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COMMISSION FOR PUBLIC COMPLAINTS AGAINST THE RCMP

**REPORT FOLLOWING A PUBLIC INTEREST INVESTIGATION INTO AN INCIDENT
OCCURRING IN THE KAMLOOPS, BRITISH COLUMBIA, CELLS**

***Royal Canadian Mounted Police Act
Subsections 45.37(1) and 45.43(1)***

Complainant

Elizabeth Fry Society of Greater
Vancouver

File No.: PC-2010-3263

22 MAR. 2012

Canada

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INTRODUCTION

In the early morning hours of August 18, 2010, two women¹ were separately arrested by members of the Kamloops RCMP Detachment in British Columbia. Both women were obviously intoxicated. The women were lodged together in the Detachment's cell block, in the cell colloquially known as the drunk tank.

Shortly after the women were lodged in the cell, they engaged in sexual activity. The cell was equipped with closed-circuit video equipment (CCVE), and the women were visible on the television monitors in the cell block guardroom. Their activity was noted by four RCMP members and two guards who were municipal employees, none of whom intervened. The women were released later that day.

The Officer in Charge of the Kamloops Detachment learned of the incident on August 23, 2010. An investigation was immediately commenced into the incident and the members involved were suspended from duty. The investigation was led by a member of the Kamloops Detachment Serious Crime Unit. A Report to Crown Counsel was submitted on October 13, 2010, and charges of breach of trust by a public officer were approved by Crown counsel on May 13, 2011, against three of the four RCMP members and one of the two municipal employees involved.

The Commission for Public Complaints Against the RCMP (Commission) received a complaint related to the incident from the Elizabeth Fry Society of Greater Vancouver. Given the complaint and the expressions of public concern related to the incident, in particular the manner it was dealt with by the RCMP, the Commission was satisfied that there were reasonable grounds to investigate the circumstances surrounding the incident. The Interim Chair of the Commission appointed an independent civilian investigator to conduct the Commission's public interest investigation.

COMPLAINT AND PUBLIC INTEREST INVESTIGATION

The Commission received the complaint from the Elizabeth Fry Society of Greater Vancouver (Society) on September 20, 2010. The Society stated in its complaint that, based upon what had been reported in the media regarding the incident in the Kamloops Detachment: "Senior Staff failed to manage personnel responsibly and were complacent in the care & custody of inmates" (**Appendix A**).

On September 23, 2010, the Commission notified the Minister of Public Safety and the RCMP Commissioner that it would conduct a public interest investigation into the Society's complaint, pursuant to the authority granted to it under subsection 45.43(1) of the *Royal Canadian Mounted Police Act* (RCMP Act).

¹ Given that this complaint arises from a third party and not the women involved, and that its focus is on the conduct of RCMP members involved, the Commission for Public Complaints Against the RCMP has chosen not to identify the women by name.

This report will examine the events and the actions of the RCMP members involved in both the initial incident in the Kamloops Detachment cells as well as the subsequent investigation of that incident.

COMMISSION'S REVIEW OF THE FACTS SURROUNDING THE EVENTS

It is important to note that the Commission is an agency of the federal government, distinct and independent from the RCMP. When conducting a public interest investigation, the Commission does not act as an advocate either for the complainant or for RCMP members. As Chair of the Commission, my role is to make findings after an objective examination of the information available to me and, where judged appropriate, to make recommendations that focus on steps that the RCMP can take to improve or correct conduct by RCMP members. In addition, one of the primary objectives of the Commission is to ensure the impartiality and integrity of investigations involving RCMP members.

The Commission does not make findings of criminal or civil liability. Rather, the Commission makes its findings and recommendations on a balance of probabilities, a lower standard than the criminal standard of beyond a reasonable doubt. Although some terms used in this report may concurrently be used in the criminal context, such language is not intended to include any of the requirements of the criminal law with respect to guilt, innocence or the standard of proof.

My findings, as detailed below, are based on a thorough examination of the following documents: the investigative report prepared by the Kamloops RCMP Serious Crime Unit and supporting documentation, including statements, notes, reports, and videos; relevant documentary materials as disclosed by the "E" Division, including memoranda, e-mails and notes of RCMP members whose involvement was other than as provided in the investigative materials.

I have also relied in large part on the independent investigation conducted by the Commission's own investigator, which included a number of interviews related to the issue of the RCMP's decision not to appoint an independent agency to conduct the investigation. I wish to acknowledge that the RCMP's "E" Division provided complete cooperation to the Commission throughout the public interest investigation process. In addition, the RCMP provided the Commission with access to all materials contained in the original investigative file and all materials identified during the public interest investigation.²

A summary of my findings and recommendations is attached at **Appendix B**. My findings and recommendations, with a commensurate explanation for each, are set out in the body of this report. A synopsis of the key RCMP and municipal personnel

² This report has been prepared in reliance on the RCMP's assurance that all relevant documentation has been disclosed to the Commission.

involved in the incident and their roles is found at **Appendix C** to this report. In addition, a condensed timeline of events is attached at **Appendix D**.

ALLEGATION: The RCMP neglected its duties and failed to properly supervise personnel in relation to a cell block incident in Kamloops, British Columbia, on or about August 18, 2010.

Arrest and detention of Ms. X

On August 18, 2010, at approximately 1:17 a.m., the Kamloops RCMP was called by a woman to remove her adult daughter, Ms. X, from her (the mother's) residence. Ms. X was intoxicated and causing problems at the residence. Constables Carla Peters, Steve Zaharia and Bryce Fieghen attended the residence and eventually arrested Ms. X for causing a disturbance and being drunk in a public place.

Ms. X was transported to the Kamloops Detachment and lodged in the drunk tank at approximately 1:34 a.m. Ms. X was uncooperative, and Constable Peters escorted her through the cell block to her cell with assistance from Constables Fieghen and Evan Elgee and Corporal Rick Brown. Also present in the cell block were the guards, municipal employees Dave Clark and Dave Thompkins. Due to the level of Ms. X's intoxication and lack of cooperation, she was escorted straight to her cell and bypassed the normal booking-in process at the guardroom desk.

The RCMP's Prisoner Report (Form C-13) in respect of Ms. X noted in the section titled "Medication required, unusual characteristics, distinguishing marks, etc." the following: "2010-04-20 Self Proclaimed HIV positive." According to Constable Peters, this was auto-filled,³ and also noted by one of the guards. Constable Peters stated that the other persons who helped lodge Ms. X were present when this was said. Constable Peters subsequently identified Mr. Clark as the guard who commented on Ms. X's HIV status. Although Mr. Clark at first stated that he was aware of the HIV status at the time of booking in, he then stated that he did not know about it until the next day and that he had not mentioned it to anyone.

Under the "Prisoner Screening" section of the Prisoner Report, Constable Peters noted that Ms. X was impaired by liquor, had an odour of liquor on her breath, was fumbling, was sagging and falling, her speech was confused and slurred, her state of mind was depressed and angry and her consciousness was confused.

Arrest and detention of Ms. Y

At approximately 2:30 a.m. Constables Steve Leadbeater and Kelly Butler responded to a complaint of assault at a residence in Kamloops. Upon arriving at the residence,

³ Meaning that the relevant entry was already complete, as the computer database field was pre-populated with information based on her record.

Constables Leadbeater and Butler observed Ms. Y at the back of the residence banging on the downstairs door, asking for her purse.

Constables Leadbeater and Butler determined that Ms. Y had been drinking at the residence along with other occupants. She was then involved in a physical altercation between her boyfriend and another male. The male stated that he had been beat up by Ms. Y after he had started to fight with Ms. Y's boyfriend. According to Ms. Y, the male had hit her on her hand with a baton.

Constable Leadbeater described the situation as "a bunch of intoxicated people where there's allegations flying back and forth but none of them were really founded at that point." Constable Butler noted in the Police Record Information Management Environment (PRIME)⁴ file that the male said that Ms. Y "attacked" him but "did not want anything done" and he had just "fallen down the stairs." Constable Butler clarified in her statement that the male did not want to admit he had been beaten up by a female. No one was arrested and no charges were laid in regard to the altercation.

Constables Leadbeater and Butler requested that Ms. Y leave the residence. Ms. Y took her bicycle and walked away. After Constables Leadbeater and Butler left the scene, Constable Leadbeater observed someone near the residence. He returned to the residence and observed Ms. Y near the front of the house. Ms. Y attempted to run and hide by some bushes. Constable Leadbeater arrested Ms. Y for trespass at night and causing a disturbance. Constable Butler re-attended the residence and searched Ms. Y after which Constable Leadbeater transported Ms. Y to the Detachment.

Constable Leadbeater lodged Ms. Y in the drunk tank with Ms. X at approximately 3:23 a.m. On the Prisoner Report, Constable Leadbeater recorded that Ms. Y had been arrested for causing a disturbance and that she should be held until she could care for herself. Under the conditions of release, Constable Leadbeater wrote "RWS," commonly understood to refer to "release when sober." Under the "Prisoner Screening" section, Constable Leadbeater noted that Ms. Y was impaired by liquor, had an odour of liquor on her breath, was fumbling, her balance was fair, her speech was confused and slurred, her state of mind was placid and her consciousness was alert.

Ms. Y was fully cooperative. Constable Leadbeater had asked the guard if it would be appropriate to place Ms. Y in the same cell with Ms. X, because he had heard Ms. X screaming on the radio when she was arrested by Constable Peters. According to Constable Leadbeater, the guard told him that Ms. X had calmed down, and indicated that there was no other cell to use. Constable Leadbeater checked the monitor in the guardroom prior to leaving and confirmed that nothing was occurring between Ms. Y and Ms. X.

⁴ An electronic police database used by police officers in British Columbia.

Activities in the RCMP cell block

The drunk tank is equipped with one camera to monitor the persons in the cell. The camera is linked to a monitor in the guardroom. The guardroom is linked to various other cameras in the cell block. The guardroom has a large monitor, which is capable of displaying the image(s) from one or more cameras.

It is apparent from the video recording of the cell block that approximately 20 minutes after Ms. Y was placed in the cell with Ms. X, they started to engage in intimate contact, including kissing and touching each other. At approximately 4:05 a.m., Ms. Y and Ms. X started to engage in more explicit sexual activity, including removing their pants, performing cunnilingus on each other, and engaging in digital vaginal penetration. This continued until approximately 4:15 a.m., when Ms. X and Ms. Y disengaged and replaced their clothing.

Ms. X and Ms. Y continued to lie together on the floor until approximately 4:17 a.m., at which time they got up and washed their faces at the sink. They lay back down and continued to talk, kiss, hug and touch each other until they fell asleep several minutes later. There was no further sexual activity between Ms. X and Ms. Y. Both Ms. X and Ms. Y were released the following morning at approximately 10:54 a.m. They shared a taxi and went their separate ways.

There were a number of persons present at different points during the time that Ms. X and Ms. Y engaged in sexual activities. At the start there were only two guards in the guardroom, Mr. Thompkins and Mr. Kevin Brumm, who had relieved Mr. Clark at approximately 3:30 a.m. Although Ms. X and Ms. Y started to engage in intimate activity at approximately 3:43 a.m., neither guard did anything to stop the activity, and the sexual activity became more explicit.

Mr. Brumm noted in the guard log book at 3:40 a.m., 3:57 a.m. and 4:17 a.m. that the cells were "checked" and "secure." Mr. Brumm did not make any notations concerning the activities of Ms. X and Ms. Y but in a statement to investigators, he acknowledged that he should have. Mr. Brumm stated that at one point (when the two women still had their clothes on) he looked into the cell and observed two women "cuddling on the floor" with their arms and legs around each other. He explained that he banged on the door and told them to stop.

Mr. Brumm stated that Corporal Brown came into the guardroom and asked if the women were fisting. According to Mr. Brumm, he stated that they needed to separate the women but Mr. Thompkins told him that there were no other cells available. Corporal Brown said to wait and see and words to the effect that no one was being hurt. Mr. Brumm explained that Corporal Brown clicked the video from the small screen to the large screen, and at one point after Corporal Brown left and then returned to the guardroom, there were five people in the guardroom watching the video monitor.

Mr. Brumm confirmed that in addition to himself, Mr. Thompkins and Corporal Brown, watch clerk Richard Beveridge and two to three other RCMP members were present watching the monitor. According to Mr. Brumm, the other persons present started to leave when "things" started to "slow down" on the video. Mr. Brumm stated that he did not hear any mention of HIV.

Mr. Thompkins was the senior guard on duty at the time the sexual activities occurred. Mr. Thompkins contacted Mr. Beveridge by telephone and told him: "You gotta see this." Corporal Brown was already in the guardroom at the time. Mr. Thompkins told two municipal employees about the incident later in the shift.⁵ Mr. Thompkins declined to provide a statement.

Mr. Beveridge did provide a statement to investigators and confirmed that he was contacted by Mr. Thompkins to come to the guardroom but he did not know why. Mr. Beveridge explained that he did not know if he would be needed to physically assist with a confrontation, so he asked Constable Elgee to come with him. They both attended the guardroom and when he asked what was going on, someone pointed at the video monitor showing the two women in the cell. Mr. Beveridge confirmed that Corporal Brown, Mr. Thompkins and another guard were in the guardroom when he got there.

Mr. Beveridge stated that Constables Zaharia and Fieghen also came to the guardroom while he was there. Corporal Brown and Constables Zaharia, Elgee and Fieghen declined to provide statements to RCMP investigators.⁶ Constable Fieghen did subsequently provide a prepared statement to the RCMP's Code of Conduct investigator (after the Crown approved charges against the three other members but not him). Constable Fieghen stated that he was returning to the general duty area of the Detachment after a coffee break when he was approached by Corporal Brown in the stairwell and asked to come to the cell block area.

Constable Fieghen stated that he did not know why Corporal Brown asked him to come to the cell block but he followed him to the guardroom where Constable Elgee, Constable Zaharia and a guard were present. Constable Fieghen stated that Corporal Brown directed his attention to the two women who had been engaging in sexual activity and that Corporal Brown appeared to be in "awe or disbelief laughing" about it. According to Constable Fieghen, the women were "near naked" but appeared to be "moving very little" at this time. Constable Fieghen stated that he was "disturbed" by what he had seen and he left after only being in the room for approximately one minute.

⁵ Both individuals confirmed that they did not view the CCVE footage. One of the individuals stated that Mr. Beveridge told him that there were "a bunch of people coming down to watch it" but he did not say who they were.

⁶ The Commission's investigator also requested statements from the members but was advised by their legal counsel that they would not provide statements.

The CCVE video footage from the Kamloops Detachment cell block recorded not only the two women but also the coming and going of persons to and from the guardroom. There is no CCVE camera angle that covers the interior of the guardroom. Accordingly, there is no footage of the persons in the guardroom actually watching the monitor when the sexual activities occurred. The CCVE footage from the hallway outside the guardroom shows the following:

- Corporal Brown enters the cell block area and guardroom at 04:07:58 after entering the hallway from the secure bay. Corporal Brown runs out of the guardroom at 04:13:40 and returns with Constable Fieghen at 04:13:58. Corporal Brown leaves the cell block area at 04:15:08.
- Mr. Beveridge enters the cell block area and guardroom at 04:10:00. Mr. Beveridge leaves the guardroom and exits the cell block at 04:15:31.
- Mr. Thompkins leaves the guardroom at 04:09:50 and returns at 04:10:12.
- Constable Elgee enters the cell block area and guardroom at 04:10:26 and leaves the cell block area at 04:15:31.
- Constable Zaharia enters the cell block area and stands at the guardroom door at 04:10:37. He remains at the doorway looking into the guardroom and at 04:12:20 he throws his head (appearing to be laughing), does a circle in the hallway and then goes back into the doorway. Constable Zaharia's head goes back and he appears to be laughing at approximately 04:14:53, and he leaves the cell block area at 04:15:31.
- Constable Fieghen enters the cell block area with Corporal Brown and enters the guardroom at 04:13:58. Constable Fieghen exits from the guardroom but then stands at the doorway looking into the office at 04:15:08. Constable Fieghen leaves the doorway and goes into the remand room at 04:15:25 and then leaves the cell block area, following Constables Zaharia and Elgee at 04:15:31.

From the above, it is clear that the four RCMP members were all present in the guardroom or at the doorway looking into the guardroom sometime during the approximately ten-minute period while the two women were engaged in explicit sexual activities. Mr. Thompkins and Mr. Brumm were present for essentially the entire time, Corporal Brown was present for approximately seven minutes, Mr. Beveridge was present for approximately five-and-a-half minutes, Constable Elgee was present for approximately five minutes, Constable Zaharia was present for approximately five minutes and Constable Fieghen was present for approximately one-and-a-half minutes.

Members' response to cell block activities

The Commission only has jurisdiction to review the conduct of RCMP members and not municipal employees. Accordingly, only the conduct of the four RCMP members was addressed in the public interest investigation.

The RCMP has a duty of care to persons who are in its custody. The RCMP's national operational policy provides that "[t]he RCMP is responsible for the well-being and protection of persons in its custody, including release to a responsible individual or to take precautions that ensure the person is not released into an adverse environment."⁷ The policy requires that prisoners be observed or checked frequently, and that the prisoners' activities be recorded in the prisoner log record book.⁸

The policy further provides the following in circumstances where a prisoner is known to have a communicable disease: "When there is a demonstrated or reasonably foreseeable threat to the health and safety of others," the prisoner may be segregated but the reasons for segregation should be explained and documented in the member's notebook and on the investigative file.⁹ The policy directs that unless this criterion is met, the prisoner should not be segregated.¹⁰

Ms. X was known to be "self-proclaimed" HIV positive. However, the precise status of Ms. X's HIV at the time of her incarceration bears little relevance to the fact that four RCMP members watched two intoxicated prisoners, one of them heavily intoxicated, engage in explicit sexual activities in the RCMP cell block.

Sexual contact, particularly when unprotected, may carry risks from a health and safety perspective. The policy direction, reproduced above, provides that the RCMP bears responsibility for the well-being and protection of those in its custody. Based on the above policy direction, it would appear that members have a duty to limit physical contact in cells to the extent possible in an effort to limit risks to which people in police custody are exposed, even more so in cases where their judgement is known to be impaired.

The limitation of risk is acknowledged in other relevant policies relating to incarcerated persons. The Correctional Service of Canada, responsible for federal penitentiaries, concentrates on harm reduction and the management of infectious diseases as opposed to sexual activity itself. Testing of inmates is conducted, as are education and training programs aimed at encouraging use of harm reduction methods, such as condoms, dental dams and bleach.¹¹ While such measures are appropriate for longer-term custodial arrangements, they would not be practicable in temporary holding

⁷ RCMP *Operational Manual*, chap. 19.3. – Guarding Prisoners/Personal Effects, s. 1.2.

⁸ RCMP *Operational Manual*, chap. 19.3. – Guarding Prisoners/Personal Effects, ss. 5.1 and 5.2.

⁹ RCMP *Operational Manual*, chap. 19.3. – Guarding Prisoners/Personal Effects, s. 6.2.

¹⁰ RCMP *Operational Manual*, chap. 19.3. – Guarding Prisoners/Personal Effects, s. 6.3.

¹¹ Correctional Service Canada, Commissioner's Directive No. 821, "Management of Infectious Diseases" (December 23, 2009).

cells. Nevertheless, the reasons for such policies can reasonably be applied to short-term custody and reflected in the relevant RCMP policy.

None of the members who witnessed the activity took any action to interrupt the physical contact, which was certainly more than incidental, or to separate the prisoners. In light of the above, I find that it was unreasonable for Corporal Brown and Constables Elgee, Zaharia and Fieghen to have permitted the contact between Ms. X and Ms. Y to continue. I decline to make a specific recommendation in respect of this finding, given the ongoing criminal process.

FINDING NO. 1: It was unreasonable for Corporal Brown and Constables Elgee, Zaharia and Fieghen to have permitted the physical contact between Ms. X and Ms. Y to continue.

The possibility of harm to detainees notwithstanding, prisoners also have some expectation of privacy, albeit a greatly reduced one. RCMP policy regarding the monitoring of prisoners with CCVE provides:

5.4.2. Limitations of space and guard personnel will exist in some locations, necessitating opposite gender monitoring of prisoners, but, where possible and practical, reasonable effort should be made to ensure that prisoner modesty is preserved. Where CCVE is employed, it should be recorded.

5.4.3. If CCVE is used, the following will apply:

5.4.3.1. The CCVE should, where practicable, be monitored by a guard of the same sex as the prisoner.

5.4.3.2. The CCVE video monitoring screen should be in a location where only the guard can observe the screen.¹²

The policy direction, while acknowledging that the monitoring of prisoners is necessary, adequately circumscribes activity best termed voyeuristic. While there is no indication that the monitor was improperly positioned—clearly, members had to enter the guardroom to view the monitor—there is equally no indication that the spirit of the policy was respected, in that the members viewing the monitor were not, to all appearances, doing so for the purpose of ensuring the security of the prisoners, but rather to observe the activity taking place. This voyeurism not only offended the spirit of the CCVE policy, but was inconsistent with the RCMP's core values. In this regard, I find that the members' conduct in this instance demonstrated a lack of professionalism and respect. These lapses were not merely personal failures but had the potential of damaging the reputation of the RCMP both locally and nationally. I decline to make a specific recommendation in respect of this finding, given the ongoing criminal process.

¹² RCMP *Operational Manual*, chap. 19.3. – Guarding Prisoners/Personal Effects, s. 5.

FINDING NO. 2: The members' conduct in this instance was unreasonable in that it demonstrated a lack of professionalism and respect.

I would also emphasize that the senior member present, Corporal Brown, demonstrated a marked lack of appropriate leadership. As the Commission has previously stated, while guards are responsible for prisoner care, members on duty and specifically the senior member on duty are ultimately accountable for both and for ensuring that relevant guidelines, directives and policies are complied with. In my view, having found that it was unreasonable for the subject members to have permitted the physical contact between the women to continue, it was equally unreasonable for Corporal Brown not only to have failed to intervene but to have instigated and/or encouraged the lack of intervention and voyeuristic behaviour to continue. Accordingly, I also recommend that Corporal Brown receive operational guidance concerning the importance of appropriate leadership and supervision.

RECOMMENDATION NO. 1: That Corporal Brown receive operational guidance concerning the importance of appropriate leadership and supervision.

RCMP's initial response to the incident

Constable Peters stated that she first learned of the incident at the end of the shift when she heard Constable Elgee talking about it with Constables Fieghen and Zaharia. Constable Peters heard of explicit sexual activities between the women.

Constable Butler was also working in the general duty area at the end of the shift. She stated that she heard Constable Elgee talking about the explicit sexual activities that had occurred. Constable Butler stated that she told Constable Elgee that it was "not even funny" and that it was "totally inappropriate." Constable Butler commented that she hoped that they had been separated, but Constable Elgee replied that he did not know, and there was no further conversation about it.

Constable Butler went on days off and returned to work on August 22, 2010, when she heard other RCMP members talking about the incident. Constable Butler decided to report the incident to her supervisor, Corporal Brown, unaware that Corporal Brown had been involved in the incident. Constable Butler sent Corporal Brown an e-mail, expressing her concerns about the incident and that it needed to be looked into to "verify whether or not it did occur."¹³

Constable Butler subsequently called Corporal Brown by telephone on an unrelated matter later that same day and asked if he had read the e-mail. Corporal Brown confirmed that he had and asked Constable Butler if she was joking, and he explained

¹³ Constable Butler copied Staff Sergeant Wes Waters, the Administration Non-Commissioned Officer, with the e-mail but received no response from him because he was on leave.

to her that he had been involved and there would likely be an internal investigation.¹⁴ Corporal Brown told Constable Butler that he was not aware that one of the women was HIV positive and that in “retrospect” it should not have happened but the women “basically were done by the time [they] looked.”

Corporal Brown’s interpretation that the sexual activities were essentially over by the time the members viewed the two women on the monitors is not consistent with the CCVE recordings. These recordings reveal that Corporal Brown and Constables Elgee and Zaharia were in the guardroom during five to seven minutes of the sexual activities shown on the monitor.

Corporal Brown went to see Staff Sergeant Garry Kerr, the Non-Commissioned Officer (NCO) in charge of the Kamloops Serious Crime Unit, the following day (August 23, 2010) to discuss the incident and the e-mail from Constable Butler. Staff Sergeant Kerr explained that Corporal Brown had approached him as a friend because he needed to talk to someone. According to Staff Sergeant Kerr, Corporal Brown told him that the women had engaged in sexual contact while one of them was known to be “self proclaimed HIV” and that he had done nothing to intervene. Staff Sergeant Kerr understood from Corporal Brown that the sexual contact involved “kissing and touching.”

Staff Sergeant Kerr told Corporal Brown that he should speak to Inspector Yves Lacasse,¹⁵ the Officer in Charge (OIC) of the Kamloops Detachment, as soon as possible. Staff Sergeant Kerr contacted Inspector Lacasse and arranged to meet him along with Corporal Brown. A short time later, Staff Sergeant Kerr met with Inspector Lacasse and informed him of the details of what Corporal Brown had told him. Corporal Brown then joined the meeting and spoke to Inspector Lacasse.

According to Inspector Lacasse, Corporal Brown told him that he had watched the prisoners engage in sexual activities for a “couple” of minutes and later learned from Constable Butler’s e-mail that one of them was HIV positive. Corporal Brown reported to Inspector Lacasse that the other RCMP members who were present included Constables Fieghen, Elgee and Zaharia. Inspector Lacasse recorded in a Continuation Report documenting the conversation that he was “led to believe that it was fairly minor.”

Inspector Lacasse then informed Corporal Duncan Hewitt of the Kamloops Detachment Professional Standards Unit that he wanted the members investigated immediately and that he was ordering a Code of Conduct investigation. Inspector Lacasse informed Superintendent Steve Lee, Southeast District Operations Officer, of the incident and forwarded a briefing note to the “E” Division headquarters.

¹⁴ There was some discussion about re-wording the e-mail to focus more on the issue of lodging infectious prisoners but there is no indication that further consideration was given to doing this.

¹⁵ Inspector Lacasse has since been promoted to Superintendent.

On August 24, 2010, Corporal Hewitt reviewed the videotapes to determine what activities had occurred between the women. Corporal Hewitt informed Inspector Lacasse of his findings. According to Inspector Lacasse, although it was originally believed that the “sexual acts were limited to digital penetration,” after Corporal Hewitt reviewed the video, it was determined that the “acts go well beyond that” and “included oral sex, kissing and what appeared to be fisting.” Later that same day Inspector Lacasse notified each of the members that he had ordered a Code of Conduct and parallel statutory investigation.

On August 25, 2010, Assistant Commissioner Al Macintyre, the acting Commanding Officer of “E” Division, made the decision to suspend the members. Later that same day Inspector Lacasse served Constable Fieghen, Constable Elgee and Corporal Brown with the notices of suspension. Constable Zaharia was on leave and was not served with the notice of suspension until September 10, 2010. The members remain suspended pending the outcome of the criminal charges and the internal discipline matters.

It is clear from this chronology that Inspector Lacasse and RCMP “E” Division management responded in a timely and appropriate manner to the allegations.

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| FINDING NO. 3: Inspector Lacasse and RCMP “E” Division management responded in a timely and appropriate manner to the allegations. |
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The RCMP’s External Investigation or Review Policy

Overview of the RCMP’s *External Investigation or Review Policy*

The suitability of the RCMP to investigate itself in criminal matters has been discussed by the Commission to varying degrees in its reports relating to the police-involved shooting of Ian Bush, the police-involved shooting of Kevin St. Arnaud, the death of Robert Dziekanski and in its report *Police Investigating Police*. In February 2010 the RCMP released its policy titled *RCMP External Investigation or Review* directing that certain incidents involving RCMP members should not be investigated by the RCMP.

The policy intent is outlined as follows:

The intent of this policy is to ensure fair, effective, thorough and impartial investigations of RCMP employees through a combination of independent external investigation, observation and review. The RCMP would prefer to never be called upon to conduct investigations of RCMP members or employees but there are not currently regimes or independent agencies in place in all jurisdictions to conduct such investigations. This policy will serve as an interim measure while the RCMP continues to work with federal, provincial, territorial and municipal partners within existing mandates and legislative frameworks to provide to the greatest extent possible for independent investigation, observation or review, and to work in support of new legislative and other initiatives to enhance this important aspect of police accountability.

The RCMP's *External Investigation or Review Policy* states as follows:

2.2 Where there is a provincially or federally established regime in place for independent external investigations of RCMP conduct, the RCMP will refer all matters that meet the established criteria of that provincially or federally established regime to the appropriate authority to conduct investigations.

There is no such regime currently established in British Columbia, although in May 2011 the Province of British Columbia announced that it had introduced legislation to create a civilian-led Independent Investigations Office to investigate incidents involving BC police officers.¹⁶ The Director of that Office, Mr. Richard Rosenthal, was named in December 2011.

The policy further provides the following:

2.3 Where no such regime has been established, the RCMP will request an external law enforcement agency or other duly authorized investigative agency to conduct an investigation (independent external investigation) that the RCMP would otherwise conduct, wherever:

2.3.1. Where there is a serious injury or death of an individual that involves an RCMP employee, or

2.3.2. Where it appears that an employee of the RCMP may have contravened a provision of the *Criminal Code* or other enactment and the matter is of a serious or sensitive nature. [emphasis added]

The policy specifically addresses issues related to the availability of external resources to conduct an investigation, providing that if there is a "lack of available external investigative resources," another RCMP division will conduct the investigation. The policy further provides that if an investigation by another division is not feasible or appropriate then the division where the incident occurred will conduct the investigation, but only as a last resort. In all cases where the RCMP conducts the investigation, an independent third-party observer will be requested to assess the impartiality of the investigation. An independent third-party observer may also be requested where an independent external investigation is conducted.

In those circumstances where the RCMP conducts an investigation under the *External Investigation or Review Policy*, an independent review will be requested from an "external law enforcement agency or a federally, provincially or territorially established investigative agency (independent external review) to assess the adequacy of the investigation."

¹⁶ See <http://www.newsroom.gov.bc.ca/2011/05/civilian-office-to-investigate-serious-police-incidents.html>.

All RCMP investigators conducting an investigation under the RCMP's *External Investigation or Review Policy* are screened for any actual or perceived conflict of interest using established criteria. The criteria were developed as part of the Independent Observer Program, cooperatively adopted and undertaken in British Columbia by the Commission and "E" Division RCMP, and include factors designed to assess the investigator's investigative experience, relationship to the detachment where the investigation arose and relationship to the subject members.

Application of the *External Investigation or Review Policy*

Given the importance of this issue, the Commission conducted a further investigation to determine the factual context for the decision not to apply the *External Investigation or Review Policy* in this matter.

The Commission identified several RCMP members, in addition to Chief Superintendent Craig Callens,¹⁷ Inspector Lacasse and Superintendent Lee, to interview as part of its further investigation related to the RCMP's decision not to apply the *External Investigation or Review Policy*. The interviews were conducted in person where practical and, with the exception of Inspector Lacasse, all of the interviews were recorded.¹⁸

The decision not to request an external investigation in respect of the Kamloops cell block incident was made in the context of the second category of circumstances identified by the policy, i.e. "[w]here it appears that an employee of the RCMP may have contravened a provision of the *Criminal Code* or other enactment and the matter is of a serious or sensitive nature."

While Chief Superintendent Callens confirmed that the circumstances involved a possible contravention of at least an "other enactment," he did not believe that the circumstances were serious or sensitive.¹⁹ He reasoned that "E" Division is seized with Part IV (Code of Conduct) and Part VII (Public Complaint) matters under the RCMP Act "virtually every day" and one needs to take a "practical considered approach" when applying the *External Investigation or Review Policy*. He acknowledged that the circumstances were "salacious" and "sensational" but were not at the "serious and sensitive threshold" as he interpreted it.

Chief Superintendent Callens stated that the determination of whether or not circumstances are serious or sensitive is not a "science" and is more of an "art." He stated that each case must be considered on its own merits. Chief Superintendent Callens explained that the *External Investigation or Review Policy*,

¹⁷ Chief Superintendent Callens, then the Deputy Criminal Operations Officer for "E" Division, has since been appointed Deputy Commissioner and Commanding Officer of "E" Division.

¹⁸ Inspector Lacasse declined to be recorded on the basis that he may have to give evidence in court against the implicated subject members.

¹⁹ Chief Superintendent Callens stated that a contravention of provincial legislation as well of the RCMP Act would suffice.

which came into force in February 2010, “. . . required some maturing in terms of a clear understanding of where the serious or sensitive threshold was.”

Chief Superintendent Callens stated that he had in fact invoked the *External Investigation or Review Policy* in circumstances that were arguably less serious and sensitive but where there existed no independent evidence (whereas in this case there was independent witness and video evidence). The circumstances of the incident were not complex, and the facts of the incident were not in dispute. He opined that the quality of the evidence available affects public confidence and perception and should be taken into account when considering whether the circumstances are serious and sensitive.

Chief Superintendent Callens considered the various factors noted and decided not to apply the *External Investigation or Review Policy*. He noted that the RCMP investigated the matter “aggressively,” deployed various resources, and in a short period of time, had gathered the appropriate facts to make a decision concerning the members’ duty status (resulting in their suspension) and to forward a package to the Crown for charge assessment. The Crown prosecutor ultimately approved charges of breach of trust by a public officer against three of the four RCMP members involved.

The decision whether or not to apply the *External Investigation or Review Policy* is discretionary. The exercise of discretion inherently contemplates more than one reasonable outcome. The issue for the Commission, therefore, is not whether Chief Superintendent Callens made the correct decision, but whether his decision was reasonable in the circumstances.

Chief Superintendent Callens’ reasons for not applying the policy took into account several factors, such as the impact of the application of the policy on timeliness of the investigation and the availability of external resources, which are arguably irrelevant to a determination of whether a matter is serious or sensitive. Ultimately, Chief Superintendent Callens simply did not believe that the circumstances met the threshold for serious or sensitive, even though he believed that the circumstances were salacious and sensational. The Commission is satisfied that his interpretation was reasonable in the circumstances, given his stated rationale.

FINDING NO. 4: Chief Superintendent Callens’ interpretation that the Kamloops cell block incident did not meet the threshold of “serious or sensitive” was reasonable in the circumstances.

Notwithstanding my finding regarding the reasonableness of Chief Superintendent Callens’ exercise of discretion, it should be noted that most of the senior RCMP members involved in or aware of this incident believed that an external investigation should be conducted. The available information suggests that those opinions were based on differing interpretations of the “serious or sensitive” threshold, and were not consistently communicated to Chief Superintendent Callens. The issue of such documentation and communication is addressed in this report, below.

As the foregoing demonstrates, the lack of guidance in the *External Review or Investigation Policy* concerning what amounts to “serious or sensitive” may contribute to uncertainty and possible inconsistent application and interpretation of the policy. Although common sense will help inform a decision maker, the lack of guidance may broaden the circumstances that can be interpreted as not meeting the threshold, or could establish a threshold which is unrealistically low.

Providing additional guidance on how to interpret “serious or sensitive”²⁰ would help alleviate uncertainty and contribute to more consistent application of the policy. While the final decision remains within the realm of managerial responsibility and accountability, the organization bears some responsibility to its managers for ensuring that they are provided with an appropriate framework to both guide and articulate their decisions.

RECOMMENDATION NO. 2: That the RCMP consider amending the *External Investigation or Review Policy* to provide additional guidance on how to determine when circumstances are “serious or sensitive.”

Documentation of rationale

There was disagreement amongst the persons involved in the investigation, directly and indirectly, regarding the decision that the *External Investigation or Review Policy* did not apply. The evidence regarding this issue, gathered as part of the Commission’s further investigation, may be summarized as follows:

- Inspector Lacasse recommended to Superintendent Lee that an external investigation be conducted;
- Superintendent Lee recommended to Chief Superintendent Callens that an external investigation be conducted;²¹
- Sergeant Mike Bloxham and Sergeant Rick Kim, investigators from the “E” Division Serious Crime Unit assigned to assist with the investigation, recommended to Inspector Lacasse that an external investigation be conducted;
- Inspector Lacasse recalled Sergeants Bloxham and Kim raising the issue of an external investigation but he told them that Chief Superintendent Callens had already made his decision;
- Sergeant Blaine Hawkins with the “E” Division Office of Investigative Standards and Practice (OISP) based in Kamloops learned of the incident from Staff

²⁰ For example, the Alberta Serious Incident Response Team, subject to the similar threshold of “sensitive or serious,” suggested in its 2009 *Annual Report* that such files “could involve corrupt or criminal behaviour on the part of police or where the conduct of an officer may affect public confidence in policing.”

²¹ Superintendent Lee did not have any notes of his communication with Chief Superintendent Callens but did send Inspector Lacasse an e-mail confirming Chief Superintendent Callens’ decision.

Sergeant Garry Kerr and recommended to Sergeant Bob Page,²² the acting OIC of the OISP in the absence of Inspector Kevin McLeod, that an external investigation be conducted;

- Sergeant Page contacted Inspector McLeod, who agreed that an external investigation should be conducted;
- Sergeant Page recommended to Superintendent Russ Nash, the OIC of the "E" Division Major Crime Unit, and to the acting line officer for the OISP, Inspector Dennis Erickson, that an external investigation should be conducted;
- Staff Sergeant Kerr contacted Staff Sergeant Moe Tremblay, the NCO in charge of the Southeast District Major Crime Unit, who agreed that an external investigation should be conducted;
- Staff Sergeant Tremblay contacted Sergeant Laura Livingstone, the acting "E" Division Major Crime Unit Operations Officer, who agreed that an external investigation should be conducted;
- Sergeant Livingstone recommended to Superintendent Nash that an external investigation be conducted;
- Staff Sergeant Rob Parker, the NCO in Charge of the "E" Division Serious Crime Unit, recommended to Superintendent Nash that an external investigation be conducted;
- Superintendent Nash spoke to Chief Superintendent Callens on more than one occasion to advocate for an external investigation;²³ and
- Inspector Erickson spoke to Chief Superintendent Callens and told him of the OISP's position.²⁴

The information above is contrasted with that provided by Chief Superintendent Callens, which may be summarized as follows:

- he was not aware that Inspector Lacasse had initially recommended that an external investigation be conducted;²⁵
- he did not recall being contacted by Superintendent Lee concerning the recommendation for an external investigation;²⁶

²² Sergeant Page has since been promoted to Inspector and is now the Officer in Charge of the "E" Division OISP.

²³ Superintendent Nash was contacted by the CPC's investigator but he preferred not to be formally interviewed, unless it became necessary. The witnesses who spoke to Superintendent Nash, including Sergeants Page and Livingstone and Staff Sergeant Parker, all confirmed their belief that Superintendent Nash supported that an external investigation be conducted and advocated to Chief Superintendent Nash on more than one occasion for it.

²⁴ Inspector Erickson had notes, and recalled that the conversation took place in Chief Superintendent Callens' office.

²⁵ This information would have been conveyed through the chain of command, from Inspector Lacasse to Superintendent Lee, who would have communicated the recommendation to Chief Superintendent Callens.

²⁶ Chief Superintendent Callens stated that he did not have any notes relating to any conversation with Superintendent Lee. However, in an e-mail dated August 24, 2010, Superintendent Lee advised Inspector Lacasse: "Just got off the phone . . . Russ Nash and Craig Callens feel this does not meet the criteria for outside resources so feel you can take it on." While Superintendent Lee believed that he had

- he did not recall Superintendent Nash advocating for an external investigation but acknowledged that he may have, but not in a manner where Superintendent Nash articulated a belief that Chief Superintendent Callens was missing anything; and
- he did not recall being contacted by Inspector Erickson with the recommendation from OISP that an external investigation be conducted.²⁷

It is a concern that the information regarding what facts were conveyed to Chief Superintendent Callens is so disparate. This disparity demonstrates a breakdown in communication, a deficiency in proper note-taking or both. It is not necessary, however, for the Commission to make conclusive findings on each disparate point for the purposes of this review, given the earlier finding regarding the reasonableness of the decision that the *External Investigation or Review Policy* did not apply.

In addition, the reasons for Chief Superintendent Callens' decision were not documented to any degree that would support meaningful review, although he did provide full cooperation with the Commission's public interest investigation, including providing the rationale for his decisions to the Commission's investigator. Nonetheless, the decision to not apply the *External Investigation or Review Policy* can have a direct impact on public confidence and, therefore, the reasons should be readily discernible on the face of the available documentation.

The Commission considered a similar lack of decision-making documentation in the police-involved shooting of Mr. John Simon, involving decisions related to internal discipline. In its report in that instance, the Commission recommended that the RCMP consider developing policy relating to the proper documentation of decisions involving internal discipline.²⁸ Given the importance of the *External Investigation or Review Policy* and its effect on public confidence, the RCMP should also consider developing policy related to the proper documentation of decisions involving the *External Investigation or Review Policy*. While the RCMP's policy regarding notebooks applies in all situations, a specific procedure would assist managers, strengthen internal oversight of the proper application of the policy and enable the Commission to more effectively review the manager's conduct in exercising his or her decision-making responsibility.

communicated with Chief Superintendent Callens in some fashion, his e-mail suggests that he may have instead communicated with Superintendent Nash.

²⁷Chief Superintendent Callens did not have notes of any conversation with Inspector Erickson, but Inspector Erickson did note that he spoke to Chief Superintendent Callens on August 25, 2010.

²⁸ See the *Report Following a Chair-initiated Complaint and Public Interest Investigation into the RCMP Member-Involved Shooting Death of John Simon* at <http://www.Commission-cpp.gc.ca/prt/rep/pii/johnSimon/johnSimonR-eng.aspx> and the recommendation that "... the RCMP consider adopting into RCMP policy a formalized process involving division Internal Services to ensure timely notifications and to ensure the proper documentation of decisions during the consultative process of Part IV in order to preserve the decision making rationale involved." The RCMP Commissioner supported this recommendation, and had previously issued a bulletin in respect of such situations.

Chief Superintendent Callens has implemented positive changes to the documentation required as part of the "E" Division Sensitive Event Reporting process. Pursuant to a broadcast issued to "E" Division members in June 2011, managers must document their recommendations as to whether the *External Investigation or Review Policy* should be applied. Chief Superintendent Callens' initiative would be instructive in any policy relating to documentation of decisions involving the *External Investigation or Review Policy*.

RECOMMENDATION NO. 3: That the RCMP amend its *External Investigation or Review Policy* to reflect a requirement for consistent documentation of decisions pursuant to that policy.

The RCMP's criminal investigation

Impartiality of the investigative team

Staff Sergeant Kerr was initially identified as the lead investigator on the basis that he was the NCO in charge of the Kamloops Detachment Serious Crime Unit, and carried out the initial stages of the criminal investigation. However, he and the members of the "E" Division Serious Crime Unit discussed the fact that he was involved as a witness because he had received the initial disclosure from Corporal Brown, and he had discussed this issue with Inspector Lacasse on August 25, 2010. At that time, it was agreed that Staff Sergeant Kerr would be removed from the file. Sergeant Royce Roenspies, the second in command of the Kamloops Detachment Serious Crime Unit, was appointed the new lead investigator. Sergeant Roenspies had no involvement in the incident or investigation up to that point.

Sergeant Roenspies described himself as a "good friend" of one of the subject members, Corporal Brown. This type of relationship between a subject member and investigator raises a perception of bias, regardless of the existence of actual bias. Sergeant Roenspies filled out an impartiality questionnaire form, which he was not required to do, following the completion of the investigation. According to Sergeant Roenspies, the purpose for completing the form was to "cover" himself because the circumstances were a "mess." Sergeant Roenspies noted on the impartiality form that he considered Corporal Brown a "good friend" and for this reason anticipated that he would be accused of some level of bias. According to Sergeant Roenspies, he had raised his concerns with Inspector Lacasse and, to a lesser degree, with Chief Superintendent Callens.

Sergeant Roenspies stated that he had known Corporal Brown virtually his entire career and had picked him to work in the Kamloops Serious Crime Unit where he was his direct supervisor. Sergeant Roenspies had "absolutely no doubt" that he had told Inspector Lacasse about his relationship with Corporal Brown. He stated that it was a "continual theme" in the first few days. Staff Sergeant Kerr, Sergeant Roenspies' supervisor, and two of the "E" Division Serious Crime Unit investigators interviewed,

Sergeants Bloxham and Kim, all confirmed that Sergeant Roenspies raised his concerns with them.

Inspector Lacasse denied that Sergeant Roenspies raised any concerns with him about his relationship with Corporal Brown. When questioned about this further and the fact that Sergeant Roenspies was adamant that he had raised the issue with him, Inspector Lacasse acknowledged that Sergeant Roenspies may have raised the issue with him but not to such a degree that it was considered significant. Inspector Lacasse stated that he was not aware of the relationship between Sergeant Roenspies and Corporal Brown but did confirm that he was aware that Corporal Brown had worked with Sergeant Roenspies in the Serious Crime Unit. Inspector Lacasse explained that there were simply too many RCMP members under his command to be aware of all of the personal relationships between the members and differentiated between members who know each other socially, on a casual basis, and members who are in fact good friends.

Inspector Lacasse differentiated between members who socialize with each other on a casual basis and members who are in fact good friends. Regardless of Inspector Lacasse's understanding of the actual relationship between Sergeant Roenspies and Corporal Brown, Inspector Lacasse was aware of information that should have caused him to make further inquiries regarding their relationship. In particular, Inspector Lacasse was aware not only that they had worked in the same detachment but that they had also worked in the same unit where Sergeant Roenspies had supervised Corporal Brown. Given this context, had Inspector Lacasse made inquiries about their relationship, he would have been in a better position to fully brief Chief Superintendent Callens.

Chief Superintendent Callens was asked about the fact that Sergeant Roenspies had identified that he was a "good friend" of one of the subject members, Corporal Brown. Chief Superintendent Callens was not aware of this fact and stated that because he had not actually taken the investigation away from the Kamloops Detachment, the Officer in Charge of the Detachment, Inspector Lacasse, bore the responsibility of ensuring that the assigned investigator was free from any perception of bias. Chief Superintendent Callens confirmed that he asked Inspector Lacasse if he was comfortable leading the investigation. Chief Superintendent Callens indicated that he would not even have Sergeant Roenspies do a "routine Part VII or Part IV investigation" with respect to Corporal Brown if they were "good friends."²⁹ Chief Superintendent Callens confirmed that he would have ensured someone else do the investigation if he had known of this relationship.

The disparity of the versions of events recalled by the involved members, as outlined above, as well as Inspector Lacasse's lack of proper consideration of the apparent friendship between the assigned investigator(s) and one of the subject members, could contribute to a diminishment of public trust in the investigative process.

²⁹ Part VII of the RCMP Act deals with public complaints and Part IV deals with internal discipline matters.

Of equal importance, failing to consider personal relationships among members, particularly those within the same detachment, may subsequently impact on employee wellness and the working relationships among members, both of which are crucial to confidence, both of the public and of the members themselves, in the investigative process. To place members in such a position when it can easily be avoided is unnecessarily counterproductive.

FINDING NO. 5: The relationship between Sergeant Roenspies and Corporal Brown raised a perception of bias.

FINDING NO. 6: Inspector Lacasse had sufficient information to identify the perception of bias but failed to do so.

RECOMMENDATION NO. 4: That Inspector Lacasse receive operational guidance regarding the proper identification of issues involving the impartiality of RCMP member-involved investigations.

Adequacy of the investigation

Staff Sergeant Kerr, with some assistance from Corporal Hewitt, carried out the initial stages of the investigation, including seizing exhibits, viewing the CCVE footage of the women, attempting to confirm Ms. X's HIV status and speaking with both Ms. X and Ms. Y. Staff Sergeant Kerr also spoke with the "E" Division RCMP Legal Services and members of the "E" Division Serious Crime Unit³⁰ prior to Sergeant Roenspies taking over as lead investigator.

Sergeant Kim, Sergeant Bloxham and Corporal Robyn Waldron attended Kamloops on August 25, 2010, to assist Sergeant Roenspies with the investigation. The investigative team commenced interviewing witnesses and agreed that any warned statements, including interviews of RCMP members, would be obtained by the "E" Division Serious Crime Unit investigators and not Sergeant Roenspies, as he worked in the same detachment as the subject members.

The investigative team obtained approximately 34 witness statements and interviewed various RCMP members (involved in the arrests of the women, working at the time of the arrests and who may have talked to other members about the incident), provincial sheriffs (who attended the cell block later in the morning after the incident occurred), civilians (at the locations where the women were arrested, and a taxi driver who had contact with them after they were released), medical professionals (related to Ms. X's HIV status) and municipal employees.

The investigative team took various steps consistent with what would be expected for a major investigation, including: seeking judicial authorization to obtain Ms. X's medical

³⁰ The "E" Division Serious Crime Unit is a part of the "E" Division Major Crime Unit.

records; securing and reviewing CCVE footage, police file details (related to the arrests of both women), internal phone line recordings, detachment access pass data, internal e-mail data and police vehicle data; documenting their investigative steps in task action reports; and attaching copies of their personal notebooks to the investigative file.

Following the completion of the investigation, Chief Superintendent Callens requested that the Abbotsford Police Department conduct an independent external review of its investigation. The Abbotsford Police Department's review concluded that the RCMP investigation was thorough and that investigators conducted the investigation in accordance with Major Case Management principles. The review identified some minor issues for follow-up.³¹

The investigation was relatively straightforward and the vast majority of the investigation was completed within approximately 10 days. Accordingly, I am satisfied that the RCMP's investigation was adequate in the circumstances, all reasonable steps having been taken.

FINDING NO. 7: The RCMP's investigation of the incident was reasonable and all appropriate investigative steps appear to have been taken.

Timeliness of the investigation

The investigation proceeded quickly and the majority of witness statements were obtained on or before September 2, 2010, with a small number of statements taken after that date.³² The reasons for the statements taken after September 2, 2010, related primarily to follow-up investigation issues identified during earlier interviews. The investigative team attempted to obtain statements from the implicated RCMP members and municipal employees but, as noted above, the majority of implicated persons declined to provide statements.

A significant volume of information was obtained and assembled as part of the investigation. Sergeant Roenspies completed his Report to Crown Counsel on October 6, 2010, and hand-delivered it to the Attorney General's office in Victoria, British Columbia, on October 13, 2010, approximately seven and a half weeks after the incident first came to the attention of Inspector Lacasse.³³ Given the short period of time

³¹ Relating to member notebooks, timeline and profile linkage charts, whether or not the video showed who may have been close to the guard when HIV was mentioned and whether any offline CPIC or PRIME searches were conducted in regards to Ms. X.

³² A total of 34 witness statements were obtained and 6 statements were obtained after Sept 2, 2010, on September 7, 13, 14 and 22, 2010.

³³ On May 13, 2011, the Criminal Justice Branch of the Attorney General of British Columbia announced that it had approved charges of breach of trust by a public official against Corporal Brown, Constables Elgee and Zaharia and Mr. Thompkins, pursuant to section 122 of the *Criminal Code*. Charges were not approved against Constable Fieghen.

it took to complete the investigation as described above, it is clear that the RCMP's investigation of the incident occurred in a timely manner.

FINDING NO. 8: The RCMP's investigation of the incident occurred in a timely manner.

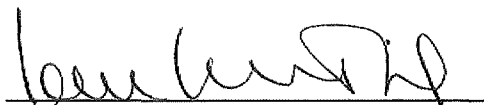
CONCLUSION

From the Commission's perspective, this incident is notable not so much as a result of the underlying conduct of the members in failing to stop sexual activity between persons detained in cells, such conduct being beyond dispute and amply recorded, but as a result of the RCMP's response to the incident. Specifically, RCMP management bore the responsibility of determining whether the conduct alleged met the "serious or sensitive" threshold mandated by the RCMP's recently implemented *External Investigation or Review Policy*. That determination having been made in the negative, RCMP management and the assigned investigators bore the onus of ensuring that the investigation itself was reasonably conducted, and that the assigned investigators were appropriately free of conflict.

The success of any investigation cannot be determined solely on the basis of whether or not criminal charges were laid and convictions obtained; public confidence risks being undermined regardless of a well-done and timely investigation and its criminal outcome, if the public does not trust the process itself. Transparency, brought about by consistent documentation and enhanced cohesion in decision-making, is an important element of fostering such trust.

The Commission found that the basis for the determination that the threshold was not met was reasonable, as was the ensuing RCMP investigation. Nonetheless, it also pointed out that the RCMP bears a responsibility to its members and to the public for ensuring both that its decision-makers are provided with appropriate guidelines for their decisions and all of the relevant information related thereto, and that those decisions are appropriately documented from the perspective of all relevant parties.

Pursuant to subsection 45.43(3) of the RCMP Act, I respectfully submit my Public Interest Investigation Report.


Ian McPhail, Q.C.
Interim Chair

March 22, 2012

APPENDIX A – THE COMPLAINT



#103 – 237 E. Columbia Street
New Westminster, B.C.
V3L 3W4 Canada

PHONE 604-520-1166
FAX 604-520-1169
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EMAIL info@elizabethfry.com
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September 15, 2010

Commission for Public Complaints against the RCMP
Western Region Office
7337-137 Street, Suite 102
Surrey, British Columbia V3W 1A4

To Whom it May Concern:

Re: Letter of Complaint

Please accept this letter of complaint regarding the criminal & internal code of conduct investigations regarding four RCMP officers and three civilian municipal staff at the Kamloops jail on August 18 2010.

Based upon the information reported in the newspapers we are concerned that the RCMP did fail to follow policy and procedures. Senior Staff failed to manage personnel responsibly and were complacent in the care & custody of inmates.

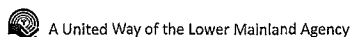
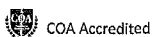
We strongly urge the investigation into these charges be done by an impartial outside party in order to ensure transparency.

Regards,

Shawn Bayes
Executive Director
Elizabeth Fry Society of Greater Vancouver

Delivered by Hand

| | |
|----------------|--------|
| Surrey Records | |
| SEARCHED | |
| INDEXED | LB |
| SEP 20 2010 | |
| INDEXED | 129318 |
| PROCESSED BY | rw |
| COMPLÉTE PAR | |



APPENDIX B – SUMMARY OF FINDINGS AND RECOMMENDATIONS

Findings

FINDING NO. 1: It was unreasonable for Corporal Brown and Constables Elgee, Zaharia and Fieghen to have permitted the physical contact between Ms. X and Ms. Y to continue.

FINDING NO. 2: The members' conduct in this instance was unreasonable in that it demonstrated a lack of professionalism and respect.

FINDING NO. 3: Inspector Lacasse and RCMP "E" Division management responded in a timely and appropriate manner to the allegations.

FINDING NO. 4: Chief Superintendent Callens' interpretation that the Kamloops cell block incident did not meet the threshold of "serious or sensitive" was reasonable in the circumstances.

FINDING NO. 5: The relationship between Sergeant Roenspies and Corporal Brown raised a perception of bias.

FINDING NO. 6: Inspector Lacasse had sufficient information to identify the perception of bias but failed to do so.

FINDING NO. 7: The RCMP's investigation of the incident was reasonable and all appropriate investigative steps appear to have been taken.

FINDING NO. 8: The RCMP's investigation of the incident occurred in a timely manner.

Recommendations

RECOMMENDATION NO. 1: That Corporal Brown receive operational guidance concerning the importance of appropriate leadership and supervision.

RECOMMENDATION NO. 2: That the RCMP consider amending the *External Investigation or Review Policy* to provide additional guidance on how to determine when circumstances are "serious or sensitive."

RECOMMENDATION NO. 3: That the RCMP amend its *External Investigation or Review Policy* to reflect a requirement to require consistent documentation of decisions pursuant to that policy.

RECOMMENDATION NO. 4: That Inspector Lacasse receive operational guidance regarding the proper identification of issues involving the impartiality of RCMP member-involved investigations.

APPENDIX C – KEY RCMP AND MUNICIPAL PERSONNEL

| Investigative Team | Posting | Role |
|--|--|---|
| Staff Sergeant Garry Kerr | Kamloops Detachment, NCO i/c Serious Crime Unit | Received initial disclosure, commenced initial investigation |
| Sergeant Royce Roenspies | Kamloops Detachment, 2IC Serious Crime Unit | Lead Investigator |
| Sergeant Richard Kim | “E” Division Serious Crime Unit | Investigator |
| Sergeant Mike Bloxham | “E” Division Serious Crime Unit | Investigator |
| Sergeant Robin Waldron | “E” Division Serious Crime Unit | File Coordinator |
| Corporal Duncan Hewitt | Kamloops Detachment, Professional Standards | Code of Conduct Investigator, RCMP’s Public Complaint Investigator/Liaison |
| RCMP Management | Posting | Role |
| Chief Superintendent Craig Callens | “E” Division, Deputy Criminal Operations Officer | Made decision not to use an independent agency to conduct the investigation |
| Inspector Yves Lacasse | Kamloops Detachment, Officer in Charge | Ordered statutory and Code of Conduct investigations |
| Superintendent Steve Lee | Southeast District Operations Officer | Inspector Lacasse’s Line Officer |
| Assistant Commissioner Al Macintyre | “E” Division Criminal Operations Officer | Ordered the suspension of the implicated RCMP members |

| Subject Members | Posting | Role |
|----------------------------|---------------------|---|
| Corporal Rick Brown | Kamloops Detachment | Watch Commander and observed two prisoners engaged in sexual activity without intervening |
| Constable Evan Elgee | Kamloops Detachment | Observed two prisoners engaged in sexual activity without intervening |
| Constable Steve Zaharia | Kamloops Detachment | Observed two prisoners engaged in sexual activity without intervening |
| Constable Bryce Fieghen | Kamloops Detachment | Observed two prisoners engaged in sexual activity without intervening |
| | | |
| Witness Members | Posting | Role |
| Constable Steve Leadbeater | Kamloops Detachment | Arrested and detained Ms. Y. |
| Constable Kelly Butler | Kamloops Detachment | Involved in arrest of Ms. Y; sent e-mail to Corporal Brown to report the incident so it could be investigated |
| Constable Carla Peters | Kamloops Detachment | Arrested and detained Ms. X |
| | | |
| Municipal Employees | Posting | Role |
| Mr. Dave Clark | Kamloops Detachment | Guard when two prisoners were lodged in cells |
| Mr. Dave Thompkins | Kamloops Detachment | Guard when two prisoners engaged in sexual activity |
| Mr. Kevin Brumm | Kamloops Detachment | Guard when two prisoners engaged in sexual activity |

Mr. Rick Beveridge

Kamloops Detachment

Watch Clerk when two
prisoners engaged in sexual
activity

APPENDIX D – CONDENSED TIMELINE

| <u>Date</u> | <u>Time</u> | <u>Activity</u> |
|-----------------|-------------|---|
| August 18, 2010 | 01:06 | A member of the public calls the police to report a loud party (where Ms. Y was in attendance). Constable Novakowski attends the residence and warns occupants to keep the noise down. |
| | 01:17 | An individual calls police to remove her daughter, Ms. X, from her residence because Ms. X is intoxicated and causing problems. Constables Peters, Zaharia and Fieghen attend the residence. Constable Peters arrests Ms. X for causing a disturbance and transports her to the Detachment. |
| | 01:30 | Constable Peters places Ms. X in the drunk tank. Constable Peters completes a Prisoner Report for Ms. X and notes the pre-filled notation about HIV. |
| | 02:38 | A member of the public reports an assault at the residence of the loud party. Constables Butler and Leadbeater attend the residence and ask Ms. Y to leave. Constable Leadbeater arrests Ms. Y when she returns to the residence, and transports her to the Detachment. |
| | 03:23 | Ms. Y is placed in the same cell as Ms. X. |
| | 03:43 | Ms. X and Ms. Y begin engaging in intimate acts. |
| | 04:06 | Ms. X and Ms. Y begin engaging in explicit sexual activity. |
| | 04:08 | Corporal Brown enters the guardroom. |
| | 04:10 | Mr. Beveridge enters the guardroom. |
| | 04:10 | Mr. Thompkins enters the guardroom. |
| | 04:10 | Constable Elgee enters the guardroom. |
| | 04:10 | Constable Zaharia goes to the doorway of the guardroom. |
| | 04:13 | Corporal Brown runs out of guardroom to the cell block door. |
| | 04:13 | Corporal Brown returns with Constable Fieghen; Constable Fieghen enters the guardroom while Corporal Brown stays at the entrance to the guardroom. |
| | 04:14 | Corporal Brown runs to the cell block door but then returns to the doorway of the guardroom. |
| | 04:15 | Corporal Brown leaves the cell block. |
| | 04:15 | Ms. X and Ms. Y finish engaging in intimate acts. |

04:15 Mr. Beveridge leaves the guardroom.

04:15 Constables Zaharia and Elgee leave the guardroom.

04:15 Constable Fieghen leaves the guardroom.

10:47 Ms. X and Ms. Y are removed from the cell.

10:54 Ms. X and Ms. Y leave the Detachment.

August 22, 2010 10:29 Constable Butler sends Corporal Brown an e-mail to report the incident so that it can be investigated.

Constable Butler telephones Corporal Brown and speaks to him about the incident.

August 23, 2010 11:50 Corporal Brown speaks to Staff Sergeant Kerr about the incident and provides him with a copy of the e-mail from Constable Butler.

12:19 Staff Sergeant Kerr advises Inspector Lacasse of the allegations.

12:23 Corporal Brown meets with Inspector Lacasse in presence of Staff Sergeant Kerr.

n/k Inspector Lacasse orders a Code of Conduct investigation.

13:01 Staff Sergeant Kerr and Corporal Hewitt attend the residence of Ms. X and determine that she is HIV positive.

14:14 Staff Sergeant Kerr and Corporal Hewitt attend the residence of Ms. Y but she is not home and they leave a message for her.

August 24, 2010 08:10 Staff Sergeant Kerr speaks with Ms. Y and asks to meet with her.

12:05 Inspector Lacasse meets with Corporal Brown and advises him of the Code of Conduct and statutory investigations; places Corporal Brown on administrative duty.

14:08 Staff Sergeant Kerr and Sergeant Roenspies attend Ms. Y's residence and advise her of the incident.

19:05 Inspector Lacasse meets with Constable Fieghen and advises him of the Code of Conduct and statutory investigations.

19:15 Inspector Lacasse meets with Constable Elgee and advises him of the Code of Conduct and statutory investigations.

August 25, 2010 Staff Sergeant Kerr discusses the case with "E" Division Serious Crime Unit and the need to engage independent body.

Staff Sergeant Kerr is removed from the case and the investigation is assigned to Sergeant Roenspies.

Sergeants Bloxham and Kim and Corporal Waldron travel to Kamloops to assist with the investigation.

11:40 Assistant Commissioner Macintyre (acting Appropriate Officer) makes the decision to suspend members.

13:25 Inspector Lacasse meets with Constable Fieghen and serves him with a suspension notice.

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| | 14:15 | Inspector Lacasse meets with Constable Elgee and serves him with a suspension notice. |
| | 14:25 | Inspector Lacasse meets with Corporal Brown and serves him with a suspension notice. |
| August 26, 2010, to September 2, 2010 | | The investigative team conducts the bulk of the investigation, including witness interviews. |
| September 10, 2010 | 08:30 | Inspector Lacasse meets with Constable Zaharia (who had been on leave) and serves him with suspension notice. |
| September 30, 2010 | | Sergeant Roenspies requests that the investigative team complete impartiality questionnaires. |
| October 6, 2010 | | Sergeant Roenspies completes the Report to Crown Counsel. |
| October 13, 2010 | | Sergeant Roenspies delivers his Report to Crown Counsel to the Criminal Justice Branch of the Attorney General of British Columbia. |
| May 13, 2011 | | The Criminal Justice Branch of the Attorney General of British Columbia announces that it had approved charges of breach of trust by a public official, pursuant to section 122 of the <i>Criminal Code</i> against Corporal Brown, Constables Elgee and Zaharia and Mr. Thompkins. Charges were not approved against Constable Fieghen. |