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COMMISSION FOR PUBLIC COMPLAINTS AGAINST THE RCMP

RCMP Act – Part VII
Subsection 45.46(3)

CHAIR'S FINAL REPORT

FOLLOWING A PUBLIC HEARING

into the complaints relating to RCMP conduct at events that took place at the UBC campus
and the Richmond RCMP Detachment during the Asia Pacific Economic Cooperation
Conference in Vancouver, B.C., in November 1997

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March 25, 2002

File No.: PC 6910-199801

CHAIR'S FINAL REPORT FOLLOWING A PUBLIC HEARING

I. INTRODUCTION

1. Procedure for Public Hearings Pursuant to the *RCMP Act*

The Chair of the Commission for Public Complaints Against the RCMP has the authority, pursuant to subsection 45.43(1) of the *RCMP Act*, to institute a hearing into a complaint concerning the conduct of a member of the RCMP, should she consider it advisable in the public interest. Such a hearing is to be conducted in public. At the conclusion of the public hearing, a written interim report is sent to the Solicitor General of Canada, the RCMP Commissioner and to all parties setting out the findings and recommendations.

Upon receipt of the interim report, the RCMP Commissioner reviews the complaint in light of the findings and recommendations in the report, then notifies the Commission Chair and the Solicitor General, in writing, of any further action that has been or will be taken regarding the complaint. Where the Commissioner decides not to act on any findings or recommendations, reasons must be given for not so acting.

It is then the Commission Chair's duty to consider the response by the RCMP Commissioner and to send to the Solicitor General, the RCMP Commissioner and the parties, a final written report setting out such findings and recommendations as she sees fit.

2. The APEC Hearing

Following the November 1997 APEC Conference in Vancouver, British Columbia, some 52 complaints were made about RCMP conduct at events that took place at the UBC campus and the Richmond RCMP Detachment. On December 9, 1997, I initiated an investigation into the complaints. I subsequently determined that it was in the public interest to institute a hearing into the complaints and did so on February 20, 1998. I assigned a three-member panel to conduct the hearing. That panel resigned in December of 1998 and I then assigned the Honourable Ted Hughes, Q.C. to conduct the hearing.

The hearing ran from March 1999 to June 2000 and the panel's interim report was completed by Mr. Hughes on July 31, 2001. The RCMP Commissioner provided the required written notice on September 6, 2001 (Appendix B). The following constitutes my final report with respect to this matter.

II. SUMMARY OF THE INTERIM REPORT

The interim report prepared by Mr. Hughes provides a comprehensive review of the complaints and the events that gave rise to them. For convenience sake, I have summarized the basic findings and recommendations made by Mr. Hughes regarding each of the categories of complaints as described in his report (Appendix A). The evidence and reasoning in support of these findings and recommendations are fully set out within the interim report and I have not repeated them.

In accordance with the terms of reference I provided, Mr. Hughes has specifically addressed the issue of whether or not the conduct of members of the RCMP involved in the events was appropriate to the circumstances and/or consistent with the fundamental freedoms guaranteed by section 2 of the *Canadian Charter of Rights and Freedoms*. I commend Mr. Hughes and I am deeply grateful for his extraordinary professionalism both in conducting this very challenging hearing and preparing such a thorough report.

III. SUMMARY OF THE NOTICE FROM THE COMMISSIONER

In his notice of September 9, 2001, the RCMP Commissioner accepted the majority of Mr. Hughes' recommendations. He accepted that errors were made by the RCMP and that it failed to achieve a high state of readiness for the APEC Conference. Specifically, he accepted all of those findings which identified errors in the areas of command structures, role separation, policy and planning, training, legal support, record keeping, and overall preparedness. He agreed that inadequacies in the planning and command structure used at APEC contributed in large part to the subsequent difficulties.

The Commissioner stated that the RCMP has gained valuable experience and learned considerably from APEC and a number of subsequent public order events. He went on to say that the RCMP has conducted an extensive review of its readiness and response to major public order events, and has consulted with other police agencies, in order to identify the best practices in the provision of security for such events.

The Commissioner referred to Mr. Hughes' findings that the conduct of individual RCMP members, in some instances, was inappropriate to the circumstances and/or inconsistent with the *Charter*. The Commissioner did not disagree with any of these findings. He pointed out that this conduct had previously been reviewed by a senior RCMP officer and an independent Crown counsel and that no criminal charges or disciplinary actions had been approved. He further pointed out that Mr. Hughes had found no evidence of malice and had not recommended that any action be taken with respect to any individual RCMP members. Accordingly, the Commissioner has not taken any further action with respect to the conduct of individual members.

With respect to the recommendations made by Mr. Hughes concerning policing of public order events, the Commissioner has directed a full review of RCMP national policies to ensure that those recommendations are clearly reflected therein. Furthermore, the Commissioner has specifically agreed with the recommendations made by Mr. Hughes concerning consistency of policies from one detachment to another and the availability of private areas to conduct searches.

IV. CONCLUSIONS AND RECOMMENDATIONS

I acknowledge the response from the RCMP Commissioner, which largely accepts the findings and recommendations and indicates that they are being acted upon. However, I do reiterate the following specific recommendation, which was not addressed by the Commissioner: that the renovations to the Richmond Detachment allowing a private area for searches be completed without delay. It is not acceptable that a detachment of this size, in the immediate vicinity of an international airport, be unable to accommodate a proper and private search of detainees.

Mr. Hughes' report makes it clear that a number of members of the public were adversely affected by the inappropriate conduct of RCMP members during the events in question. In keeping with the RCMP's notable Force-wide emphasis on community policing, timely apologies to those people would certainly have been appropriate but, unfortunately, were not forthcoming. Hopefully, Mr. Hughes' findings and the acknowledgement of their accuracy by the RCMP Commissioner will provide some consolation for those who suffered the consequences of inappropriate police conduct. An apology now, would still be appropriate.

I ask the RCMP Commissioner to keep me apprised of any progress made with respect to the recommendations arising from this hearing and the initiatives proposed by him in response.

This is my final report to the RCMP Commissioner and the Solicitor General of Canada in relation to these complaints.



Chair

March 25, 2002

Shirley Heafey
Chair
Commission for Public Complaints Against the RCMP
P.O. Box 3423, Station "D"
Ottawa, Ontario K1P 6L4

APPENDIX A

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

1. The Findings¹

Complaint Category No. 1 – Security Perimeter, Demonstration Area and Noise-Free Zone

The RCMP provided demonstration sites too small for the number of protesters and created security zones that were larger than necessary for security purposes so that APEC delegates would be shielded from the sights and sounds of protest.

Findings	Paragraphs
RCMP conduct in establishing the security/event perimeter was neither inappropriate nor inconsistent with the <i>Charter</i> .	13.2.2
RCMP conduct in respect of the demonstration area was neither inappropriate nor inconsistent with the <i>Charter</i> .	13.3.3 & 30.4
RCMP conduct in respect of the noise-free zone was neither inappropriate nor inconsistent with the <i>Charter</i> .	13.4.2

Complaint Category No. 2 – Singh Photo at ACCO Office

Mr. Jaggi Singh's photo was posted in the ACCO offices prior to the APEC conference, which he found to be intimidating.

Finding	Paragraph
RCMP members had nothing to do with the posting of Mr. Jaggi Singh's photo.	14

Complaint Category No. 3 - Undertakings

Six protesters were arrested on November 22 and 23 and released on undertakings that placed restrictions on the protesters' activities for the duration of the APEC conference.

Finding	Paragraphs
The three restrictive conditions included by the RCMP in the undertakings imposed on the arrested protesters were inconsistent with the <i>Charter</i> and were not appropriate to the circumstances.	15.7.1 – 15.7.4

¹ All paragraph references are to the paragraph numbers used in the interim report.

Complaint Category No. 4 – Removal of Press Pass

An RCMP officer wrongfully removed the press pass of Mr. Dennis Porter.

Finding	Paragraphs
The conduct of Sgt. John Buis, who took Mr. Dennis Porter's press pass, was neither inappropriate nor inconsistent with the <i>Charter</i> .	16.3.2 – 16.3.3

Complaint Category No. 5 – Singh Arrest, Charge & Release

Mr. Jaggi Singh was arrested on a warrant based on a spurious charge; the manner of his arrest was inappropriate in the circumstances; the timing of the arrest was calculated to prevent him from attending protests on November 25; the bail conditions sought were overly restrictive.

Findings	Paragraphs
The conduct of S/Sgt. Plante in recommending charges, a warrant and release conditions for Mr. Jaggi Singh was not appropriate to the circumstances although not inconsistent with the <i>Charter</i> .	17.12.1 – 17.12.2
There was nothing inappropriate about the timing of Mr. Jaggi Singh's arrest.	17.13
The conduct of the arresting RCMP members in propelling Mr. Jaggi Singh face first into the rear floor area of their vehicle, with his hands cuffed behind his back, was not appropriate to the circumstances.	17.14
There was insufficient communication between the RCMP's APEC planning process and the UBC Detachment, leaving S/Sgt. Plante to make decisions without the benefit of the background knowledge held by senior commissioned officers in command roles.	17.15 & 30.1.5 & 30.2.1

Complaint Category No. 6 – Malmo-Levine

RCMP members wrongfully arrested Mr. David Malmo-Levine at the flagpole and, in carrying out the arrest, used excessive force on him and others and infringed his right of expression.

Findings	Paragraphs
The conduct of the RCMP members who intervened in this incident was reasonable and necessary.	18.2
The arrest of Mr. Malmo-Levine was lawful.	18.3.1
The degree of force used by S/Sgt. Hugh Stewart during the course of this arrest, including the use of pepper spray, was reasonable and appropriate in the circumstances.	18.3.3 – 18.3.5
The conduct of Sgt. (then Cst.) Claude Wilcott, Cst. Michelle Adriaanse, Cst. Patrick Lockert and Cst. Ricki Chaulk, all of whom assisted in this arrest, was appropriate to the circumstances.	18.3.7

Complaint Category No. 7 – Dog Bite

During the second arrest of Mr. Jaggi Singh, Mr. Jamie Doucette was bitten on the arm by an RCMP police service dog.

Finding	Paragraph
The handling by the RCMP of their dogs during this incident was appropriate to the circumstances.	19.7

Complaint Category No. 8 – Removal of Tibetan Flag

RCMP members wrongly removed the Tibetan flag from the Graduate Student Society Building. [Note: It was also alleged that Kevin Dwyer's security accreditation was wrongly removed, and that the RCMP members inadequately investigated complaints of criminal acts by students of Chinese heritage. These complaints were not pursued. Refer to Chapter 20 for reasons given by Mr. Hughes.]

Findings	Paragraphs
The conduct of S/Sgt. Plante and Cpl. Anderson in having the Tibetan flag removed was inconsistent with the <i>Charter</i> and not appropriate to the circumstances.	20.3.1 – 20.3.2
The UBC Detachment should not have been in a position to drive the initiative to have the Tibetan flag removed – it should have been required to consult with senior officers with full background knowledge.	30.2.2

Complaint Category No. 9 – Removal of Green College Signs & Jones Arrest

RCMP members removed signs from Mr. Craig Jones and others in front of Green College, just before the motorcades arrived; Mr. Craig Jones was pushed to the ground and arrested.

Findings	Paragraphs
No fault or responsibility rests with the constables who followed the instructions of a senior officer and seized signs or arrested Mr. Jones.	21.5
The conduct of Insp. Bill Dingwall in ordering the indiscriminate removal of all of the signs was inconsistent with the <i>Charter</i> and not appropriate to the circumstances.	21.10 – 21.11
The arrest of Mr. Jones was appropriate to the circumstances, and the RCMP used no more force than necessary to effect the arrest.	21.13
Inadequate briefing and last minute assignments to key positions contributed to the problems in front of Green College.	30.1.1
Had the calibre of planning been higher, the major gaffe of failing to recognize the obvious protest site outside Green College would not have occurred and a contingency plan would have been in place.	30.1.2 & 30.2.3

Complaint Category No. 10 – Muttray & Doucette Arrests

Mr. Jamie Doucette and Ms. Annette Muttray were arrested for using walkie-talkies; their bicycles and a backpack were not secured by the police.

Findings	Paragraphs
The arrest of Ms. Annette Muttray resulted from a decision made by a member of the Vancouver Police Department, not the RCMP.	22.5.1
The conduct of RCMP Cst. Robert Hodder in assisting with the arrest of Ms. Annette Muttray was appropriate to the circumstances.	22.5.2
The conduct of S/Sgt. Hugh Stewart in directing the arrest of Mr. Jamie Doucette without reasonable grounds, was not appropriate to the circumstances.	22.6
RCMP conduct with respect to the bicycle and backpack of Ms. Annette Muttray was not inappropriate.	22.7
The loss of Mr. Jamie Doucette's bicycle ought not to be borne by him.	22.7
S/Sgt. Plante was not involved in either arrest (as had been alleged).	22.7

Complaint Category No. 11 – Confrontation at the Noon Rally

The RCMP used excessive force on the crowd, including pepper spray, after a security fence came down; they used it punitively and without warning; some protesters who were seeking to be arrested peacefully were pepper sprayed and assaulted by police.

Findings	Paragraphs
The conduct (including the use of pepper spray) of all RCMP members engaged when the fence first came down was appropriate to the circumstances.	23.4
The conduct (including the use of pepper spray) of the RCMP when four protesters subsequently readvanced to the police line was appropriate to the circumstances.	23.5
Decontamination procedures following these incidents were proper and acceptable.	23.5
The conduct of the RCMP in allowing but then limiting a number of negotiated arrests was reasonable.	23.6
RCMP conduct throughout the events surrounding the fence incident was appropriate to the circumstances.	23.7
Deficiencies in RCMP planning for the noon rally included: <ul style="list-style-type: none"> • the failure to have anyone in command who was aware of the protesters' plans; • the last-minute decision to give protesters access to the fence; • the woefully inadequate construction of the fence; • the late recruitment and inadequate training of Deputy Site Commanders; • the ill-advised decision to separate the planning and operational responsibilities which left the senior officers who had planned the operation out of the chain of command; 	30.1.3

<ul style="list-style-type: none">• the sheer folly of failing to plan for effective leadership at the well-publicized noon rally;• the lack of an approved contingency plan setting out the RCMP response to potential protests and demonstrations on campus.	
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Complaint Category No. 12 – Oppenheim Arrest

Mr. Jonathan Oppenheim was wrongfully arrested for his role in the collapse of the security fence near the School of Theology; excessive force was used in his arrest.

Findings	Paragraph
Cpl. Charles McDonald had reasonable grounds to direct the arrest of Mr. Jonathan Oppenheim.	24.5
The conduct of Cpl. Charles McDonald, Cst. Richard Rollings and all other members of the RCMP involved in the arrest of Mr. Jonathan Oppenheim was appropriate to the circumstances.	24.5

Complaint Category No. 13 – Groebner Arrest

Mr. Johann Groebner was wrongfully arrested for an alleged assault on a cameraman.

Finding	Paragraph
The arrest of Mr. Johann Groebner near Gate 3 by Cst. Dale Carr was not appropriate to the circumstances.	25.3

Complaint Category No. 14 – Removal of Megaphone

Police wrongfully grabbed a megaphone from Ms. Brenna Bhandar during a demonstration near Gate 3, and took hold of her arm.

Finding	Paragraph
No RCMP officers were involved in the seizure of the megaphone or the alleged assault.	26

Complaint Category No. 15 – Police Identification

Various RCMP officers at various times did not display name tags or refused to identify themselves to members of the public.

Finding	Paragraph
RCMP members substantially complied with the requirement to wear identification and to respond to appropriate requests for identification.	27

Complaint Category No. 16 – Protesters Moved from Gate 6

Peaceful protesters were ordered to clear the road at Gate 6 and then pepper sprayed before they had a chance to do so; some were pepper sprayed as they were leaving; others were pepper sprayed as they stood watching; Mr. Mark Brooks was arrested and pepper sprayed as he was asking for calm; decontamination services following the spray were insufficient and inadequate.

Findings	Paragraphs
S/Sgt. Hugh Stewart did not give the protesters enough time to comply with his order to clear Gate 6.	28.1.2
S/Sgt. Stewart's use of pepper spray on that occasion was not a justifiable or appropriate level of force. It should not have been used.	28.1.3
The conduct of RCMP planners in failing to make contingency arrangements to delay the departure of the motorcades until S/Sgt. Stewart had the opportunity to clear the road in a reasonable manner was not appropriate to the circumstances. They must bear major responsibility for this incident.	28.1.4
The conduct of RCMP members, which allowed the breakdown in communication between S/Sgt. Stewart and the zone commander at Gate 6, was a serious error and not appropriate to the circumstances.	28.2
The manner in which the pepper spray was deployed by S/Sgt. Stewart, Sgt. Mercer and Sgt. McLaren, likely did not conform with recommended procedures but did not involve inappropriate conduct.	28.2.1
S/Sgt. Stewart did not intentionally pepper spray Mr. Rob Douglas, the CBC cameraman, and he extended two apologies for having done so.	28.2.2
The conduct of S/Sgt. Stewart in arresting Mr. Mark Brooks at Gate 6 was not lawful and not appropriate to the circumstances.	28.3.2.5
The precipitous arrest of Mr. Mark Brooks, made in an atmosphere of crisis, was directly attributable to the chaos that resulted from inadequate police planning to ensure the orderly and safe exit of the world leaders.	30.2.5
The conduct of Cst. Alan Homeniuk (the van driver) and other members of the RCMP that resulted in Mr. David Wolinetz, Mr. Rex Bailey and Mr. Mark Brooks receiving inadequate decontamination treatment after the Gate 6 incident was not appropriate to the circumstances.	28.5
<p>Deficiencies in RCMP planning for the Gate 6 incident included:</p> <ul style="list-style-type: none"> • the absence of a tactical plan to ensure exits from campus remained secure and open; • confusion and chaos in the APEC Command Centre when the exit routes were blocked, resulting in protocol being abandoned; • relieving Supt. Thompsett of his command responsibility to clear Gate 6 and assigning it to the Command Centre, amidst panic and uncertainty; • dispatching S/Sgt. Stewart from Gate 3 to Gate 6 and giving him 6 minutes to get there and clear it. 	30.1.4
The unnecessary pepper spraying of protesters at Gate 6 was the direct result of the inadequacy of police planning and the lack of a contingency plan.	30.2.4

Complaint Category No. 17 – Treatment of Prisoners at Richmond Cells

The driver of the wagon taking prisoners to the Richmond Detachment intentionally made the trip uncomfortable and long; prisoners at the Richmond cells were denied access to lawyers and to washrooms; the prisoners were placed in overcrowded cells; the prisoners were denied blankets, given inadequate food, and threatened with pepper spray; prisoners were held in custody for an excessive length of time; female prisoners were unnecessarily strip-searched.

Findings	Paragraphs
S/Sgt. Frank Shedden (the bus driver) did not intentionally make the trip long or uncomfortable.	29.2
The bathroom needs of the prisoners were not unduly delayed.	29.3.3
RCMP members did their best in allocating cell space in a difficult situation.	29.3.4
RCMP members made every reasonable effort to comply with the requirement to provide telephone calls to counsel as soon as possible. The delay with respect to Ms. Annette Mutray's case was inadvertent.	29.3.5
It was not established that any RCMP member threatened any prisoner with pepper spray.	29.3.6
Those on duty at the supper hour did their best to meet the nutritional needs of the prisoners although vegetarians were not provided with a satisfying meal.	29.3.7
Individual needs were not taken into account when blankets were requested by prisoners.	29.3.8
Generally, the conduct of the RCMP members in dealing with the large number of prisoners in the Richmond cell block, was not inappropriate.	29.3.9
The allegation that women were forced to disrobe in front of men is a false one. Strip-searches of women were conducted but not as a punitive measure.	29.4.11
The strip-searches of all female prisoners were not justified, were far too intrusive in the circumstances, and were neither reasonable nor necessary. They were inconsistent with the <i>Charter</i> and inappropriate to the circumstances.	29.5.2.6
Major responsibility for the events at Richmond cells rests with the planners who failed to advise the detachment of the role it would play. Had the detachment been so notified, it is unlikely that the strip-searching and the differential treatment of male and female prisoners would have occurred.	29.5.3 & 30.1.5 & 30.2.6
The timing of the release of the prisoners was neither inconsistent with the <i>Charter</i> nor inappropriate to the circumstances.	29.6.3
The release of two female prisoners in paper suits late at night was troublesome.	29.6.4

Complaint re Removal of Protesters at the Museum of Anthropology

Findings	Paragraphs
The conduct of the RCMP (on the directions of the federal government), in removing protesters tenting on the grounds of the Museum of Anthropology, was an unjustifiable infringement of the rights of the protesters under s. 2(b) of the <i>Charter</i> . However, this conduct was the result of an honest mistake by the RCMP and therefore was appropriate to the circumstances.	11.5 & 11.5.1 & 11.6.2
RCMP personnel, principally Supt. May, should not have abandoned its independence by acceding to a federal government request to remove the tenters, which action could have jeopardized security operations.	11.6.1 & 30.4

2. The Recommendations

In Chapter 31 of his report, Mr. Hughes has set out a number of recommendations arising from his findings. The main recommendations relating to policing of public order events are summarized as follows.

Recommendations	Paragraphs
At future public order events, a generous opportunity should be afforded for peaceful protesters to see and be seen.	31.1.1
The RCMP should adopt an integrated or similar command structure of planning and operations for public order events.	31.1.2
When one position reports to another, the same officer should not fill both positions.	31.1.3
For policing public order events, the RCMP should formulate a current policy addressing the methodology and a comprehensive training program for senior personnel.	31.1.4
Quick Response teams should be assembled in advance to allow for group instruction and training in the field.	31.1.5
Proper briefing of police personnel assigned to public order duties should be a priority.	31.1.6
Legal advice should be made available to police planners of such events.	31.1.7
An officer should be designated to compile and file records of such events including all operational plans.	31.1.8
The RCMP should continue and enhance its open door policy of meeting and working with protest groups, well in advance of events.	31.1.9
Before taking action that could result in physical confrontation, police should make reasonable efforts to warn protesters of what they are going to do and provide them with enough time to comply with the warning.	31.1.10
RCMP policy with respect to body searches of those in custody should record the need to take into account all relevant factors, including the circumstances of the arrest.	31.1.11

When releasing prisoners, police should take into account the circumstances of those who are particularly vulnerable.	31.1.12
The RCMP must instil in its officers, by whatever educational or other means available, that they are to brook no intrusion or interference from government officials with respect to the provision of security services.	31.3.2
RCMP detachment policies on specific issues should be as consistent as possible from one detachment to another, with coordination at the national level.	31.5.1
Detachment facilities should contain a private area for searches of prisoners and the renovations at the Richmond detachment in this regard should be completed without further delay.	31.5.2

Royal Canadian Mounted Police



Gendarmerie royale du Canada

G. Zaccardelli
Commissioner Le Commissaire

SEP 06 2001

Protected "A"

Ms. Shirley Heafey
Chair
Commission for Public Complaints Against
the Royal Canadian Mounted Police
P.O. Box 3423
Station "D"
Ottawa, Ontario
K1P 6L4

Dear Ms. Heafey:

I acknowledge receipt of Mr. E.N. Hughes' Interim Report of July 31, 2001, relative to the complaints that arose from the Asia-Pacific Economic Cooperation (APEC) Conference in November 1997 in Vancouver, British Columbia.

In 1997, APEC was the largest and most complex security assignment that the Royal Canadian Mounted Police (RCMP) had ever undertaken. Since that time, the challenges faced by police, in Canada and elsewhere in the world, in providing security at major public order events have increased significantly. Recognizing the importance of this issue, and the strong desire of all parties that I address this matter at the earliest possible opportunity, I have prepared my response to this interim report, which is enclosed and provided pursuant to subsection 45.46(2) of the RCMP Act.

Between August 6 and 26, 2001, I examined Mr. Hughes' interim report in detail. I would like to take this opportunity to commend Mr. Hughes for the thoroughness and diligence with which he conducted the hearing in this matter, and for his comprehensive and insightful report. His analysis and understanding of the difficulties faced by the RCMP members in this case, and his ability to view APEC in the context of the real world, are very much appreciated.

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Mr. Hughes noted that "there is evidence in the country to indicate that the RCMP has learned considerably from the events of November 25, 1997". I agree fully with that observation, and want to assure you that this report will be the basis for continued improvement in how the RCMP polices major public order events in the future.

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

Sincerely,


G. Zaccardelli

Enclosure

Pursuant to subsection 45.46(1) of the Royal Canadian Mounted Police (RCMP) Act (the "Act"), I have completed a thorough review of the interim report of Mr. E.N. (Ted) Hughes, Q.C., dated July 31, 2001, relative to complaints that arose from the Asia-Pacific Economic Cooperation (APEC) Conference in Vancouver, British Columbia (B.C.) in November 1997.

Subsection 45.46(2) of the Act states:

After reviewing a complaint in accordance with subsection (1), the Commissioner shall notify the Minister and the Commission Chairman in writing of any further action that has been or will be taken with respect to the complaint, and where the Commissioner decides not to act on any findings or recommendations set out in the report, the Commissioner shall include in the notice the reasons for not so acting.

The following constitutes my notice in this matter:

Introduction

In 1997, the APEC Conference was the largest and most complex security assignment that the RCMP had ever undertaken. Approximately 23,000 people were accredited to the conference, including 8,600 delegates and media representatives; and over 1000 volunteers.

Amongst the dignitaries were 75 Internationally Protected Persons, 12 of whom were at the maximum level of security, representing a total of 18 economies. More than 3,000 police officers, including approximately 2,300 RCMP officers and several hundred Vancouver Police officers, were involved in providing security for the week long event from November 19 to 25, 1997.

During the first six days of the conference, meetings of senior officials as well as ministers took place primarily at the Vancouver Trade and Convention Centre. However, there were 33 separate venues in the Vancouver area, each of which required security arrangements during the week, and 12 of which were hotels where security was in place 24 hours a day.

Following APEC tradition, on the final day of the conference, the leaders were scheduled to meet in a retreat setting to allow for informal discussions. At previous APEC Conferences, such retreats had been held in very isolated areas which were inaccessible to the public, such as: on an island near Seattle; at a site 40 kilometers outside of Jakarta; at an abandoned United States (U.S.) naval base in the Philippines, and; at a secluded castle in Japan.

The site selected for the leaders' retreat in Vancouver was the Museum of Anthropology on the University of British Columbia (UBC) campus, with lunch at nearby Norman Mackenzie House, the official residence of the President of UBC. It was at this site and in these circumstances that conflict arose between protesters and the RCMP.

While not discussed in the interim report, it is important to note that the public record indicates that RCMP members dealt with several protests during the first six days of the conference. These protests, which occurred at the convention centre, as well as at some of the hotels and other venues, were all handled without conflict or complaint.

In responding to the interim report, I want to state at the outset that I accept the majority of the recommendations. I accept that some errors were made by the RCMP in planning security arrangements at the UBC site and that, as Mr. Hughes noted, the RCMP failed to "...achieve a high state of readiness for November 25 [1997]."¹

The following are my additional comments with respect to the recommendations in the order in which they are listed in the report:

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¹Mr. E.N. Hughes, Commission for Public Complaints against the RCMP - Interim Report Re: APEC, p. 441.

31.1. Policing Public Order Events

31.1.1. Opportunity for protest:

Mr. Hughes recommends that when the RCMP is called upon in future to police public order events, the leadership of the Force should ensure that:

"A generous opportunity will be afforded for peaceful protesters to see and be seen in their protest activities by guests to the event"; and

"No attempt will be made to use a university campus as the venue for an event where delegates are to be sequestered and protected from visible and audible signs of dissent."

Both of these points are well taken and will no doubt be considered in the planning of future events. However, the final decision concerning the type of meeting and the venue to be used are not within the jurisdiction of the RCMP.

The Force may be consulted on such matters, but the government, as host of the event, ultimately selects the site. It is then the responsibility of the RCMP to provide appropriate security. This approach is not unique to Canada. Chief Superintendent Robert Milton of the London Metropolitan Police testified at the APEC hearing that the UBC campus was not an ideal location for a retreat setting, however, that was a decision to be made by conference organizers and not the police.

Mr. Hughes observed that the selection of UBC as the site of the leaders' retreat "may well have contributed significantly to the events of November 25, 1997."² Having said that, once that decision was made, it became the responsibility of the RCMP to ensure that appropriate security arrangements were in place.

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²Hughes, p.59.

31.1.2. Integrated Command Structure
to.

31.1.12. Release of Prisoners:

Mr. Hughes identified errors that were made at APEC, particularly in the areas of command structures, role separation, policy and planning, training, legal support, record keeping, and overall preparedness.

I accept those findings. The planning and command structure used at APEC, which was a significant departure from our prescribed process, contributed in large part to the subsequent difficulties. This deviation has since been described as an attempt to innovate and, while I fully support efforts by our members to continuously try to improve service delivery, I must agree with Mr. Hughes' observation that "... it was probably not wise to introduce this innovation in the context of such a critically important and large scale policing assignment."³

With particular regard to Recommendation 31.1.4 - Policy and Training, I agree with Mr. Hughes when he observed that the RCMP has learned considerably from this experience. I would add that we have learned valuable lessons from other experiences as well.

Since APEC, the RCMP has gained valuable experience in the provision of security at several major public order events such as the Francophone Summit in Moncton, New Brunswick, in September 1999; the meeting of the Organization of American States in Windsor, Ontario, in June 2000, and; the Summit of the Americas in Québec City, in April 2001.

Additionally, we have conducted an extensive review of our readiness and response to major public order events, including initiating ongoing consultations with other police agencies, nationally and internationally, to share information and to identify best practises in the provision of security at major public order events.

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³Ibid., p. 442.

Mr. Hughes also found that, in some instances, the conduct of individual RCMP members was inappropriate to the circumstances, and/or inconsistent with the rights guaranteed under the Charter of Rights and Freedoms (the "Charter").

These allegations of misconduct were fully investigated when the public complaints were initially lodged against 47 RCMP members in November 1997. The allegations contained in those complaints were reviewed by the RCMP in Vancouver to determine whether further investigation was indicated, either under the Criminal Code of Canada, or the RCMP Code of Conduct for disciplinary reasons.

As a result of that review, the conduct of 17 individual RCMP members was subjected to a full investigation. Independent Crown counsel then reviewed the results of the criminal investigations and no criminal charges were approved. A senior RCMP officer, who had no involvement with APEC, reviewed the results of the Code of Conduct investigations, and no disciplinary allegations were approved.

Those allegations were then examined by Mr. Hughes as part of the public complaint process. Mr. Hughes found no evidence of malice, nor did he recommend that action be taken concerning the conduct of any individual RCMP member.

Having considered all of the foregoing, I am satisfied that further action concerning the conduct of any individual RCMP member in this case is not warranted. I accept the following observations of Mr. Hughes:

"It is inescapable that in most instances where I have found police conduct to have been either inappropriate to the circumstances or inconsistent with Charter rights, the primary responsibility rests with those who held key roles in security planning for the APEC Conference. That may go to the highest level at RCMP Headquarters in Ottawa. This seems to be the source of approval, if not direction, that security services on November 25 would be delivered by officers who were, at best, on the periphery of the two-year planning process while those intimately involved in that process were out of command from the moment the APEC Conference opened."⁴

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⁴Hughes, p.442.

and...

"I heard the evidence of approximately 90 members of the RCMP. Most officers in the field met their responsibilities in an entirely satisfactory manner, notwithstanding the difficult situations they faced, due to a large extent to the planning shortcomings over which they had no control. I am of the view, based on my assessment of the calibre of an overwhelming number of officers who gave evidence, constables, NCOs and commissioned officers alike, in whose hands the future of the RCMP will substantially rest, that what occurred in preparing and delivering police services on this occasion will certainly not be repeated, particularly if there is adherence to my recommendations in Chapter 31."⁵

31.1.9. Relations with protesters

Mr. Hughes recommends that:

"The RCMP should continue to follow, and enhance where appropriate, its existing open door policy of meeting and working with the leadership of protest groups, well in advance of a planned public order event, with a view to both police and protesters achieving their objectives in an environment that avoids unnecessary confrontation."

I am pleased that Mr. Hughes has recognized RCMP efforts to avoid conflict at APEC by offering to work in a cooperative manner with protest leaders. This approach requires the establishment of a spirit of collaboration for mutual interest and, unfortunately, not all protest leaders accepted this approach at APEC. As Mr. Hughes noted, "...the RCMP made reasonable efforts to make their policy work and any responsibility for a failure to establish a cooperative working rapport with APEC Alert does not rest with the RCMP."⁶

This "open door" policy, which is a cornerstone of the RCMP approach to policing such events, was used successfully on numerous occasions during the week at APEC. For example, when

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⁵Ibid., p. 444 / 445.

⁶Hughes, p.116.

RCMP members learned that the route of a planned protest march would conflict with a motorcade route, they contacted the leaders of the protest group to discuss the matter.

In the spirit of cooperation, arrangements were made for an alternative parade route which allowed the protest group to accomplish their goals, while removing any chance of conflict with the motorcade route.

Since APEC, we have increased our efforts in this area. In two recent public order events in British Columbia, for example, trained negotiators were utilized to assist in opening dialogue between police and protest leaders. In both cases, this approach assisted in the development of a cooperative relationship which avoided conflict.

The development of cooperative relationships between police and peaceful protesters at major public order events is a key to minimizing conflict. Our efforts in contacting protesters in advance to discuss security issues with them are aimed at the development of an atmosphere of collaboration between police and protesters. We want to work cooperatively with protesters to find ways to protect all participants, while ensuring the right to peaceful protest.

To ensure that we draw maximum benefit from this report, I am directing a full review of RCMP National Policies relative to policing of major public order events to ensure that my responses to the foregoing recommendations are clearly reflected therein.

31.2. Public Complaint Procedures

31.2.1. Availability of a summary process

to

31.2.3. Separation of Functions

I fully agree with Mr. Hughes' observation that the procedure followed in this matter was "...lengthy, complex and expensive."⁷ Almost four years have passed, millions of dollars have been spent, and much human effort and apprehension on the part of the RCMP members as well as the complainants, has been consumed in the process.

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⁷Hughes, p. 449.

I see this as excessive and would support consideration of a more timely, less adversarial process. Having said that, I wish to point out that the current public complaint provisions do allow for submission of evidence by affidavit and, in fact, that process was used during the APEC hearings.

I also agree fully with Mr. Hughes' comments regarding the "wide and generous" terms for granting of complainant status. I will discuss the foregoing recommendations with the Chair of the Commission for Public Complaints (CPC) Against the RCMP to determine what further action may be taken to address these issues.

In terms of the recommendation with regard to separation of functions, I, like Mr. Hughes, pass along the views of the B.C. Civil Liberties Association for consideration at the appropriate time and place.

31.3. Relations with the Canadian Government

31.3.1. Statutory Recognition of Police Independence

31.3.2. RCMP Responsibility

In his report, Mr. Hughes briefly analyzes the proper relationship between government and the RCMP and, in particular, the issue of police independence, noting that:

"The nature and extent of police independence is not clearly defined in Canadian Law. Although it is generally agreed that the RCMP does enjoy a measure of independence, there is no consensus, either in academic writing or in judicial decisions, as to what is the proper relationship between the federal government and the RCMP."

The recent Supreme Court of Canada (S.C.C.) case of R. v. Campbell⁸ clarified this issue. As Mr. Hughes noted:

"...the court noted that a police officer engaged in a criminal investigation is not acting as a government agent. However, police perform many other functions apart from the investigation of crimes, including

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⁸R. v. Campbell, [1999] 1 S.C.R. 565

ceremonial duties and protection of visiting foreign dignitaries. Some of these functions bring the RCMP into a closer relationship to the Crown than others."

After analysis of this issue, Mr. Hughes proposes the following five principles concerning RCMP independence from government:

"When the RCMP are performing law enforcement functions (investigation, arrest and prosecution) they are entirely independent of the federal government and answerable only to the law."

"When the RCMP are performing their other functions, they are not entirely independent but are accountable to the federal government through the Solicitor General of Canada or such other branch of government as Parliament may authorize."

"In all situations, the RCMP are accountable to the law and the courts. Even when performing functions that are subject to government direction, officers are required by the RCMP Act to respect and uphold the law at all times."

"The RCMP are solely responsible for weighing security requirements against the Charter rights of citizens. Their conduct will violate the Charter if they give inadequate weight to Charter rights. The fact that they may have been following the directions of political masters will be no defence if they fail to do that."

"An RCMP member acts inappropriately if he or she submits to government direction that is contrary to law. Not even the Solicitor General may direct the RCMP to unjustifiably infringe Charter rights, as such directions would be unlawful."

Mr. Hughes then recommends that the RCMP request statutory codification of the nature and extent of police independence from government with respect to:

1. Existing common law principles regarding law enforcement; and
2. The provision of and responsibility for delivery of security services at public order events.

I concur with the principles which Mr. Hughes has enunciated. However, I do not agree that statutory codification is required with regard to police independence in law enforcement generally, nor in matters of protective policing specifically.

In matters of criminal investigation, arrest and prosecution, the S.C.C. has clearly articulated that the police are entirely independent of government and are answerable to the law. This clear understanding exists and functions well without codification.

With regard to the provision of security at public order events, there must be close consultation between those who are representing the host of the event, the government, and those who are responsible for provision of security, the police. That consultation must occur within the parameters of the previously noted principles.

To ensure that there is no confusion within the RCMP regarding this issue, I am directing that the five principles, as enunciated by Mr. Hughes, form the basis for a clear national policy statement. All members of the RCMP, particularly those involved in the delivery of security arrangements at major public order events, will be expected to have a clear and thorough understanding of this issue.

I am confident that the accountability mechanisms currently in place will effectively balance any concerns about RCMP independence. In addition to the civil law and criminal law processes, there are civilian oversight mechanisms pursuant to the RCMP Act (the CPC RCMP and the RCMP External Review Committee), as well as accountability to the Solicitor General and to Parliament.

My response to Mr. Hughes' recommendation relative to Relations with Foreign Governments (31.4.) is substantially the same. While respecting international conventions and our protective policing mandate, I will ensure that RCMP policy clearly addresses this matter.

31.3.3. Record of meetings

This provision is already in place in national policy, however, I will ensure that it is included in the policy review and updated as necessary.

31.5. General

31.5.1 Consistent policies

31.5.2 Privacy for personal searches

I agree with these recommendations. RCMP policies should be consistent from one detachment to another, and legal advice should be obtained to ensure compliance with the law. The RCMP does have personnel in policy centres both at the Division and National Headquarters levels to assist in this regard.

Conclusion

It is important to note that, at the conclusion of APEC, the representatives of 18 economies, thousands of Canadian citizens, and hundreds of police officers returned to their respective homes safely. Mr Hughes, in generous and supportive comments in Chapter 30 of his report, complimented the commitment and abilities of RCMP members to resolve many of the difficult and unfortunate situations in which they found themselves.

Since 1997, the level of violence, which is perpetrated by a minority of people who attend public order events, has escalated considerably. In recent years, the world has witnessed violent confrontations at public order events in major cities in Canada, the U.S. and Europe.

The central issue for all police forces has become how to protect dignitaries and peaceful protesters against those who are committed to violence, while at the same time ensuring the right to peaceful protest. The safety and well-being of citizens who reside in the vicinity of, or attend, major public order events has also become a concern as the level of violence has escalated.

Mr. Hughes noted that finding the appropriate balance is becoming an increasingly more difficult challenge when he stated:

"The Vancouver APEC Conference was an extraordinary event in Canadian policing but the evidence is clear that police in Canada and around the world will face increasing challenges as they are called upon to police

international gatherings that attract growing dissent. Their role is to protect government leaders and officials and also to safeguard citizens' rights to lawful protest."⁹

In closing, I want to thank Mr. Hughes for his thoughtful and clearly articulated report and for the many well-founded, realistic recommendations that he has put forward to assist the RCMP in meeting this very difficult challenge. I also want to reaffirm the RCMP commitment to learn from the valuable lessons in this report, and to continue to improve our response to major public order events in the future.


G. Zaccardelli

Date: 01-09-06.

⁹Hughes, p.446.

