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**CIVILIAN REVIEW AND COMPLAINTS COMMISSION
FOR THE ROYAL CANADIAN MOUNTED POLICE**

**COMMISSION'S INTERIM REPORT FOLLOWING A PUBLIC INTEREST
INVESTIGATION INTO THE COMPLAINT
OF GARRY KERR**

Royal Canadian Mounted Police Act
Subsection 45.76(1)

Complainant

Mr. Garry Kerr

File No.: PC-2016-1913

NOV 30 2018

COMMISSION'S INTERIM REPORT FOLLOWING A PUBLIC INTEREST INVESTIGATION

INTRODUCTION

[1] This public interest investigation arises from a public complaint filed by Garry Kerr on August 11, 2016. Mr. Kerr¹ served as an RCMP member from 1981 to 2012. He was a Staff Sergeant at the Kamloops Detachment in British Columbia during all periods relevant to his complaint.

[2] On June 11, 2011, Constable Lisa Mackenzie, an RCMP member at the Kamloops Detachment in British Columbia, informed Staff Sergeant Kerr of potential criminal acts that she believed had been committed in 2006 and earlier by her ex-husband, also a member at the Kamloops Detachment, as well as a senior retired member, employed on a temporary contract at the Kamloops Detachment in 2006. Later in 2011, another member was identified by Constable Mackenzie as apparently involved in criminal acts with her ex-husband prior to 2006.

[3] Staff Sergeant Kerr reported Constable Mackenzie's allegations to the Assistant Commissioner and others in "E" Division on June 12, and 13, 2011. Starting in the autumn of 2011, and again in his public complaint of August 11, 2016, Staff Sergeant Kerr asserted that the RCMP failed to charge the identified members with criminal offences, that an insufficient investigation was conducted of the criminal allegations, and that he had not been informed of the RCMP's response to the criminal complaint in a reasonable or timely manner.

PUBLIC INTEREST INVESTIGATION

[4] The credibility of and public confidence in the RCMP is called into question when an RCMP member alleges a failure by senior RCMP members to reasonably assess allegations of criminal acts committed by its own members.

[5] The Chairperson of the Civilian Review and Complaints Commission for the RCMP ("the Commission") notified the Commissioner of the RCMP on December 16, 2016, that the Commission would be conducting a public interest investigation into Staff Sergeant Kerr's August 11, 2016, public complaint (**Appendix A**). At the same time, the Commission sent a disclosure request (**Appendix B**) to the RCMP for all materials relevant to Staff Sergeant Kerr's August 11, 2016, complaint.

¹ Although Mr. Kerr's complaint is filed in his capacity as a civilian, for the purposes of this report he will be identified as Staff Sergeant Kerr hereafter, in light of his status at the time of the events complained of, and his originating complaint to Assistant Commissioner Craig Callens on June 12, 2011, concerning Constable Mackenzie's allegations.

[6] The Commission received investigation materials from the RCMP on December 30, 2016. Following further requests for information, the Commission received additional materials on January 26, 2017, March 10, 2017, May 30, 2017, August 2, 2017, and March 6, 2018. The Commission conducted numerous interviews throughout 2017, and received documentation from Staff Sergeant Kerr on January 24 and 25, 2017. On April 26, 2018, the Commission granted the retired members that had been identified as subject members following its investigation the opportunity to provide information or a response to the Commission's potential adverse findings. Submissions and comments from retired subject members were received over the spring, summer and early autumn of 2018.

[7] This report constitutes the Commission's findings and recommendations following its public interest investigation into Staff Sergeant Kerr's complaint. A summary of findings and recommendations can be found in **Appendix C**. A list of Commission interviews can be found in **Appendix D**.

COMMISSION'S REVIEW OF THE FACTS SURROUNDING THE EVENTS

[8] 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 for either the complainant or for RCMP members. The Commission's role is to reach conclusions after an objective examination of the evidence and, where judged appropriate, to make recommendations that focus on steps that the RCMP can take to improve or correct conduct by RCMP members.

[9] The Commission's findings, as detailed below, are based on a careful examination of the relevant RCMP materials, information provided by the complainant and witnesses interviewed, as well as all applicable law and RCMP policy.

[10] It is important to note that the findings and recommendations made by the Commission are not criminal in nature, nor are they intended to convey any aspect of criminal culpability. A public complaint process is a quasi-judicial process, which weighs evidence on a balance of probabilities. 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 or innocence.

Relevant backdrop to the public complaint

[11] Between 2000 and 2004, the RCMP received reports that a number of RCMP members at the Prince George Detachment in British Columbia had engaged the services of and, in some cases, assaulted underaged female sex-trade workers. This information coincided with the receipt of similar information that Prince George Provincial Court Judge David Ramsay was abusing underaged female prostitutes and procuring their services. The RCMP investigated Judge Ramsay, who was ultimately charged and convicted after confessing to several of the charges. He received a seven-year sentence in 2004.

[12] After concluding its investigation of Judge Ramsay, the RCMP conducted an internal investigation of members of the Prince George Detachment who had been identified by a number of the same sex-trade workers who had complained or provided evidence about Judge Ramsay.

[13] RCMP Code of Conduct investigations were initiated in 2004 and 2005, and at least two members were suspended with pay during RCMP internal investigations.² From the information received, it appears that only one investigation of one member led to referral to a disciplinary board. That referral was dismissed following a preliminary procedural motion.

[14] One of the members implicated by the allegations was Constable Joseph Kohut. Constable Kohut had been assigned to the Prince George Detachment for several years in the 1990s and early 2000s. Following his transfer to the Kamloops Detachment, on March 29, 2005, he was served notice that he was suspended with pay and that he was being investigated for several Code of Conduct breaches arising from the allegations of sexual assault of underaged sex-trade workers in Prince George in the 1990s and early 2000s.

[15] Thereafter, a sex-trade worker in Prince George in the 1990s and 2000s, and who had provided credible evidence against Judge Ramsay, died in hospital. This event appears to have at least contributed to the withdrawal of the Code of Conduct investigation of the RCMP members against whom she had provided incriminating evidence. Neither Constable Kohut nor any other member confessed to misconduct, and none were charged criminally.

[16] In late 2004, prior to his suspension, Constable Kohut married Constable Lisa Mackenzie. She, too, was transferred to the Kamloops Detachment. Although they lived together at the time of his suspension in early 2005, Constable Kohut left Constable Mackenzie on May 4, 2005, and he began divorce proceedings later that year.

[17] Sometime in January 2006, Constable Mackenzie allegedly informed Staff Sergeant Bill Goughnour, a retired member working on contract at the Kamloops Detachment, that she had found five or six video tapes in a box in her basement storage. She allegedly told him that she believed that the videos had been filmed by Constable Kohut in Prince George, years earlier. She reported hearing Constable Kohut talking on the tapes, and she also recognized another member, whom she later named. In one of the videos, these two members were making lewd comments to an Indigenous sex-trade worker whom Constable Mackenzie recognized from Prince George and urging her to show them her breasts. In a second video, she claimed she heard the same members making lewd comments to another woman, but Constable Mackenzie did not recognize that woman, her ethnic origin, or the exact location of the filming. The

² Suspensions for Constable Joseph Kohut, as of March 29, 2005, and Constable J. P. Harris, as of September 15, 2004.

third tape she viewed was of a personal nature involving Constable Kohut's first ex-wife. She later explained that she set that last one aside, intending to return it later to Constable Kohut's ex-wife. She allegedly only watched three videos before returning them to the box.

[18] Constable Mackenzie believed that the two tapes not involving Constable Kohut's first ex-wife might be relevant to the 2005 investigation of Constable Kohut and the allegations made by underaged sex-trade workers in Prince George. However, she alleged that when she informed Staff Sergeant Goughnour about the tapes, he instructed her to "hide" them and to "tell no one" about them.

[19] Constable Mackenzie did as she was instructed, allegedly assuming that Staff Sergeant Goughnour was going to pursue the matter. However, a couple of days later, on January 24, 2006, Constable Kohut broke into her home while she was at work. Constable Kohut admitted to breaking into her home, but claimed that he was frustrated because Constable Mackenzie had changed the locks and he wanted to recover his belongings.

[20] Although Constable Mackenzie complained about Constable Kohut's actions to Inspector Yves Lacasse³ of the Kamloops Detachment on January 24, 2006, when she was interviewed by Sergeant Dale Einarson later that day, she did not mention the tapes. Constable Kohut was not charged with breaking and entering, or any offence following Constable Mackenzie's report. Documents in a file pertaining to the investigation of the break-in reveal that a Crown attorney deemed the incident "civil" in nature, based upon the incomplete information Constable Mackenzie had provided at the time.

[21] It was not until June 11, 2011, that Constable Mackenzie told Staff Sergeant Kerr about the video tapes she had found and later discovered missing after Constable Kohut's break-in. In recounting the historic incident, she explained to Staff Sergeant Kerr that she had not told anyone else because she found the coincidence between her telling Staff Sergeant Goughnour about the tapes in late January 2006 and Constable Kohut's break-in a few days later very suspicious.

Facts giving rise to Staff Sergeant Kerr's 2015 public complaint

[22] On May 5, 2011, following complaints from Staff Sergeant Kerr and others at the Kamloops Detachment about management issues at the Kamloops Detachment, primarily involving Superintendent Lacasse, a Directed Review⁴ of the Detachment was

³ Inspector Lacasse was promoted to Superintendent in 2010 and became the Officer in Charge of the Kamloops Detachment until his retirement in 2013.

⁴ Also referred to as an "Incident" Review. (The concept of an Incident Review was explained by Chief Superintendent Taylor to the Commission's investigator as a review of specified incidents. The specified incidents in this case arose from Staff Sergeant Kerr's complaints about Superintendent Lacasse's management of the Detachment.) Deputy Commissioner Hourihan was Commanding Officer of "E" Division from October 2010 to August 12, 2011. He told the Commission's investigator that he had not been informed of Constable Mackenzie's allegations before his retirement.

ordered by Deputy Commissioner Peter Hourihan, the Commanding Officer of "E" Division at that time. Chief Superintendent Rick Taylor managed the Directed Review between May and early July 2011. He was assisted by Inspector Pete Nazaroff and a small administrative team.

[23] As part of that review, Constable Mackenzie was interviewed by Inspector Nazaroff on June 4, 2011. Although she raised her dissatisfaction with Inspector Lacasse's response to her complaint about her ex-husband Constable Kohut's break and enter on January 24, 2006, she did not mention the video tapes she had found, the fact that they went missing after the break-in, or her concerns about Staff Sergeant Goughnour's response.

[24] Then, on June 11, 2011, Constable Mackenzie told Staff Sergeant Kerr about the video tapes and events in January 2006, as set out above. She explained to him that she had never told any RCMP member about the video tapes, other than Staff Sergeant Goughnour, because she did not know whom she could trust after the break-in and possible complicity of Staff Sergeant Goughnour.

[25] Staff Sergeant Kerr agreed to take the matter forward. He contacted Assistant Commissioner Craig Callens by email that same night, and spoke with him at length on June 12, 2011. The information he provided to Assistant Commissioner Callens, even though derived from Constable Mackenzie's allegations, constituted a criminal complaint about Constable Kohut and Staff Sergeant Goughnour. Assistant Commissioner Callens agreed that the allegations were very serious.

[26] That same day, Assistant Commissioner Callens relayed the complaint to Chief Superintendent Taylor and other senior members, including Acting Chief Superintendent Kevin De'Bruyckere, Employee Management Relations, the Officer in Charge of Development and Resourcing in Human Resources, "E" Division. Superintendent Stephen Lee, Acting Southeast District Officer for "E" Division, was also informed.

[27] Assistant Commissioner Callens, Chief Superintendent Taylor and Acting Chief Superintendent De'Bruyckere all agreed that Constable Mackenzie needed to be interviewed.

[28] On June 14, 2011, Sergeant Lisa Fossum, working in the Professional Standards Unit ("PSU"), was assigned to conduct an interview of Constable Mackenzie. However, on June 29, 2011, Sergeant Fossum reported that Constable Mackenzie had been uncooperative, and no further attempts were made to interview her after the end of June 2011.

[29] In the end, it was not until December 7, 2011, that Staff Sergeant Kerr and Constable Mackenzie were finally interviewed, and only due to Staff Sergeant Kerr's persistence, and the intervention of a senior colleague, Inspector Tony Hamori, of "K" Division.

[30] By the time Inspector Hamori intervened, Chief Superintendent Mike Sekela had been appointed "E" Division's Southeast District Officer. When Chief Superintendent Sekela was finally made aware, in November 2011, of the full scope of Constable Mackenzie's allegations, and Staff Sergeant Kerr's role in bringing them forward, he committed to having the allegations investigated. At Staff Sergeant Kerr's urging, Acting Chief Superintendent De'Bruyckere subsequently arranged to have Inspector Ward Lymburner, an independent investigator from "E" Division's Major Crime Unit, interview Constable Mackenzie and Staff Sergeant Kerr on December 7, 2011, in the offices of Walt Kosteckyj, a lawyer representing Staff Sergeant Kerr.

[31] Following those interviews, at the request of Inspector Lymburner, Constable Mackenzie sent Mr. Kosteckyj the only video tape she had retained from the box of video tapes she had discovered in her basement in 2006. As set out earlier, this single video tape contained footage of a personal nature about Constable Kohut's first ex-wife. Constable Mackenzie did not assert that it contained evidence pertaining to the 2004–2005 allegations of misconduct by Constable Kohut. Mr. Kosteckyj immediately contacted the RCMP to recover the requested video tape.

[32] However, it was not until August 2012 that Acting Chief Superintendent De'Bruyckere retrieved the video tape from Mr. Kosteckyj. Acting Chief Superintendent De'Bruyckere later asserted that he had watched the video tape and concluded that it was not relevant to the events previously investigated in Prince George. No record exists to confirm that Chief Superintendent De'Bruyckere reviewed Constable Mackenzie's December 7, 2011, interview. A subsequent request to the RCMP to return the irrelevant video tape resulted in a response that the tape could not be found, that it had been "misplaced."

[33] By the time Staff Sergeant Kerr retired from the RCMP in March 2012, he had not been informed about the progress or outcome of any investigation of the criminal complaint (i.e. Constable Mackenzie's allegations) that he had submitted on June 12, 2011.

[34] Dissatisfied with the non-response to the criminal complaint and other matters, retired Staff Sergeant Kerr wrote directly to the RCMP Commissioner, Robert Paulson, on January 29, 2015. His letter was forwarded to then Deputy Commissioner Callens, who directed Assistant Commissioner Norm Lipinski, to address Staff Sergeant Kerr's complaint. In turn, Assistant Commissioner Lipinski directed Chief Superintendent Derren Lench, Deputy Criminal Operations Officer – Core Policing, to investigate the concerns expressed in Staff Sergeant Kerr's January 29, 2015, letter.

[35] Chief Superintendent Lench met with Staff Sergeant Kerr twice in 2015, but Staff Sergeant Kerr reported that he was not informed of any details about the scope of his investigation. Then, on September 29, 2015, Staff Sergeant Kerr received a letter from Deputy Commissioner Callens asserting that everything had been reviewed, and no charges were indicated.

[36] Staff Sergeant Kerr did not accept that response and did not believe that a reasonable investigation had ever been conducted of Constable Mackenzie's complete criminal allegations about Constable Kohut and Staff Sergeant Goughnour. On August 11, 2016, he filed a public complaint.

ANALYSIS

[37] The allegations in Staff Sergeant Kerr's public complaint can be summarized broadly as follows:

1. The RCMP failed to reasonably investigate the criminal complaint that he brought forward on June 12, 2011.
2. The Professional Responsibility Unit of "E" Division failed to conduct Code of Conduct investigations of the allegations in a timely manner.
3. There was a breach of policy and practice resulting from the unexplained loss of the video tape provided to the RCMP by Constable Mackenzie in 2011.
4. All members responsible failed to keep Staff Sergeant Kerr, both as a member and an originating complainant of the criminal allegations, apprised of any investigation.

The Commission's approach to assessing the RCMP's investigation of Staff Sergeant Kerr's criminal complaint (Constable Mackenzie's allegations)

[38] Paragraph 18(a) of the *Royal Canadian Mounted Police Act* ("the RCMP Act") states that it is the duty of members:

18(a) to perform all duties that are assigned to peace officers in relation to the preservation of the peace, the prevention of crime and of offences against the laws of Canada and the laws in force in any province in which they may be employed, and the apprehension of criminals and offenders and others who may be lawfully taken into custody.

[39] The preservation of peace, prevention of crimes, and the apprehension of offenders require that the police investigate alleged offences. However, the police are not required to comprehensively investigate every criminal complaint brought forward.

[40] To require that every allegation be investigated thoroughly would place an undue constraint on policing resources. Rather, the duty to investigate begins with the exercise of discretion. The police may exercise the discretion not to fully investigate an allegation where there is no reasonable suspicion that an offence has occurred. That discretion is not without constraints. It must be exercised reasonably.⁵

⁵ See *Hill v Hamilton-Wentworth Regional Police Services Board*, [2007] 3 SCR 129 at para 54: "[Police officers] are permitted to exercise discretion. What they are not permitted to do is to exercise their discretion unreasonably."

[41] To conclude that a reasonable suspicion exists, the suspicion need only have a reasonable foundation. Once that is accepted, a reasonably thorough investigation must be engaged.

[42] The Commission has repeatedly determined that a reasonable investigation requires, in part, that the police:

1. Pursue all leads provided promptly and effectively.
2. Interview possible sources and suspects promptly and effectively.
3. Request any relevant forensic tests/reports to check for physical evidence and consult with other experts with specialized knowledge.
4. Follow relevant RCMP policy and reference other related police technical texts as available.
5. Maintain good case management of the file, ensuring that properly written notes support the actions taken during the investigation.⁶

[43] These are the standards against which the Commission will assess the RCMP's investigation of and response to Staff Sergeant Kerr's allegations.

FIRST ALLEGATION: Retired Staff Sergeant Goughnour and retired Constable Kohut ought to have been investigated for possible statutory offences.

SECOND ALLEGATION: Assistant Commissioner Callens failed to act in a timely and appropriate manner after Staff Sergeant Kerr informed him of what he knew about Constable Mackenzie's disclosure.

[44] Deputy Commissioner Callens was interviewed by the Commission's investigator on February 20, 2017. He was Assistant Commissioner, Criminal Operations Officers, "E" Division, when Staff Sergeant Kerr informed him of Constable Mackenzie's allegations on June 12, 2011. He is now retired.

[45] Deputy Commissioner Callens confirmed to the Commission's investigator that it had been his opinion when he first heard from Staff Sergeant Kerr on June 12, 2011, that Constable Mackenzie had made potentially serious allegations of criminal and professional misconduct committed by Staff Sergeant Goughnour, Constable Kohut, and possibly others, and that she needed to be interviewed before any further steps were determined.⁷

[46] Although Deputy Commissioner Callens did not identify the specific criminal offences he felt might have been committed, either or both of obstruction of justice and criminal conspiracy are offences that could arise from the facts provided by

⁶ This approach has been approved by the Commissioner of the RCMP in accepting numerous Commission interim and final reports in the past. For example, see PC-2010-2675, Commissioner's Notice dated June 21, 2012.

⁷ Also, in an email to Chief Superintendent Taylor and Inspector Nazaroff on June 12, 2011, Deputy Commissioner Callens indicated that he thought it might be a Major Crime Unit or Professional Standards Unit matter, but he would leave it to them to determine which was possible.

Staff Sergeant Kerr, Constable Mackenzie, the documentation, and the witnesses interviewed by the Commission's investigator.

[47] In Canada, anyone obstructs justice who:

... willfully attempts in any manner ... to obstruct, pervert or defeat the course of justice is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.⁸

[48] It has been established by the courts that interfering with the investigation of a potential crime is captured by this *Criminal Code* offence.⁹ Staff Sergeant Goughnour's alleged instruction to Constable Mackenzie to hide the video tapes, and to tell no one about them, could constitute the criminal offence of obstructing justice. Constable Kohut's alleged removal of the tapes could also constitute an offence under this provision.

[49] Additionally, if a preliminary investigation of the allegations concluded that there was sufficient evidence to support a reasonable belief that Constable Kohut and Staff Sergeant Goughnour acted in concert to take and conceal the tapes, the offence of criminal conspiracy¹⁰ may also constitute a matter for investigation.

[50] Finally, Constable Kohut's actions allegedly recorded on the tapes could constitute supporting evidence of his suspected criminal conduct with underaged sex-trade workers in Prince George in the early 2000s.

[51] Whether or not the information provided by Constable Mackenzie could have led to criminal charges against Staff Sergeant Goughnour, Constable Kohut, or anyone else is not a determination for the Commission's public interest investigation. The Commission's role is to assess whether Assistant Commissioner Callens (or others) responded reasonably upon receiving the information from Staff Sergeant Kerr of the potentially serious criminal allegations made by Constable Mackenzie.

[52] In addition to criminal charges, the allegations contained in Constable Mackenzie's disclosure to Staff Sergeant Kerr on June 11, 2011, and more thoroughly to Inspector Lymburner on December 7, 2011, could have constituted information relevant to several Code of Conduct breaches per Part IV of the RCMP Act. Although the Commission does not have the authority to investigate or make decisions pursuant to Part IV of the RCMP Act,¹¹ the Commission is not restricted from assessing whether the actions or inaction of Assistant Commissioner Callens or others resulted in a failure to conduct a Code of Conduct investigation.

⁸ *Criminal Code*, RSC, 1985, c C-46, s 239(2).

⁹ *R v Spezzano* (1977), 34 CCC (2d) 87 (Ont CA); *R v Dosanjh*, [2006] BCJ No. 2637 at para 59; *R v Watson*, [2010] OJ No. 5341 at para 15.

¹⁰ *Criminal Code*, *supra* note 8 at para 465(1)(c).

¹¹ RCMP Act, at s 45.53(3): "The Commission shall refuse to deal with a complaint concerning any decision under Part IV."

The 2011 response by Assistant Commissioner Callens and others to Staff Sergeant Kerr's criminal complaint

[53] After speaking with Staff Sergeant Kerr on June 12, 2011, Assistant Commissioner Callens sent an email to Chief Superintendent Taylor and Inspector Nazaroff, the two officers conducting the 2011 Directed Review of the Kamloops Detachment. He asked them to determine if the information provided by Staff Sergeant Kerr had been raised by Constable Mackenzie, either during her interview with Inspector Nazaroff the previous week or otherwise, and if not, to canvass the facts with her. He also asked them to contact Staff Sergeant Kerr.

[54] Chief Superintendent Taylor contacted Staff Sergeant Kerr on June 13, 2011, at which time the latter repeated the information he had given to Assistant Commissioner Callens.

[55] Also on June 13, 2011, Assistant Commissioner Callens spoke with Chief Superintendent Brad Hartl, the Human Resources Officer for the Division, and briefed him on his discussion with Staff Sergeant Kerr. They agreed that they would determine future action once Constable Mackenzie had been interviewed.

[56] It appears that, after this point, Chief Superintendent Hartl had no involvement in the allegations of Constable Mackenzie, as brought forward by Staff Sergeant Kerr. It appears he went on leave for a significant stretch during the summer and autumn of 2011. There is no documentation pertaining to his involvement, and when interviewed by the Commission's investigator in 2017, his memory was limited to issues in play during the Kamloops Directed Review rather than Staff Sergeant Kerr's information about Constable Mackenzie's fuller allegations.

[57] Assistant Commissioner Callens had a further conversation with Chief Superintendent Taylor later on June 13, 2011, who, at that juncture, opined that there was no need for them to follow up with Constable Mackenzie, as the PSU would speak with her and determine what, if any, further action would be taken.

[58] Assistant Commissioner Callens spoke next to Acting Chief Superintendent De'Bruyckere,¹² Employee Management Relations, and the Officer in Charge of Development and Resourcing, "E" Division Human Resources, on June 13, 2011. The latter confirmed that he could have a PSU officer interview Constable Mackenzie forthwith. The extant emails and Assistant Commissioner Callens' notes recording Acting Chief Superintendent De'Bruyckere's statements on June 13, 2011, were subsequently denied by him when he spoke with a Commission employee in 2018.

[59] Other than these preliminary discussions by email, scantily referenced in notes, there is no indication that anyone was clearly designated to lead an inquiry into

¹² Kevin De'Bruyckere was a Chief Superintendent at the time of his retirement, but is referred to herein as Acting Chief Superintendent, his rank at the relevant times in 2011.

Staff Sergeant Kerr's report of Constable Mackenzie's allegations, or that a file was created to track the matter.¹³

[60] Deputy Commissioner Callens responded to the Commission's investigator that he did not create a diary date to follow up on actions taken in response to the information provided by Staff Sergeant Kerr. He asserted that this was a matter for the Southeast District Officer¹⁴ to track. However, Chief Superintendent Don Harrison, the Southeast District Officer, was on leave at that time and there is no indication in any documentation that the Acting Southeast District Officer, Superintendent Stephen Lee, undertook any direction over the matter.

[61] Deputy Commissioner Callens believed that the specific authority for any investigation would have been the Acting Human Resources Officer for "E" Division, identified in various correspondence and interviews as being Acting Chief Superintendent De'Bruyckere, Employee and Management Relations.

[62] While no file containing direction to investigate was provided to the Commission, records reveal that on June 13, 2011, Sergeant Craig MacMillan of the PSU was asked to interview Constable Mackenzie. However, this request was abandoned by June 14, 2011, after a potential perception of conflict was raised. Thereafter, Sergeant Fossum of the PSU was assigned, briefly.

[63] After extended efforts to contact Constable Mackenzie, Sergeant Fossum scheduled an interview with Constable Mackenzie on June 30, 2011. At the last minute, Constable Mackenzie backed out of the interview. She subsequently explained that she did not trust anyone at the PSU.

[64] Thereafter, Sergeant Fossum obtained an alternate assignment. She notified Acting Superintendent Paul Darbyshire, Employee Management Relations on July 24, 2011,¹⁵ that she had not had an opportunity to review Constable Mackenzie's earlier statements about Constable Kohut, or to otherwise pursue the matter. It appears that, after that, no one in the PSU or any unit was assigned to follow up with Constable Mackenzie for several months.

¹³ A file (2006-0227) created on January 24, 2006, for Constable Mackenzie's complaint about Constable Kohut breaking into her home on January 24, 2006, was found sometime after the 2011 Directed Review. Constable Mackenzie asked for the file number and access shortly after the 2006 incident, but was allegedly told that there was no file. The found file (misfiled and misidentified) contained her statement received by Sergeant Dale Einarson on January 24, 2006, Constable Kohut's statement received by Corporal Royce Roenspies in 2005 regarding Constable Kohut, as well as Sergeant Einarson's occurrence report. However, Staff Sergeant Kerr's report of Constable Mackenzie's further allegations on June 12, 2011, and her subsequent statement to Inspector Lymburner on December 7, 2011, and all other documentation pertaining to her further allegations about January 24, 2006, and related matters were never referenced to the original file.

¹⁴ Chief Superintendent Don Harrison was the Southeast District Officer in June 2011. On September 15, 2011, Chief Superintendent Mike Sekela was appointed to this position.

¹⁵ Sergeant Fossum's notes and emails refer to Acting Superintendent Darbyshire as "Inspector" Darbyshire.

[65] Acting Superintendent Darbyshire¹⁶ was interviewed by the Commission's investigator in 2016, but had little recollection of the events. Nor could he identify who had jurisdiction over Staff Sergeant Kerr's complaint arising from Constable Mackenzie's disclosure on June 11, 2011.¹⁷ This leaves no explanation for why Sergeant Fossum reported to him on July 24, 2011, that she had not interviewed Constable Mackenzie.

[66] Assistant Commissioner Callens did not hear anything further after the week of June 14, 2011, about Staff Sergeant Kerr's complaint pertaining to Constable Mackenzie's allegations.

[67] During the Commission's investigation, Deputy Commissioner Callens explained that he had not expected to hear anything further because of the command structure of "E" Division in 2011. It was not until he received Staff Sergeant Kerr's letter of January 29, 2015, that he became aware that there was a continuing concern. From Assistant Commissioner Callens' perspective, at that time he was only a conduit for Staff Sergeant Kerr's report.

[68] When Deputy Commissioner Callens was reminded during the Commission's investigation that Constable Mackenzie had not given a statement until December 7, 2011, he agreed with the Commission's investigator that even though Constable Mackenzie had not cooperated with Sergeant Fossum in the first instance, more should have been done to obtain her statement promptly.

[69] The need to engage further with Constable Mackenzie about her ex-husband's break and enter was identified obliquely in a companion memorandum (dated July 5, 2011) to the Directed Review report of July 8, 2011. That companion memorandum was later identified in the February 24, 2012, Kamloops Management Review report as one of the rationales for the Management Review. Nonetheless, beyond the December 7, 2011, interview facilitated by Staff Sergeant Kerr's continuing pressure, no criminal or Code of Conduct investigations appear to have been engaged.

[70] Deputy Commissioner Callens was asked by the Commission's investigator what, if anything, with the benefit of hindsight, he would have done differently in response to Staff Sergeant Kerr's information on June 12, 2011. He explained that, after 2012, the roles and responsibilities for District Officers in "E" Division changed. Every Thursday morning, briefings were held with the "E" Division Commanding Officer, both Criminal Operations officers, the Human Resources Officer, and the Staffing Officer. Topics included updates on new and ongoing Code of Conduct investigations, any significant harassment complaints, and anything deriving from managerial reviews in the

¹⁶ His substantive rank was Inspector in 2011 when he began acting as a Superintendent Employee and Management Relations Officer.

¹⁷ Acting Superintendent Darbyshire reported by phone discussion on May 7, 2018, that Inspector Sean Sullivan or another Inspector with the Professional Standards Unit would have been Sergeant Fossum's direct contact. The Inspectors with the Professional Standards Unit reported to him, but he reported that he would not have directly instructed Sergeant Fossum to conduct the interview.

Division. This served the purpose of ensuring that all the relevant officers received the same information at the same time. Deputy Commissioner Callens suggested that, in hindsight, this would have been a better process for managing potential criminal or Code of Conduct allegations like those asserted by Staff Sergeant Kerr in 2011.

[71] However, with the command structure of “E” Division in 2011, it was reasonable for him to pass along the information provided by Staff Sergeant Kerr on June 12, 2011, to the key players, Chief Superintendent Taylor, who was responsible for the Directed Review of the Kamloops Detachment being conducted at that time, as well as Acting Superintendent De’Bruyckere, who appeared to have various responsibilities in “E” Division pertaining to member conduct, and to the Acting Southeast Division Officer, Superintendent Lee.

[72] Based on the foregoing, particularly in light of the command structure of “E” Division in 2011, and in light of Assistant Commissioner Callens’ prompt actions in response to Staff Sergeant Kerr’s criminal complaint of June 12, 2011, the Commission concludes that Assistant Commissioner Callens acted on Staff Sergeant Kerr’s information in a timely and reasonable manner in June 2011.

FINDING

1) In June 2011, Assistant Commissioner Callens responded in a timely and reasonable manner to Staff Sergeant Kerr’s criminal complaint.

Response to Staff Sergeant Kerr’s letter of January 29, 2015

[73] According to Deputy Commissioner Callens, as soon as he received a copy of Staff Sergeant Kerr’s January 29, 2015, letter to Commissioner Paulson, he instructed Assistant Commissioner Norm Lipinski, the Criminal Operations Officer – Core Policing, to review the allegations in the letter. One of the allegations was the failure of the RCMP to investigate or respond to Staff Sergeant Kerr’s June 12, 2011, criminal complaint, arising from Constable Mackenzie’s allegations.

[74] In his turn, Assistant Commissioner Lipinski assigned Chief Superintendent Derren Lench, Deputy Criminal Operations Officer – Core Policing, to conduct a thorough review of the allegations.

[75] At the end of his review, Chief Superintendent Lench drafted a letter to Staff Sergeant Kerr for consideration of Assistant Commissioner Lipinski and Deputy Commissioner Callens. There is no information to support a conclusion that either Deputy Commissioner Callens or Assistant Commissioner Lipinski was advised of the specific information Chief Superintendent Lench examined, or of the details of the scope of the investigation he conducted. However, Deputy Commissioner Callens adopted a letter drafted by Chief Superintendent Lench, which concluded that Staff Sergeant Kerr’s allegations had been reviewed and dealt with appropriately. The letter to Staff Sergeant Kerr was eventually signed and dated September 29, 2015.

[76] During his review, Chief Superintendent Lench met with Staff Sergeant Kerr on two occasions in 2015. The first time was to hear what Staff Sergeant Kerr knew about Constable Mackenzie's allegations. Staff Sergeant Kerr explained to the Commission's investigator that he was surprised by that line of inquiry given that he had already provided a full (and more timely) statement setting out the second-hand information from Constable Mackenzie on December 7, 2011, as had Constable Mackenzie, the source of the allegations. Constable Mackenzie was not apparently contacted by Chief Superintendent Lench in 2015.

[77] A second meeting between Chief Superintendent Lench and Staff Sergeant Kerr occurred in the summer of 2015. Chief Superintendent Lench informed Staff Sergeant Kerr that there would be no further investigation, and that no charges would be laid. Chief Superintendent Lench did not share any specific information about the investigation or his conclusions.

[78] It is important to emphasize that Staff Sergeant Kerr's January 29, 2015, letter of complaint to the RCMP Commissioner does not mirror his August 11, 2016, public complaint to the Commission. One reasonable interpretation of his January 29, 2015, letter could be that his primary focus at that time was the failure of anyone to contact him about his several 2010 and 2011 complaints about Superintendent Lacasse. Those complaints had been reviewed during the Directed and Management reviews of the Kamloops Detachment in 2011 and 2012, respectively.

[79] A less wordy concern expressed in Staff Sergeant Kerr's January 29, 2015, letter was the failure of anyone to contact him about the criminal complaint of Constable Mackenzie that he brought forward on June 12, 2011. Staff Sergeant Kerr continued to believe that her allegations had not been reasonably investigated.

[80] When Staff Sergeant Kerr wrote to the Commissioner on January 29, 2015, almost four years had elapsed since he had brought forward Constable Mackenzie's allegations. By that time, Staff Sergeant Goughnour, Constable Kohut, as well as a third member implicated by Constable Mackenzie's December 7, 2011, statement had left the RCMP, precluding Code of Conduct investigations.

[81] Nonetheless, even though the allegations about Staff Sergeant Goughnour and Constable Kohut dated back to January 2006, and earlier, there was no legal impediment in 2015 to consideration of a criminal investigation of either or both of them.

[82] It appears that, from all the documentation and the Commission's interview of Chief Superintendent Lench, his 2015 investigation was not a comprehensive review of the reasonableness of any assessment or investigation of Constable Mackenzie's allegations, but rather a review of what had been done in response to the several complaints raised by Staff Sergeant Kerr in the spring of 2011 and earlier, about Superintendent Lacasse of the Kamloops Detachment. Only minimal consideration appears to have been given to the response to Staff Sergeant Kerr's June 12, 2011, criminal complaint based upon Constable Mackenzie's information.

[83] Even though Deputy Commissioner Callens' September 29, 2015, response to Staff Sergeant Kerr stated that "there was additional action taken as a result of the Kerr and Mackenzie statement(s) provided to Superintendent (previously Inspector) Ward Lymburner in December 2011," this assertion remains opaque. There was no information provided in the letter, or any files disclosed to the Commission, to support a conclusion that any review was conducted of Constable Mackenzie's December 7, 2011, statement. Nonetheless, retired Chief Superintendent Lench informed a Commission employee in 2018 that he had reviewed Constable Mackenzie's allegations. He believed that there was documentation to support his recollection, but no disclosure by the RCMP confirmed his belief.

[84] If Chief Superintendent Lench reviewed Constable Mackenzie's allegations about Constable Kohut and Staff Sergeant Goughnour in a reasonably thorough manner in 2015, the absence of any written record confirming a review of the allegations constituted a breach of RCMP policy to keep reasonably thorough notes.¹⁸ The obligation to document ought to be considered a more significant responsibility when an investigator is assessing criminal allegations about RCMP members.

[85] A further concern about the 2015 "review" arises from the reference in the September 29, 2015, letter to Staff Sergeant Kerr that there had been a "Crown" legal opinion, which had concluded that "the file was civil, and that the tape did not contain evidence of criminal wrongdoing."

[86] This statement is not supported by any of the records disclosed by the RCMP to the Commission from June 2011 forward pertaining to this complaint. No legal opinion in respect of Constable Mackenzie's expanded allegations of 2011 is found in any records disclosed to the Commission. Moreover, Chief Superintendent Lench informed the Commission's investigator in an interview in 2017 that the reference to a Crown legal opinion about the fuller allegations was a "mistake."

[87] Although no explanation for the provenance of this mistake was offered, it appears most likely that Chief Superintendent Lench's "mistake" derived from the inclusion in extant files of a reference to a Crown legal opinion obtained in 2006 in response to Constable Mackenzie's original (and limited) January 24, 2006, report that Constable Kohut had broken into her house.

[88] An occurrence report shortly after her January 24, 2006, report states that Crown counsel did not believe there was a reasonable likelihood of conviction on any of the criminal offences considered (i.e. break and enter). However, it appears from subsequent memos that there was confusion at that time about Constable Kohut's property rights in respect of the home that Constable Mackenzie continued to occupy after their separation. A subsequent Crown counsel memorandum concluded that this

¹⁸ RCMP *Operational Manual*, chap 25.2., s 3.1.: "Investigator's notes should thoroughly describe the details of the occurrence and answer: who, what, when, where, why, and how."

confusion led to the suspect conclusion that the dispute was “civil” in nature.¹⁹ Regardless of the confusion, the 2006 legal opinion did not address Constable Mackenzie’s allegation about the theft or collusion by Constable Kohut and Staff Sergeant Goughnour, given that she only disclosed that allegation in 2011.

[89] A further concern about Chief Superintendent Lench’s 2015 review arises from the focus on the “missing tape”. The records reveals that the 2015 review of Constable Mackenzie’s 2011 allegations about Constable Kohut and Staff Sergeant Goughnour was focussed almost exclusively on finding the one tape not taken during the break-in by Constable Kohut in January 2006.

[90] In her December 7, 2011, interview, Constable Mackenzie informed Inspector Lymburner that she had set aside one of the five or six tapes she had found in her basement in January 2006. She explained that the tape set aside contained footage of a personal nature of Constable Kohut’s first ex-wife. She had intended to give the tape to the ex-wife, but had subsequently forgotten about it until the interview by Inspector Lymburner. It is clear in her statement to Inspector Lymburner that she was alleging that, because she had set that one tape aside, Constable Kohut had not taken it when he broke in on January 24, 2006. Constable Mackenzie never alleged that she had an extant tape containing evidence of a crime by Constable Kohut.²⁰

[91] Nonetheless, as requested by Inspector Lymburner, a short time after Constable Mackenzie was interviewed by him she gave the extant tape to Staff Sergeant Kerr to give to Mr. Kosteckyj, who undertook to pass it along to Inspector Lymburner or someone responsible for the anticipated investigation. Mr. Kosteckyj immediately informed Inspector Lymburner that he had taken possession of the tape. For reasons unknown, the tape was not retrieved by Inspector Lymburner. It was eventually picked up by Acting Chief Superintendent De’Bruyckere, but not until August 2012, after Mr. Kosteckyj reached out once again to the RCMP.

[92] Regardless of the reasoning, it appears from all the information available to the Commission that Chief Superintendent Lench focussed on finding that video tape picked up by Acting Chief Superintendent De’Bruyckere in 2012, rather than investigating the allegations in Constable Mackenzie’s December 7, 2011, statement.²¹

[93] Chief Superintendent Lench never found the tape in 2015, but (then retired) Chief Superintendent De’Bruyckere recalled for Chief Superintendent Lench that he had

¹⁹ A later Crown opinion suggested that, if a more thorough investigation had been conducted, a different result may have ensued. This appears to derive from the fact that by January 24, 2006, Constable Mackenzie had a right to sole occupancy of the marital home.

²⁰ Creating confusion in the history of this matter, Staff Sergeant Kerr evidently misunderstood Constable Mackenzie’s report on June 11, 2011, and incorrectly believed that she said that she had retained a video tape containing evidence of Constable Kohut’s criminal activity. His error was repeated to Assistant Commissioner Callens on June 12, 2011, and to every other member he spoke with in 2011, including Inspector Lymburner.

²¹ Disclosure by the RCMP supports a conclusion that Chief Superintendent Lench received Constable Mackenzie’s December 7, 2011, statement, but his reported focus on the Directed Review supports a conclusion that he did not assess her statement for reasonableness.

viewed the tape after he retrieved it in 2012, and that it did not contain any information that would support criminal charges.²² Chief Superintendent De'Bruyckere's conclusion about the nature of the extant tape is not revelatory. Constable Mackenzie had never asserted that it was relevant.

[94] As discussed elsewhere in this report, the RCMP has a duty to reasonably investigate reasonable suspicions of criminal conduct. This implies in the first instance that a reasonable assessment must be conducted of allegations of criminal conduct to assess whether a reasonable suspicion exists.

[95] As early as June 12, 2011, Deputy Commissioner Callens had opined that Constable Mackenzie's allegations were of a serious nature and ought to be investigated by the Major Crime Unit ("MCU"). A reasonable step after obtaining Constable Mackenzie's statement on December 7, 2011, would have been to conduct an analysis of her allegations, perhaps by comparing them to her earlier statements about Constable Kohut on September 1, 2005, and January 24, 2006, and any other information available at that time. Yet Inspector Lymburner appears to have had no further role beyond conducting the interview. There is no file pertaining to his role, and no indication that he, or any other member, conducted any assessment of her statement.

[96] Deputy Commissioner Callens' September 29, 2015, response to retired Staff Sergeant Kerr does not reveal a clear picture of what investigation or assessment was conducted, if any, between June 12, 2011, and September 29, 2015.

[97] For reasons unknown, based upon all the disclosed RCMP records, it appears reasonable for the Commission to conclude that no one presented with the criminal allegations reported by Constable Mackenzie to Staff Sergeant Kerr and Inspector Lymburner in 2011 ensured that a reasonable assessment was conducted in the first place, let alone a reasonable investigation.

[98] The structure of "E" Division in 2015, and the breadth of responsibility for both the Deputy Commissioner and the Assistant Commissioner made it reasonable for Deputy Commissioner Callens and Assistant Commissioner Lipinski to rely upon the conclusions of the assigned, high-ranking officer, Chief Superintendent Lench.

[99] Nonetheless, it was the Deputy Commissioner who signed the September 29, 2015, letter to Staff Sergeant Kerr, and consequently, ultimate responsibility rested with him to ensure that the matter was reasonably addressed.

[100] In summary, although unknown to Deputy Commissioner Callens at the time, the following omissions occurred in the review ordered by him of Staff Sergeant Kerr's allegations arising from Constable Mackenzie's June 11, 2011, report about Constable Kohut and Staff Sergeant Goughnour:

²² Acting Chief Superintendent De'Bruyckere had retired as a Chief Superintendent by that time.

1. No files or documentation was prepared by or shown to have been reviewed by Chief Superintendent Lench in 2015 to establish that anyone had conducted any assessment of whether there was a reasonable suspicion that any criminal offences had been committed by Constable Kohut or Staff Sergeant Goughnour.
2. No extant information supports a conclusion that any member reasonably exercised their discretion to not investigate in 2011, 2012, or 2015.

FINDINGS

- 2) Deputy Commissioner Callens reasonably responded to retired Staff Sergeant Kerr's letter of January 29, 2015, by directing that the Assistant Commissioner, Criminal Operations Officer, review the matter.
- 3) No files exist to support a conclusion that Chief Superintendent Lench, or anyone, reasonably assessed, or reasonably recorded an assessment of, Constable Mackenzie's criminal allegations.

RECOMMENDATIONS

- 1) That an assessment be conducted, without delay, of whether Constable Mackenzie's June 2011, allegations support a reasonable suspicion that a criminal offence or offences were committed by Staff Sergeant Goughnour and/or Constable Kohut.
- 2) That a reasonably thorough criminal investigation be conducted, without delay, should it be established that Constable Mackenzie's allegations support a reasonable suspicion of criminal conduct.
- 3) That the RCMP inform Staff Sergeant Kerr and the Commission, without delay, of the process engaged and its findings in response to these recommendations, subject to any legal constraints.

THIRD ALLEGATION: Chief Superintendent Taylor failed to act in a timely and reasonable manner after Staff Sergeant Kerr reported what he knew about Constable Mackenzie's disclosure.

[101] As previously noted, Chief Superintendent Taylor was informed of Constable Mackenzie's disclosure to Staff Sergeant Kerr by Assistant Commissioner Callens on June 12, 2011.

[102] Following a brief telephone conversation with Staff Sergeant Kerr later the next day, Chief Superintendent Taylor contacted Constable Mackenzie. Although the content of their discussion was not recorded, it appears from email exchanges with Assistant Commissioner Callens and others on June 13, 2011, that he informed Constable Mackenzie that she would be interviewed by a member of the PSU.

[103] The decision to have the PSU interview Constable Mackenzie about her allegations deviated from Chief Superintendent Taylor's initial recommendation to

Assistant Commissioner Callens and others in an email he sent on June 12, 2011. At that juncture he recommended that the matter be investigated by the MCU. This echoed Staff Sergeant Kerr's request and preferred approach. That recommendation was never engaged, and there are no records or recollections to explain that deviation.

[104] Chief Superintendent Taylor also indicated in an email late on June 12, 2011, that his plan was to recommend to the "CO" (Deputy Commissioner Hourihan at that time) that the matter be investigated outside of the Directed Review. However, there is no record of any such recommendation being made by Chief Superintendent Taylor to Deputy Commissioner Hourihan. Equally, there is no record that Deputy Commissioner Hourihan was ever notified of Constable Mackenzie's allegations.

[105] According to further emails between Assistant Commissioner Callens, Chief Superintendent Taylor and others, on June 13, 2011, Chief Superintendent Taylor concluded that the matter would be handled by the PSU. During the Commission's investigation in 2017, retired Superintendent Darbyshire denied any responsibility for the investigation of Constable Mackenzie's allegations.

[106] Some extant emails reveal that Sergeant Craig MacMillan from the PSU was initially assigned to interview Constable Mackenzie. However, it was quickly pointed out by Chief Superintendent Taylor that his assignment may give rise to a claim of bias by Constable Mackenzie, who had previously filed a complaint against Sergeant MacMillan for allegedly interfering in a civil matter in 2006, also involving her ex-husband, Constable Kohut.

[107] In the end, according to her own notes, Sergeant Fossum from "E" Division's PSU was assigned on June 14, 2011, to interview Constable Mackenzie. No record of who actually assigned Sergeant Fossum was provided to the Commission. In June 2011, Inspector Sean Sullivan appeared to have line authority, but was on leave. It appears, though it is difficult to confirm, that Acting Superintendent Darbyshire was in charge of the PSU. Sergeant Fossum reported her attempts to interview Constable Mackenzie in emails to Acting Superintendent Darbyshire.

[108] Sergeant Fossum obtained Constable Mackenzie's agreement for an interview on June 30, 2011, but at the last minute, Constable Mackenzie refused to meet with her. Thereafter, Sergeant Fossum reported to Acting Superintendent Darbyshire that she was occupied with other duties.

[109] Acting Superintendent Darbyshire informed the Commission's investigator that Inspector John Brewer would have been the responsible authority for the PSU in the summer of 2011. However, the RCMP provided no records to confirm this statement or explain the email report of Sergeant Fossum to Acting Superintendent Darbyshire. Furthermore, there were no records disclosed to suggest that Inspector Brewer had any involvement in responding to the allegations of Constable Mackenzie brought forward in June 2011.

[110] During the Commission's interview of retired Chief Superintendent Taylor in 2017, he explained that, although he was conducting a Directed Review of the Kamloops Detachment when he learned of Constable Mackenzie's allegations from Assistant Commissioner Callens, and then Staff Sergeant Kerr, he had no mandate to investigate Code of Conduct or criminal complaints as part of the Directed Review of the Kamloops Detachment. However, the mandate letter concerning the Directed Review included the obligation to report on any criminal offences identified in the course of the review.

[111] In email correspondence to Chief Superintendent Sekela on October 6, 2011, Chief Superintendent Taylor wrote, "We did not 'investigate' any allegations of historical events/issues, as that would be for Southeast District or whomever the CO decided to task." Yet, as previously noted, there were no records found to establish that Chief Superintendent Taylor had ever informed the CO of Constable Mackenzie's June 12, 2011, allegations. Also, as previously noted, the CO, Deputy Commissioner Hourihan, had no recollection of Constable Mackenzie's June 2011 allegations, and there are no extant files indicating his awareness or supervision of any investigation.

[112] While no investigation file concerning Constable Mackenzie's 2011 allegations was ever disclosed to the Commission, what is evident from the Commission's investigation is that Chief Superintendent Taylor never informed Staff Sergeant Kerr who would be assigned to the matter or what steps were to be taken to respond to the allegations. The interview of retired Chief Superintendent Taylor by the Commission's investigator in 2017 demonstrated that he was not sure himself who had been assigned.

[113] Chief Superintendent Taylor speculated during the Commission's 2017 interview, and later during a clarification he provided in an email to the Commission's Senior Reviewer/Analyst on June 18, 2018, that perhaps there was no file and no follow-up due to the fact that there were a number of vacancies in "E" Division at that time, several members had transitioned from one post to another, there were increased workloads, and "E" Division offices moved from Vancouver to Surrey at about that time, making it possible that records were misplaced.

[114] While Chief Superintendent Taylor was reassigned to "K" Division immediately after completing his Directed Review of the Kamloops Detachment in mid-July 2011, he was a senior member in "E" Division up until that time. In his own words, in a memo to his Directed Review team in 2011, his mandate to conduct a Directed Review of the Kamloops Detachment included identifying potential criminal offences brought forward during the review. Constable Mackenzie's allegations of June 12, 2011, brought forward by Staff Sergeant Kerr were specifically directed to Chief Superintendent Taylor by Assistant Commissioner Callens because the former was conducting a Directed Review of the Detachment.

[115] Even though Chief Superintendent Taylor did not view it as his role to ensure any follow-up on matters arising from the Directed Review, he agreed that he had to produce a report about the issues identified during the Directed Review. A duty to report implicitly includes a duty to report in a reasonably complete manner.

[116] Therefore, the Commission concludes that Constable Mackenzie's identification of potential criminal offences fell within Chief Superintendent Taylor's mandate to report criminal allegations arising during the Directed Review to either the "E" Division's Southeast District Officer, Chief Superintendent Don Harrison (on leave, replaced at that time by Superintendent Lee), or Deputy Commissioner Hourihan.

[117] Yet neither of Chief Superintendent Taylor's reports arising from the Directed Review (July 8, 2011, Directed Review report and the companion memorandum of July 5, 2011) provided a reasonably inclusive summary of Constable Mackenzie's June 11, 2011, fuller allegations. The summary of her complaints in the July 5, 2011, companion memorandum was limited to her complaints about Inspector Lacasse in 2006. Neither report mentioned the video tapes that she allegedly found in January 2006, the content of those video tapes she had viewed, the alleged removal of the video tapes by her ex-husband Constable Kohut on January 24, 2006, or the potential role of retired Staff Sergeant Goughnour.

[118] This omission may have had an adverse impact on any subsequent response to her allegations. Of particular note is a memorandum dated December 19, 2011, that also failed to include Constable Mackenzie's complete allegations, provided just twelve days earlier, on December 7, 2011, to Inspector Lymburner. Instead, it referred to entirely different allegations by Constable Mackenzie, including the failure of anyone to provide her with information regarding her January 24, 2006, complaint, and bullying by Inspector Lacasse while she was on stress leave.

[119] The inexplicable omission of her December 7, 2011, expanded allegations about Constable Kohut and Staff Sergeant Goughnour is observed again in 2012, during a follow-up to Chief Superintendent Taylor's Directed Review companion memorandum of July 5, 2011.

[120] On April 17, 2012, a continuation report penned by Inspector C. L. Demerais entitled "Mackenzie, Lisa, Incident #4" reveals that a further investigation of Constable Mackenzie's allegations, as set out in the Directed Review report, was no more than a file review, supplemented by a circumscribed discussion with Constable Mackenzie about issues extraneous to her June 11, 2011, and December 7, 2011, disclosures.

[121] For example, Inspector Demerais reviewed Constable Mackenzie's allegation that the Detachment never provided her with a file number for her January 24, 2006, report about her ex-husband's break-in, and that her ex-husband had never been charged. Inspector Demerais wrote, "I would assume at this time that [Constable] MACKENZIE is referring to the damage done to the door of the house."

[122] Inspector Demerais' report and "assumption" lead to a reasonable conclusion that he did not have Constable Mackenzie's December 7, 2011, statement, or was not clearly tasked with following up on all of her allegations of criminal and Code of Conduct misconduct brought to Chief Superintendent Taylor's attention by Staff Sergeant Kerr on

June 13, 2011. This is not surprising given that her June 2011 disclosure was not included in either of the reports signed by Chief Superintendent Taylor following the conclusion of the Directed Review.

[123] This conclusion is further supported by a memorandum from Inspector Demerais to Corporal Amanda Jones of the Kamloops Detachment on April 18, 2012. His opening paragraphs states:

Upon your request, I have reviewed Kamloops File 2006-2297 to determine, I believe, whether or not the file met "E" Division Violence in Relationship (VIR) policy, in place in 2006, and whether there was enough evidence to proceed with a charge in regards to the damage to the door.

[124] The file number referenced in this report is that of Constable Mackenzie's limited complaint on January 24, 2006, that her ex-husband broke into her home. Once again, there is no indication that her further allegations brought forward in June 2011 by Staff Sergeant Kerr, or those in her interview of December 7, 2011, were reviewed by Inspector Demerais in 2012.

[125] The absence of file documentation further suggests that applicable RCMP policy was not applied after learning of Constable Mackenzie's fuller allegations. RCMP major case management policy is set out in chapter 25.3. of the RCMP's *Operational Manual*. Chapter 25.3. describes "major cases" as "cases/investigations that are *serious* in nature and because of their *complexity, risk* and resources require the application of the principles of Major Case Management (MCM)."²³ [Emphasis added]

[126] Constable Mackenzie's 2011 allegations directly related to a major criminal investigation of Constable Kohut in 2005. Nonetheless, her allegations were not treated as relevant to, or part of, any major crime investigation, and there is no indication that her allegations were ever referred to the MCU for assessment.

[127] Of particular note in chapter 25.3. of the RCMP's *Operational Manual* is the requirement for comprehensive and efficient "organization of the file" at an "early" stage. There was no documentation provided to the Commission that could support a conclusion that this policy requirement was respected in spite of the evident link between Constable Mackenzie's allegations and the 2004–2005 major crime investigation of Constable Kohut.

[128] Equally, her allegations that Constable Kohut and Staff Sergeant Goughnour obstructed justice by concealing evidence (the video tapes allegedly containing potential evidence of Constable Kohut's sexual abuse of underaged sex-trade workers) were not dealt with in accordance with the more simply stated requirements of the RCMP policy on sexual offence investigations in chapter 2.1. of the RCMP's *Operational Manual*. Section 2.2.1. requires sexual offences to be investigated "promptly, thoroughly and

²³ RCMP *Operational Manual*, chap 25.3. "Major Case Management", s 1.1.

with sensitivity.”²⁴ None of these requirements appear to have been observed after her allegations were brought to the attention of senior management on June 12, 2011, by Staff Sergeant Kerr.

[129] Further, there was no documentation provided by the RCMP to the Commission to support a conclusion that Constable Mackenzie’s allegations about Constable Kohut were referred to the PSU for a Code of Conduct assessment after Constable Mackenzie provided her statement to Inspector Lymburner on December 7, 2011. At the very least, her allegations deserved a consideration of whether any new information might trigger further Code of Conduct processes prior to Constable Kohut achieving his negotiated departure from the RCMP.

[130] In addition to the foregoing canvassed delays in obtaining Constable Mackenzie’s comprehensive statement by the PSU between June 2011 and December 2011, further delays and omissions should be noted, as they may be attributable to the failure to report her allegations in the Directed Review report, or to maintain reasonable records.

[131] In early September 2011, Chief Superintendent Mike Sekela was appointed as the new Southeast District Officer in “E” Division. In his notebooks from that period, he records that he was tasked with reviewing the 2011 Directed Review of the Kamloops Detachment and its recommendations.

[132] A report dated October 4, 2011, identified the potential “other allegations” that had been earlier referenced in Chief Superintendent Taylor’s July 5, 2011, companion memorandum to the Directed Review report. Constable Mackenzie’s allegations with respect to the response to the break and enter by Constable Kohut in January 2006 were repeated, but once again, the October 4, 2011, report did not mention her further allegations disclosed by Staff Sergeant Kerr on June 12, 2011.

[133] Even though Chief Superintendent Sekela’s notebooks further indicated that he would “ensure [he was] satisfied with investigative actions,” in response to the Directed Review, no plan for an investigation of Constable Mackenzie’s further June 11, 2011, allegations forwarded by Staff Sergeant Kerr was noted by Chief Superintendent Sekela. There is no indication that Chief Superintendent Sekela was even aware of Constable Mackenzie’s further allegations, until November 2011.

[134] Although it appears that the PSU failed to take any further action after Sergeant Fossum was unable to interview Constable Mackenzie on June 30, 2011, Staff Sergeant Kerr took action. In late July 2011, while speaking with an old friend and higher-ranking colleague, Inspector Tony Hamori,²⁵ Staff Sergeant Kerr repeated Constable Mackenzie’s June 11, 2011, disclosure, and voiced his concerns about what he perceived as senior management inaction.

²⁴ RCMP *Operational Manual*, chap 2.1. “Sexual Offences”.

²⁵ Inspector Hamori had been appointed Commanding Officer of the Airdrie Detachment in Alberta in the summer of 2011.

[135] On November 11, 2011, Inspector Hamori contacted Staff Sergeant Kerr for an update on his complaint. Staff Sergeant Kerr reported that, to his knowledge, there had not been any investigation of the allegations. Inspector Hamori, a senior RCMP member, even though from a different Division, immediately took it upon himself to send a "C-237" (an RCMP form) to Chief Superintendent Sekela and others detailing Staff Sergeant Kerr's allegations about Constable Mackenzie's disclosure on June 11, 2011.

[136] After receiving Inspector Hamori's C-237, Chief Superintendent Sekela inquired about Constable Mackenzie's June 11, 2011, disclosure to Staff Sergeant Kerr. He wrote that he "assumed" that "HQ" would be looking after her allegations.

[137] Although Chief Superintendent Sekela told the Commission's investigator that he had updated Staff Sergeant Kerr on November 4, 2011, about the investigation of his June 12, 2011, allegations, there is no documentation or other information to support his recollection, nor is the substance of that update clear. Moreover, Staff Sergeant Kerr denies having been informed.

[138] Chief Superintendent Sekela's notes indicate that, by November 22, 2011, he believed that Acting Chief Superintendent De'Bruyckere had been assigned carriage of the investigation of Constable Mackenzie's allegations. As the apparent Acting Chief Superintendent of Employee and Management Relations at "E" Division, Acting Chief Superintendent De'Bruyckere did not report to Chief Superintendent Sekela.

[139] Chief Superintendent Sekela's belief is not supported by any specific file. In a submission to the Commission in October 2018, retired Chief Superintendent Sekela questioned the absence of a file. He believes that a file specifically pertaining to Constable Mackenzie's June 2011 allegations was opened in 2011, and he asserts that this file would provide additional information and demonstrate that an appropriate review had been conducted.

[140] Retired Chief Superintendent De'Bruyckere declined to provide the Commission with a recorded interview, but he did speak with a Commission employee in June 2018, and provided comments by email on September 10, 2018. In his opinion, this matter was the responsibility of the Human Resources Officer. He indicated that, at that time, Acting Superintendent Darbyshire was the Human Resources Officer. However, Acting Superintendent Darbyshire denied that he had held that title or responsibility in 2011.

[141] Retired Chief Superintendent De'Bruyckere's response does not lift the veil of confusion on this matter. Extant records as well as other interviews suggest that Acting Chief Superintendent De'Bruyckere was de facto the Human Resources Officer after June 13, 2011, due to the absence of Chief Superintendent Brad Hartl, the Human Resources Officer, "E" Division.

[142] On November 18, 2011, only after Inspector Hamori's intervention, Staff Sergeant Kerr received an email from the PSU's Sergeant Murray Watt. During a

subsequent conversation between Staff Sergeant Kerr and Sergeant Watt in November 2011, Sergeant Watt disclosed to Staff Sergeant Kerr that he did not know much about the "file." He did not ask to interview Staff Sergeant Kerr and did not indicate that he would be contacting Constable Mackenzie.²⁶

[143] Sergeant Watt's reference to a "file" is confusing given the absence of any file associated with Constable Mackenzie's June 11, 2011, disclosure to Staff Sergeant Kerr and his report to senior management on June 12, 2011.²⁷ Sergeant Watt also referred to the matter as the "Lisa Fossum" file, and suggested that Sergeant Fossum had "dropped the ball."

[144] Sergeant Watt told the Commission's investigator that his involvement was fleeting, as "the file" was quickly taken away from him by Sergeant Eldon Dueck. The scant extant documentation appears to confirm that his involvement was transitory and brief, encompassing less than a month in late 2011.

[145] On November 28, 2011, Staff Sergeant Kerr received a phone call from Sergeant Dueck, of the PSU, who appeared to be reporting to Acting Chief Superintendent De'Bruyckere.

[146] Staff Sergeant Kerr remained firm when speaking with Sergeant Dueck, and later with Acting Chief Superintendent De'Bruyckere, that the interviews of Constable Mackenzie and himself not be conducted by a member from the PSU, or any member from Kamloops who might know Constable Kohut or Staff Sergeant Goughnour. Staff Sergeant Kerr explained that this requirement was imperative because both Constable Kohut and Constable Harris, two of the subject members implicated in the 2004–2005 investigations, had tried to contact Staff Sergeant Kerr to discuss how his actions could disrupt their ongoing settlement (and departure from the RCMP) negotiations. Staff Sergeant Kerr remained convinced that Constable Mackenzie's allegations were a matter for the MCU.

[147] In addition to Chief Superintendent Taylor's early musings that the allegations required referral to the MCU, two internal emails support the reasonableness of Staff Sergeant Kerr's contention that the allegations should have been treated seriously and investigated by the MCU, not the PSU. Both of the emails are from Acting Chief Superintendent De'Bruyckere.

²⁶ Emails confirm that Sergeant Watt attempted to make contact with Constable Mackenzie in December 2011; however, there are no email responses from her. Constable Mackenzie later reported to Staff Sergeant Kerr that she was afraid to speak with the PSU in light of recent phone calls from Constables Kohut and Harris to Staff Sergeant Kerr expressing concerns about what he and she were doing, implying that their actions could have an adverse effect on the Harris and Kohut settlements.

²⁷ Sergeant Fossum's notebook and emails exchanged with senior members and Constable Mackenzie, as well as a formal memo to "Inspector" Darbyshire, do not provide a file reference. Email exchanges with Constable Mackenzie have the subject line "Inquiry."

[148] The first is dated December 1, 2011, and was sent to Sergeant Dueck and Inspector Sullivan. It references the interviews to be conducted on December 7, 2011, of Staff Sergeant Kerr and Constable Mackenzie. His email states:

The bottom line is that we need to get to the bottom of these allegations ASAP to allow for the investigations to move forward.

[149] Then, after Staff Sergeant Kerr and Constable Mackenzie had been interviewed by Inspector Lymburner, on December 9, 2011, Acting Chief Superintendent De'Bruyckere wrote to them:

The information Lisa and you provided will be assessed. . . . I'll make sure you both know if we have to go further. I anticipate any follow up [*sic*] will be carried out by E Div. MCU.

[150] However, after December 9, 2011, and until the present day, there is no indication that the information provided by Constable Mackenzie was "assessed" as promised, or that the MCU ever became involved. Indeed, no documentation was disclosed to the Commission to support a conclusion that any further action was taken in response to Constable Mackenzie's statement of December 9, 2011.

[151] On July 18, 2012, Chief Superintendent Sekela signed a memorandum entitled "Summary of the action taken to address some of the issues raised in the Kamloops Directed Review." Constable Mackenzie's earlier complaints are summarized under the heading "Issue no. 4." However, there is no mention of her fuller 2011 allegations about Constable Kohut or Staff Sergeant Goughnour.

[152] An email from Sergeant Dueck dated December 19, 2016, to Gersham Ranu (rank unknown), also of the PSU, reveals a striking factual error, likely caused by a lack of reasonable case management, and a potentially negative attitude about Staff Sergeant Kerr:

I know Murray Watt was assigned to look into it, and if I recall correctly, *Kerr was not happy with how it was being dealt with so he stopped cooperating*. I know it didn't go anywhere. [Emphasis added]

[153] With the exception of the last sentence, Sergeant Dueck's recollection in 2016 was not factually correct, or was biased. Sergeant Watt does not appear to have been assigned a portfolio to "look into" Constable Mackenzie's allegations. Moreover, the description of Staff Sergeant Kerr as uncooperative is arguably a biased interpretation of Staff Sergeant Kerr's intentions and efforts. It was Staff Sergeant Kerr who had repeatedly pushed for the matter to be investigated. What Staff Sergeant Kerr insisted upon in November, 2011, after Sergeant Dueck contacted him, was that an independent investigator from outside the PSU conduct the interview of him and Constable Mackenzie.²⁸ It was Staff Sergeant Kerr who facilitated Constable Mackenzie

²⁸ Sergeant Dueck's impression may also have been affected by the views of Sergeant Watt in November 2011. Inexplicably, in his daily log, Sergeant Watt noted that "Kerr declined to assist

providing a statement. Constable Mackenzie was hesitant to be interviewed by anyone from the PSU due to her distrust of the PSU. Staff Sergeant Kerr thereupon conceived the idea of having Inspector Lymburner interview her.

[154] Of interest, Sergeant Dueck's attitude about Staff Sergeant Kerr was evidently shared by Inspector Pete Nazaroff, the investigator who assisted Chief Superintendent Taylor in the 2011 Directed Review of the Kamloops Detachment. In an email dated June 17, 2011, to Chief Superintendent Taylor he stated:

I never heard back from Cst. Mackenzie today as she was to text me when to call her . . . so I've texted her that if she wishes to speak with me to let me know.

This could be another issue of S/Sgt. Kerr pushing his agenda anywhere he can.

[155] Alternatively, or cumulatively, Sergeant Dueck's attitude may have arisen due to a confluence of events in 2011 and 2012. When Staff Sergeant Kerr reported Constable Mackenzie's allegations in June 2011, he was on disability leave from the RCMP. During that time, he obtained outside employment with BC Lotteries. He was notified by the PSU that he was to be charged with a Code of Conduct offence for allegedly failing to obtain prior approval from the RCMP for the outside employment. Those charges were communicated to Staff Sergeant Kerr in May 2011 by the then Acting Southeast District Officer, Superintendent Lee. The charges originated with the PSU. Sergeant Dueck was in the PSU at that time.

[156] The next overlapping and potentially obfuscating occurrence was the Directed Review of the Kamloops Detachment that stemmed from Staff Sergeant Kerr's complaints about Superintendent Lacasse, the Officer in Charge of the Kamloops Detachment. After the Directed Review was completed a report was issued. In early 2012, dissatisfied with the report and the fact that Superintendent Lacasse was not disciplined, Staff Sergeant Kerr sought disclosure of all the materials that contributed to the Directed Review report. Records suggest that this access request placed an administrative burden on the Division, and rankled a few people in the process.

[157] Finally, in February 2012, Staff Sergeant Kerr apparently threatened to sue the RCMP because of their failure to discipline or remove Superintendent Lacasse as Officer in Charge of the Kamloops Detachment.

[158] It cannot be known if any negative attitude held by some members toward Staff Sergeant Kerr had an impact on decisions to review or investigate Constable Mackenzie's allegations.

[159] Regardless of any potentially improper motives, confounding events involving the Kamloops Detachment and Staff Sergeant Kerr's complaints, unclear lines of authority

investigation." This log entry is in direct contradiction to Staff Sergeant Kerr's contact with Inspector Hamori, and subsequent efforts to ensure that an independent investigator interviewed himself and Constable Mackenzie. Staff Sergeant Kerr's insistence on an independent investigator appears not to have sat well with the members in the PSU.

in "E" Division and the Southeast District in 2011, as well as limited extant records and memories make it evident to the Commission that a systemic failure occurred, including a complete failure by all management personnel aware of Constable Mackenzie's 2011 allegations to:

1. Make a record of any assessment of whether Constable Mackenzie's allegations gave rise to a reasonable suspicion that an offence had been committed.
2. Follow RCMP policy regarding reasonable case management of criminal allegations. Specifically, to ensure that:
 - i. there was a file for tracking progress or authority,
 - ii. a formal lead investigator responsibility was identified,
 - iii. there was documentation setting out a reporting structure and process,
 - iv. the complainant was informed of the investigation progress and results in a timely manner,
 - v. Code of Conduct time limitation was respected.²⁹
3. Conduct timely interviews of witnesses or suspects. Of particular note, Staff Sergeant Goughnour, Constable Kohut, the other members Constable Mackenzie allegedly saw or heard on the putative tapes, and the alleged sex-trade worker on one of the tapes were not interviewed about the existence or content of the tapes or otherwise.
4. Reasonably inform Staff Sergeant Kerr of the process and outcome of his June 12, 2011, criminal complaint.

[160] To the extent that there was an investigation file created pertaining to Constable Mackenzie's 2011 allegations, as Chief Superintendent Sekela asserted during the Commission's investigation, the fact that no such file was disclosed to the Commission by the RCMP aggravates the Commission's concern about a systemic failure to ensure reasonable file management practices.

[161] The Commission's broad conclusions echo retired Chief Superintendent De'Bruyckere's concession, in his conversation with a Commission employee in 2018, that "the Force dropped the ball."

FINDING

- 4) The information supports a conclusion that no one in a position of authority in "E" Division in 2011 reasonably ensured that:**
- a) a timely assessment was conducted of whether Constable Mackenzie's allegations raised a reasonable suspicion of criminal misconduct or Code of Conduct breaches by Constable Kohut, Staff Sergeant Goughnour, or others;**
 - b) a reasonable investigation was conducted of Constable Mackenzie's**

²⁹ Prior to being amended in November 2014, s 43(8) of the RCMP Act created the following limitation period: "No hearing may be initiated by an appropriate officer under this section in respect of an alleged contravention of the Code of Conduct by a member after the expiration of one year from the time the contravention and the identity of that member became known to the appropriate officer."

- allegations;
- c) case management of Constable Mackenzie's allegations was engaged;
 - d) Staff Sergeant Kerr was reasonably informed of the process engaged following his June 12, 2011, report of Constable Mackenzie's allegations.

RECOMMENDATIONS

- 4) That "E" Division engage a review forthwith to ensure that, whenever internal allegations of criminal conduct committed by RCMP members are made, reasonable case management practices are implemented without delay, including but not limited to:
 - a) File number assignment;
 - b) Clear responsibility tasking in writing;
 - c) Assurance that responsibility tasking is known by all members assigned to the file;
 - d) Indication of the assigned file number on all documents created, obtained or relevant to the investigation;
 - e) File storage in accordance with secure file management practices;
 - f) Creation of diary dates to ensure compliance with time limitations set out in Part IV of the RCMP Act or otherwise;
 - g) Regular status reports to clearly identified senior management;
 - h) Adherence to conflict of interest rules;
 - i) Status updates to complainants and affected parties, subject to *Privacy Act* requirements and reasonable concerns about security of information during a criminal investigation.
- 5) That the RCMP Commissioner provide a written apology to Staff Sergeant Kerr for the untimely and incomplete response to Constable Mackenzie's allegations, which Staff Sergeant Kerr first provided on June 12, 2011.

FOURTH ALLEGATION: Chief Superintendent De'Bruyckere failed to provide Staff Sergeant Kerr with any updates in a timely manner pertaining to the information he provided to Assistant Commissioner Callens about Constable Mackenzie's disclosure in June 2011.

[162] All the available and limited extant records reveal that Acting Chief Superintendent De'Bruyckere was informed on June 12, 2011, by Assistant Commissioner Callens that Staff Sergeant Kerr had brought forward potentially volatile allegations by Constable Mackenzie about at least two members of the RCMP, and one retired member. The records also confirm that, as Acting Chief Superintendent of Employee Management Relations, he signed emails with the title: Officer in Charge of Development and Resourcing. Moreover, some members referred to Acting Chief Superintendent De'Bruyckere as both the Acting Human Resources Officer at that time and the Staffing Officer. Regardless of the uncertainty of his titles and roles, there is no doubt that he bore some responsibility for the PSU given his actions in November and December 2011 to assist the PSU in obtaining Constable Mackenzie's statement.

[163] However, there is no information to support a reasonable conclusion that, once Staff Sergeant Kerr's and Constable Mackenzie's interviews were conducted by Inspector Lymburner, Acting Chief Superintendent De'Bruyckere, or any other member involved in the response to Staff Sergeant Kerr's criminal complaint of June 12, 2011, reasonably informed Staff Sergeant Kerr about the process and progress of his complaint.

[164] Acting Chief Superintendent De'Bruyckere's failure to communicate stands in disappointing contrast to related recommendations about communication standards issued at that time, as well as to two commitments, one of which was made by Acting Chief Superintendent De'Bruyckere himself.

[165] The first recommendation came from Chief Superintendent Taylor's Directed Review report of July 8, 2011. In that report, the complaints of Kamloops Detachment employees concerning inadequacy of communication by management was recognized.³⁰ The report thereby recommended that management develop strategies to improve communication with members.³¹

[166] While the Kamloops Detachment did not have a role in responding to Staff Sergeant Kerr's complaint, the recommendation that management develop better communication strategies was something that should have applied across the board in the handling of member complaints of a criminal nature about other members.

[167] Acting Chief Superintendent De'Bruyckere made a commitment in his email to Constable Mackenzie and Staff Sergeant Kerr dated December 9, 2011, to keep them informed. The information leads to a conclusion that, after that date, he never provided either member with an update or conclusion to the matter.

[168] The second commitment came out of the Management Review report on the Kamloops Detachment in February 2012, which noted that communication of information remained a problem, even after the release of the Directed Review report and a shuffling of management. The Action Plan created in 2012, in response to both the Directed and Management reviews highlighted the communications goal: to "design a strategy to keep staff informed."³²

[169] Staff Sergeant Kerr retired in 2012. There is no specific statutory or policy obligation to keep retired staff informed about ongoing internal RCMP investigations arising from information they provided prior to retirement. Nonetheless, the Commission

³⁰ According to the Management Review report dated February 24, 2012, members expressed concerns about "communication" failings of senior management during the Directed Review.

³¹ The Management Review report states: "The OIC of Kamloops detachment is to implement an internal communication plan that fosters bi-lateral communication with a view to increasing transparency, improving the relationship, between the senior management team and all personnel within the detachment thereby improving morale."

³² "MR Action Plan Kamloops 2012-06-06." The Action Plan repeats the wording used in the Management Review report.

concludes that the RCMP's core values commitment to transparency, professionalism and accountability creates an ethical obligation to keep retired members informed about the status of their complaints, within the constraints of any applicable legislation.³³ Additionally, the Commission concludes that there is an implied duty to communicate with employees/complainants, arising from the general commitment by the RCMP to communicate with its members.³⁴

[170] The Commission acknowledges that the *Privacy Act* creates a legislative constraint on disclosure of personal information acquired during investigations.³⁵ In this case, personal details obtained from any investigation of Constable Mackenzie's allegations about Constable Kohut or others could not be released to Staff Sergeant Kerr without the consent of any individuals identified. This does not prevent disclosure of information about whether and when an investigation was conducted, its scope, and by which unit or member.

[171] Nonetheless, in this case, there is no information to suggest that the RCMP used the *Privacy Act* as a justification for not informing Staff Sergeant Kerr.

[172] Based upon the foregoing facts, the Commission supports Staff Sergeant Kerr's allegation that Acting Chief Superintendent De'Bruyckere, and all other members involved in the response to his criminal complaint of June 12, 2011, failed to keep him informed. However, this evidently being one element of the systemic failure of the RCMP's "E" Division to reasonably respond to the June 12, 2011, complaint, the Commission declines to duplicate its previous finding.

FIFTH ALLEGATION: Retired Chief Superintendent De'Bruyckere mishandled property, resulting in the loss of an exhibit and potential evidence of a crime.

[173] The mishandled property referred to in this allegation was the single video tape retained by Constable Mackenzie from the box of five or six video tapes she found in January 2006, and which she believed to have been made by Constable Kohut.

[174] As commented upon more fully in the analysis of the second allegation, according to Constable Mackenzie she had set aside and retained one video tape that did not appear to be work-related. She had explained to Inspector Lymburner in the December 7, 2011, interview that from her viewing, she concluded that it only contained footage of a personal nature of Constable Kohut's first ex-wife.

[175] However, because she confirmed that she had not watched the tape in its entirety, Inspector Lymburner asked her if she would give it to him. She agreed, and the

³³ RCMP, *Mission, Vision and Values*, online: <<http://www.rcmp-grc.gc.ca/about-ausujet/mission-eng.htm>>, accessed on January 30, 2018.

³⁴ *Ibid.* As part of its vision, the RCMP will "ensure a healthy work environment that encourages team building, open communication and mutual respect," and is committed to "open, honest and bilateral communication" with its employees.

³⁵ RSC, 1985, c P-21, s 26 [*Privacy Act*].

tape was passed from her to Staff Sergeant Kerr, and then to his lawyer, Mr. Kosteckyj, a few days later.

[176] What followed next was a serious breach of RCMP policy. It appears from various documents that the RCMP believed that this extant video tape contained evidence of Constable Kohut committing a criminal offence.³⁶

[177] Nonetheless, in spite of Mr. Kosteckyj's timely efforts to inform the RCMP that the tape was available to be picked up, there was no effort to retrieve the tape before August 2012.

[178] Acting Chief Superintendent De'Bruyckere personally picked it up in August 2012, but thereafter failed to handle it as potential evidence or as property belonging to a third party. He did not complete an Exhibit Report, and he did not issue a receipt to Mr. Kosteckyj. There is also no indication that he made any notes upon picking up or viewing the video tape.

[179] In 2015, Acting Chief Superintendent De'Bruyckere reported to Chief Superintendent Lench that he recalled viewing the tape in 2012, but that it did not contain any evidence.³⁷ This would suggest that the concern about the tape in 2015 was "much ado about nothing," except for the patent failure of any member to handle what was originally believed to be potential evidence in accordance with RCMP policy, or reasonable investigation practices.³⁸

[180] When Staff Sergeant Kerr was informed in 2015 that the video tape was not evidence, and that it had not been returned to Constable Mackenzie, he asked to have it returned. The video tape has never been found. While the video tape was not evidence of a crime, and therefore its loss does not affect a criminal prosecution, it was an exhibit obtained during the course of what was purported to be a preliminary investigation of a

³⁶ In addition to Staff Sergeant Kerr incorrectly asserting in his December 7, 2011, interview that the extant tape contained evidence relevant to prior investigations of Constable Kohut and others breaching the Code of Conduct, see email dated May 3, 2016, from Inspector Sean Sullivan to Cindy Ramos and Sharon Woodburn stating, "Rumour at this point is the tapes contained video of Harris and Kohut driving around Prince George on duty and approaching prostitutes asking them to show them their breasts. This has never been confirmed to my knowledge." While that rumour is consistent with part of Constable Mackenzie's allegations, the description by Mr. Sullivan is of the tapes that Constable Kohut allegedly took when he broke into Constable Mackenzie's home on January 24, 2006, and not of the one that she retained and later gave to Mr. Kosteckyj to give to the RCMP in accordance with Inspector Lymburner's request. The belief that the tape contained relevant evidence persisted at least into 2016.

³⁷ In a discussion with a Commission employee in June 2018, retired Chief Superintendent De'Bruyckere reported that he had not been informed of Staff Sergeant Kerr's January 2015 letter to the Commissioner prior to his retirement in May 2015, and never received a copy. As with all the retired members, this raises concerns of fairness to the retired members who became subjects of this public interest investigation.

³⁸ In addition to various emails exchanged between numerous players after Constable Mackenzie's June 11, 2011, disclosure to Staff Sergeant Kerr, this is based on the fact that Inspector Lymburner requested the tape from Constable Mackenzie on December 7, 2011, because she had not viewed it in its entirety.

criminal allegation. In hindsight, retired Chief Superintendent De'Bruyckere admitted that an Exhibit Report ought to have been completed.

[181] Moreover, in light of the fact that it contained personal information about a third party—Constable Kohut's first ex-wife—the RCMP was obligated to handle that information in accordance with the *Privacy Act*.³⁹ The inability to locate the video raises a reasonable question as to whether there was a breach of that legislation.

[182] Based on the foregoing, the Commission finds that Acting Chief Superintendent De'Bruyckere failed to handle the video tape in accordance with reasonable investigative practices, or RCMP exhibit handling policy.⁴⁰

FINDING

5) Acting Chief Superintendent De'Bruyckere failed to comply with reasonable evidence handling practices and RCMP policy on exhibit handling.

RECOMMENDATION

6) That the RCMP review its obligations under the *Privacy Act*, and determine whether it is subject to a statutory obligation to inform the third party, Constable Kohut's first ex-wife, about the loss of her personal information.

[183] In addition to the findings in response to the specific allegations in this complaint, the Commission has concerns arising from this public interest investigation with respect to the timeliness of disclosure by the RCMP. Several repeated requests for information were made by the Commission in 2017 and 2018. The delays hampered a timely completion of the Commission's public interest investigation.

[184] Having considered the complaint, the Commission hereby submits its Interim Report in accordance with subsection 45.76(1) of the RCMP Act.



Guy Bujold
Interim Chairperson

³⁹ *Privacy Act*, *supra* note 35 at s 8.

⁴⁰ RCMP *Operational Manual*, chap 22.10. "Processing Seized Articles", s 1.7. (dated 2005-11-01).

Civilian Review and
Complaints Commission
for the RCMP



Commission civile d'examen
et de traitement des plaintes
relatives à la GRC

Office of the Chairperson

Bureau du président

Protected "A"

PC-2016-1913

DEC 16 2016

Commissioner Robert W. Paulson
Attention: Director, National Public Complaints Directorate
Royal Canadian Mounted Police
73 Leikin Drive, M5 Building,
3rd Floor, Suite 101, Mailstop #47
Ottawa, ON K1A 0R2

Dear Commissioner Paulson:

Re: Investigation into the Complaint of Mr. Garry Kerr

On August 11, 2016 Mr. Garry Kerr, of Duncan, British Columbia, contacted the Commission to report serious allegations against a number of senior members of the RCMP in E Division. His complaint stems from a time when he was a member of the RCMP in Kamloops, having retired in 2012.

The complaint was forwarded to the RCMP National Public Complaints Directorate (NPCD) on September 16, 2016 for investigation pursuant to subsection 45.6(1) of the *Royal Canadian Mounted Police Act* ("the RCMP Act"). Included in the standard notification to the NPCD was a written communication addressed to Inspector Sean Curry (Officer in Charge NPCD) from the Commission's British Columbia Operations Manager, Mr. Jason Galloway, outlining certain considerations to assist the RCMP in potentially resolving this complaint informally (see attached).

It should be noted that the complainant contacted the Commission as he had lost trust in the RCMP after recent interactions. The considerations outlined a proposed process, which were drafted in consultation with Mr. Kerr to allow the RCMP to work with and allow the Commission to participate in a monitoring role in order to re-establish trust between Mr. Kerr and the RCMP. This proposed plan could have provided Mr. Kerr the confidence that the original investigation had been handled appropriately.

Despite numerous interactions between staff of the Commission and the NPCD, little progress has been made on either the investigation or the proposed

.../2

informal resolution. Further, I was informed on December 14, 2016 nearly three months after the notification by the Commission to the RCMP, that the remaining serving member named in the complaint had yet to be formally notified of the substance of this complaint as required by section 45.54 of the RCMP Act.

As the Commission has indicated regularly and in many fora, civilian review of police conduct, to be effective, must be timely. In my view, the actions to date in this complaint do little to support the perception that the matter is being addressed in a timely manner by the RCMP.

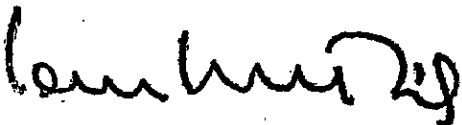
As such, pursuant to subsection 45.66(1) of the RCMP Act I am of the opinion that it would be in the public interest for the Commission to investigate this complaint. The member whose conduct is the subject matter of the complaint, Deputy Commissioner Craig Callens, will be notified of this decision forthwith pursuant to section 45.69 of the RCMP Act by the Commission.

Further, I draw your attention to subsection 45.6(2) of the RCMP Act which stipulates that the RCMP is now required to discontinue its investigation of this complaint.

Subsection 45.39(1) of the RCMP Act provides that the Commission is entitled to have access to any information in the possession of the RCMP relevant to the matter. In order to facilitate the Commission's investigation, I request that the RCMP prepare a package of all relevant materials that would include, but not be limited to: copies of the relevant occurrence files; any statements taken in connection with these events; and, all notebook entries, continuation reports and correspondence (electronic or otherwise) relating to these events.

To ensure a timely response to this complaint, it is my expectation that the file material indicated above will be delivered to the Commission within 30 days of receipt of this notification.

Yours truly,



Ian McPhail, Q.C.
Chairperson

Attach: (2)

Civilian Review and
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for the RCMP



Commission civile d'examen
et de traitement des plaintes
relatives à la GRC

FORMAL COMPLAINT – PLAINTE OFFICIELLE

NAME / NOM : Garry Kerr
CRCC FILE NO. / N° DE DOSSIER DE LA CCETP : 2016-1913
CRCC CROSS REF NO. / N° DE RENVOI DE LA CCETP :

COMPLAINT DATE / DATE DE LA PLAINTE : August 11, 2016	COMPLAINT MADE BY / PLAINTE DÉPOSÉE PAR : LETTER-LETRE	ATTACHMENTS ARE IDENTIFIED AS FOLLOWS / LES PIÈCES JOINTES SONT IDENTIFIÉES COMME SUIV : 49 pages
PREPARED BY / PRÉPARÉ PAR : CRCC – NATIONAL INTAKE OFFICE CCETP – BUREAU NATIONAL DE RÉCEPTION DES PLAINTES		
DATE COMPLAINT FORWARDED TO RCMP / DATE D'ACHEMINEMENT DE LA PLAINTE À LA GRC : MONTH / MOIS DAY / JOUR YEAR / ANNÉE 09 16 2016		DIVISION : E DETACHMENT / DÉTACHEMENT : Burnaby Municipal (1) and Unknown (5)

THE SPECIFIC ALLEGATIONS OF MISCONDUCT ARE AS FOLLOWS / LES ALLÉGATIONS D'INCONDUITE SONT LES SUIVANTES :

Mr. KERR would like to file a complaint against the following members of the RCMP in relation to a report he made to RCMP senior managers of a video tape that purported to show Cst. Joe Kohut and other RCMP members in an inappropriate act with a young indigenous female, and the removal of that tape after Cst. Kohut forcibly entered his ex-companion's residence (also an RCMP regular member) to retrieve "some personal items" .:

S/Sgt. Bill Goughnour (reportedly now retired) and Cst. Joe Kohut for possible statutory offences.

C/Supt. Craig Callens for not acting in a timely and appropriate manner after S/Sgt. KERR (now retired) reported what he knew to C/Supt. Callens in June, 2011.

C/Supt. Rick Taylor (retired) for not acting on the information he was provided by S/Sgt. KERR in June, 2011.

C/Supt. Kevin De'Bruyckere (retired) who was apparently the conduct officer in this matter, yet after Mr. KERR provided his statement Mr. KERR states he was never updated on the information he had provided.

C/Supt. De'Bruyckere & Unknown member(s?) from "E" Division for Mishandling of property regarding the loss of a second video tape reportedly containing incriminating evidence against Cst. Kohut and other officers involved in allegations of sexual relations with underage females. This tape was handed to C/Supt. De'Bruyckere by lawyer Walter Kosteckyj.

Mr. KERR states that he does not know if the RCMP conducted a criminal investigation into S/Sgt. Goughnour's actions as they relate to the first video tape but this is a concern of his.

In addition, Mr. KERR questions what materials C/Supt. Lench reviewed that led to the correspondence from C/Supt. Callens dated 2015-09-29.

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ADDITIONAL INFORMATION / RENSEIGNEMENTS SUPPLÉMENTAIRES :

S/Sgt. KERR retired from the RCMP in March, 2012. Please see attachments from the complainant for further details of the incident and other potential allegations.

Civilian Review and
Complaints Commission
for the RCMP



Commission civile d'examen
et de traitement des plaintes
relatives à la GRC

COMPLAINT FORM

Note: By submitting the complaint form, you are authorizing the Civilian Review and Complaints Commission for the RCMP to collect your personal information. This information is being collected solely for purposes related to Part VII of the *Royal Canadian Mounted Police Act* (RCMP Act).

The Complaint Form along with all other relevant documentation may be forwarded to the RCMP for investigation pursuant to subsection 45.35(3) of the RCMP Act. Accordingly, an RCMP complaint investigator may contact you to provide a statement.

Additionally, by indicating on the form below that you would like the Civilian Review and Complaints Commission for the RCMP to communicate directly with a legal representative or an advocate instead of yourself, you are authorizing the Civilian Review and Complaints Commission for the RCMP to disclose information related to your complaint to your representative.

The information is held in personal information bank CPC PPU 005, and you have a right to access this information in accordance with the *Privacy Act*.

Complainant Information

Family Name (Required): KERR

Given Name (Required): Garry

Address (Required): [REDACTED]

City (Required): [REDACTED] Province (Required): BC

Postal Code (Required): [REDACTED] Country (Required): _____

Telephone number: [REDACTED]

Preferred method of communication (Required)

Email Phone Mail

E-mail Address: [REDACTED]

MAY 17 '16 8:43

Received Date/At CRCC/ _____

Questions

Preferred Language of Correspondence (Required)

English French

Have you previously filed a complaint about this incident with the RCMP? (Required)

Yes No

If yes, did you sign an agreement with the RCMP to resolve this complaint informally? (Required)

Yes No

Do you wish the Commission and the RCMP to communicate directly with a legal representative or an advocate instead of yourself? (Required)

Yes No

If yes, please provide the full name and contact information of your representative or advocate.

Details of Complaint (complete as much as possible)

Please describe the circumstances that led to your complaint as completely as possible (Required)

Please include:

- Where and when the incident(s) took place (you may wish to include details such as landmarks)
- Who was involved
- Were you directly involved in the incident(s)?
- What was said and done
- Any other people who witnessed the incident (including other police officers)
- If there was any damage or injury
- If there was something that you feel caused the incident or affected your interaction with the RCMP

ATTACHED



Please provide the name(s) of any witness(es), if applicable. Witnesses may include RCMP members you are not complaining about.

Please provide, if possible, the name, rank and detachment of the RCMP members involved.

My name is Garry Edward KERR. I joined the RCMP on 1981-11-10 and I retired from the RCMP in March, 2012. When I retired from the RCMP I was at the rank of a S/Sgt and I was in charge of the Serious Crime Unit at Kamloops, BC.

In early June, 2011, I was approached by Cst. Allister OWEN of Kamloops Detachment. OWEN was in a common-law relationship with Cst. Lisa MacKENZIE. OWEN asked me if it would be okay for MacKENZIE to call and speak to me about something. I enquired as to what it was about and OWEN said he did not want to discuss the issue with me, and that it would be best for MacKENZIE to speak to me about it. I told OWEN that MacKENZIE could call me anytime. I had no idea what MacKENZIE wanted to speak to me about.

On 2011-06-11, I received a phone call at my residence from MacKENZIE. MacKENZIE was with the Kamloops RCMP Detachment. I knew MacKENZIE only from working at Kamloops Detachment. MacKENZIE was not a personal friend nor was I her supervisor at the detachment.

MacKENZIE had been in previous relationship with Cst. Joe KOHUT. KOHUT was one of the RCMP Member's that had been previously investigated for having inappropriate relationships with young females in Prince George, BC.

MacKENZIE provided me with the details of an incident that had taken place at her residence sometime previous. S/Sgt. Bill GOUGHNOUR was the Administrative NCO for Kamloops Detachment. MacKENZIE told me that GOUGHNOUR had attended to her residence unannounced several months previously. GOUGHNOUR told MacKENZIE he was there to discuss some of the ongoing issues in the relationship that MacKENZIE had with KOHUT. The details of GOUGHNOUR's unannounced visit to MacKENZIE's residence are detailed in the attached statement that I provided on 2011-12-07 to Insp. Ward LYMBURNER in the presence of legal counsel, Walter KOSTECKYJ.

A brief summary of the details are that MacKENZIE disclosed to GOUGHNOUR was that she had a video tape showing KOHUT and other RCMP Members in an inappropriate act with a young native female. GOUGHNOUR told MacKENZIE to hide the video. GOUGHNOUR was present when the video was hidden in the kitchen of the residence. GOUGHNOUR departed telling MacKENZIE not to tell anyone of the video's existence.

A couple of days later, KOHUT broke into MacKENZIE's house by kicking the front door down. He reported the incident to the Kamloops RCMP, but said he had only done it to retrieve some personal items from the residence that he had previously shared with MacKENZIE. MacKENZIE was interviewed and confirmed that none of her personal possessions had been taken by KOHUT. What MacKENZIE did not reveal was that the video that GOUGHNOUR had told her to hide was gone. The only two people that knew where the video was hidden, were MacKENZIE and GOUGHNOUR. GOUGHNOUR and KOHUT had a close relationship at Kamloops Detachment.

She was very emotional during the phone conversation and told me that she wanted to tell someone what had happened and that she felt I was someone she could trust to move the information forward. I told MacKENZIE that I would contact "E" Division about the information.

That same day I sent an email to C/Supt. Craig CALLENS. CALLENS was the CROPS Officer for "E" Division and someone that I had known for many years. I also sent the email to A/Comm. Peter GERMAN. The email did not disclose any of the information that MacKENZIE had provided to me. It simply asked that they call me to discuss a serious issue.

The following morning, 2011-06-12, I received a phone call from CALLENS. I detailed the information that MacKENZIE had provided to me. CALLENS made a comment to the effect of, "do you have any idea of the possible ramifications of this information?" I replied to CALLENS that it was because of the nature of the information that I had wanted to provide it to him. CALLENS asked that I not discuss the information with anyone and that he would have someone call me the following day.

Shortly after speaking to CALLENS, I received a phone call from C/Supt. Rick TAYLOR. TAYLOR was the OIC Burnaby Detachment at that time. TAYLOR stated that GERMAN had asked him to call me on his behalf. I related the same information to TAYLOR along with the details of my conversation with CALLENS. TAYLOR said he would inform GERMAN of the details.

I never heard from anyone for several months. Not a phone call, not an email, nothing.

Several months later, after still never hearing from anyone, I related the details to Insp. Tony HAMORI of "K" Division. HAMORI and I had been close personal friends for over 20 years. HAMORI was in disbelief that no one had ever contacted me. During my conversation with HAMORI I stated that I was going to go to the media with the information. HAMORI asked me not to go to the media as he said it would be media frenzy and look terrible for the RCMP. HAMORI said he would move the information forward. HAMORI drafted a C-237 with all of my information to "E" Division. HAMORI told me that he had briefed the Commanding Officer of "K" Division of the information.

As a result of the C-237 that HAMORI had forwarded to "E" Division, I was contacted by C/Supt. Kevin DE' BRUYCKERE. DE' BRUYCKERE was the OIC Staffing & Personnel. I was never sure why I was contacted by the OIC Staffing & Personnel and not someone from Major Crime. DE' BRUYCKERE said he wanted to arrange for MacKENZIE and I to provide statements.

On 2011-12-07, MacKENZIE and I travelled to Vancouver and provided statements to LYMBURNER in the presence of legal counsel, Walter KOSTECKYJ.

After providing separate statements, KOSTECKYJ approached me and said that during MacKENZIE's statement, she said she did not want to provide the name of one of the individual's that she had said was in the missing video tape. KOSTECKYJ asked that I speak to MacKENZIE to see if she would tell me the name of the RCMP Officer that she had said was in the video.

I spoke to MacKENZIE about KOSTECKYJ's request. MacKENZIE provided me with the name of the officer. In turn, I called KOSTECKYJ and provided the name to him that same day.

Separate from the statements, MacKENZIE had given me a video tape that she said contained incriminating evidence in regards to KOHUT and the other officers involved in the allegations of sexual relations with underage females. I personally gave the video to KOSTECKYJ and asked that it be turned over to the RCMP. KOSTECKYJ later confirmed with me that he had personally given the video to DE' BRUYCKERE.

Some five years later, I have never heard if the information was acted upon. On 2015-01-29 I sent a letter to RCMP Commissioner, Bob PAULSON. I have attached a copy of the letter. In the letter, I asked what had been done with the information I provided to CALLENS five years previous.

Shortly thereafter, I was contacted by C/Supt. Derren LENCH of "E" Division. I was assured that he would review the matter and get back to me in a timely manner. LENCH met personally with me twice. On both occasions he travelled to Vancouver Island to speak to me. On the first occasion he asked that I provide him with my concerns over CALLENS initial handling of the information and other relevant details. I was assured by LENCH that he would leave no stone unturned in his review of the matter. On 2016-07-30, LENCH again travelled to Vancouver Island to inform me that he had reviewed all materials and that it was his opinion that CALLENS and others had acted appropriately with the information. When I asked the obvious question of why no one contacted me after I had spoke to CALLENS ON 2011-06-12, LENCH stated that CALLENS was busy doing "background work," on the information. I do not believe that LENCH reviewed any significant materials in coming to his decision. LENCH was not able to answer one single direct question that I asked of him. When I asked him if the information on GOUGHNOUR had been subject to a criminal investigation, he told me that due to privacy laws, he was not able to answer the question.

I received a letter from CALLENS dated 2015-09-29. I have attached a copy of the letter. In part the letter stated that Crown had reviewed the videotape and in their opinion it contained information that was civil and not criminal.

Following the letter from CALLENS I requested the videotape be returned to me. I received an email from the RCMP stating that they could not find the video and they felt it had been lost.

I am requesting that the following be investigated:

- Why did CALLENS and TAYLOR not act on the information?
- Did the RCMP conduct a criminal investigation into GOUGHNOUR'S actions as they relate to the video tape?
- How did the RCMP lose the video tape?
- What materials did LENCH review that led to CALLENS letter of 2015-09-29.

I have attached a copy of the statement I provided as well as a copy of the letter I sent to PAULSON and the one I received from CALLENS. The single biggest question I have, is why did CALLENS not act in a timely and appropriate manner. I have all emails, notes, etc relating to the information I have provided.

My home address is [REDACTED] My cell is [REDACTED] and my email is [REDACTED]

Respectfully submitted,



Garry KERR
2016-05-11

January 29, 2015

Bob PAULSON, Commissioner
RCMP National Headquarters
Headquarters Building
73 Leikin Drive
Ottawa, ON K1A 0R2

Dear Commissioner PAULSON,

I am writing in regards to specific information I provided to the RCMP on 2011-04-27 which resulted in a Directed Review ordered by E Division HQ.

I have never been contacted by the RCMP in regards to the status or results of the Directed Review. I retired from the RCMP while ODS in March 2012.

My purpose in writing this letter is to formally request that the information I provided be properly investigated in a timely manner by a competent agency.

Details and timeline are as follows:

On 2011-03-01 I met with Deputy Commissioner BASS and Deputy Commissioner HOURIHAN in my office at the Kamloops RCMP Detachment. My rank was S/Sgt. I detailed specific information to them in regards to serious concerns I had over the actions of the Operations Office, Inspector LACASSE. Deputy Commissioner HOURIHAN ordered the Directed Review at the Kamloops Detachment following our discussion.

On 2011-04-27 I was interviewed in length by C/Supt. TAYLOR at PRTC in Chilliwack. During the interview with C/Supt. TAYLOR I related details on specific incidences where I felt that the actions of Insp. LACES were criminal in nature.

Following my interview the Directed Review was carried out and led by C/Supt. TAYLOR at Kamloops Detachment.

Shortly thereafter I was contacted by a Female Member who detailed specific information to me regarding her knowledge of a criminal investigation wherein her then common law spouse was suspect. The common-law spouse is a Member of the RCMP. The Female Member told me information about a Kamloops S/Sgt. (GOUGHNOUR) coming to her home and instructing her to hide a video tape that contained information implicating her ex-common law spouse and others in regards to allegations of them having sex with young females in Prince George, BC. Her ex-common law spouse was one of the members investigated. A couple days later, the ex-spouse broke into this Female Member's residence by kicking in the front door when she was not

at home. The Female Member told me that the only items missing were the video tape that she had been instructed to hide by S/Sgt. GOUGHNOUR.

The following day I personally detailed this information to then C/Supt. CALLENS who was the CROPS Officer at the time. I also detailed it to C/Supt. TAYLOR. I was told by both that the matter would be looked into very quickly. For reasons unknown to myself I never heard from anyone for several weeks. It was only after I discussed this information with a senior Officer that I trusted that suddenly the wheels were in motion to have myself and the Female Member interviewed at a lawyer's office in Vancouver.

The Female Member had provided a second tape to me that contained evidence in regards to the allegations that her ex-spouse and other member's had sexual contact with young females in Prince George, BC. I turned this video over to the lawyer who in turn turned it over to the RCMP.

I have discussed this information regarding Insp. LACASSE and S/Sgt. GOUGHNOUR with one senior Crown Counsel and one senior Defense Counsel. Both agree with my contention that this information is worthy of criminal investigation.

In short the allegations are:

- Insp. LACASSE ordered me to delete witness information in a Report to Crown Counsel.
- Insp. LACASSE interfered in a sexual assault investigation involving a young female. He had a direct connection to the suspect and as a result the investigation was derailed.
- S/Sgt. GOUGHNOUR was involved in counselling a female RCMP Member to hide a video tape that related to an investigation of RCMP Members sexually assaulting females in Prince George, BC.
- In my statement to C/Supt. TAYLOR I also detailed incidents of bullying at the hands of Insp. LACASSE.

Again, I have never been contacted by anyone within the RCMP regarding the allegations and information I brought forth.

Yet, in C/Supt. TAYLOR'S report to the Commanding Officer it detailed six (6) Code of Conduct allegations against me. I can tell you categorically that all of these allegations were either false and/or outright lies.

I will briefly detail one of these Code of Conduct Allegations for you:

- The wording in the report was such that I was under suspicion for either stealing a firearm and/or coming into possession of it through something less than legal means and that the firearm was found to have been missing for several years from a unit on Vancouver Island. The truth is that upon my retirement I turned in two firearms. Many years ago I was attached to 'E' Division Serious Crime. S/Sgt. Don RINN was my supervisor and had requisitioned a

- service pistol for plain clothes use. I have the original RCMP Stores Document bearing S/Sgt. RINN'S signature for the issuing of this firearm to me.

Again, I have never been contacted by anyone in regards to the final report.

Therefore, I have been left to assume that little has been done with the information I detailed in my statement to C/Supt. TAYLOR.

I respectfully request and urge you to read the statement I provided and not simply the final report of C/Supt. TAYLOR. Again, I am writing this letter to formally request a criminal investigation be carried out on the allegations I have brought forward as I have personal knowledge that the information I brought forward did not result in any criminal investigation(s).

When I was a junior Constable I was trained to always be upfront and honest with those you deal with. I am proud that I served my entire career, of over 30 years, with that in mind.

Yet this did not serve me well when I came forward with the information I provided. In retrospect, the day I provided the statement to C/Supt. TAYLOR was the end of my career due to the response I received or I should say lack of response. Just as one example; shortly after I came forward, a lateral position came up that I had been offered a few years previous. I was overlooked due to the allegations I had brought forward, in fact I was specifically told this and that retirement was my best option.

Needless to say, this was not the way I wanted to leave my career of over 30 years.

I trust you will take my letter seriously and take the necessary steps to have this information reviewed and investigated. I respectfully look forward to your response to my request.

Sincerely,



Garry E. KERR

Reg #37329, Retired

Distribution:

ATTORNEY GENERAL OF BC, Honorable Suzanne ANTON

**APPENDIX C
COMMISSION FINDINGS AND RECOMMENDATIONS**

FINDINGS

- 1) In June 2011, Assistant Commissioner Callens responded in a timely and reasonable manner to Staff Sergeant Kerr's criminal complaint.
- 2) Deputy Commissioner Callens reasonably responded to retired Staff Sergeant Kerr's letter of January 29, 2015, by directing that the Assistant Commissioner, Criminal Operations Officer, review the matter.
- 3) No files exist to support a conclusion that Chief Superintendent Lench, or anyone, reasonably assessed, or reasonably recorded an assessment of, Constable Mackenzie's criminal allegations.
- 4) The information supports a conclusion that no one in a position of authority in "E" Division in 2011 reasonably ensured that:
 - a) a timely assessment was conducted of whether Constable Mackenzie's allegations raised a reasonable suspicion of criminal misconduct or Code of Conduct breaches by Constable Kohut, Staff Sergeant Goughnour, or others;
 - b) a reasonable investigation was conducted of Constable Mackenzie's allegations;
 - c) case management of Constable Mackenzie's allegations was engaged;
 - d) Staff Sergeant Kerr was reasonably informed of the process engaged following his June 12, 2011, report of Constable Mackenzie's allegations.
- 5) Acting Chief Superintendent De'Bruyckere failed to comply with reasonable evidence handling practices and RCMP policy on exhibit handling.

RECOMMENDATIONS

- 1) That an assessment be conducted, without delay, of whether Constable Mackenzie's June 2011, allegations support a reasonable suspicion that a criminal offence or offences were committed by Staff Sergeant Goughnour and/or Constable Kohut.
- 2) That a reasonably thorough criminal investigation be conducted, without delay, should it be established that Constable Mackenzie's allegations support a reasonable suspicion of criminal conduct.
- 3) That the RCMP inform Staff Sergeant Kerr and the Commission, without delay, of the process engaged and its findings in response to these recommendations, subject to any legal constraints.
- 4) That "E" Division engage a review forthwith to ensure that, whenever internal allegations of criminal conduct committed by RCMP members are made, reasonable case management practices are implemented without delay.

including but not limited to:

- a) **File number assignment;**
 - b) **Clear responsibility tasking in writing;**
 - c) **Assurance that responsibility tasking is known by all members assigned to the file;**
 - d) **Indication of the assigned file number on all documents created, obtained or relevant to the investigation;**
 - e) **File storage in accordance with secure file management practices;**
 - f) **Creation of diary dates to ensure compliance with time limitations set out in Part IV of the RCMP Act or otherwise;**
 - g) **Regular status reports to clearly identified senior management;**
 - h) **Adherence to conflict of interest rules;**
 - i) **Status updates to complainants and affected parties, subject to *Privacy Act* requirements and reasonable concerns about security of information during a criminal investigation.**
- 5) **That the RCMP Commissioner provide a written apology to Staff Sergeant Kerr for the untimely and incomplete response to Constable Mackenzie's allegations, which Staff Sergeant Kerr first provided on June 12, 2011.**
- 6) **That the RCMP review its obligations under the *Privacy Act*, and determine whether it is subject to a statutory obligation to inform the third party, Constable Kohut's first ex-wife, about the loss of her personal information.**

**APPENDIX D
LIST OF MEMBERS, RETIRED MEMBERS AND WITNESSES
INTERVIEWED DURING THE COMMISSION'S
PUBLIC INTEREST INVESTIGATION**

Date	Name	Recorded
March 24, 2017	Dave Attfield, C/Supt.	No
February 20, 2017	Craig Callens, (retired) D/Commr.	Yes
July 19, 2017	Paul Darbyshire, (retired) Supt.	Yes
March 24, 2017	Kevin De'Bruyckere, (retired) C/Supt.	No
March 21, 2017	Cal Demerais, (retired) Inspector	Yes
July 20, 2017	Eldon Dueck, Staff Sergeant	No
June 5, 2017	Lisa Fossum, (retired) Sergeant	No
July 19, 2017	Bill Goughnour, (retired) Staff Sergeant	No
March 20, 2017	Tony Hamori, C/Supt.	Yes
July 18, 2017	Brad Hartl, (retired) C/Supt.	Yes
February 21, 2017	Peter Hourihan, (retired) D/Commr.	Yes
January 24, 2017	Garry Kerr, (retired) Staff Sergeant	Yes
March 23, 2017	Walter Kostecky (lawyer)	Yes
March 22, 2017	Derren Lench, (retired) C/Supt.	Yes
March 23, 2017	Norm Lipinski, (retired) A/Commr.	No
July 19, 2017	Lisa Mackenzie, Constable	Yes
July 18, 2017	Craig MacMillan, Sergeant	Yes
February 23, 2017	Marianne Ryan, (retired) D/Commr.	Yes
February 22, 2017	Mike Sekela, (retired) C/Supt.	Yes
February 22, 2017	Rick Taylor, (retired) C/Supt.	Yes
May 10, 2017	Murray Watt, (retired) Staff Sergeant	Yes