, car crash sites, and the like." The law also recognizes that the police have the power to cordon off an area in certain circumstances to carry out their duties.

Where a police officer's conduct has interfered with a person's liberty, the courts since *Knowlton* apply a two-part test to determine whether the police officer's conduct falls within their common law ancillary powers:

(1) Does the police conduct in question fall within the general scope of any duty imposed on the officer by statute or common law?

(2) If so, in the circumstances of this case, did the execution of the police conduct in question involve a justifiable use of the powers associated with the engaged statutory or common law duty?

The second part of the test requires a balance between the competing interests of the police duty and of the liberty interests at stake. The factors that must be weighed include:

(1) The importance of the duty to the public good;

(2) The extent to which it is necessary to interfere with liberty to perform the duty; and

(3) The degree of interference with liberty. This aspect of the test requires a consideration of whether an invasion of individual rights is necessary for the peace officers to perform their duty, and whether such an invasion is reasonable.

In *Figueiras*, the ONCA concluded that the police officers' conduct interfered with Mr. Figueiras' common law right to move unimpeded on a public highway, as well as his paragraph 2(b) Charter right of freedom of expression.

The ONCA agreed that the police were trying to carry out their duty to preserve the peace when they stopped Mr. Figueiras and demanded to search his bag. However, the ONCA said that the police conduct did not pass the second part of the test.

At the conclusion of the Commission's report in the Kent County investigation, the Commission stated that the police may only establish "buffer zones" in accordance with the parameters

detailed by the courts in the relevant jurisprudence. Anything outside of these bounds is impermissible in a free and democratic society. The Commission recommended that "decisions to restrict access to public roadways or other public sites must be made only with specific, objectively reasonable rationales for doing so, and should be done in a way that interferes with the rights of persons in as minimal a fashion as possible, for example, a buffer zone that is as limited in size as possible and an exclusion that is as short in duration as possible."

RCMP Commissioner Brenda Lucki agreed with the Commission, but she did not direct that the RCMP take any action to implement the recommendation, because she was satisfied that RCMP operations already complied. She did not present any information about how RCMP practices and procedures had changed since the events in Kent County, however, and so the Commission's concerns remained.

In 2019, the SCC decided an appeal called *Fleming v Ontario*, about whether the police could exercise invasive ancillary powers where no crime has been alleged. The SCC concluded that there was no common law power to arrest a person who is acting lawfully for an anticipated breach of the peace by someone else.

This is important to the issue of RCMP exclusion zones because the decision elaborates on how the ancillary powers doctrine applies where people are not suspected of a crime and the police are not investigating one.

For police conduct to be justified under the above test for the ancillary powers doctrine, it must be "reasonably necessary for the fulfillment of the duty." While the common law police duties of preserving the peace, preventing crime, and protecting life and property can lead to the ability to act preventatively where appropriate, actions that interfere with individual liberty will be especially hard to justify when a person is not suspected of any wrongdoing. The SCC stated, "The first duty of the police is to protect the rights of the innocent rather than to compel the innocent to cease exercising those rights."

As a rule, "it will be more difficult for the state to justify invasive police powers that are preventative in nature than those that are exercised in responding to or investigating a past or ongoing crime." The SCC stated that intrusions on liberty should be a last resort, not a first option, and that anything else "is a recipe for a police state, not a free and democratic society."

The Supreme Court of British Columbia (BCSC) applied the above decisions in an August 2021 decision about the RCMP's use of exclusion zones at Fairy Creek.

The RCMP argued that exclusion zones, access control points, and media restrictions were necessary because of the logistical challenges of operating in a remote, vast environment and that the movement of people, protesters, and even journalists were necessary for safety reasons. The RCMP also stated that some media members (or people posing as media members) might breach the injunction otherwise.

The BCSC stated that the goal of the injunction was to ensure access to the area, not just for Teal Cedar, but for the public (who had a right to use the forest service roads and who could hike and camp in the area), and for lawful protests. The BCSC described the RCMP's duty under the injunction as arresting and removing people who are breaching the injunction, and to preserve the peace and protect life and property in doing so. This is what the injunction authorized. However, even supposing that the terms of the injunction gave the RCMP a further

duty to **prevent** people from breaching the order, the BCSC stated that there was no evidence that less intrusive methods were inadequate, or that the exclusion zones, access control points, and media restrictions were necessary.

The decision held that forcing pedestrians to submit to a search as a condition of entry was not rationally connected to the arrest and removal duty. It was done to prevent escalation of the blockades. The exclusion zones, checkpoints, searches, and media restrictions created substantial and serious interference with liberties, including freedom of movement, freedom of expression and of the press, and freedom of peaceful assembly.

The restrictions were not limited in time or size, which greatly harmed the argument that they were reasonable. The BCSC said that the exclusion zones and access control points had been ongoing for months, and that they had restricted access to "a vast area."

The BCSC stated that the injunction was already very clear that the public had access to the injunction area, but the BCSC altered the injunction to make it clearer that the RCMP must not interfere with media access to the injunction area except where there was a genuine operational need, in which case the restriction must be as minimal as possible.

The RCMP's report in this public complaint had stated that the Court of Appeal for British Columbia had overturned many of the BCSC decisions in this matter. The Commission's review determined that, although the Court of Appeal for British Columbia reversed a subsequent BCSC decision not to extend the injunction, it had not interfered with the BCSC's conclusions about the unlawfulness of the RCMP's actions. The above BCSC decision had not been appealed.

According to the RCMP's report, the RCMP had responded to the BCSC ruling by reducing the size of the exclusion zones by the time of the man's arrest, but the RCMP gave no details. The Commission asked the RCMP for more details about its practices before and after the court decision, as well as on the day of the arrest, and the RCMP replied in general terms only. Consequently, the Commission was not satisfied that the RCMP acted reasonably on the day in question by maintaining the access control point and exclusion zone.

The Commission concluded that the law permits small, temporary perimeters so that the police can, in cases like this, safely arrest and remove people. However, even if the RCMP defined its exclusion zones as being small and temporary, the RCMP's access control points were being used to control access to vast areas. The Commission concluded that anything beyond an access control point was indistinguishable from an exclusion zone because the checkpoint's very role was to exclude people who did not meet the RCMP's criteria for entry. The system had been in place for weeks by the time of the man's arrest, and the practical effect was the same as a fixed police blockade.

One of the explicit goals of the civil injunction was to permit public access to the area. The Commission concluded that it would be a perverse irony to rely on the goal of preserving public access to justify the RCMP's activities to impede, obstruct, and interfere with that access on such a large and intrusive scale.

The Commission found that the RCMP exclusion zone and checkpoint in place were inconsistent with court rulings, and they were unreasonable. Consequently, the Commission found that the RCMP's practice of searching persons crossing through the police checkpoint

into an unreasonable exclusion zone was inconsistent with the individuals' right to be secure against unreasonable search and seizure as well as their constitutional freedom of expression and their common law right to move freely. This meant that it was unreasonable for the RCMP members to demand to search the man as a condition of crossing the access control point.

The Commission concluded that a broader solution for this issue was necessary because the RCMP's enforcement strategy had a serious and ongoing effect on people's rights and freedoms. The civil injunction at Fairy Creek has since lapsed, but the Commission was concerned about similarly broad, intrusive, and unreasonable strategies being used at future protests.

The Commission recommended that the RCMP develop national guidance for the enforcement of civil injunctions that is consistent with the prevailing jurisprudence. This meant that RCMP policy had to reflect the limited size and duration of exclusion zones allowed by the common law, and the courts' cautions about claiming invasive ancillary police powers that are preventative in nature and are not related to a past or ongoing crime. The Commission stressed that it was not satisfied that the RCMP's practices in this case were consistent with the state of the law or the Commission's previous recommendations that had been supported by the RCMP Commissioner after the Commission's Kent County reports.

B. The RCMP members' arrest of the man for obstruction was unreasonable

Section 129(a) of the *Criminal Code* states that anyone who wilfully obstructs a peace officer in the execution of their duty is guilty of an offence. Proof of the offence requires evidence that the peace officer was obstructed and that this affected them in the execution of a duty. The act must be done intentionally by the accused person and without a lawful excuse. The Commission's review of the case law established that the act of obstruction must do more than merely inconvenience the police officer, but it does not have to completely prevent them from carrying out the duty.

When a police officer has reasonable grounds to believe that they have been obstructed, they may arrest the person without a warrant. Here, the RCMP's report stated that the man was arrested when he obstructed RCMP members acting within their legal authority by refusing to cooperate with RCMP "search and identification procedures." However, people cannot obstruct a peace officer by refusing to answer questions or to identify themselves unless a specific law (like motor vehicle laws for drivers) requires them to do so. There was no such obligation here. The above analysis also established that the RCMP members were acting outside their duties in trying to prevent escalations of the blockades, and that their methods were too disproportionately intrusive to be justified as an ancillary power anyways.

The man was lawfully entitled to use the forest service road, and he had no obligation to identify himself, submit to a search, or answer any other police questions. However, even if he had been under such an obligation, the RCMP process did not apply to him so long as he did not try to pass through the access control point and enter the exclusion zone.

The evidence established that the RCMP members arrested the man only because he would not leave an area outside the exclusion zone—an area where the RCMP's own report stated that the "RCMP does not impose restrictions on access." Even though the man asked to be arrested as part of his protest about the RCMP's unreasonable restrictions, the RCMP members had no reasonable grounds to arrest him. The Commission found that the man's arrest was

unreasonable. The arrest raises serious questions about the quality of the training given to RCMP members acting to enforce the injunction, and about the attitudes of the individual police officers on the ground towards the rule of law and civil liberties.

The Commission recommended that the RCMP give the RCMP members written guidance, mentoring, or training regarding the grounds to arrest for the offence of obstructing a peace officer. The Commission also recommended that an appropriate member of the RCMP apologize to the man for the RCMP's failure to give proper regard to his constitutional rights and civil liberties by arresting him without grounds despite his efforts to highlight his right to use the forest service road and to protest peacefully the actions of the police.

C. Permitting RCMP members to remove their name tags was unreasonable

The Commission's review established that the RCMP ground commanders had authorized RCMP members to remove their name tags because of concerns around "doxing" (referring to threats and harassment against someone and/or their families after their name is made public, usually through social media). The RCMP members were told to give their name or regimental number when asked, or when providing instructions to protesters or arresting them.

The RCMP's report stated that the RCMP's *Uniform and Dress Manual* gave the RCMP members flexibility about their uniforms and that this flexibility included the freedom to remove their name tags when the circumstances justified it. The RCMP's report concluded that this meant that the RCMP members had not breached RCMP policy, although the RCMP's report concluded that the RCMP members had failed to identify themselves properly to the man. They were given written guidance to ensure that they understood the requirements about identification and accountability.

The RCMP's report also stated that the RCMP was now issuing identification tags to be worn instead of name tags. These new tags simply showed an RCMP member's regimental number.

The Commission was not satisfied that the *Uniform and Dress Manual* was as flexible as the RCMP's report found. There was also no evidence that the ground commanders had consulted with the relevant RCMP authorities (such as the RCMP Corps Sergeant Major) or RCMP policy centres before they decided to permit removing name tags. Furthermore, permitting the removal of name tags without a reasonable way to visually identify RCMP members effectively shielded them from accountability or reasonable public scrutiny. It was unreasonable to expect RCMP members to verbally identify themselves as needed, in what might be tumultuous, confused, or busy circumstances.

Policing is inherently a visible job with a lot of public interaction. Police officers have many powers and a lot of authority, and with such great power comes great responsibility. This includes being in the public eye and facing public scrutiny and criticism, as well as being subject to oversight processes. When police officers remove all identifying information from their uniforms, they have been permitted to cloak themselves in anonymity. This harms accountability and eats away at the public's trust in the police, who might seem like faceless monoliths in the eyes of protesters and observers. The public might also fear that police officers who cannot be identified will act with impunity.

The Commission found that it was unreasonable for RCMP command teams to permit RCMP members conducting enforcement in the Fairy Creek injunction area to remove their name tags

without an alternate way to distinguish and identify them visually. The Commission referred to past cases where it and other oversight bodies had serious concerns about deploying the police without any way to identify them visually, including another interim report about the RCMP's actions at Fairy Creek (see Commission summary 24-023). In that case, the Commission had found that the RCMP's decision to issue small tags with the RCMP members' regimental numbers was unreasonable. Regimental numbers are permanent and are included in public documents. This means that RCMP members could still fear being "doxed" as a result of those numbers. The regimental numbers are also long and difficult to remember, and a partially remembered number would be much harder to use to identify an RCMP member than a partially remembered name.

The Commission had previously recommended that the RCMP update its policies to state that RCMP members can only remove their name tags where an alternate visual system is being used. In August 2023, the RCMP updated its *Uniform and Dress Manual* to only permit the removal of name tags in specific circumstances. In those cases, RCMP members had to wear identification tags with their regimental numbers instead.

The Commission had also recommended that RCMP members conducting enforcement during protests and other public order events be identified instead by short codes that could be easily remembered. Unlike permanent regimental numbers, these codes could be changed if needed (with appropriate records kept of code assignments). RCMP tactical troop members already wear such codes on their helmets, presumably for the same reasons identified by the Commission.

The Commission observed that protests can be crowded and confusing events, and so the Commission recommended that in such cases the alternate codes be worn prominently on the front and back of RCMP uniforms for high visibility. This would help accountability because small name or regimental number tags will be difficult to read in the tumult and may not be clearly captured in photographs or video. The Commission was concerned that RCMP members might not be identifiable at all without them, especially when wearing face masks to help prevent the spread of COVID-19 or to protect against the cold.

The Commission repeated its finding that the decision to create tags with regimental numbers alone was unreasonable. The Commission recommended that RCMP policy be amended to state that RCMP members being deployed to protests and other public order events must wear prominently displayed identifying codes visible from the front and back, even if they are wearing a name tag. The Commission recommended that the codes should be short, unique, and high contrast, and that records about code assignments should be retained.

The Commission found that the RCMP members in this case had unreasonably failed to identify themselves as required. The RCMP members were dismissive and disdainful on video, and later described their response as, "Then he just went off on why we weren't wearing name tags and what's your [regimental] number? And blah blah blah. So, we said it really quickly." The RCMP members refused to repeat their regimental numbers or even acknowledge that they were required by the RCMP's own policy to wear a name tag on their uniforms.

The Commission was satisfied by the RCMP's response to give the RCMP members written guidance about accountability, but the Commission was nevertheless concerned about the tone

of the RCMP members when asked by peaceful members of the public for their names at a police checkpoint—where these very individuals were expected to identify themselves under the threat of expulsion or arrest for failing to do so. Police officers who hide their faces, refuse to give their names, and acknowledge no authority to wear visual identification are invoking the impunity through anonymity that causes concerns to the Commission.

D. An RCMP member acted unreasonably when he wore the "Thin Blue Line" patch on his uniform

The RCMP's report explained that "there is not yet a firmly established societal consensus" about what the "Thin Blue Line" symbol means, but that the RCMP Corps Sergeant Major (responsible for matters like RCMP uniforms and grooming) had told RCMP members that it was an unapproved symbol. The RCMP members at Fairy Creek "were reminded of the RCMP's position regarding the patch but for those who chose to wear it, not all were ordered to remove it." The RCMP's report stated that RCMP ground commanders would be reminded about this issue and that they would be expected to make reasonable efforts to ensure that the symbol was not displayed on uniforms.

The Commission observed that the "Thin Blue Line" is a reference to the "Thin Red Line," an expression that originated from the 1854 Battle of Balaclava in the Crimean War, when a red-coated Scottish infantry regiment of the British Army stood its ground in a thin line against a Russian cavalry charge. The "blue" in the modern vernacular of the "Thin Blue Line" refers to the police uniform. This concept has become an important symbol for policing, and it has been incorporated into the Police and Peace Officers Memorial Ribbon that multiple police services in Canada have endorsed, including the RCMP.

However, the Commission's review noted that the "Thin Blue Line" flag is much more modern. The flag was created in the United States of America (USA) in 2014 as a symbol for police solidarity in response to nationwide protests and criticism of policing arising from the Black Lives Matter movement. The design is of a black and white version of the American flag crossed horizontally by a blue line. The creator stated that the black area above the blue line represents "citizens," and the black area below the blue line represents "criminals." The creator's company states that the blue line represents law enforcement, and that it divides society, order, and peace from anarchy, crime, and chaos. While this is just one view, the creator's intent for the flag is nevertheless relevant.

The flag was quickly adopted by the Blue Lives Matter countermovement, which emerged after the murder of two New York Police Department (NYPD) officers. Blue Lives Matter sought to counter unfavorable portrayals of law enforcement following protests against racial injustice and police brutality that erupted across the city and the country following the decision not to indict an NYPD police officer for the chokehold death of a Black man.

Other version of the "Thin Blue Line" flag have since been adopted in other nations, including Canada. The Canadian version is of a black and white Canadian flag crossed horizontally in the middle by a blue line, much like the original USA version.

The Commission's review noted that critics in Canada and the USA argue that the Blue Lives Matter movement is an effort to erase calls for reform in the criminal justice system by elevating the reputation and well-being of police officers (who are already widely respected) over the lives

of Black people and members of other communities whose identities are fixed and who face widespread discrimination and systemic disadvantages.

Furthermore, while Canadian police officers have embraced the “Thin Blue Line” flag as a patriotic symbol of their service and of esprit de corps, it has also been adopted in both the USA and Canada by hate groups and authoritarian movements.

The Commission noted that the “Thin Blue Line” flag is seen by many Canadians as divisive or even hateful given its history and the social context in which it emerged, and that it has been widely rejected as an appropriate or permitted part of police uniforms in Canada—including by the RCMP.

The Commission discussed the rejection of the symbol by the Calgary Police Commission, which saw the “Thin Blue Line” flag as an “us versus them” battle line that is inconsistent with the modern understanding that our world cannot be divided into good people and bad people. Rather, the Calgary Police Commission stressed that public safety comes from police serving their communities to collaboratively address the root causes of crime and to help those in distress.

The Commission found that the RCMP member acted unreasonably by wearing the “Thin Blue Line” patch on his uniform. Not only did he breach RCMP policy as the RCMP concluded, but the video evidence showed that the RCMP member took a disrespectful and even hostile tone when the man questioned the presence of the patch on the RCMP member’s uniform when it was associated with white supremacist groups. The Commission acknowledged the good faith meanings of solidarity and commemoration of fallen police officers that police and many members of the public associate with the “Thin Blue Line” flag, but the negative meanings were nevertheless serious and well documented.

The RCMP Corps Sergeant Major has since told RCMP members that they may only wear authorized symbols like the poppy and the mourning ribbon. RCMP members who breach this requirement will receive operational guidance—that is, a discussion with their supervisor. The Commission was concerned that this response was too informal where an RCMP member has acted insubordinately by defying policy and direction, and had worn a symbol that has been associated with white supremacy, hate groups, and authoritarian movements. The Commission recommended that the RCMP impose performance or disciplinary measures that reflect the Commission’s concerns, but which are appropriate for the individual circumstances of the breach.

RCMP Commissioner’s response:

RCMP access control points, exclusion zones, and searches

The RCMP Commissioner stated that he agreed with the Commission’s finding that the RCMP exclusion zone and access control point in place were inconsistent with court rulings, and they were unreasonable.

The RCMP Commissioner also agreed with the Commission’s finding that the RCMP’s practice of searching persons crossing through the police access control point into an unreasonable exclusion zone was inconsistent with the individuals’ right to be secure against unreasonable search and seizure as well as their constitutional freedom of expression and their common law right to move freely.

The RCMP Commissioner agreed that the RCMP members acted unreasonably when they demanded to search the man as a condition of crossing the access control point, and that it was unreasonable to arrest the man for obstructing a peace officer when he declined the search, and did not try to cross, but also did not leave.

The RCMP Commissioner supported the Commission's recommendation that the RCMP members should receive written guidance, mentoring, or training regarding the grounds to arrest for the offence of obstructing a peace officer. The RCMP Commissioner also supported the recommendation that an appropriate member of the RCMP should apologize to the man for the RCMP's failure to give proper regard to his civil liberties by arresting him without grounds and despite his efforts to highlight his right to use the forest service road and to protest peacefully the actions of the police.

However, the RCMP Commissioner did not fully support the Commission's recommendation about developing national policy about the enforcement of civil injunctions that is consistent with the prevailing jurisprudence. The RCMP Commissioner stated that he supported developing a policy along these lines, but he objected to the Commission's statement that the policy should reflect the courts' cautions about police claiming invasive ancillary police powers that are preventative in nature and not exercised in responding to or investigating a past and ongoing crime.

The RCMP's position is that police do not need to be engaged in criminal law duties to have recourse to ancillary powers, and that the courts have stated that the police may exercise these powers even where no crime is alleged.

Removal of name tags

The RCMP Commissioner agreed that it was unreasonable for RCMP command teams to permit RCMP members at Fairy Creek protest sites to remove their name tags without establishing an alternate way to distinguish and identify RCMP members visually.

The RCMP Commissioner also agreed that, although the RCMP members were acting on the direction of their superiors when they removed their name tags, the perfunctory and defensive way in which they identified themselves and responded to questions about their identities was unreasonable. The RCMP Commissioner agreed as well that the RCMP's decision to give the RCMP members written guidance about identifying themselves and about police accountability was reasonable.

However, the RCMP Commissioner disagreed that policy gaps continue to exist after the update to the *Uniform and Dress Manual* about wearing numbered tags. The RCMP Commissioner also disagreed that the decision to create badges with RCMP members' regimental numbers alone was unreasonable in the circumstances.

According to the RCMP Commissioner, "the updated policy was the result of extensive internal consultation with the relevant policy centres and was based on the recommendation of the Uniform Equipment sub-committee, which considered multiple options." The RCMP Commissioner acknowledged that this measure does not eliminate the risk of "doxing," but he stated that further policy amendments were not warranted. The RCMP Commissioner also stated that the use of numeric name tags containing regimental numbers was a reasonable

compromise between members' legitimate safety concerns about being "doxed" and the public's need for members to be accountable for their actions.

For this reason, the RCMP Commissioner only partially supported the Commission's recommendation that RCMP policy should state that, when RCMP members are deployed for protests and other public order events, they must always wear prominently displayed identifying codes that are visible from both the front and back, whether they wear their standard issue name tags or not. However, he stated that the RCMP's National Tactical Support Group Program (NTSGP) supports the Commission's recommendation to the extent that it applies to this group's duties.

The RCMP Commissioner stated that the NTSGP will be augmenting its equipment to support a clearly identifiable system for levels of dress for public order events. The NTSGP is also coordinating with other police agencies nationally, provincially, and municipally, so that they can work together seamlessly in larger events requiring multiple police services. According to the RCMP Commissioner, the NTSGP has an alphanumeric identification system in place on their "Level IV Public Order Helmet," and this is reflected in their policy.

The RCMP Commissioner also partially supported the Commission's recommendation that identifying codes should be short but unique and displayed in large, high-contrast characters, and that a record must be retained linking the identifying code to the RCMP member assigned to that code. He stated that he supported the recommendation to the extent that it applied to the NTSGP. He also stated that RCMP emergency response teams already use an alphanumeric call sign system to identify members, but these are not, and should not be, high-contrast characters because these would jeopardize officer safety in the context of emergency response team operations.

The RCMP Commissioner supported, in part, the Commission's recommendation that the RCMP policy should apply to RCMP uniforms to the extent that it applied to the specialized equipment being used by the NTSGP.

Finally, the RCMP Commissioner supported the Commission's recommendation that the RCMP should implement consistent messaging and measures for failure to wear a name tag or identifying code as required in the circumstances.

"Thin Blue Line" patch

The RCMP Commissioner agreed with the Commission's finding that the RCMP member acted unreasonably when he wore an unauthorized "Thin Blue Line" patch on his RCMP uniform and that the RCMP's response to this action was reasonable.

The RCMP Commissioner disagreed with the Commission's finding that giving operational guidance alone to RCMP members who wore the "Thin Blue Line" symbol on RCMP uniforms was inadequate. He wrote that there is no evidence that the discussed incidents of wearing the "Thin Blue Line" patch were done as a deliberate display of disobedience or insubordination, or that the members knew that this symbol may propagate hatred or white supremacist views.

The RCMP Commissioner did not believe that mandatory harsher penalties were warranted or appropriate, but he believed that the RCMP's responses must be decided case by case. The

RCMP Commissioner stated that it was necessary in the interest of procedural fairness to consider the history of the symbol and the RCMP member's reasons for wearing it on their uniform. This flexibility would also work the other way when there was evidence that an RCMP member's actions were a deliberate endorsement of a cause or stance that was not aligned with the RCMP's core values, allowing for a much more severe response.

For these reasons, the RCMP Commissioner did not support the Commission's recommendation that any performance or disciplinary measures that the RCMP imposes on RCMP members who wear the "Thin Blue Line" symbol on their uniforms should reflect the Commission's concerns about insubordination and wearing a symbol associated with hate movements.

The RCMP Commissioner repeated that it would be unreasonable to automatically make a negative presumption about an RCMP member wearing the "Thin Blue Line" patch, and that inflexible responses would be a breach of procedural fairness.

Commission's final report:

RCMP access control points, exclusion zones, and searches

The Commission welcomed the RCMP Commissioner's agreement with these key findings and the RCMP Commissioner's full support or partial support of most of the Commission's recommendations. In particular, the Commission welcomed the RCMP Commissioner's commitment to develop appropriate policy guidance about protest policing that was consistent with the prevailing jurisprudence.

Nevertheless, the Commission noted that the RCMP Commissioner incorrectly described the Commission's position as being that the police may only exercise ancillary powers in carrying out police duties relating to a crime, and so the Commission was concerned about the RCMP's partial support only for the recommendation on that basis.

The context of the Commission's analysis and recommendation were about the significant restrictions on liberty carried out routinely by the RCMP in enforcing the civil injunction at Fairy Creek—restrictions which the RCMP maintained at that time were consistent with the jurisprudence and reasonably necessary.

As the RCMP Commissioner wrote, the SCC stated that the ancillary powers doctrine can apply even where no crime is alleged—but with an important clarification that the RCMP Commissioner's response did not acknowledge. The SCC wrote that granting **intrusive** ancillary police powers in response to the mere possibility of an unlawful or disruptive act occurring in the future would allow profound intrusions on liberty with little benefit to society.

The Commission's conclusions and its recommendation reflect the prevailing jurisprudence, most importantly the statement of the SCC in *Fleming v Ontario* that invasive ancillary police powers that interfere with liberty—such as arrests, detentions, and searches—will be very hard to justify where a person is not even reasonably suspected of criminal wrongdoing.

By the date of the final report in this case, the Commission had reviewed multiple public complaints about the actions of the RCMP C-IRG in enforcing injunctions in British Columbia in

2020 and 2021. The Commission has repeatedly found that the RCMP acted unreasonably in claiming authority for invasive police powers like access control points and exclusion zones.

Although the RCMP Commissioner's support for the Commission's findings and his substantive support for the Commission's recommendations should be celebrated, the Commission pointed out that the frequently unreasonable actions of the RCMP C-IRG mean that the Commission has made substantially the same findings and policy recommendation three more times in subsequent reports.

For these reasons, the Commission reiterated its findings and repeated in full its recommendation to the RCMP.

Removal of name tags

The Commission's analysis in the final report does not take place in a vacuum because the issue of RCMP members removing their name tags has arisen in other public complaints about the enforcement at Fairy Creek.

There have been, and will continue to be, multiple points of failure in identifying RCMP members and holding them accountable. Images and video obtained by the Commission showed that RCMP members were impossible to identify in many cases because they had no visible identification, and their faces were covered by masks or were indistinct due to low image/video quality. However, even if the RCMP members had been wearing name tags or regimental number tags, these tags would be too small to read in most images, and they would not be discernible or even visible if the RCMP member was not directly facing the camera. Furthermore, RCMP recordkeeping was often poor, apart from video recordings—and even these were inconsistent and had image quality issues.

The most important gap stems from the issue that the RCMP Commissioner stated was not necessary to revisit: the absence of short, unique, identifying codes that are visible from a distance. The Commission's recommendation will not always solve the problem of identifying RCMP members, but large, simple codes worn front and back would have been much more likely to be visible. The Commission's critical concerns remain unsolved, and the Commission expects that this problem will occur again.

Therefore, the Commission reiterated its previous finding that the decision to create badges with RCMP members' regimental numbers alone was unreasonable, and the Commission reiterated its recommendations with the modification that the RCMP use short codes that are in large, high-contrast characters for all uniforms "unless the very nature of the duty requires concealment."

"Thin Blue Line" patch

The Commission stated that, when RCMP members decide for themselves what rules to follow, this delegitimizes their claim to being impartial enforcers of the law against protesters who are doing what they think is right. The Commission's original recommendation specifically stated that the RCMP's response to wearing the "Thin Blue Line" patch or other unauthorized symbols must be appropriate to the individual circumstances of the breach.

What the Commission was concerned about was an inconsistent and unreasonably permissive approach compared to other breaches of policy like failing to wear a name tag, as well as the

fact that the RCMP's approach said nothing about escalating the response for repeat and/or more serious breaches.

Nevertheless, the Commission recognized that operational guidance for the first incident could help RCMP members understand the issue better. The Commission stated that it was generally satisfied with this response so long as the RCMP applied its policy consistently and escalated their response when RCMP members repeatedly fail to comply. The Commission reiterated its findings and modified its recommendations accordingly.