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JUN 17 2020

PROTECTED "A"

Ms. Michelaine Lahaie
Chairperson
Civilian Review and Complaints
Commission for the RCMP
P.O. Box 1722, Station "B"
Ottawa, Ontario
KIP 0B3

Dear Ms. Lahaie:

I acknowledge receipt of the Commission's report regarding the Chairperson-initiated complaint and public interest investigation into the RCMP's response to anti-shale gas protests in Kent County, New Brunswick, file number PC-2013-2339.

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, overall, RCMP members handled post-arrest and detention procedures in a reasonable manner and in compliance with policy.

I agree with Finding No. 2 that, in general terms, RCMP members understood and applied a measured approach in their dealings with protesters.

I agree with Finding No. 3 that, throughout the protests up to October 17, 2013, the RCMP command team and the Crisis Negotiation Team made every effort to bring stakeholders together to achieve a resolution to the conflict. These efforts were frustrated, in part, by the intractable nature of the dispute and by the absence of clear leadership on the part of the protesters.

I agree with Finding No. 4 that the information available to the Commission does not establish, on the balance of probabilities, that persons had an objectively reasonable expectation of privacy with regard to their communications through Facebook groups, or that the RCMP undercover operator "intercepted" those communications as outlined in the relevant jurisprudence.

I agree with Finding No. 5 that any gathering of potentially private electronic communications by the RCMP must be done only within the strictures of the *Criminal Code*, Charter, and related jurisprudence.

I agree with Finding No. 6 that, on the balance of probabilities, the open-source information gathering in the cases of Protester B, Protester D, and Protester E was not unreasonable in the circumstances.

I generally agree with Finding No. 7 that RCMP policy on the use of open sources did not provide clear guidance as to the collection, use, and retention of personal information obtained from social media or other open sources, particularly in situations where no criminal nexus was determined, considering that at the time of the Kent County anti-shale gas protests, the RCMP did not have a policy on the handling of personal information obtained from open sources.

However, on March 13, 2015, the Force adopted its first policy on this issue, namely *Operational Manual* (OM) 26.5. "Using the Internet for Criminal Investigations and Intelligence". I take this opportunity to inform the Commission that on July 15, 2019, the original version of OM 26.5. was amended and is now titled "Using the Internet for Open Source Intelligence and Criminal Investigations". While this policy update changed the roles and responsibilities of the Tactical Internet Operational Support (TIOS) Unit and unit commanders, in addition to expanding the definition section to align policy with the most recent technology developments in the area of open-source intelligence (OSI) collection, it did not modify the core provisions found in the original version.

Following a review of OM 26.5., the *Privacy Act*, and RCMP policies on information management, I am satisfied that members are now provided with sufficient guidance on the collection, use, and retention of personal information obtained from social media. I find that OM 26.5. is not meant to be read as a standalone document, nor to be used as a substitute for specialized training. Rather, I consider that policy is a complement to the existing legislative framework (e.g. *Privacy Act)* and related jurisprudence and provides context about the practical application of the investigative techniques within the confines of the law.

The RCMP collects OSI to develop actionable criminal intelligence and uses said information to carry out its mandate under the *RCMP Act*. OSI is always collected in support of an established file or program activity and the type of information gathered from social media is based on the needs of the investigation or activity. Pursuant to OM 26.5., RCMP employees performing intelligence-gathering activities must ensure that the collection, use, and retention of personal information obtained from open sources, such as social media, respect privacy requirements. I am satisfied that the RCMP's collection, use, and retention of OSI are done in accordance with the present state of the law as it relates to informational privacy.

It is also important to note that, since the collection of personal information from social media must be directly related to a specific operational file or program, the results are retained in the related operational file, like any other piece of information collected during an investigation. Consequently, the retention period of personal information collected from social media will be determined based on the retention period of the associated occurrence file, in accordance with RCMP policies on information management.

In my view, the provisions of OM 26.5. are not intended to be so prescriptive as to hamper an employee's ability to analyze and evaluate the investigational value of any potentially collected information. Understandably, every potential scenario cannot be described and provided for in policy, particularly so as police techniques and case law in this area rapidly evolve and adapt to new and emerging technology. However, should legislation and/or case law evolve in that regard and require modifications to current practices, procedures, or policy, the RCMP will do so through appropriate consultation with implicated stakeholders.

In light of my conclusion above, I do not support Recommendation No. 1 that the RCMP provide clear policy guidance describing what personal information from social media sites can be collected, the uses that can be made of it, and what steps should be taken to ensure its reliability. While I do not find that further policy guidance as worded in the Commission's recommendation is required, I am satisfied that there are presently mechanisms in place, as briefly described in the following paragraphs, to ensure that employees performing intelligence-gathering activities are provided with the required guidance on the use of social media for OSI collection.

When it is unclear if OSI activities might be contrary to policy or could potentially violate the law, policy directs designated practitioners to consult the unit commander, the TIOS Unit, the National Covert Operations Unit, and/or RCMP Legal Services for guidance. Furthermore, all members performing intelligence-gathering activities within the RCMP are required by policy to have training. The "Introduction to Open Source Internet Research" Workshop provided to Tier 2 OSI practitioners expands on the rules governing the collection of personal information from social media sites and the use that can be made of such information and emphasizes on the need to confirm, corroborate, or discredit OSI before it can be used in intelligence reports. In addition to that workshop, Tier 3 OSI practitioners must also complete the "Tactical Use of the Internet" training. This five-day classroom course provides advanced, in-depth instructions on how to conduct investigative internet research and includes a 12-hour module on the use of social media for intelligence and investigative purposes. In addition, this training provides members with an in-depth explanation of OM 26.5., the relevant case law and the authorities applicable to the collection and use of OSI found in various legislation.

I take this opportunity to inform the Commission that the policy centre responsible for OSI activities within the RCMP is in the process of creating a Sharepoint collaborative environment site dedicated to Tier 2 and Tier 3 practitioners to ensure that they are kept current with the latest changes in legislation, techniques, methodologies, and case law related to the collection, use, and retention of OSI. I will direct that this collaborative environment be launched as soon as possible after the release of the Commission's final report. Moreover, the RCMP is in the process of developing a course covering the acceptable use of open-source intelligence, which will be available online to all employees via the Infoweb Agora platform. The focus of this course is to provide employees with an understanding of existing legislation, policy, privacy impacts, and case law related to the use of open-source intelligence. I will direct that once it is completed, the newly developed Agora course will be made available and communicated as such to all RCMP employees.

Finally, I want to inform the Commission that, in the 2018–2023 Risk-based Audit, Evaluation, and Data Analytics Plan, I approved an Audit on Open Source Information. The RCMP Internal Audit, Evaluation, and Review Branch is presently completing the draft report for this audit, which will be tabled at the Departmental Audit Committee in the near future. The objectives of the RCMP Audit on Open Source were to determine whether internet-related open-source activities conducted across the organization consistently complied with policy. Specifically, the audit sought to determine whether the Force's policy related to open source activities and information was established, adequate, maintained, clearly communicated and followed by members and whether employees were provided with the necessary training and tools to support the discharge of their responsibilities for open source activities. The Commission may be informed that any recommendations made by the Internal Audit, Evaluation, and Review Branch following the completion of the audit will be followed by a management action plan to ensure their implementation as expeditiously as possible.

I do not support Recommendation No. 2 that RCMP policy require the destruction of records obtained from social media sources containing personal information (such as screen captures of social media sites) once it is determined that there is no criminal nexus regarding the information.

While I agree with the Commission that it is reasonable for the RCMP to compile information to gain a current intelligence profile of an individual and to analyze said information to determine whether a criminal threat exists, I disagree that once it is determined that there are no criminal threats related to the said individual, the personal information collected no longer serves a law enforcement or criminal intelligence purpose and should not be retained on file. The police have a duty to prevent crime and keep the peace, but they also have a general duty to protect life and property that extends beyond crime prevention and peacekeeping functions. During public protests, such as the ones that occurred in Kent County, the command team and/or lead investigator will use tactical intelligence as an investigative tool to obtain information on groups

involved in protests to determine the amount of disruption a given protest may cause and whether there will be any risk to participants, bystanders, police, and the public in general. In order to make that determination and in support of its overarching goal to keep Canadians safe, the RCMP needs to have the ability to access information on the participants even in situations where there is no reason to believe that the participants were previously involved in criminal activities. It is necessary for the police to learn more about the individuals with whom they may potentially interact in order to adopt the appropriate measured approach.

While intelligence analysts might browse through a vast array of information while conducting searches, including information on individuals associated with various groups, only OSI relevant to the original request will be collected and used to produce intelligence reports. The type of information sought from open sources or social media is not limited in terms of categories or topics, but it must support the operational file. The information is continuously subjected to real-time and historical analyses in order to determine and evaluate potential threats. However, the nature of the information collected does not always have an apparent criminal aspect. For example, in order to create a baseline for the activities of a group of protesters and determine if it is of any interest to the police, intelligence practitioners need to include in their reports information on the criminal background of the individuals comprising the group, but also information on those who do not have such a background. Indeed, commanders will rely on the results of the intelligence process to make informed decisions on the overall risk posed by a specific group in order to develop an appropriate strategic plan and response to the protests. It is therefore justified that information related to protesters be found in the operational file, even if some of those individuals are not associated to criminal activities. This situation is not in any way different than that of personal information being obtained during an investigation, by other means than open source, and being retained in the investigational file, despite it having no criminal nexus. The information is part of the fruits of the investigation and supports the actions taken and the decisions made in a specific incident.

It is also important to note that once an intelligence report containing OSI and/or personal information has been created it becomes Operational Information Resources of Business Value (OIRBV)[1] and must be incorporated

[1] Section S.1.1.1.1. of the Information Management Manual (IMM), chapter 1.1. "*Information Management Stewardship*" provides that **Information Resources of Business Value** are materials, regardless of format, that are created or acquired because they enable and document decision-making in support of programs, services, and ongoing operations, and support departmental reporting, performance and accountability requirements. Additionally, IMM chapter 2.3. "*Operational Information Resources*" section 2.1. defines **Operational Information Resources of Business Value** as information supporting the mandate of the RCMP in the enforcement of the law in the detection, prevention, or suppression of crime, as well as the administration of individuals who have been involved in investigations under the *Criminal Code,*

into or linked to the operational file from which the initial OSI search request originated. Indeed, section 12.1.1. of the *Information Management Manual* 1.2. creates an obligation for RCMP employees to ensure that all information resources of business value he or she creates or collects is incorporated in the RCMP Records Management Program. Therefore, all OSI materials collected from social media used to develop an intelligence report are filed with said report as supporting documents and are kept with any other information collected during the investigation. The intelligence report and its supporting documentation become an integral part of the investigative material and have the same retention period as the occurrence file. The retention periods for OIRBV will vary depending on the type of occurrences; therefore, the timeframe for the purging of all information associated to a file will depend on the offence type and the corresponding prescribed retention period in accordance with the *Privacy Act* and its regulations and RCMP policies.

For these reasons, I find that proceeding to the destruction of records obtained from social media sources and containing personal information would not be reasonable and might not be lawful considering that once the information is used to produce OSI, it becomes OIRBV and needs to be retained in the associated operational file in accordance with the *Privacy Act* and RCMP policies.

For the same reasons, I therefore do not support Recommendation No. 3 that the RCMP develop a policy providing that, where the RCMP obtains personal information that is determined to have no nexus to criminal activity, the information should not be retained.

I disagree with Finding No. 8 that it appears that RCMP members did not have judicial authorization or other legal authority to conduct stop checks for the purposes of information gathering in a way that constituted a "general inquisition" into the occupants of the vehicles and that the practice was inconsistent with the Charter rights of the vehicle occupants. As stated in *R.* v. *Harris*[2] and related jurisprudence, whether requesting identification from an individual engages the Charter depends on the facts and, more importantly, on whether or not the individual was detained at the time when the information was solicited. Following a careful review of the relevant material as it relates to this finding, particularly of the videos and check sheets[3], I am unable to conclude, on a balance of probabilities, that the passengers of the vehicles were detained, or that the sole purpose of the stops was intelligence gathering, or that members acted improperly or in a manner which was inconsistent with the

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federal and provincial statutes, municipal bylaws, and territorial ordinances. Operational information resources of business value also include management of RCMP intelligence.

[2] *R* v. *Harris*, 2007 ONCA 574. See also *R* v. *Frank*, 2012 ONSC 6274, *R* v. *Grafe*, 1987 CanLII 170 (ON CA) and *R* v. *Hall*, 1995 CanLII 647 (ON CA).

[3] Only 6 check sheets dated July 27, 2013, and 2 others dated July 26, 2013, were located in the relevant material. Additionally, while many videos were reviewed, it is uncertain whether they are indeed the same videos referenced by the Commission at paragraph 103 of its report, as there was no electronic reference provided in its analysis of this finding.

Charter. Specifically, the video referred to by the Commission at paragraph 106 of its report does not capture the totality of the interaction or any actions taken by the member prior or subsequent to the request for identification. Some of the other videos reviewed have very poor sound quality and did not capture the totality of the interaction. For these reasons, I find that there are simply not enough facts or context upon which to derive any conclusions.

I disagree with Finding No. 9 that randomly stopping vehicles for a purpose other than those set out in provincial highway traffic legislation without judicial authorization and in the absence of the emergency investigation of a serious crime was, on the balance of probabilities, inconsistent with the Charter rights of vehicle occupants. I find that there was insufficient information provided by the Commission in support of this finding detailing specific instances where a roadblock would have been unlawfully erected. I note that the jurisprudence referred to by the Commission at paragraph 110 of its report, such as *R* v. *Clayton*[4], refers to emergency situations in which not only were exclusion zones or roadblocks erected but the detained vehicles and vehicle occupants were searched. However, a review of the relevant material in this case does not reveal that roadblocks or exclusion zones were arbitrarily established or that individuals were being detained. Nor does it indicate that individual and vehicle searches occurred during this specified timeframe in the protest (i.e., June and July 2013). That being said, several instances were found in the available information suggesting that, at various times during the protests, roadways and highways were rendered inoperable or unsafe by felled trees, serious property damage and arson occurred and that certain circumstances, at times, created a hazard to public safety. The authority to create a perimeter in such circumstances, of course, would be derived from common law, as contemplated by the examples summarized in *Figueiras* v. *Toronto (Police Services Board)*[5], at paragraph 59:

> [...] Examples of the common law police power to control access to an area include establishing a perimeter around a police officer who is executing an arrest (R. v. *Wutzke*, 2005 ABPC 89, at paras. 60-66), establishing a perimeter around a police officer who is questioning a suspect or a witness (*R v. Dubien*, [2000] Q.J. No. 250, at paras. 14-26 (C.M.)), establishing a perimeter around a crime scene to preserve evidence (*R.* v. *Edwards*, 2004, ABPC 14, 25 Alta. L.R. (4th) 165, at paras. 4–6, 24–48, 66), and establishing a perimeter around a hazardous area to preserve public safety (ft c. *Rousseau*, [1982] C.S. 461, at pp. 461–62, 463–64 (Qc.)). It has also been recognized that the police can establish a security perimeter around a potential target of violent crime in order to ensure the target's protection (*Knowlton*, at pp. 447–48).

[4] [2007], 2 SCR 725.
[5] 2015 ONCA 208.

I disagree with Finding No. 10 that, on the balance of probabilities, it appears that the practice of searching persons entering the campsite was, in the circumstances, inconsistent with the individuals' right to be secure against unreasonable search and seizure.

I note that the Commission's finding refers to the time of the blockade of the SWN Resources Canada (SWN) compound on Route 134, which began on or about September 29, 2013, and ended on October 16, 2013, the day before the operation to end the blockade took place. Additionally, I find the wording of the present finding and the associated analysis to be somewhat vague as to whether the Commission is referring only to searches of persons entering the campsite on foot or also to searches of vehicles that were allowed to enter the campsite. Thus, I proceeded on the assumption that the Commission is referring to both scenarios during the above-mentioned timeframe.

Regarding the search of vehicles entering the campsite, I note that during the blockade of the SWN compound, Route 134 was closed to all traffic including police vehicles out of necessity since some of the protesters unlawfully blocked the entrance to the compound with a van and subsequently blocked Route 134 with felled trees. However, a review of the relevant material reveals that some vehicles were allowed into the campsite, such as a trailer for the comfort of the elders, which was searched prior to entering the campsite following an agreement with the protesters, as well as a van that brought in food from time to time and a vehicle bringing in and taking out "Porta Pottys", which were both searched prior to being allowed into the campsite.

In determining whether the search of the vehicles entering the campsite was reasonable, I must consider all the circumstances, specifically in this case, the environment in which the searches were conducted. Obviously, the anti-shale gas protests at times created an extremely hostile environment. Some protesters issued threats of death and sexual assault against Industrial Security Limited (ISL) personnel and their families and police. Some protesters destroyed hundreds of thousands of dollars' worth of SWN equipment. In addition, there were persistent, albeit unconfirmed, rumours and reports from confidential human sources of the presence of firearms in the campsite. Warriors, who were observed to be under the influence of drugs, were present at the campsite. This environment, coupled with the lower expectation of privacy in motor vehicles, leads me to the conclusion that the searches of the vehicles allowed into the campsite were reasonable. In fact, I find that the RCMP could have been viewed as negligent in their duties if the decision not to search the very few vehicles allowed into the campsite would have resulted in the importation of weapons or explosives ultimately used to injure police or protesters.

With respect to the searching of persons entering the campsite on foot, I do not agree with the Commission that Staff Sergeant Vautour's and Chief Superintendent Gallant's statements support the conclusion that the RCMP engaged in a practice of searching persons entering the campsite. My review of

those statements demonstrates that Staff Sergeant Vautour was definitive that people were not personally searched during the course of the timeframe in question. She does concede that at the beginning of the protests it was possible that some people may have been checked if they were carrying bags into the protest site; however, she is not certain on that account. Additionally, it could not be determined from the relevant material that even if those searches occurred, they were carried out during the blockade. As for Chief Superintendent Gallant, he stated that he did not recall any persons being physically searched given that there was no legislative authority to do so and that it would not have been something that he would have endorsed.

In addition, both Superintendents Gilles Maillet and John Warr stated that they had no knowledge of any personal searches being carried out as a matter of practice, nor was there any standing order given to routinely search anyone coming into the campsite. Finally, I note that there is some independent evidence supporting the view that members were not routinely searching those entering the campsite on foot. Mr. Chris Cainsford-Betty, Staff Operations Geophysicist for SWN's parent company, stated in an affidavit dated October 9, 2013, that "[...] [fjrom my review of the video, it appears that the RCMP are allowing pedestrian traffic freely."

Accordingly, it is my view that the available evidence does not support the conclusion that there was a practice of routinely searching or "patting down" persons entering the campsite on foot

Although I do not support Recommendation No. 4 in regards to the above three findings, I believe it will serve as a best practice going forward that, members involved in public order policing operations be provided with a review of law and policy related to search and seizure, including the warrant requirement and the legal grounds establishing exceptions for warrantless searches. For this reason, I will direct that said recommendation be shared through the public order command structure.

I disagree with Finding No. 11 that, on the balance of probabilities, RCMP members made several arrests of protesters pursuant to the November 22, 2013, injunction without having reasonable grounds, from an objective point of view, to believe they had committed an offence. This was apparently based on a misinterpretation of the conditions of the injunction. It appears from my review of the relevant material that there is no evidence to support the conclusion that the RCMP made several arrests based on a misinterpretation of the November 22, 2013, injunction.

I find that the videos referred in the Commission's analysis do not depict anyone being illegally arrested, nor do they clearly demonstrate a lack of understanding of the provisions of the injunction. Additionally, I note that Constable Marco Johnson indicates in his notes that Protester Y was arrested because he was found within 250 metres of the SWN trucks.

Constable Frederic Langlois, another member involved in the arrests, describes Protesters Y and Z as being arrested for the same reason. In my view, these notebook entries seem to indicate that both protesters were standing within 250 metres of the SWN vehicles when they were arrested, which would be in accordance with the provisions of the injunction. I note that the Commission did not refer to the notes of Constables Johnson and Langlois in its analysis.

The Commission also refers to the fact that the Crown Prosecutor refused to approve the charges for both protesters to support the view that members made arrests that were contrary to the provisions of the injunction. While I acknowledge that there was a disconnect between the reasons for the arrests as indicated in the members' notes, the content of the Prosecutor's Information Sheets, and the charges that were proffered for approval, I find that the fact that the Crown refused to approve the charges is not material to the reasons for the arrests.

Therefore, I am satisfied that RCMP members had reasonable grounds, from an objective point of view, when they arrested several protesters pursuant to the November 22, 2013, injunction. Notwithstanding this conclusion, I nonetheless support Recommendation No. 5 that the RCMP provide members who are engaged in the policing of public protests or public order policing with detailed, accurate interpretations of the conditions of any injunction or unique legal provisions that they are expected to enforce, obtaining legal advice as necessary.

Indeed, I find that the Incident Commander or Critical Incident Commander should be responsible to disseminate to members engaged in policing public protests the accurate information concerning the enforcement of any injunctions. Consequently, I will direct that OM 55.2. "Aboriginal Demonstrations or Protests", as well as any other RCMP policy requiring that members enforce injunctions, such as OM 37.7. "Labour Disputes", be amended to provide that the Incident Commander and/or Critical Incident Commander should ensure that members under their command are briefed on the conditions and interpretations of any injunction that they are expected to enforce and are provided with all the nuances and unique background information regarding the specific protest or public order event. Additionally, I wish to inform the Commission that the RCMP is currently seeking to provide national oversight with respect to RCMP employees engaged in public protest/public order activities in general by developing a policy on public assemblies, which will provide for all protests, not only protests involving Indigenous matters specifically. Consequently, I will further direct that a section similar to the one mentioned above be included in the new policy on public assemblies.

I partially agree with Finding No. 12 that, given the lack of particularized information in the allegations, there was insufficient information available to conclude in general terms that road closures and the re-routing of traffic during the anti-shale gas protests was unreasonable. Likewise, there was insufficient

information to support the allegation that media were unreasonably denied access to protest sites.

The only specific allegation provided in the Commission's analysis in support of this finding relates to the arrest of Mr. Dallas McQuarrie and of other protesters for mischief and obstruction in circumstances where the roadway was being blocked by protesters, thus preventing SWN from using it. In those given circumstances, I find the arrests for mischief and obstruction to be lawful and reasonable. Additionally, I note from the information provided by witnesses to these particular arrests that the members had the situation under control in minutes and that the road closure was of brief duration. Since there were no other specific allegations in support of this finding, a perusal of the relevant material was undertaken in order to fully respond to this finding. This review of the relevant material, particularly the instances of road closures alluded to in the briefing notes to the Commissioner during the relevant time, allows me to determine that, in fact, the instances of road closures, buffer zones, or traffic rerouting were generally minimal, necessary, and reasonable.[6] Therefore, in my opinion, there is enough information found in the relevant material to support a finding, on the balance of probabilities, that the instances of traffic rerouting or road closures during the anti-shale gas protest were brief, necessary, and responsive to the circumstances and therefore reasonable. Likewise, with respect to the media having access to the protests sites, a review of the relevant material, including the numerous media articles referenced by the affiants in support of the injunction, as well as the televised press conference held at the protesters camp on Route 134, leads me to conclude that the media had unfettered access to the protest sites.

I agree with Finding No. 13 that, in its report regarding Protester F's complaint, the Commission found, on the balance of probabilities, that the decision to restrict the complainant's access to the protest site to prevent crime and ensure public safety was not unreasonable in those circumstances.

I support Recommendation No. 6 that, decisions to restrict access to public roadways or other public sites be made only with specific, objectively reasonable rationales for doing so, and, if legally permissible, be done in a way that interferes with the rights of persons in as minimal a fashion as possible, for example, a buffer zone as limited in size as possible and an exclusion that is as short in duration as possible. However, I will not direct that any action be taken in relation to said recommendation as I am satisfied that RCMP operations in that regard are already in line with the terms of the recommendation.

While I support Recommendation No. 7 that, particularly when policing a public protest, members be cognizant of the limits of their powers, specifically in relation to curtailing protesters' ability to assemble and express themselves in a

[6] See briefing notes dated June 5, 2013; June 19, 2013; and July 29, 2013, located in the electronic document "Briefings", Document ID 128, Investigation # 2013-83622.

lawful manner, I will not direct that any action be taken in that regard since I am satisfied that RCMP operations are already in line with the terms of the recommendation.

I agree with Finding No. 14 that, at the time the anti-shale gas protests policing operation began, with some notable exceptions, the members assigned to the operation did not have sufficient training in Indigenous cultural matters.

I support Recommendation No. 8 that the RCMP require all members to review the RCMP's *Native Spirituality Guide*, and that all members involved in Indigenous policing, including members of tactical troops and public order units involved in policing protests by Indigenous persons, be required to attend a training program that is specifically aimed at understanding Indigenous cultural issues.

In support of the above, I wish to inform the Commission that, since the Kent County anti-shale gas protests, the RCMP has deployed ongoing efforts on training current and new members to keep pace with the diversity, understanding, and compassion required to execute policing duties in a bias-free manner and to provide members with a solid knowledge of cultural elements and history of our Indigenous communities. In total, the RCMP offers no less than 29 learning programs at the divisional and national levels that include Indigenous culture as part of its curriculum; 24 of these programs or courses were created for and are presented directly to members of the RCMP with the intent of increasing Indigenous cultural knowledge and 26 of those courses contain material on Indigenous culture with a focus on regional traditions or geographic differences.

I also wish to inform the Commission that the RCMP is presently developing a new *Indigenous Awareness Guide* that will highlight the distinct and unique cultures, languages, political and spiritual traditions of Canada's First Nations, Metis, and Inuit peoples. This guide is intended to educate and increase the RCMP's employees' cultural awareness and understanding of matters related to the delivery of Indigenous policing services and interactions with Indigenous peoples. I am satisfied that the new *Indigenous Awareness Guide* will expand on the information provided to members with regard to Indigenous cultural issues. Therefore, in order to implement the first part of the Commission's recommendation, I will direct that, once the new *Indigenous Awareness Guide* is completed, a national communique be sent to all employees requesting that they review both the current *Native Spirituality Guide* and the newly developed *Indigenous Awareness Guide*.

As for the recommendation that all members involved in Indigenous policing, including members of the tactical troops/public order units involved in policing protest by Indigenous persons, be required to attend a training program specifically aimed at understanding Indigenous cultural issues, I will direct that the Commanding Officer of each division identify training specifically aimed at

understanding the cultural issues of the Indigenous communities found in their division and ensure that its members take said training. The results will be recorded on the members training record through HRMIS.

I agree with Finding No. 15 that the available information suggests that RCMP members did not, either deliberately or unwittingly, unnecessarily interfere with Indigenous ceremonies or sacred items. Based on my review of the relevant material, I am able to confidently determine that RCMP members generally demonstrated great care in ensuring that their intervention was necessary and mindful of cultural traditions. When in doubt, continuous consultation with community elders were made in order to obtain clarifications in regard to religious and spiritual ceremonies and sacred objects prior to the intervention. When ceremonies were happening on busy public highways, this, at times, presented significant public safety concerns. In using the measured approach, members resisted intervention and generally managed the risks to the extent where they could ensure the safety of all the individuals involved. When intervention was required, every effort was made to respect cultural beliefs and traditions by seeking further consultation or by means of dialogue with the involved protesters. However, I understand and acknowledge the concern that, at times, due to what appears to have been a lack of appropriate communication or guidance, the handling of sacred objects during certain arrests, specifically, could reasonably have led one to perceive an interference with said sacred objects.

I support Recommendation No. 9 that the RCMP initiate collaboration with various Indigenous stakeholders with a view to developing a context-specific, practical procedure providing guidance to members with regard to the handling of sacred items in various contexts. Considering the country's demographics and the varied traditions, beliefs, and practices of its Indigenous communities, I find that the implementation of the present recommendation should be done at the divisional level, and I will therefore direct the Commanding Officers of each division to ensure collaboration is initiated with their relevant local Indigenous stakeholders in order to develop appropriate and culturally sensitive procedures, as referenced in the Commission's recommendation.

I agree with Finding No. 16 that, on the available evidence, the Commission is satisfied that RCMP members did not differentiate between Indigenous and non-Indigenous protesters when making arrests, nor did they demonstrate bias against Indigenous protesters generally.

I agree with Finding No. 17 that the RCMP did not act as private security for SWN. Its role was to keep the peace and ensure public safety while respecting the protesters' right to protest. Based on the available information, the RCMP's interactions with SWN Resources Canada were reasonable in the circumstances.

I agree with Finding No. 18 that, the decision to isolate members of the Crisis Negotiation Team (CNT) from information about operational planning,

however well-intentioned, indirectly led to the unfortunate and regrettable situation of the tactical operation occurring shortly after RCMP negotiators offered tobacco to campsite protest leaders.

I support Recommendation No. 10 that, although there are reasonable rationales for maintaining separation between negotiators and operational planners, the RCMP should give consideration to more fully informing CNT members of the overall strategy being pursued to avoid regrettable misunderstandings that can damage relationships between the RCMP and members of the public. I acknowledge the consequences that the decision to isolate members of the CNT from information about the operational plan had in this case. I wish to inform the Commission that consideration has been given to the present recommendation and it was found that the *Tactical Operations Manual* (TOM) Part 3 "Crisis Negotiations Team" should be modified to provide that the CNT Team Leader be made privy to the overall operational strategy being pursued by the command team. This modification should also specify that it would be the responsibility of the CNT Team Leader to share with the other members of the team only the information necessary to fulfil the CNT's role. I will direct that this be done.

I support Recommendation No. 11 that the RCMP should consider drafting a policy that is specifically tailored to the CNT's role in the context of public order policing. I wish to inform the Commission that this recommendation has been considered and, it was determined that TOM 3.1. "Crisis Negotiation Responsibilities" could better reflect the different roles played by the CNT. I will direct that this be done.

I agree with Finding No. 19 that, given the terms of the injunction, the RCMP had the legal authority to conduct the operation and, on the balance of probabilities, it was a reasonable exercise of their discretion to do so in all the circumstances.

I disagree with Finding No. 20 that it would have been prudent to allow more time for negotiations and a review of the injunction in court before proceeding with the operation. I also disagree that allowing more time for negotiations, particularly after the CNT's negotiations had already borne fruit, would have been reasonable and desirable in the circumstances.

My review of the relevant material reveals that Superintendent Maillet cited several reasons for refusing to delay the operation in favour of further negotiation as requested by Inspector Fraser and Constable Denny. Notwithstanding the fact that the ISL employees had been allowed to leave the compound, he articulated a number of concerns that led him to the conclusion that the operation needed to proceed on October 17, 2013. These concerns included the presence of Warriors at the campsite, who were seen to be under

the influence of drugs, and unconfirmed intelligence reports of the likely presence of firearms at or near the campsite.

I note that the Commission recognized in its analysis that, notwithstanding the release of the ISL employees the day before the commencement of the operation, the RCMP still faced a difficult decision in determining whether to proceed with the operation as planned as the situation just before the operation was volatile and not proceeding with the operation could have led to a more explosive and dangerous confrontation at a later date. In addition, I find that there is no indication in the relevant material with respect to how much time Inspector Fraser and Constable Denny required for further negotiation. As timing is of the essence in these types of operations, this element would have been a consideration in the Incident Commander's risk analysis. I note that the Commission's investigators did not broach this issue with Superintendent Maillet, Constable Denny, or Inspector Fraser.

Therefore, I am satisfied that, on a balance of probabilities, the decision taken by Superintendent Maillet to deny the request for further time for negotiations and to proceed with the operation as planned on October 17, 2013, was prudent and a reasonable consequence of his risk analysis based on the information known to him at the relevant time.

I partially agree with Finding No. 21 that, in general terms, and with certain exceptions (arrests conducted pursuant to the November 22, 2013 injunction], during the anti-shale gas protests, RCMP members had reasonable grounds to arrest persons for various offences including mischief and/or obstruction, and that, in general terms, the force used in conducting arrests was necessary and proportional in the circumstances. While I agree with the Commission that RCMP members had reasonable grounds to arrest persons for various offences including mischief and/or obstruction, and that, in general terms, the force used in conducting arrests was necessary and proportional in the circumstances, as mentioned previously, I am satisfied that members also had reasonable grounds when they arrested several protesters pursuant to the November 22, 2013, injunction.

I agree with Finding No. 22 that the handcuffs that were initially placed on Protester C and Protester D were likely tighter than was necessary to restrain them.

I support Recommendation No. 12 that in situations such as public order policing when RCMP members may be required to arrest persons using plastic tie wrap handcuffs, the restraints only be applied with as much force as is necessary to safely restrain the arrested person. I find that this recommendation is in line with the use of force principles of proportionality, necessity, and reasonableness identified in case law, and I am satisfied that RCMP's operational practices in that regard are in accordance with said recommendation. Consequently, I will not direct any further action.

I agree with Finding No. 23 that it is reasonable to conclude that the persons maintaining the blockade were committing mischief, in that they were interfering with SWN's ability to use its equipment, and others at the campsite, if not necessarily active participants in the blockade, were parties to the offence of mischief. In addition, the injunction order specifically prohibited persons from impeding SWN's work at the compound and authorized police to arrest persons violating the terms of the injunction. Thus, arrests of persons at the campsite were reasonable in the circumstances.

I agree with Finding No. 24 that it was reasonable for RCMP members to arrest Chief Sock and the council members for the offence of mischief when they sat down in front of the SWN compound and refused to leave.

I agree with Finding No. 25 that physical force such as pushing, striking, or using pepper spray to control the protesters was used after the protesters physically tried to break through the police line and were effectively participating in a riot. Given the risks posed by the protesters and the concerns regarding the safety of RCMP members and the public, the use of force including pushing, striking, or deploying pepper spray was necessary in the circumstances and was proportional to the conduct encountered by the members.

I agree with Finding No. 26 that, in the context of the standoff, it was necessary for members to use force (including sock rounds and the drawing and/or pointing of firearms), and the type and amount of force used was proportional to the conduct that the members encountered.

I agree with Finding No. 27 that Emergency Response Team members had reasonable grounds to suspect that protesters in the woods might be carrying firearms or explosive devices because of the standoff with an armed protester that had occurred earlier that day, and because Molotov cocktails had been thrown from the woods by unidentified protesters earlier that day.

I agree with Finding No. 28 that, given that Emergency Response Team members had reasonable grounds to suspect that protesters in the woods might be carrying firearms or explosive devices, from the evidence available to it, the Commission finds that the pointing of a firearm did not constitute an unreasonable use of force in the circumstances.

I agree with the Finding No. 29 that pointing or firing firearms loaded with sock round ammunition amounted to a measured response to the behaviour of individuals whose actions posed a threat to themselves, police officers, or the general public, in a context where other methods of intervention would have been inappropriate.

With respect to Finding No. 30 that the Commission did not find any evidence of direct physical contact between police service dogs and protesters, I agree that

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the evidence shows that police service dogs were used as a psychological deterrent only. Consequently, the use of police service dogs complied with RCMP policy and the Incident Management/Intervention Model. I concur with the Commission that the relevant C-227B Case Report documents, which must be completed according to RCMP policy, could not be located in the relevant material.

I agree with Finding No. 31 that the evidence before the Commission does not support the allegation that, on October 17, 2013, RCMP members were "ill-equipped so that some might suffer physical harm, which would result in the vilification of protesters".

I disagree with Finding No. 32 that, although there had been no reliable information about firearms at the campsite, there had been several rumours to that effect. It would, therefore, have been reasonable for the Tactical Operational Plan to have provided for the possibility of there being firearms and explosives at the campsite.

While there may not have been a formalized process contained within the operational plan to deal with the possibility of the presence of firearms and/or explosives at the campsite, I find that it is clear in the relevant material that the possibility of firearms being at the campsite was addressed in the operational plan. In addition, the file is replete with references to the possibility of firearms in or near the campsite. The operational plan notes that there was a significant amount of unconfirmed information that certain individuals may have been in possession of firearms. The plan also allowed for the handlers of confidential human sources to be notified if firearms were seen at the protest site. Furthermore, the operational plan stated that the Tactical Troop Commanders, Incident Commander, and standard operating procedures would dictate how best to deal with "any threat or resistance encountered." In my view, it was preferable to allow members to address the discovery of firearms or explosive by using their training and experience rather than to require them to follow a process that may or may not be workable given the highly volatile and stressful nature of the protests.

I agree with Finding No. 33 that, in the circumstances, and in keeping with the measured approach, it was not unreasonable for the tactical troops to initially be directed to wear Level 2 gear.

I agree with Finding No. 34 that it was reasonable for the RCMP to have decided to use police vehicles as a "movable" barricade. Once the situation had deteriorated, it was reasonable for RCMP members to prioritize the safety of all parties and the maintenance of order over attempting to preserve the police vehicles. In the end, the burning of the vehicles was the responsibility of the persona) who illegally set them ablaze.

I partly agree with Finding No. 35 that, in the totality of the circumstances, it would have been reasonable for the RCMP to have had a contingency plan providing for the possibility of a large number of belligerent protesters on Route 134.

I acknowledge that the operational plan operation does not address the possibility of a significant increase in the number of belligerent protesters on Route 134, once word of the operation to take down the campsite was underway. That being said, a review of the relevant material indicates that Superintendent Maillet was very much alive to the possibility of a large number of belligerent protesters on Route 134, and, given the resources at his disposal, I find it is reasonable to conclude that he did not feel the need to make specific provisions for that eventuality in the operational plan. Indeed, Superintendent Maillet had a number of Quick Response Teams that could be deployed to support tactical team members when the need arose and tactical troops from "J", "H", and "C" Divisions were being brought in to deal with the increase in protesters expected when the operation began. Therefore, Superintendent Maillet had 200 members at his disposal for the operation and he did not need more resources. In my view, Superintendent Maillet, and presumably most other members, were very much aware of the possibility of an increase of the number of belligerent protesters on Route 134 once the operation began.

Therefore, while it would have been reasonable for the Operational Plan to address the possibility of a large number of belligerent protesters on Route 134, I find that the absence of such a provision was not unreasonable and in all likelihood would not have changed how the RCMP handled the protesters' response to the dismantling of the campsite on Route 134.

I partly agree with the Finding No. 36 that the decision not to inform the schools about the imminent operation was reasonable, although it would have been prudent for the Tactical Operational Plan to have been modified to ensure that children were able to get to school prior to the operation commencing. While I agree with the Commission's conclusion that Superintendent Maillet's decision not to inform the school authorities of the impending operation was reasonable, I find that there is insufficient evidence to conclude that the operational plan could have been modified in such a way as to allow the children to attend school and at the same time to prevent word of the impending operation from reaching the protesters.

It is clear that Superintendent Maillet had to balance the inconvenience to the children and school staff with the need to carry out the operation in a manner that minimized risk to the public, the protesters, and the members. In my view, public and police safety, which required secrecy with respect to the timing of the operation, took precedence over any inconvenience to the school children, teachers, and staff. I also note that the Commission investigators did not specifically broach the issue of modifying the operational plan with

Superintendent Maillet. As a result, I do not have any evidence with respect to how the operational plan could have been modified, if at all, to accommodate the school children's need to get to school, while maintaining secrecy of the impending operation.

I agree with Finding No. 37 that there is no evidence to support the claim that agents provocateurs were used by the RCMP on October 17, 2013.

I agree with the Finding No. 38 that there is no evidence that non-RCMP members were used during the operation on October 17, 2013.

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

Kindest regards,

Brenda Lucki
Commissioner