Commission for Public Complaints Against the Royal Canadian Mounted Police

Commission des plaintes du public contre la Gendarmerie royale du Canada

PUBLIC INTEREST INVESTIGATION INTO RCMP MEMBER CONDUCT RELATED TO THE 2010 G8 AND G20 SUMMITS

FINAL REPORT

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OVERVIEW

On June 26 and 27, 2010, people around the world turned on their televisions, smartphones and computers to be greeted by chaotic scenes of the events occurring in the environs of the G20 Summit in Toronto, Ontario. Minute by minute, the news coverage depicted crowds filling the streets, buildings being vandalized, police cars being set afire, protesters clashing with police. There were also stories of hundreds of arrests and detentions in a temporary holding facility, which attracted considerable scrutiny. In the face of what appeared to be rampant disorder, perceived inaction and subsequent overreaction by police fueled public concerns, making security the predominant storyline of the Summit. Many media articles, political speeches and demands for public inquiries followed.

Major international events will always present significant security challenges. The 2010 G8 and G20 Summits, however, involved a unique confluence of factors: the Summits were held back-to-back at sites some 200 kilometres apart; security planning and policing involved several police agencies with overlapping jurisdiction as well as the Canadian Forces; and, the G20 was held in the downtown core of Canada's largest city. While the G8 Summit was uneventful from a policing perspective, this could not be said of the subsequent G20 Summit.

In response to widespread expressions of concern summarized in a complaint from the Canadian Civil Liberties Association (CCLA), the Commission for Public Complaints Against the RCMP (Commission) launched a public interest investigation.

> **"The RCMP's role in the security of the G8 and G20 Summits was largely limited to activities falling within the sphere of planning and protection of summit participants . . ."**

Commission Mission Statement

To provide civilian oversight of RCMP members' conduct in performing their policing duties so as to hold the RCMP accountable to the public.

In the course of its investigation, initiated on November 5, 2010, the Commission specifically examined:

- the planning process for the Summits;
- intelligence activities surrounding the Summits;
- specific incidents of use of force, if any;
- the so-called "kettling" incident; and
- events occurring at the Eastern Avenue Detention Centre.

The RCMP's role in the security of the G8 and G20 Summits was focused on activities falling within the sphere of planning and protection of summit participants, as opposed to front-line policing and interactions with members of the public. The integrated nature of that planning and the subsequent policing resulted in a complex command structure which presented many challenges in the determination of the role of each of the involved police agencies.

The Commission's jurisdiction extends only to the conduct of RCMP members. While the RCMP, generally speaking, has legislated authority over and responsibility for the protection of international events and their attendees, the police force of jurisdiction, namely the Toronto Police Service in the case of the G20 Summit, retains its primary responsibility and authority for policing the City of Toronto. The Office of the Independent Police Review Director has jurisdiction over complaints surrounding the conduct of members of the Ontario police agencies other than the RCMP involved in policing the Summits. The Office of the Independent Police Review Director has undertaken its own review.

In summary, the Commission concludes that the RCMP's security planning process for the Summits was robust and thorough and that

appropriate policies and procedures were in place. The Commission also concludes that no RCMP members used unreasonable force, and that the RCMP's involvement in the kettling incident was reasonable in the circumstances. Finally, the Commission concludes that the RCMP had no involvement in respect of the Eastern Avenue Detention Centre, another source of much public criticism, from either a planning or a policing perspective, nor did they with arrests carried out at Queen's Park, the University of Toronto or The Esplanade. The Commission recommends that record-keeping and note-taking be more comprehensive, that consistent post-event integrated debriefing take place to identify areas of concern or best practices, and that, in advance of an integrated policing event, relevant policies be clarified to the extent they are inconsistent with the policies of the police agency of primary jurisdiction.

Finally, it should be noted that the Commission's investigation was delayed by many factors. Chief among them was the sheer volume of RCMP documentation and relevant material which required review and analysis by the Commission. The Commission recommends that, in the future, the potential of an independent *ex post facto* review be contemplated throughout the planning process for major events such that records are effectively kept and relevant documents suitably organized for later disclosure. The Commission was also challenged by the need to coordinate the disclosure process with that of the Office of the Independent Police Review Director, given the integrated nature of the policing effort involved. Nonetheless, the Commission is satisfied that its examination of the extensive documentation, including video footage, was complete.

THE COMPLAINT AND PUBLIC INTEREST INVESTIGATION

On October 22, 2010, the Commission received a complaint from Ms. Nathalie Des Rosiers, General Counsel for the CCLA, regarding RCMP conduct during the G8 and G20 Summits (**Appendix A**). The Commission had previously received several individual complaints stemming from the Summits, many of which had been determined not to involve RCMP members, who were not, in general terms, a visible presence outside the fenced zones of the Summits. In that light, the Commission had been conducting a low-key and measured review of specific complaints regarding the Summits. However, as a result of continuing public concerns as set out in the CCLA complaint, on November 5, 2010, the Commission notified the RCMP Commissioner that it considered it advisable in the public interest for the Commission to investigate the complaint pursuant to subsection 45.43(1) of the *Royal Canadian Mounted Police Act* (RCMP Act).

The Commission defined the scope of its public interest investigation to include the conduct of unidentified RCMP members to the extent they were involved in the following matters:

1. G8 and G20 Summits security planning (including the location of the security fences).
2. Infiltration and surveillance (if any) of individuals or groups before and during the Summits.
3. Use of force, detentions and arrests during the Summits in particular with respect to the following:

    a. the dispersal of protesters at Queen's Park on June 26, 2010;
    b. detentions and arrests at The Esplanade on June 26, 2010;
    c. detentions and arrests at Queen Street West and Spadina Avenue on June 27, 2010;
    d. arrests and police conduct outside of the Eastern Avenue Detention Centre on June 27, 2010;

e. arrests at the University of Toronto's Graduate Students' Union building on June 27, 2010.

4. Conditions of Eastern Avenue detention facilities in Toronto.

In the Terms of Reference of its public interest investigation (**Appendix B**), the Commission specified that RCMP member conduct would be assessed according to the following criteria:

1. Whether in carrying out any of the activities listed above the involved RCMP members complied with appropriate statutory requirements, policies, practices and procedures relevant to such events.
2. Whether the conduct of these same RCMP members adhered to the standards set out in section 37 of the RCMP Act and respected the rights and freedoms guaranteed by the *Canadian Charter of Rights and Freedoms* (Charter).
3. Whether existing RCMP policies, practices and procedures related to major events such as the Summits are adequate, accord with established police practices and respect the rights and freedoms guaranteed by the Charter.

Pursuant to subsection 45.43(3) of the RCMP Act, the Commission is required to prepare a written report setting out its findings and recommendations with respect to the complaint. This report constitutes the Commission's investigation into the issues raised in the complaint and the associated findings and recommendations. A summary of the findings and recommendations can be found in **Appendix C**.

Apart from the CCLA's complaint, a total of 28 public complaints relating to the G8 and G20 Summits were made. Of the 28, 14 were terminated[1] by the RCMP, 2 were found to be outside the Commission's jurisdiction, and 12 were investigated and deemed unsupported. Five of the latter pertained to the detention and treatment of persons detained in the area of Queen Street and Spadina Avenue on June 27, 2010, and will be discussed below.

OTHER REVIEWS RELATING TO THE SUMMITS

Following the Summits, various aspects of the events became the subject of review by various bodies, agencies and levels of government, as follows:

1. The Ontario Ombudsman examined the propriety of a provincial regulation passed pursuant to the Ontario *Public Works Protection Act*, regarding the G20 security perimeter. This report was issued in December 2010.
2. The Office of the Independent Police Review Director has undertaken an investigation of the security planning and policing of the G20 Summit (as they pertain to the actions of provincial and municipal police officers in Ontario) as well as into nearly 300 individual complaints. Because the nature of the investigations undertaken by the Commission and the Office of the Independent Police Review Director are closely related, the two bodies have cooperated to the extent possible throughout their respective investigations.
3. The Toronto Police Services Board called an independent civilian review of the policing of the G20, headed by the Honourable John W. Morden. The Toronto Police Services Board review is ongoing.
4. The Ontario Special Investigations Unit opened investigations into allegations of inappropriate conduct by Toronto police during the G20 causing injury to a person. Two Toronto Police Service officers were charged.
5. The Standing Committee on Government Operations and Estimates released a report in March 2011, regarding expenses incurred for the G8 and G20 Summits.

1 Under subsection 45.36(5) of the RCMP Act, the RCMP Commissioner (or his delegate) may refuse to investigate or terminate the investigation into a public complaint made under Part VII of the RCMP Act in certain circumstances: when the subject matter of the complaint is already being examined through another process provided for in federal legislation; if the complaint is deemed to be frivolous or vexatious; or if investigation would not be necessary or reasonably practicable. RCMP decisions to terminate investigations into public complaints are subject to review by the Commission.

6. The Standing Committee on Public Safety and National Security released a report in March 2011, regarding issues surrounding security at the G8 and G20 Summits.
7. The Auditor General commented on spending for and funding of the G8 and G20 Summits in her Spring 2011 report.
8. The Ontario Minister of Community Safety and Correctional Services engaged the former Chief Justice of Ontario, the Honourable Roy McMurtry, to review the Ontario *Public Works Protection Act*. His report was released in April 2011.
9. The CCLA released its own report into the security issues arising from the G20 in June 2010, with an updated report released in February 2011, following public hearings held by the CCLA. The CCLA subsequently issued a follow-up report in August 2011.

METHODOLOGY OF THE COMMISSION'S INVESTIGATION

On December 13, 2010, RCMP Commissioner William Elliott wrote to the Interim Chair of the Commission to express his commitment to cooperate with the Commission's investigation. It should be noted that the Commission's current enabling legislation, the RCMP Act, does not require the RCMP to cooperate with a Commission public interest investigation; subsection 45.43(2) of the RCMP Act states that in such circumstances, the RCMP "is not required to investigate, report on or otherwise deal with the complaint."

Given the necessity for the Commission's review of the relevant documentation in the context of its public interest investigation, Commissioner Elliott wrote to the Interim Chair on February 25, 2011, three months after the investigation was called, setting out the conditions under which the Commission would be permitted to view RCMP documentation. The RCMP also crafted a protocol for the viewing of Event Management System[2] documents.

Between December 2010 and March 2011, RCMP officials met with Commission staff on four occasions to give general overviews, and provided a minimal amount of documentation. The Commission investigator met with the appropriate RCMP members to review the documents in the Event Management System on two occasions, in March and June 2011. The Commission also made numerous requests for follow-up documentation, and continued to receive relevant documents from the RCMP as late as October 14, 2011.

While RCMP officials have been cooperative in providing documents to the Commission upon request, the production process has highlighted the need for the RCMP to effectively manage the volume of documentation generated in the course of a large-scale operation, and to easily identify all documentation relating to a specific event or query from the Commission in order that it may be provided quickly, consistently and completely. While the Commission recognizes the challenge posed by the integrated nature of this particular event, it nonetheless emphasizes that delays occasioned by the lack of timely disclosure are of concern. As such, the Commission recommends that the RCMP more effectively integrate into its planning function for major events an awareness of the potential of *ex post facto* review and adopt commensurate document organization practices and guidelines for appropriate disclosure.

Recommendation No. 1

That the RCMP more effectively integrate into its planning function for major events an awareness of the possibility of *ex post facto* review and adopt commensurate document organization practices and guidelines for appropriate disclosure.

2 The Event Management System database was used by the Integrated Security Unit (ISU) during the Summits to capture documentation pertaining to the Summits.

Despite the foregoing, the Commission is satisfied that it has had the opportunity to examine the RCMP records that the Commission considered relevant to its investigation. In addition to documents, the Commission received RCMP video of certain demonstrations and events. Furthermore, the RCMP sought and acquired permission for the Commission to view specific documents belonging to the Toronto Police Service. These documents were obtained.

In respect of documents belonging to the Toronto Police Service, the Commission notes that such documents included the notes of RCMP members who were part of "high visibility teams" (discussed further on page 22), as well as sections of integrated plans relating to the Toronto Police Service. In the Commission's view, while it acknowledges that the memorandum of understanding between the two services contemplated that notes of RCMP high visibility team members would be remitted to the Toronto Police Service, it is clear that such documentation would be relevant to any review of member conduct. Accordingly, the Commission recommends that the RCMP reflect in its agreements with other police agencies, to the extent possible, that RCMP note-taking guidelines require members to retain notes for, among other things, subsequent review of their conduct.

Recommendation No. 2

That the RCMP reflect in its agreements with other police agencies, to the extent possible, that RCMP note-taking guidelines require members to retain notes for, among other things, subsequent review of their conduct.

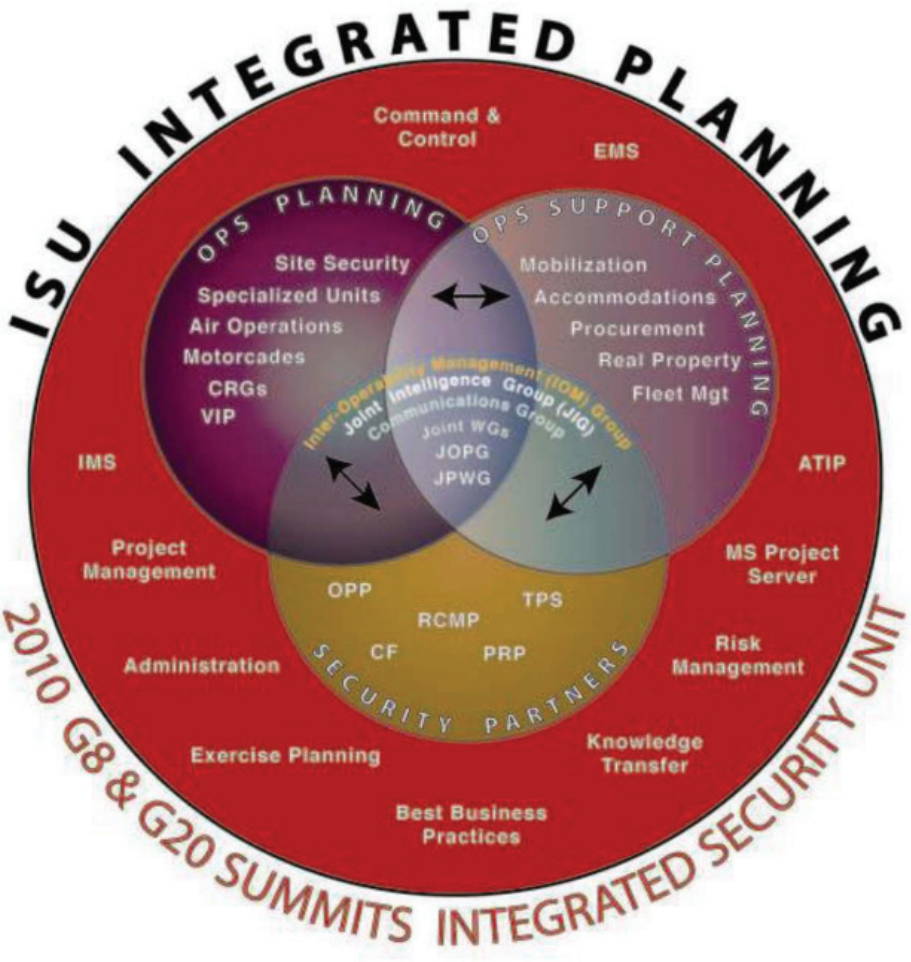
To supplement the documentation and materials received, the Commission conducted interviews with 38 persons. This included appropriate RCMP members, members of the Toronto Police Service and Government of Canada personnel. The General Counsel for the CCLA also cooperated with the Commission's investigation and made herself available for an interview by the Commission's investigator. In addition, the CCLA made available to the Commission some of its monitors who were among the public during the G20 to observe the actions of the police. The Commission also conducted interviews with some individuals who lodged complaints concerning the G20. The Commission found that, in an overwhelming majority of cases, police services as well as individual officers were cooperative, agreed to interviews and shared the information requested. Only one RCMP member declined to be interviewed, as was the member's right under the current legislation governing the public complaint process. All other interviews or meetings requested were facilitated.

> **"[T]he production process has highlighted the need for the RCMP to effectively manage the volume of documentation generated in the course of a large-scale operatio[n]."**

COMMISSION'S REVIEW OF THE FACTS SURROUNDING THE EVENTS

It is important to note that the Commission is an agency of the federal government, distinct and independent from the RCMP. When conducting a public interest investigation, the Commission does not act as an advocate either for the complainant or for RCMP members. It is the role of the Chair of the Commission 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.

FIRST ISSUE: G8 AND G20 SUMMITS SECURITY PLANNING



The enormity of the task of providing security for each of the Summits cannot be overstated. Hosting of both the G8 and G20 Summits, one immediately after the other, by the same country had never taken place previously. Further compounding matters was that in the months leading up to the Summits, the RCMP was heavily involved in security for the Vancouver 2010 Olympic and Paralympic Games, which took place in February and March 2010.

Canada's security obligations during events such as the G8 and G20 Summits, in addition to the general protection of property and the public, include the protection of Internationally Protected Persons,[3] such as heads of State and government and foreign diplomats, while in Canada. Initial planning assumptions indicated that:

- an estimated 52 Internationally Protected Persons and their delegations would attend the Summits;
- 3,000 accredited and 500 non-accredited media personnel were expected to be in attendance;
- 17,500 security personnel would be required; and
- large-scale protests were anticipated.

However, the Commission noted that these numbers were in constant flux until days before the Summits began. In an intelligence brief dated 11 days before the start of the G8 Summit, the Integrated Security Unit (ISU) Joint Intelligence Group (JIG) estimated that nearly 20,000 people would participate in G20 protests in Toronto. While the total number of protesters who actually participated has not been estimated, 2,500 people, including Internationally

3 Internationally Protected Persons, pursuant to the *Criminal Code*, include heads of state, a head of a government, ministers of foreign affairs, representatives or officials of a state or an agent of an international intergovernmental organization, and family members of such persons.

Protected Persons and their delegates, attended the G8 in Huntsville, while 7,600 Internationally Protected Persons, delegates and accredited media attended the G20 in Toronto.

Background

Both protest and security tactics at large multinational events have evolved over time. In November 1997, Canada hosted the Asia-Pacific Economic Cooperation Conference in Vancouver, British Columbia: "In all, 23,000 people were accredited to the [Asia-Pacific Economic Cooperation Conference] in Vancouver. This figure included 8,600 delegates and media representatives; more than 3,000 police officers; 1,000 volunteers. . . ."[4] Policing was the joint responsibility of the RCMP and the Vancouver Police Department.[5]

Over the course of the conference, protests had been relatively peaceful. However, on the final day of the conference, the perimeter fence was breached due to a lack of police presence, and protesters also managed to block one of the exit roads. Police used pepper spray to move the protesters, a tactic later deemed unnecessary by the Commission following its public hearing into the matter, conducted by the Honourable Ted Hughes, Q.C. The Commission's Final Report,[6] issued in March 2002, largely attributed the outcome of the events to the poor quality of planning.

Seattle was host to the 1999 World Trade Organization Ministerial Conference, which saw street protests involving an estimated 30,000 to 50,000 people.[7] On the opening day of the meetings, thousands of protesters surrounded the streets around the convention centre where the conference was being held. Traffic was brought to a standstill and most delegates were unable to reach the meeting site. The police resorted to pepper spray, tear gas, concussion grenades and rubber bullets. The following day, the police declared the downtown area a "no-protest zone" and a curfew was imposed. Ultimately, 500 protesters were arrested, and there was extensive property damage.[8] According to a report by the Canadian Security Intelligence Service, which examined the anti globalization movement, "[s]ecurity agencies at Seattle . . . were caught off guard by the large number of demonstrators and scope of representation, combined with the use of sophisticated methods and technology that effectively shut down the Conference."[9] It was in Seattle that the "black bloc" tactic first gained prominence in North America.[10]

In April 2000, a joint meeting of the International Monetary Fund and World Bank was held in Washington, DC. Due to the challenge of clearing the streets of protesters around the meeting venue during the World Trade Organization conference in Seattle, the DC Metropolitan Police Department announced "oversized no-protest zones" well in advance,[11] in an effort to restrict demonstrations to an area far from the meeting site. Nonetheless, more than 20,000 protesters unsuccessfully attempted to create blockades around the World Bank building in an attempt to prevent delegates from arriving at the facilities five days into the conference; consequently, delegates arrived before dawn on the advice of the local police. Some 1,300 people were arrested by police over the course of the weekend.[12]

4 Commission for Public Complaints Against the RCMP, *Commission Interim Report Following a Public Hearing Into the Complaints regarding the events that took place in connection with demonstrations during the Asia Pacific Economic Cooperation Conference in Vancouver, B.C. in November 1997 at the UBC Campus and at the UBC and Richmond detachments of the RCMP* (Ottawa, 2001) (online: http://www.cpc-cpp.gc.ca/prr/rep/phr/apec/APEC-intR-index-eng.aspx). [hereinafter "APEC Interim Report"].

5 *Ibid*.

6 http://www.cpc-cpp.gc.ca/prr/rep/phr/apec/fr-rf-eng.aspx.

7 American Civil Liberties Union of Washington, *Out of Control: Seattle's Flawed Response to Protests Against the World Trade Organization* (July 2000) (online: www.aclu-wa.org/library_files/WTO%20Report%20Web.pdf) at 5.

8 della Porta, Donatella, Abby Peterson & Herbert Reiter, eds., *The Policing of Transnational Protest (Advances in Criminology)* (London: Ashgate Publishing, 2006) at 106 [hereinafter "della Porta"].

9 Canadian Security Intelligence Service, *Report No. 2000/08: Anti-Globalization – A Spreading Phenomenon* (August 22, 2000).

10 See Katherine Blaze Carlson, "Black Bloc and Blue" *The National Post* (15 June 2010).The "black bloc" tactic is believed to date back to the early 1980s in Germany; however by some accounts, the tactic has its roots in 1960s Italy. Despite popular belief that "black bloc" is a group, it is, in fact, a protest tactic which involves numerous individuals donning black clothing to show both solidarity and anonymity, as well as scarves, masks or helmets to further conceal their identities. Those using black bloc tactics engage in violent protest, often ending in large-spread property damage and personal injury.

11 della Porta at 109.

12 *Ibid.* at 106-107.

After the large-scale demonstrations at the 1999 World Trade Organization meeting in Seattle and the 2000 International Monetary Fund/World Bank meetings in Washington, DC, it was decided that the 2000 Organization of American States Ministerial Meeting in Windsor, Ontario, would include the construction of a perimeter fence which secured the six block area of the Summit site.[13] The Organization of American States meeting was secured by approximately 3,700 police officers from the RCMP, the Ontario Provincial Police, the Peel Regional Police Service, the Toronto Police Service, the Chatham Police Service and the Windsor Police. There were an estimated 2,000 to 6,000 protesters.[14] While the event was largely heralded as a success, there were three instances of protesters clashing with police. The police deployed tactical troops and pepper spray in each of the three confrontations, and a total of 78 arrests were made. The decision to hold the Organization of American States meeting in an area that could easily be secured by a perimeter fence, the close partnership of the police forces involved in securing the Summit and the utilization of intelligence-led policing have been noted as the key reasons that the Organization of American States meeting was considered by the police to be successful.[15]

> **"It was in Seattle that the 'black bloc' tactic first gained prominence in North America"**
>
> **- Katherine Blaze Carlson, *National Post***

In April 2001, the City of Québec hosted the third Summit of the Americas. In preparation for this event, a 6.1-kilometre security perimeter was constructed to keep protesters from the conference site. An estimated 6,000 police officers from four different agencies were deployed to police the event.[16] A number of clashes between police and protesters took place on the first day of the Summit, with minor perimeter breaches that resulted in the police using water cannons, stun guns and rubber bullets, and firing tear gas canisters into the crowd.[17] The following day, protests involved an estimated 25,000 to 60,000 people. A total of 463 arrests were made over the course of the Summit.[18]

The 2001 European Union Summit, held in Gothenburg, Sweden, began with a demonstration of approximately 25,000 people.[19] Protesters threw stones and various other projectiles at police,[20] with the violence lasting 12 hours.[21] Approximately 560 people were detained[22] and 90 people injured in the riots, 3 by live ammunition.[23] Approximately 4,000 police officers were present during the event, with riot squads, canine and horseback units. At least 19 police officers were reportedly injured.[24] Damage was estimated at $4.1M USD.[25] Swedish prosecutors found that the four police officers who used their firearms during the protests acted in self-defence and therefore would not be charged.[26]

Firearms were also used by the police during the G8 Summit held in Genoa, Italy, the same year. An estimated 100,000 protesters took to the streets, resulting in millions of dollars in property damage and a significant number of serious injuries. Over 500 people were injured and one protester was fatally shot by police.[27] Thirteen officers[28] were convicted of offences for their actions, including abuse of authority, abuse of office and uniform as

13 *Ibid.* at 82.
14 de Lint, W., "Public Order Policing in Canada: An Analysis of Operations in Recent High Stakes Events" (2004) (online: http://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/policy_part/research/pdf/deLint.pdf) at 19-20 [hereinafter "de Lint"].
15 della Porta at 82-84.
16 *Ibid.* at 85.
17 de Lint at 21.
18 *Ibid.* at 22.
19 *Associated Press Online*, "Swede Sentenced for EU Summit Riots", August 7, 2001.
20 Nacheman, Allen. "Protestors rampage in Gothenburg, disrupt EU summit, two shot," *Agence France Presse*, June 16, 2001.
21 Black, Ian & Michael White, "Rioters disrupt EU summit" *Manchester Guardian Weekly*, June 27, 2001, p. 1.
22 *Associated Press Online*, "Swede Sentenced for EU Summit Riots," August 7, 2001.
23 della Porta at 177.
24 *Associated Press Worldstream*, "Prime Minister slams Sweden rejects EU interference in handling riots," June 18, 2001.
25 *Associated Press Online*, "Swede Sentenced for EU Summit Riots", August 7, 2001.
26 *Associated Press Worldstream*, "Prosecutor drops case against Swedish police who opened fire during EU summit riots", September 28, 2001.
27 Her Majesty's Inspectorate of Constabulary (2009), *Adapting to Protest*, at 96 [hereinafter "HMIC"].
28 BBC News, "Italy back convicted Genoa G8 Police", May 20, 2010 (online: http://www.bbc.co.uk/news/10132208.)

well as negligence. The officer charged in relation to the fatal shooting was acquitted by reason of self-defence.[29]

Subsequent to the violent protests in Sweden and Italy, Canada played host to the 2002 G8 Summit. The Canadian government opted to hold the Summit in Kananaskis, Alberta. As part of the security measures, the RCMP established exclusionary zones (areas that protesters are prohibited from entering) in Kananaskis. These zones were patrolled by more than 5,000 military personnel and 1,500 RCMP officers. Protests took place in Calgary, 90 kilometres east of Kananaskis. Those protests were largely peaceful, with no more than 2,500 protesters present at any given time.[30]

The 2004 G8 Summit was also held in a secluded area—Sea Island, Georgia: "In order to ensure the island's security, a 'ring of steel' involving units of the United States armed forces surrounded the island." The limited access led to limited protest activity and minimal disruption to the event.[31]

The subsequent G8 Summit took place in Gleneagles, Scotland. Its first day saw a violent protest near the Summit site. Approximately 10,000 police officers from various forces throughout the United Kingdom (UK) were called upon to contribute officers to the public order policing effort.[32] Three hundred and fifty eight people[33] were arrested as a direct result of demonstrations, and an additional 700 people were detained and later released without charges.[34]

In 2009, the G20 Summit was held in London, England. On the first day of the Summit, ten separate protests over seven sites resulted in violent confrontations between protesters and police.[35] It is estimated that approximately 35,000 protesters demonstrated in the centre of London during the Summit.[36] The scale of the policing operation was considerable; in excess of 5,500 Metropolitan Police Service officers were deployed on the first day, and 2,800 on the second day.[37] One individual was killed while on his way home from work when he collapsed shortly after he was struck by a baton and pushed to the ground by a police officer. This, in addition to other individual complaints of excessive police use of force,[38] led to an investigation by the UK's Independent Police Complaints Commission, and an official inquiry into the events by Her Majesty's Inspectorate of Constabulary.[39]

Legislative Framework

It was against the backdrop of these previous international meetings and large-scale events that security planning for the 2010 G8 and G20 Summits took place. The RCMP assumed the role of security lead by authority of the G8 Summit Privileges and Immunities Order, 2010-2,[40] and the G20 Summit Privileges and Immunities Order, 2010.[41] These orders created the legal basis for Canada to host the Summits and, accordingly, provided the RCMP with authority pursuant to the *Foreign Missions and International Organizations Act*[42] to take the lead role for security of the events. This Act provides the following:

> 10.1 (1) The Royal Canadian Mounted Police has the primary responsibility to ensure the security for the proper functioning of any intergovernmental conference in which two or more states participate, that is attended by persons granted privileges and immunities under this Act and to which an order made or continued under this Act applies.
>
> (2) For the purpose of carrying out its responsibility under subsection (1), the Royal Canadian Mounted Police may take

29 HMIC at 96.
30 de Lint at 23-24.
31 HMIC at 98.
32 Her Majesty's Chief Inspector of Constabulary for Scotland, *Annual Report 2004/2005*, November 2005 at 6.
33 Waddington, D. & M. King, "The Impact of the Local Police Public-Order Strategies During the G8 Justice and Home Affairs Ministerial Meetings" *Mobilization: An International Journal*, 12(4) at 418.
34 Indymedia UK, "Legal Support Group Statement on the Policing of the G8 Protests," July 13, 2005 (online: http://www.indymedia.org.uk/en/2005/07/318170.html).
35 HMIC at 22.
36 House of Commons (2009), *Policing of the G20 Protests*, Home Affairs Committee Eighth Report of Session 2008-09 at 3 [hereinafter "Eighth Report"].
37 HMIC at 22.
38 Eighth Report at 19.
39 *Ibid.* at 3.
40 SOR/2010-13.
41 SOR/2010-62.
42 S.C. 1991, c. 41.

appropriate measures, including controlling, limiting or prohibiting access to any area to the extent and in a manner that is reasonable in the circumstances.

(3) The powers referred to in subsection (2) are set out for greater certainty and shall not be read as affecting the powers that peace officers possess at common law or by virtue of any other federal or provincial Act or regulation.

(4) Subject to subsection (1), to facilitate consultation and cooperation between the Royal Canadian Mounted Police and provincial and municipal police forces, the Minister of Public Safety and Emergency Preparedness may, with the approval of the Governor in Council, enter into arrangements with the government of a province concerning the responsibilities of members of the Royal Canadian Mounted Police and members of provincial and municipal police forces with respect to ensuring the security for the proper functioning of a conference referred to in that subsection.

No arrangement under subsection 10.1(4) of the *Foreign Missions and International Organizations Act* was entered into for the purpose of the Summits.

Other than the *Foreign Missions and International Organizations Act* and the common law, certain statutory provisions outline the duties of RCMP members and confer on them specific powers when ensuring the security of Internationally Protected Persons. These include the *Criminal Code*, section 18 of the RCMP Act, section 17 of the *Royal Canadian Mounted Police Regulations, 1988*, section 6 of the *Security Offences Act*, and the United Nations Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.

Another applicable statute with potential application during the G20 Summit and which has been widely examined in its wake is the Ontario *Public Works Protection Act*, originally passed in 1939. This statute gives peace officers the power to search, request identification from and deny entry to persons wishing to enter an area designated a public work. A regulation pursuant to this statute was made June 2, 2010 and in force June 21, 2010, just prior to the time of the Summits. The regulation designated the area of, or highways within, the intended G20 Summit security perimeter a "public work" for the purposes of the *Public Works Protection Act* between June 21 and June 27, 2010.

Documentation provided to the Commission indicates that the *Public Works Protection Act* regulation was enacted in response to concerns expressed by the Toronto Police Service that officers would not be able to demand identification from those wishing to enter the area in which the Summit was taking place. A legal opinion[43] sought by the Commission in the course of its investigation in order to clarify the impact of the *Public Works Protection Act* on RCMP members and the statute's interaction with the *Foreign Missions and International Organizations Act* concluded that the *Public Works Protection Act* did not impact upon or conflict with the *Foreign Missions and International Organizations Act* or any other legislation providing adequate police powers to RCMP members in the context of the Summits.

There is no indication that any RCMP member took any action under the authority of the *Public Works Protection Act* during the Summits. According to the Federal Security Coordinator (and Unified Command Centre [UCC] Commander):

> [W]e never communicated to the RCMP members that they had any authority to enforce the *Public Works Protection Act*. We didn't talk to them about it. It wasn't in their handbook. It wasn't part of our authority. We were satisfied with the authorities already in place.

The Integrated Security Unit

On June 19, 2008,[44] two years before the event, Prime Minister Stephen Harper announced that Canada would host the 2010 G8 meeting in Huntsville, Ontario. The RCMP Commissioner tasked the Commanding Officer of the RCMP's "O" Division (Ontario), to establish an Integrated

43 For the complete legal opinion, see **Appendix D**.
44 See http://pm.gc.ca/eng/media.asp?id=2155.

Security Unit (ISU)[45] to manage planning with policing partners and to coordinate logistics. As noted in the RCMP's After Action Report:

> The G8 ISU, a composite task-tailored RCMP-led planning and operations headquarters, was tasked with all aspects of Summit security including the safe arrival, stay and departure of [Internationally Protected Persons] and delegations, and the protection of designated Summit sites. It ensured that the Summit proceeded without interruption as well as the protection of the general public and [its] own security forces. After the careful consideration of diverse factors, the ISU was established up in Barrie, Ontario . . . .

Under the overall direction of a senior RCMP member and composed of members of the RCMP, Ontario Provincial Police, North Bay Police Service and the Canadian Forces, the G8 ISU began the task of planning security for the G8.

The mission statement for the G8 ISU was to ensure the safety and security of the general public and heads of State attending the G8 Summit in Canada, in June of 2010.

Its strategic objectives were to:

1. Determine all Summit security requirements.
2. Develop the business plan, concept of operations, and operational plans for Summit security.
3. Incorporate Summit security partners in an ISU.
4. Coordinate and focus intelligence to support Summit security.
5. Develop a network to facilitate liaison between local, provincial and federal agencies.
6. Develop the information technology systems required for an integrated planning/operations group.
7. Provide training for all Summit security personnel.
8. Ensure the safety and well-being of [its] employees.
9. Develop and implement a comprehensive transfer of knowledge strategy for future major events.

Although the RCMP took the lead in certain areas, the Commission was informed that the security planning process for the G8 was integrated: members of the involved agencies were co-located and worked in an interoperative fashion.

Planning for the G8 continued from June 2008 until December 2009. On December 7, 2009, the Prime Minister announced that the G20 Summit would be held in Toronto on June 26 and 27, 2010.[46] At that time, the ISU was expanded to include the G20 planning. The Commission was told by the ISU Lead, the most senior RCMP member involved in the planning process, that after the assessment of a number of possible sites, the Metro Toronto Convention Centre was chosen by the Government of Canada in late January 2010. Although the RCMP was consulted and provided analysis on the various location options from a security perspective, the final decision rested with the Government.

> **"[The] G8-G20 2010-ISU is responsible for all aspects of security planning."**
>
> **- ISU website**

While initial planning discussions for a possible G20 Summit were underway as early as September 2009, the later announcement allowed six months to plan and test a security strategy that afforded sufficient protection to Internationally Protected Persons and to the international delegations that would be present during the G20. This included not only operational considerations, such as threat assessments, site security, intelligence and public outreach, but also logistical requirements, such as lodging and meals for thousands of security personnel and the placement of the fences to designate security zones.

Planning for the G20 was further complicated because resources (human and equipment) in

45 See **Appendix E** for further detail on the ISU.

46 See http://pm.gc.ca/eng/media.asp?id=3026.

place for the G8 Summit in Huntsville could not be immediately redeployed to the G20 in Toronto, as security had to be maintained in Huntsville until the delegates departed, leaving little time between the end of the G8 on the morning of June 26, 2010, and the beginning of the G20 in the afternoon of the same day. According to a senior RCMP member, this, in part, contributed to the large number of required police personnel.

The RCMP assigned, in total, 176 of its members to the planning process.

Planning Principles

The provision of security for the Summits was intelligence-led, a concept which required the development of flexible and adaptable plans. The approach to security planning was also predicated on the use of joint risk management. According to the RCMP's After Action Report, the aim of a joint risk management plan was to:

> . . . provide a framework for the members of the ISU team to identify, analyze, plan, monitor, control and communicate potential negative threats and positive opportunities from events to enhance the achievement of the ISU Mission and Objectives. . . .

Concept of Operations

The RCMP approached planning for the G8 (and subsequently the G20) by creating a G8 Strategic Concept of Operations document, which served as the basis for planning and operational management of the Summit. It provided the assumptions under which the ISU partners agreed to proceed for the purposes of planning and providing security during the Summit. These included that the RCMP was the lead agency for security, and that intelligence would dictate the applicable threat level for the Summit at any given time. It also discussed processes including the protection of critical infrastructure, design and conduct of operations, corporate management and finance issues, logistics and business continuity and information technology processes.

Unlike the G8 process, no Concept of Operations document was agreed to by the partners for the G20. While a Strategic Concept of Operations document was drafted, there was insufficient time to complete the document due to the pressing need to continue the security planning process. The RCMP lead planner for the Summits told the Commission that the need to create detailed tactical plans and to outline a structure for command and control amongst the policing partners was more pressing than the formalization of a Concept of Operations document for the G20.

Governance and management structures were also created as part of the planning process, including:

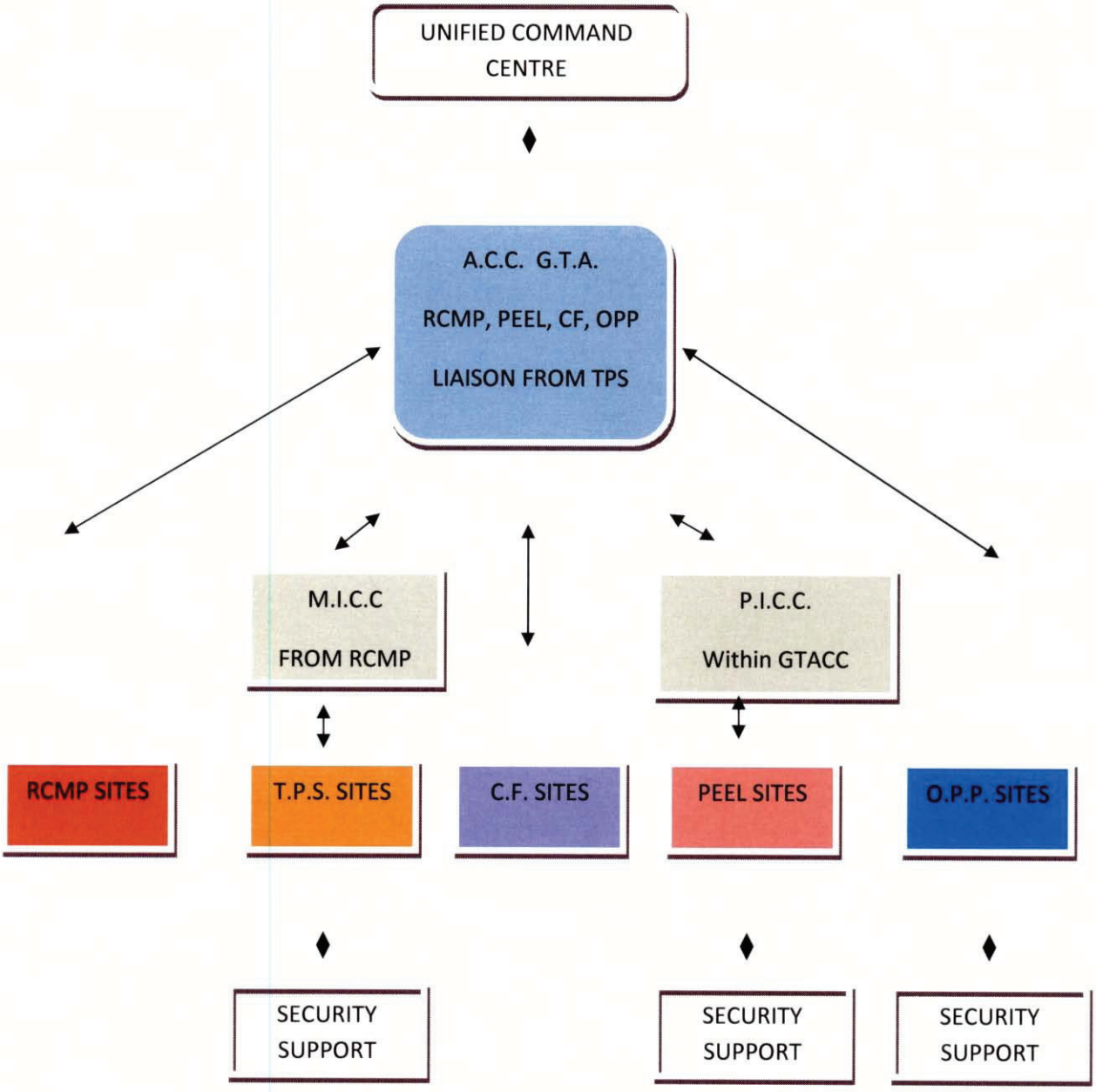
- Executive Steering Committee – an executive level management body which provided strategic direction and championed solutions to issues outside of the ISU's authority.
- Joint Operations Planning Group Muskoka – comprised of a multi disciplinary team of security partners that created the operational plans and standard operating procedures for the G8, as well as plans for the transition of resources to the G20 in Toronto.
- Joint Operations Planning Group Greater Toronto Area – same as above but with responsibilities for the G20.

Operational Plans

For both Summits, the ISU opted to use a series of operational plans. The plans addressed a specific aspect of the overall security envelope for each of the G8 and G20. For the G8, plans were developed by an integrated team of security partners. For the G20, police partners crafted their own operational and logistical plans with the intent that they would complement each other. According to the RCMP lead planner, the decision to have the security partners develop their own plans was made because of time constraints and jurisdictional issues. Although the G20 planning process was not integrated[47] to the degree it was for the G8, in an interview with the Commission, a Toronto Police Service deputy chief explained that the Toronto Police Service and RCMP G20 planners met regularly to ensure proper coordination.

47 According to the ISU Lead, issues such as marine security and motorcades were fully integrated.

Unified Command Centre - Greater Toronto Area



The Commission reviewed the RCMP's operational plans for both Summits, as well as the Toronto Police Service operational plan for the Public Order Units (POUs).

Summits Command Structure

The approach taken to the command structure for both Summits was predicated on the Incident Command System, as outlined in **Appendix F**, which essentially contemplates three levels of command: tactical, operational, and strategic. The Command and Control document set out the unified command structure for the Summits:

> . . . Unified command provides all agencies . . . with geographic or functional jurisdiction for an incident, the opportunity to manage the incident by establishing a common set of objectives and strategies. Agencies . . . will not relinquish their authority, responsibility, or accountability but will contribute to the command process by determining overall objectives, planning jointly for operational activities while conducting integrated operations and maximizing the use of all assigned resources.

Accordingly, security during the events was managed and coordinated through a series of command centres. When the Summits began, most of the members of the ISU transitioned from their planning roles into operational roles. For example, the RCMP member who had served as the Federal Security Coordinator in the planning phase became the Unified Command Centre (UCC) Commander during the operational phase.

The UCC was identified in the Command and Control document as:

> . . . the highest level of command and control for the G8 and G20 Summits. It will be comprised of Commanders from all participating agencies/departments/services/forces. The RCMP Incident Commander will assume the role of the overall Commander.

According to the Concept of Operations, the role of the UCC was to coordinate all major security requirements during the Summits. It included representatives from all security partners and other essential supporting agencies. The security partners did not relinquish authority, responsibility or accountability.

The UCC was specifically responsible for:

- strategic communication;
- coordination and requests for additional police resources;
- air incursion/incidents;
- deployment of air and aviation assets;
- Internationally Protected Persons air transport coordination;
- Internationally Protected Persons motorcade coordination; and
- Internationally Protected Persons evacuation.

The UCC had three RCMP incident commanders, two on the day shift and one on the night shift. These members were experienced incident commanders, most recently having worked at the Vancouver 2010 Olympics.

The Commission reviewed the scribes'[48] notes for all three UCC incident commanders and interviewed the senior day Commander, who had also assumed the role of Federal Security Coordinator during the planning phase. The scribes' notes in particular confirmed that the UCC was aware of ongoing events; received regular intelligence from the JIG; was in direct contact with the Muskoka Area Command Centre (MACC) and the Toronto Area Command Centre (TACC); and provided direction to the MACC and TACC commanders where necessary and appropriate. The UCC did not have direct contact with the Toronto Police Service's Major Incident Command Centre (MICC), in keeping with the Summit Command and Control document.

> **"The security partners did not relinquish authority, responsibility or accountability"**

The MACC, which reported to the UCC, was located in Huntsville and was the Command and Control Centre for the G8. The RCMP was in command and the relevant security partners were represented. The MACC's role was to coordinate security issues pertaining to the G8, such as motorcades, with the police partners located in the UCC (depending on the seriousness of the issues involved). Given that the focus of the Commission's investigation was primarily the G20 Summit, MACC commanders were not interviewed.

The TACC, which served as the Command and Control Centre for the G20 operation, was located at the Toronto Pearson International Airport. The TACC, which was also commanded by the RCMP, was tasked with coordinating security issues pertaining to the G20, such as motorcades, with the UCC and local police partners. As stated in the ISU

48 The RCMP's Tactical Operations Manual defines a scribe as: ". . . an employee who reports directly to the Incident Commander, Incident Director or Tactical Troop Commander during a deployment, takes notes and maintains a record of decisions" and states: "A scribe will record and maintain accurate and legibly written accounts of all information or decisions received or given by an Incident Commander, Incident Director or Tactical Troop Commander while responding to a critical incident."

G20 operational plan: "It [the TACC] supports local operations to coordinate and provide leadership under the direction from the Unified Command Centre . . . ." The TACC included representatives of the RCMP, the Peel Regional Police, the Toronto Police Service, the Ontario Provincial Police, and the Canadian Forces.

In particular, the MACC and the TACC were responsible, within the established inner controlled zones (the Controlled Access Zone and Restricted Access Zone) for, among other things:

- marine operations;
- consequence management;
- chemical, biological, radiological, nuclear and enhanced explosives management;
- deployment of POUs; and
- Emergency Response Team / Tactical Team deployment.

In addition to the UCC, the MACC and the TACC, security coordination for the G20 included the MICC at Toronto Police Service Headquarters in Toronto. Under the Toronto Police Service's command, the MICC coordinated the response to policing issues within the City of Toronto. The MICC was responsible for the same items as the TACC and the MACC, but within the outer fenced area (the Interdiction Zone) and the larger City of Toronto. As noted in the Toronto Police Service After Action Review:

> The MICC was the central point of command, control, communication and information for the [Toronto Police Service]. The MICC Incident Commander had a full perspective of all resources under the command of the [Toronto Police Service] and tactical control of those resources in his function of ensuring the safety and security of the public in all areas of Toronto outside of the RCMP protected zones.[49]

The RCMP had two senior members (superintendents) assigned to the MICC as liaison officers (one on day shift and one on night shift). Their role was to support the Toronto Police Service and to communicate relevant information between the MICC and the TACC. Both members stated during their interviews with the Commission that they were not part of any command decisions made by the Toronto Police Service Incident Commander in the MICC, nor were they consulted on operational matters. However, the RCMP liaison officers were part of the regular briefings in the MICC. This was confirmed by a review of the members' scribe notes and in interviews. The RCMP also had a public order liaison officer in the MICC to assist with the coordination of tactical troops.

The Commission was informed that the MICC was not initially part of the RCMP's G20 plans, but the Toronto Police Service opted to have their own command centre to control operations in the city. Some RCMP planning officers interviewed by the Commission expressed their belief that the MICC was not necessary and that the extra layer of command created confusion among the police officers on the ground. This was echoed by a small number of individuals who responded to a questionnaire provided to security partners after the Summits, including tactical troop commanders. When asked by the Commission about the MICC, the ISU Lead commented:

> I would have preferred to have one command centre. That would have been my preference, you know, as we had in Huntsville. One command centre is an easier animal to control. The Toronto Police felt strongly about having their own command centre. . . That was an operational decision on their [Toronto Police Service] part. Being the police service of jurisdiction, they decided that the way to do it would be to have their own command centre . . . It really wasn't for us [the RCMP] to say otherwise . . .

"Some RCMP planning officers. . . expressed . . . that the extra layer of command created confusion among the police officers on the ground"

49 Toronto Police Service After Action Review, June 2011, p. 34.

It is not within the jurisdiction of the Commission to review Toronto Police Service plans, including the role of the MICC. As previously noted, such issues fall within the jurisdiction of the Office of the Independent Police Review Director.

Each police partner maintained representatives and/or liaison officers in the command centres and there were regular briefings throughout the operations. In addition, connecting each of the centres was an electronic situation board (sitboard) on which occurrences and information were posted to allow persons in each of the other centres to see at a glance the issues arising. The postings were entered as soon as possible; while information was not posted in real time, it was kept current.

Decision-Making

To facilitate decision-making and to ensure that all partner agencies knew which agency held primary responsibility and that appropriate notifications of decisions were made in a timely manner, the ISU planning group created a responsibility assignment matrix as well as a decision-making matrix. The RCMP's After Action Report described the responsability assignment matrix as follows:

> A fundamental document to any project is the [responsability assignment matrix]. This document at the high level shows project function for which organizations are Responsible, Accountable, Consulted or Informed and at the lowest level individual names can be assigned to tasks to indicate a working [Responsible, Accountable, Consulted or Informed].

The decision-making matrix took the form of a chart that indicated the level(s) at which decisions could be made and which other levels were to be informed of those decisions. For situations in which operational decisions needed to be made quickly, the authority to decide was provided to the operational commanders at the relevant sites, who would have the closest perspective on what was occurring. The more serious the decision, the more authority would be required. The determination of the level of seriousness was left to the operational commanders.

The decision-makers for the G8, in descending order, were the Executive Steering Committee, the UCC Commander, the Area Commander and the Site Commander. POU commanders, if deployed, were given authority to make decisions with respect to the tactics and equipment to be used during time-sensitive operational situations. A similar matrix was created for the G20, but an added level of Jurisdictional Commander, e.g. the MICC Commander, appeared below Site Commander to reflect the addition of the MICC.

Government Involvement

The Commission also explored the possibility of inappropriate interference in the security planning. A senior government official in the Privy Council Office told the Commission that while security concerns may have impacted substantive preparations for the Summits, the RCMP was never directed to organize its security plan in a specific way. The Commission found no information which would indicate that anything other than legitimate security concerns influenced the planning.

Finding No. 1

The RCMP planning process was robust and thorough. The Commission found no indication that planning was influenced by anything other than legitimate security concerns.

Specific Aspects of Planning

Exercises

In preparation for the Summits, three training exercises were also carried out. As noted in the RCMP's After Action Report:

> [For Summit 2010, a] planned and progressive exercise program was created that relied on a layered and developed approach. Each partner organization had responsibility for their specific individual or collective training. At the ISU level, with the assistance of various external agencies and partners, the exercise regime included the Pinnacle series of workup exercises that culminated in an all level of government exercise Trillium Guardian. The

> exercise program was fundamental to the success [of Summits 2010] and is a critical requirement for preparation and validation of plans and personnel.

In an interview with the Commission, a senior RCMP member commented that exercise Trillium Guardian was very realistic, testing the capacity and response to various scenarios.

According to the RCMP's lead planner, the decision-making matrix (noted above) was adjusted following the exercises. This demonstrates how the exercises helped inform the planning process.

Orientation and Training

Police officers attending the Summits were expected to arrive already trained in the general tasks they were to accomplish, at which point the ISU intended that they be given orientation to apply their skills to the particular environment of the Summits.

Upon their arrival at the Summits, a one-day orientation session was provided to RCMP members and support staff (there were separate sessions for the G8 and G20). At this session, members and support staff were given a handbook, developed by the ISU. The handbook included forewords from the heads of all partner agencies, which set the tone for the security operation and provided an overview of the G8 and G20 Summits. It set out information of use to all police officers during the Summits, including details regarding the command structure, media and communications, legal authorities, Internationally Protected Persons, protests, arrest procedure and first aid.

In addition to the exercises and orientation, efforts were made to provide some specific training as required. For instance, "E" (British Columbia) and "O" (Ontario) Division RCMP members were specifically trained in hand searches in order that they could conduct venue searches prior to the Summits. Some RCMP members who worked with the Toronto Police Service in advance of the G20 Summit also received on-line training offered by the Toronto Police Service to provide some information in respect of provincial statutes[50] and other aspects of security for the G20, such as crowd management, chemical, biological, radiological, nuclear and enhanced explosives management, incident management system, crowd use of force,[51] search authorities, arrest procedures, and gate management. In addition, RCMP, Toronto Police Service and other members received training from the Calgary Police Service in respect of event monitoring (discussed on page 30).

The Commission was informed that RCMP POUs assigned to the G20 Summit did receive training together with Toronto Police Service POUs to better understand the use of water cannons and the Toronto Police Service's various public order tactics, such as the use of horses. POU commanders also participated in a briefing in Toronto prior to the start of the Summits, as it was expected that they would be re-deployed from Huntsville to Toronto.

> **"'E' and 'O' Division RCMP members were specifically trained in hand searches in order that they could conduct venue searches prior to the Summits"**

Controlled Access to Summit Venues

An issue raised by the CCLA in its complaint was the placement of the security fences during the G20.

As a general rule, security fencing and barriers designed to keep individuals away from a specific location help police manage crowds by defining the areas that the public, including protesters, are not allowed to access, and by channelling or guiding protesters along a particular route. Similarly, security fencing designed to keep individuals safe within a given area, such as a designated protest zone, help police manage a reasonably large crowd with fewer resources, while allowing as

50 The Toronto Police Service training contained a general reference to the *Public Works Protection Act*, indicating that it was an Act that could be invoked, but did not state that a specific regulation had been enacted with respect to the G20.

51 The Toronto Police Service Crowd Use of Force training was intended to provide information to uniformed police officers when dealing with a crowd situation, and was not intended as strategic or tactical training for POUs.

much freedom of movement to event participants as possible.[52] This may result in a much smaller police presence around designated protest areas than would normally be needed in the absence of a fence.

While barriers and fencing are regularly used to secure large events, consideration must be given to securing the event while continuing to allow protesters to exercise their rights. Security measures that result in a limitation of fundamental rights and freedoms must be necessary and proportional. As stated in the Commission's Asia-Pacific Economic Cooperation Conference Interim Report, the police should ensure that ". . . generous opportunity will be afforded for peaceful protesters to see and be seen in their protest activities by guests to the event . . . ."

No security fencing was used at the 1999 World Trade Organization meeting in Seattle. According to a report submitted to the Seattle City Council, it was "one of the most disruptive events in Seattle's history."[53] Having witnessed the disruption of policing efforts at the 1999 World Trade Organization meeting in Seattle compared to the relative calm during other similar events, it appeared that the lack of security fencing may have contributed to the increased level of violence. As such, police planners responsible for the 2000 International Monetary Fund/World Bank meeting in Washington, DC, and the subsequent Organization of American States meeting in Windsor opted to construct an exclusionary perimeter fence.[54]

For the 2000 Organization of American States meeting in Windsor, the planners' decision was based, in part, on intelligence indicating the potential likelihood of more than 20,000 to 30,000 protesters attending the event.[55] Accordingly, a six-block area around the Summit site was cordoned off by an eight-foot-high continuous metal fence.[56]

Compared to the Seattle meeting, the Windsor and Washington, DC, meetings resulted in relatively peaceful demonstrations, which may in part be attributed to the installation of fences. These

52 Narr, Tony; Jessica Toliver; Jerry Murphy; Malcolm McFarland; Joshua Ederheimer, 2006. *Police Management of Mass Demonstrations: Identifying Issues and Successful Approaches* at 60.
53 Report to the Seattle City Council World Trade Organization Accountability Review Committee, Preparations and Planning Panel, August 24, 2000 at 3.
54 della Porta at 82.
55 King, Prof. Dr. Mike, "From Reactive Policing to Crowd Management?: policing anti-globalization protest in Canada," Jurisprudencija, 1 2006 (79); 40–58, pp. 51-52.
56 della Porta at 82-83.

1997

(SOURCE: The Commission's Asia-Pacific Economic Cooperation Conference Inquiry Files)

The inner perimeter security fence surrounding the 1997 Asia-Pacific Economic Cooperation Conference in Vancouver, British Columbia.

(SOURCE: The Commission's Asia-Pacific Economic Cooperation Conference Inquiry Files)

The outer perimeter security fence surrounding the 1997 Asia-Pacific Economic Cooperation Conference in Vancouver, British Columbia.

lessons were subsequently used in planning the 2001 Summit of the Americas meeting in the City of Québec, where a 6.1-kilometre, three-metre-high fence was erected to cordon off the entire conference site. The fence itself became the focus of protests and anger, whereby protesters sought to challenge the legitimacy of the fence by bringing it down.[57] It has been argued that the wall was too extensive for police to secure, and that its size alone may have made it a target for protesters.[58]

> "... consideration must be given to securing the event while continuing to allow protesters to exercise their rights."

Based on the unexpected breach of the perimeter in Québec, and the fact that the fence itself became the centre of protest attention, the tactic of using security fences was altered in several ways.

Barriers and fencing were built higher, stronger and made more rigid, and they were deployed in a layered defensive system (i.e. with inner and outer fences as backups).[59]

The principles outlined above appear to have been reflected in the decisions relating to the security fences installed for the G8 and G20 Summits. Through interviews and a review of documents, the Commission confirmed that the security fences were considered necessary by the RCMP and ISU planners in order to provide a safe venue for the Summits, both in terms of the physical security of the Internationally Protected Persons and their delegates, and making the most efficient use of limited resources in securing the areas around the various venues.

As determined through a vulnerability risk assessment conducted by the ISU in December 2009, Internationally Protected Persons were protected by a series of concentric rings delineated by fences. For the G20, the "Controlled Access Zone" referred to the areas of downtown Toronto in which the G20 Summit took place and in which most Internationally Protected Persons were housed. The Controlled Access Zone, encircled by

57 *Ibid*. at 85.
58 Boski, Joseph, "Responses by state actors to insurgent civic spaces since the World Trade Organization meetings in Seattle," at 367, 369 and 380.
59 See della Porta and de Lint.

2000

(SOURCE: Windsor Independent Media Center)

The security fence surrounding the 2000 Organization of American States meeting in Windsor, Ontario.

2001

(SOURCE: Neonyme/Centre des médias alternatifs du Québec)

The security fence surrounding the 2001 Summit of the Americas in the City of Québec, Quebec.

a fence, would have the highest level of security and would be accessible only to those with Controlled Access Zone accreditation. A second fenced area, the "Restricted Access Zone" encompassed the Controlled Access Zone and two of the hotels housing Internationally Protected Persons. These two zones were to be the responsibility of the RCMP. Finally, a third fenced area, the "Interdiction Zone," would encompass the Restricted Access Zone, and would be the responsibility of the Toronto Police Service.

Interviews with RCMP and security personnel representing the Government of Canada confirmed that the security fences for both the G8 and G20 Summits were erected for the purpose of providing security as required for the Internationally Protected Persons and delegations. Fences were not erected or moved, nor was the footprint of the secure zones made larger than was necessary, to ensure security. The Commission saw no indication that security zones were created or sized to ensure that protesters were kept farther away from Internationally Protected Persons than was necessary. RCMP decisions respecting the security fences were consistent with general practice and the Commission found no indication that these decisions were based on inappropriate considerations.

Finding No. 2

The Commission saw no indication that security zones were created or sized to ensure that protesters were kept farther away from Internationally Protected Persons than was necessary, or that RCMP decisions in their respect were based on any inappropriate considerations.

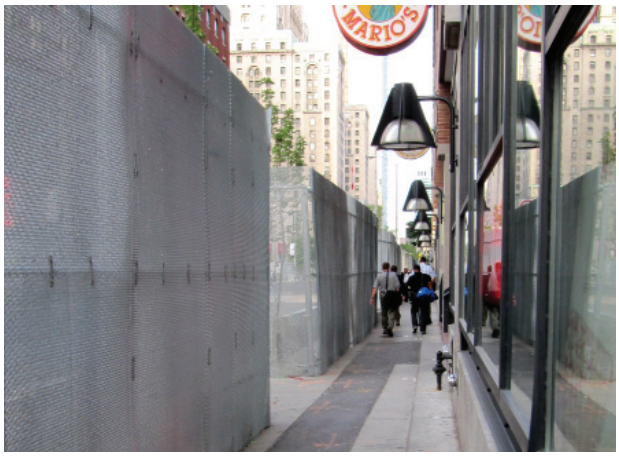
Police Presence

The ISU identified the number of police needed to provide an adequate level of security based in part on an examination of past summits, as well as completed threat risk assessments and the development of operational plans. Ultimately, the total number of police and security personnel mobilized for the Summits was approximately 21,000.

In addition to the police officers staffing the command centres and those tasked to the Joint Intelligence Group (JIG), numerous specialized units were also required to be in place. These included:

- rapid response assessment teams,
- quick response teams,
- critical incident response teams,

2010



(SOURCE: Loozrboy/Flickr)

The inner perimeter security fence surrounding the 2010 G20 Summit in Toronto.

(SOURCE: Gary J Wood/Flickr)

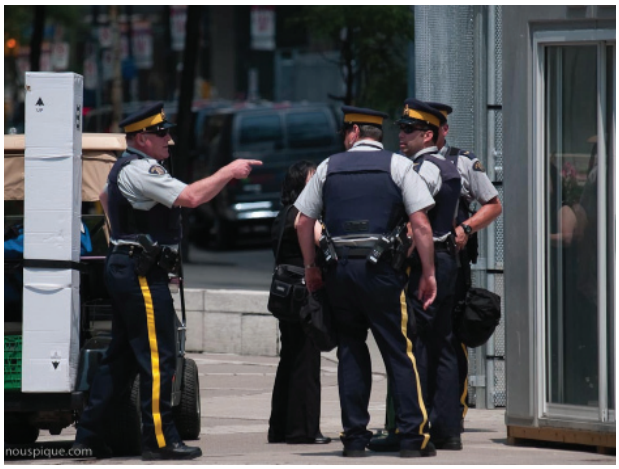
The outer perimeter security fence surrounding the 2010 G20 Summit in Toronto.

- explosive disposal units,
- chemical, biological, radiological, nuclear and enhanced explosives response teams,
- police dog units,
- marine and dive units, and
- air operations.

To achieve its operational goals, the RCMP temporarily moved several thousand of its members from other areas of the country into the Toronto and Huntsville areas. To maintain security for Summit venues, it was necessary to clear and hold these venues to ensure that no infiltration could take place prior to or during the Summits.

The RCMP in its planning also provided for the possibility of violence in the week leading up to the G20 (which included the time prior to and during the G8 Summit). The ISU planned to allow the downtown streets to remain open to those requiring access for as long as possible before closing them off prior to the G20, but recognized that in the event of violence, it may have been necessary to close the access points sooner. As a result, the RCMP needed to have in place the resources to close these access points and keep them secure pending the arrival of the Internationally Protected Persons and delegates.

In this regard, RCMP members from British Columbia were tasked with conducting site searches in both Summit locations. These members arrived nearly a week in advance of the Summits. Once the searches were complete and the sites secured, these members would not have been engaged until the G8 began. As such, in June 2010, the RCMP and the Toronto Police Services Board entered into a memorandum of understanding allowing these members to work alongside Toronto Police Service members in the latter's jurisdiction, as what the RCMP came to call "high visibility team" members during the period of June 20 to 23, 2010. The memorandum of understanding allowed the RCMP members, all of whom were posted in the Lower Mainland of British Columbia and who were experienced in policing urban areas, to assist ". . . the [Toronto Police Service] with the provision of specific security for the G20 Summit." In particular, the memorandum of understanding stated that the RCMP would make available uniformed members to assist the Toronto Police Service in carrying out its traffic control duties and in responding to public incidents related to the G20 Summit.[60] As a result, Toronto Police Service members were freed from the area of the Summit for use in other areas of the city. The RCMP members were sworn in as provincial constables, pursuant to the Ontario *Police Services Act*, which provided the necessary authority to enforce provincial statutes. These members were under the direct command and control of the Toronto Police Service during the stipulated time.



(SOURCE: nouspique/Flickr)

The RCMP believed that having its members in working uniform—a less common sight in Ontario—would raise the RCMP's public profile.

According to the RCMP, the intangible benefit in this agreement was that the public would be able to see RCMP members in working uniform—a sight less common on Ontario streets because the RCMP carries out mostly federal statute duties in the province and its members generally work in plain clothes. It was expressed to the Commission that the RCMP felt this presence would raise the profile of the RCMP. The unintended consequence is that it may have led to the perception that the RCMP was in overall charge of security not only for the G20, but also within the City of Toronto in the area of the Summit.

60 Memorandum of Understanding for Deployment of Police Officers to the City of Toronto for the Purpose of the G20 Summit Between Toronto Police Services Board and the RCMP.

With the cooperation of the Toronto Police Service, the Commission was provided with and reviewed the notes of the 300 RCMP members, along with other relevant documentation. The Commission confirmed that no arrests were made by these members between June 20 and 23, 2010.

Communications

The G8/G20 Public Affairs Communications Team was an integrated unit which included media relations personnel from the primary partner agencies. Its role was to provide information relating to security issues to the media and the public to mitigate the effects of closures and inconveniences and to provide background information.

According to the G20 Concept of Operations, the Public Affairs Communications Team was responsible for external and internal communications, including proactive and reactive media relations to external and internal parties and the provision of public affairs advice to commanders on security incident responses. The Public Affairs Communications Team was also charged with ensuring that all federal, provincial and municipal partners were informed of operational matters relevant to their respective mandates. The Public Affairs Communications Team was equally responsible for maintaining the content of the ISU website and managing social media and media relations. In an interview with the Commission, the RCMP's Director of Communications for the Summits explained that the Public Affairs Communications Team's chief role was to provide information on a variety of platforms to ensure that the community could access pertinent information in the format that best suited their needs.

The Commission notes that the Public Affairs Communications Team employed appropriate strategies to provide information on as close to a real-time basis as possible by making use of social media. Via this method, Public Affairs Communications Team members could potentially counter electronic feeds that were incorrect or misinformed much faster than traditional media processes would have allowed.

Finding No. 3

The Public Affairs Communications Team employed appropriate strategies to provide information to the public leading up to and during the Summits.

During the Summits, the Public Affairs Communications Team was responsible for the development of media lines. Media lines were created prior to the Summits, but if an incident commander in the UCC, TACC, MACC or MICC required additional media lines, they were often written and approved for use by senior officials within half an hour. This contributed to the Public Affairs Communications Team's mission to provide ". . . accurate and timely communications leading up to and during the summits."

The G8/G20 ISU websites contained media lines and frequently asked questions, including timely information on road closures and information for demonstrators. While the Information for Demonstrators section of the G20 Summit website laid out specific pieces of legislation which give police the authority to limit the activities of demonstrators, it failed to mention the *Public Works Protection Act*. When questioned about this during an interview with the Commission, the RCMP's Director of Communications for the Summits stated that the statute had no impact on the ISU or the RCMP and was the responsibility of the Toronto Police Service's Communications Team. Despite this opinion, the Commission is of the view that the G20 ISU website was intended to be a primary source of information for the public, explicitly listing statutes that could affect demonstrators. The website therefore should have been updated to contain information about the *Public Works Protection Act* and the expanded powers it gave to peace officers during the G20 Summit.

Finding No. 4

The official G20 Summit security website should have contained information regarding the *Public Works Protection Act* inasmuch as it would potentially affect the public.

Outreach (Community Relations Group)

> **"Establishing a dialogue well in advance and leaving the lines of communication open throughout an event are critical to decreasing the likelihood of violence"**
>
> **- The UK Association of Chief Police Officers policy manual, 2010**

The UK's 2010 Association of Chief Police Officers policy manual and most other open source literature examining policing best practices relating to large-scale events all place strong emphasis on pre- and in-event communication initiatives. They explain that establishing a dialogue well in advance and leaving the lines of communication open throughout an event are critical to decreasing the likelihood of violence.

In its Interim Report concerning the Asia-Pacific Economic Cooperation Conference, the Commission also recommended the following:

- The RCMP should continue to follow, and enhance where appropriate, its existing open door policy of meeting and working with the leadership of protest groups, well in advance of a planned public order event, with a view to both police and protestors achieving their objectives in an environment that avoids unnecessary confrontation.[61]
- Before taking action that could result in physical confrontation, police should make all reasonable efforts to warn protestors of the duty then resting with the police (such as to clear a roadway), the steps they intend to take to fulfil that duty, and what actions the protestors should take to allow the police to fulfil that duty and to allow the protestors to avoid arrest. Once the warning has been given, the protestors should be given a reasonable opportunity to comply before the police take further steps.[62]

Dialogue allows police and demonstration organizers alike to explain their aims, requirements and responsibilities, while helping the organizers understand their liabilities in terms of health and safety. It also gives police an opportunity to express the thresholds of acceptable behaviour throughout the event. Pre-event dialogue allows for a joint agreement on the type and duration of protest activity, while attempting to minimize the element of surprise during the event on both sides.[63]

One of the key tasks of the ISU was to establish robust community outreach programs to ensure that the mission, aim and goals of the ISU were well understood by diverse stakeholders.

To provide outreach to both protest groups and to residents and business people affected by the Summits, the ISU created the Community Relations Group, which reported through the Public Affairs Communications Team and was composed of members of the different involved police agencies.

As noted in the RCMP After Action Report:

> The [Community Relations Group G8 and subsequently, separate G8 and G20 groups] was designed and implemented to establish and maintain effective lines of communication between the ISU and stakeholders affected both directly and indirectly by G8 and G20 Summits. The [Community Relations Group]'s mandate included the development of constructive community relationships that would reinforce the timely bi-lateral exchange of critical information in an atmosphere of trust and mutual respect. The [Community Relations Group] acted as a bridge between the security teams, and those affected by, or involved in the event. The information gleaned from [Community Relations Group] outreach efforts was included in the preparation of communication strategies and operational plans.

The G8 Community Relations Group was led by the RCMP and included members of the Ontario Provincial Police, the Canadian Forces and other law enforcement partners. The G20 Community

61 APEC Interim Report, s.31.1.9.
62 *Ibid.*, s.31.1.10.

63 National Policing Improvement Agency (NPIA), 2010. *Manual of Guidance on Keeping the Peace*. Produced on behalf of the Association of Chief Police Officers, at 90-91.

Relations Group was led by the Toronto Police Service and included members of the RCMP and the Peel Regional Police.

The G20 Community Relations Group was divided into two stakeholder groups: Protester/Activist and Business/Resident. The groups acted independently but shared information regularly.

The Business/Resident Group focused its initial outreach efforts on Toronto's financial district, as this was the area expected to be most affected by the G20 Summit. Once the specific venue was announced, outreach expanded to all businesses and residents in the surrounding area, particularly those who worked or resided inside the controlled access zones.

The Protester/Activist Group was tasked with establishing bilateral communication with the various protest and activist groups expected to attend the G20, which ranged from Aboriginal rights activists to organized labour and anti-globalization groups:

> The team's primary objective was the facilitation of peaceful, lawful protest, and the identification of key contact people within the protest/activist groups. Another of the team's objectives was to ensure that the protest groups understood the role of the police, and what could be expected if protest was in fact, not peaceful and lawful.[64]

The Community Relations Group used a toll-free line, the ISU website and in-person meetings to answer questions and relay information, and also produced YouTube videos.

Criticism was levelled by some activists/protesters through the media that Community Relations Group members were merely intelligence officers who were interested in obtaining whatever information they could, primarily from protest groups, and feeding that into the intelligence process.

In its review of documentation, and after conducting interviews with some RCMP Community Relations Group members, the Commission noted neither intent nor any action on the part of the Community Relations Group to target any particular group to obtain intelligence to thwart the right of a group to have its issues heard. The Commission specifically sought to identify any instance in which the Community Relations Group was tasked to target a particular protest group or to provide intelligence on a particular group or person of interest to the JIG. The Commission found none. The Commission was told by Community Relations Group members that they, at no time, targeted any particular individuals or groups in this manner. Community Relations Group members said that their aim was to assist protesters by providing information and by attempting to facilitate groups being heard and seen.

Finding No. 5

The Commission found neither intent nor action on the part of the Community Relations Group to obtain intelligence aimed at preventing groups from having their issues heard.

The information reviewed indicated that the Community Relations Group provided what assistance it could to those inconvenienced by the Summits. For example, the Commission was made aware of assistance provided by the Community Relations Group to facilitate the transport of a child awaiting surgery to the Hospital for Sick Children in downtown Toronto during the G20. In another instance during the G20, the Community Relations Group was involved in assisting a wedding party through crowds and road closures to reach their hotel in downtown Toronto.

64 *Ibid.*

Members of the Community Relations Group did attend meetings of protest groups in advance of the Summits, and identified themselves as police officers. The Commission was told by an RCMP member of the Community Relations Group that these meetings were usually identified by reviewing postings on open Internet sites. The Commission was informed that the Community Relations Group members were often not welcomed at such meetings and that some individuals, who had attended several different meetings, publicly accused Community Relations Group members of harassing them. Despite the accusations, the Commission did not receive any public complaints in this regard.

During the G20 Summit, members of the Community Relations Group's Protester/Activist Group also attended the various demonstrations. They were visible and identifiable by their bright green jackets. The purpose of attending the protests was to continue outreach efforts. In interviews with some CCLA monitors who were also on the ground, the Commission was informed that Community Relations Group members were visible at locations such as Queen's Park and Allan Gardens. One CCLA monitor commented that he was pleased that the police were engaging in such outreach.

(SOURCE: Jason Hargrove/Flickr)

Members of the Community Relations Group were visible and identifiable throughout the G20 Summit.

On the issue of record-keeping, the standard operating procedures for the Community Relations Group stated: "[Community Relations Group] members are tasked with completing both a daily and weekly . . . report which includes all meetings with stakeholders and contacts." The members of the G20 Community Relations Group who dealt with residential and business contacts reported regularly to the RCMP member who was heading up that part of the Community Relations Group. All of these reports were available in the Event Management System. The Protestor/Activist Group, led by a member of the Toronto Police Service, did not keep precise records of their contacts, contrary to standard operating procedures. Commission staff was told that the Protester/Activist Group contacts were inputted to a chart which was maintained by the Toronto Police Service member in charge of that group. The Commission found none of this information in the Event Management System, nor was it provided to the Commission as part of the investigation documentation.

Finding No. 6

Community Relations Group members' records were not consistently stored in the Event Management System database.

Recommendation No. 3

That all contacts be recorded and reported in a comprehensive and consistent manner to ensure proper and adequate recording of actions taken.

Post-Summits Debriefing

The RCMP prepared an After Action Report in the wake of the Summits, which it provided to the Commission in July 2011. This report canvassed numerous issues and identified many areas in which plans worked as intended as well as issues and areas requiring improvement.

The Commission believes that in order to provide a more comprehensive view of the operation, participants, including external security partners, should have had the opportunity to provide such input in order to identify issues, deficiencies or best practices. While both the RCMP and the Toronto Police Service produced after action reports, the Commission sees a clear need for a combined review in light of the integrated nature of the security operation.

Recommendation No. 4

That the RCMP ensure that a formal, integrated post-incident process is established for all major events to ensure that deficiencies as well as best practices are identified.

SECOND ISSUE: INTELLIGENCE

Intelligence and the organizational mechanisms aimed at producing and sharing intelligence have become key components of securing major events, as policing has become increasingly intelligence-led. In recent years, the establishment of a Joint Intelligence Group (JIG) has been a cornerstone of the intelligence function in policing most large-scale events, particularly those of a multinational nature where several levels of jurisdiction are involved and where Internationally Protected Persons may be present.[65]

> **"Intelligence provides a means for the police to adequately deploy and use resources as and where they are most needed."**
>
> ***- New challenges in public order policing*, 2002**

The G8 Concept of Operations document listed as one of its critical objectives, the development of a ". . . coordinated and focused intelligence fusion architecture to support Summit security." It went on to note that one of the pre-conditions for success was accurate and timely all-source intelligence sharing among partners. This translated into the creation of the JIG in January 2009:

> The JIG was created with a mandate to collect, collate, analyze, and disseminate accurate information and intelligence in a timely manner to facilitate the decision-making process in both the planning and executing phases of securing G8 and G20 Summits.

Initially, prior to the announcement of the G20, the JIG was co-led by the RCMP and the Ontario Provincial Police. Together, they established the structure and developed the framework for the JIG. With the announcement of the G20, the JIG was broadened to include the Toronto Police Service and the Peel Regional Police, and the RCMP became the sole lead. The JIG Commander (an RCMP Superintendent) reported directly to the ISU Lead (an RCMP Chief Superintendent).

On January 20, 2011, the Commission was provided with a general briefing on the Summits, which included the JIG structure and function. In the months following, the Commission received and reviewed documentation which included the JIG operational plan, standard operating procedures, protocols, relevant policies, intelligence reports, and JIG members' notes. The Commission also interviewed the JIG Commander and Deputy Commander, both of whom are RCMP members.

Finding No. 7

The JIG fulfilled its mandate by conducting intelligence investigations and preparing and/or contributing to analytical reports.

65 Plecas, Dr. Darryl, Dr. Martha Dow, Jordan Diplock (MA), and John Martin (MA), 2010. *The Planning and Execution of Security for the 2010 Winter Olympic Games: 38 Best Practices and Lessons Learned*, p. 20.

Intelligence in the Planning Process

Intelligence provides a means for the police to adequately deploy and use resources as and where they are most needed, as well as pursue other intelligence-led policing activities,[66] such as targeted arrests of individuals suspected of instigating violence.

As noted in the operational resource rationale prepared by the ISU in December 2009:

> During the lead up to the commencement of the [G20] Summit, intelligence led threat assessments will be prepared by the Joint Intelligence Group (JIG). These reports will document threat levels relating to terrorism threats and planned protest threats.
>
> The ongoing intelligence from these reports will have an impact on the deployment of human and material resources, where the potential for confrontation between protestors and police personnel are likely to occur. G20 Operations personnel conducted Vulnerability Risk Assessments in Toronto in December 2009 of the proposed venue, airport and hotels.
>
> Current intelligence indicates there is a significant threat of large protests and demonstrations that may commence several days before the Summit. This has influenced the approach to security at this site.

Throughout the planning process, the JIG produced regular reports and briefs to inform decision-makers. This continued during the operational phase.

In reviewing the documentation, the Commission learned that the JIG developed an intelligence collection plan for the purpose of identifying and assessing possible threats to the Summits. In relation to the identified threats, the JIG mandated that:

> All "targeting" will be based upon criminal predicate: Suspects will be determined based upon their proven willingness, capacity and intention to commit criminal acts and/or create situations that pose public safety concerns.

The Commission is satisfied that the JIG appropriately identified and assessed criminal threats to the Summits, and that its process was linked to criminality as explained above.

Finding No. 8

The JIG appropriately identified and assessed criminal threats to the Summits.

In reviewing JIG documentation, the Commission also concluded that human rights were appropriately considered by JIG management. In an August 2009 memo regarding JIG protocols, the JIG Commander declared: ". . . the RCMP's commitment to ensuring that all intelligence related functions are conducted in a professional, responsible and lawful manner while fully respecting the rights granted to Canadians under the Charter of Rights."

Furthermore, the Commission noted that the JIG Commander asked the Deputy Commander to facilitate a one-day session for JIG personnel to address national security-related matters, including recommendations from the *Commission of Inquiry into the Actions of Canadian Officials in relation to Maher Arar*, intelligence sharing, working with intelligence agencies, human rights, and ministerial directives.

Finding No. 9

Human rights were appropriately considered by JIG management.

It is of note that the JIG also established an enhanced reporting structure for its criminal intelligence investigations after considering whether to apply an element of the national security framework that mandates that investigations involving sensitive sectors[67] be approved at a higher level than would generally be required and that reporting be centralized. Although in

66 Button, Mark; Tim John; Nigel Brearley, *New challenges in public order policing: the professionalisation of environmental protest and the emergence of the militant environmental activist*, 2002, pp.17-32 (p. 29).

67 Sensitive sectors include ". . . fundamental institutions of Canadian society. Primary among these institutions are those in the sectors of academia, politics, religion, the media and trade unions." RCMP Ministerial Direction: National Security Investigations in Sensitive Sectors, dated November 4, 2003.

this instance no such approval requirement was instituted, an enhanced reporting structure was being used by the JIG. The RCMP may wish to consider an enhanced approval and reporting structure as a best practice for future major events where criminal intelligence investigations involving sensitive sectors are contemplated.

Recommendation No. 5

That the RCMP consider the establishment of an enhanced approval and reporting structure for sensitive sector criminal intelligence investigations as a best practice for future major events where such investigations are contemplated.

Undercover Operations

To identify and investigate potential threats, the JIG employed a number of operational measures, including but not limited to, undercover operations. These operations were intended to provide timely and accurate information for decision-makers. According to RCMP policy:

> An undercover operation is an investigative technique used by a peace officer or agent to seek or acquire criminal evidence or intelligence through misrepresentation, pretext or guise.

> "[T]he RCMP had a robust system governing . . . [undercover] operations, which included high-level internal oversight"

In an interview with the Commission, the JIG Commander confirmed that all RCMP members participating in undercover operations were trained. This is consistent with RCMP policy on undercover operations. He also confirmed that all undercover activities were legally authorized, but would not go into further detail because a number of criminal matters remained before the courts at the time of the interview.

The JIG Commander further reported that RCMP undercover operations were run by the RCMP and not by another police service, although RCMP operations were coordinated with other policing partners also conducting undercover operations to ensure that resources and assets were properly aligned. Further, the RCMP Deputy Commissioner responsible for Federal Policing reported that he was regularly briefed on all undercover operations, including the justification for such operations.

The Commission received and reviewed redacted copies of the RCMP undercover operational plans for JIG projects, as well as relevant undercover policies. Despite the redactions, the plans clearly articulated the objectives of the operations, how the objectives were to be achieved and who was to be involved. One of the operational plans noted that the undercover operator and the cover team members[68] received a designation pursuant to section 25.1 of the *Criminal Code*, which provides a limited justification at law for acts and omissions that would otherwise constitute an offence. The RCMP subsequently confirmed to the Commission that all undercover operators and cover team members were required to have the designation.[69]

The Commission also received and reviewed the redacted notes of some RCMP undercover operators. In reviewing these notes, the Commission confirmed that the operators were clearly aware of the operational objectives and were being monitored by their cover teams.

The question of whether the intelligence collection was carried out in a manner consistent with legal authorities is a matter for the criminal courts. The mandate of the Commission, on the other hand, is limited to an examination of RCMP intelligence collection to ensure compliance with relevant policies and procedures. In the case of the G8/G20, the Commission's ability to examine the operations in depth was circumscribed by the

68 According to the *RCMP Operational Manual*: "An approved cover person is a member who has . . . successfully completed the Operational Undercover Training Course . . . as an operator and has been recommended for cover person duties . . . ."

69 The Minister of Public Safety is required to report annually on the law enforcement justification provisions. For additional information, see the most recent report at: http://www.publicsafety.gc.ca/abt/dpr/le/rcmp2010-eng.aspx#a1.

necessity of avoiding any effect on the ongoing litigation and criminal trials. Despite this restriction, the Commission was able to review the RCMP's policies and procedures for the collection of intelligence, including undercover operations. The Commission was able to determine that the RCMP had a robust system governing these sensitive operations, which included high-level internal oversight. The Commission notes that subsequent to its investigation, criminal matters were resolved. Given that the resolution did not include any judicial scrutiny of whether the operations were carried out in an appropriate manner, the Commission is considering whether further review of these operations is required.

Event Monitoring Units

Incident commanders and decision-makers need to have access to intelligence assessments of crowd behaviour and developing situations, as well as maintaining a near-real-time level of situational awareness of events. After several planning meetings, it was determined that "event monitors" were required for the "live event"—that is to say, the Summits. Accordingly, in addition to undercover operations, the JIG employed Event Monitoring Units, which consisted of police officers working in plain clothes among the crowds at the Summits.

According to the 2010 G8/G20 Summits ISU-JIG operational plan:

> JIG investigators will be assigned as Event Monitors and report on demonstrations in real time as to its direction, temperament and tempo . . . . The primary role of the "Event Monitors" will be to provide ongoing and real time intelligence by closely surveilling any large gatherings with pre-existing potential for criminality. . . . They will attempt to identify suspects and provide guidance and information to Public Order Teams assigned to conduct any follow-up actions.

JIG personnel assigned to Event Monitoring Units, including RCMP members, received "Crowd Observation and Extraction Team" training by the Calgary Police Service Public Safety Unit in advance of the Summits. The training emphasized that event monitors were not to be part of any enforcement actions or Public Order Unit actions unless exigent circumstances existed (e.g. to prevent grievous bodily harm) and they were not to participate in demonstrations (observation only). Event monitors were employed in both Huntsville and Toronto.

When interviewed by the Commission, the JIG Commander stated in relation to the role of the monitors: "They were strictly used as observation, overhearing, recording those observations and passing that information on." The JIG Commander went on to state: "The crowd observation and overhearing and live time feeds of intelligence was very worthwhile. It was very rewarding as far as getting that out directly to our site and area commanders . . . ." This is echoed in the RCMP's After Action Report, which lists Event Monitoring Units as a best practice to be transferred to other events.

> **"[The event monitors] were strictly used as observation, overhearing, recording . . . and passing that information on."**

Some concern has been expressed in the media that agents provocateurs may have been employed during the Summits. In an interview with the Commission, the JIG Commander stated that:

> Prior to the Summits I met for a presentation with Chief Blair [of the Toronto Police Service], Deputy Souccar [RCMP], Assistant Commissioner McDonell [RCMP], and a number of other police leaders, and in which . . . that [agent provocateur] was discussed. Shortly thereafter . . . I issued an email regarding agent provocateur that it would not be tolerated and [to] ensure that the people, their people underneath them were aware of that, unless explicitly authorized by the *Criminal Code*, which it never did happen.

The Commission reviewed the referenced email from the JIG Commander sent to JIG supervisors, asking them to remind JIG personnel, ". . . involved in such duties as covert operations, field intelligence and event monitoring to use good judgement and refrain from provocateur type activity . . ."

When asked if he had any knowledge of any incidents where this reminder was not heeded, the JIG Commander responded emphatically, "Absolutely not."

Having reviewed relevant documentation relating to both event monitors and undercover operations, the Commission saw no indication that the RCMP employed agents provocateurs during the Summits.

Finding No. 10

The Commission saw no indication that RCMP undercover operators or event monitors acted inappropriately or as agents provocateurs.

THIRD ISSUE: USE OF FORCE, DETENTIONS AND ARRESTS

There were no security incidents or arrests by the RCMP (or any other police service) during the G8 Summit in Huntsville.

Regarding the G20, the actions of RCMP members, as they related to interactions with protesters and demonstrations, all occurred in or around the outer area of the Summit, outside the fenced Controlled Access, Restricted Access and Interdiction zones. Within those zones, no arrests were made, nor were any demonstrations possible given the controlled access. However, seven arrests were made by RCMP POUs in the outer area.[70]

Jurisdiction

The public perception concerning the G8 and G20 Summits appears to have been that the RCMP was in charge of all security arrangements and operational decisions. However, based on several interviews with senior RCMP officials, the RCMP believed that it was responsible for the protection of the Summits and the Internationally Protected Persons within the perimeter of the first two fenced areas (the Controlled and Restricted Access zones) of the G20 Summit; any police actions outside these fenced areas (in the Interdiction and Outer zones) were the responsibility and duty of the Toronto Police Service, as the police of local jurisdiction.

The question of which police agency had jurisdiction at any particular time during the Summits—and indeed, during any integrated event—is a pertinent one, and the subject of much discussion. Further, an understanding of the responsibilities of the RCMP members, and to what degree the members were subject to the direction of the police force of local jurisdiction, is integral to a proper assessment of any actions taken by RCMP members during the course of the Summits. To this end, and as previously referenced, the Commission sought an independent legal opinion regarding the specific authorities and responsibilities vested in participating police agencies and their members throughout the Summits.[71]

The Commission's legal opinion reached several conclusions which served to guide the Commission's analysis of RCMP member conduct during the Summits. Specifically:

1. RCMP members have the *authority* to exercise police powers with respect to federal responsibilities and offences throughout Canada at any time.
2. RCMP members were only *required* to exercise police powers within the Controlled and Restricted Access zones, and/or in the event of security threats to the Summits or Internationally Protected Persons arising outside of those zones to the extent deemed necessary.
3. Operationally, the RCMP was in charge of G20 Summit-related policing in the Controlled and Restricted Access zones. This contemplated directing members of other police agencies with respect to Summit-related matters within those zones.
4. Operationally, the Toronto Police Service was in charge of policing outside the Controlled and Restricted Access zones unless the RCMP identified security threats to the G20 or Internationally Protected Persons falling within its federal mandate.
5. The RCMP retained its regulatory Code of Conduct, policies and operational guidelines over its members irrespective of the area in which policing was being carried out.

70 A total of seven arrests were made by the RCMP during the G20 Summit, all by Public Order Units. In the afternoon of June 26, 2010, the "C" Division Public Order Unit arrested an individual in front of the US Consulate. Later that evening, the "K" Division Public Order Unit arrested an individual at the intersection of Queen Street and Spadina Avenue. The next day, on June 27, 2010, the Lower Mainland District team arrested five individuals, also at the intersection of Queen and Spadina (discussed further in this section).

71 For the complete legal opinion, see **Appendix D**.

Consistent with the foregoing, it should be recalled that pursuant to subsection 10.1(1) of the *Foreign Missions and International Organizations Act*, the RCMP bears "primary responsibility to ensure the security for the proper functioning of any intergovernmental conference in which two or more states participate, that is attended by" Internationally Protected Persons.

Consideration has been given to the meaning of "primary responsibility." It is clear upon the application of principles of statutory interpretation that the expression is intended to give the RCMP final decision-making power in respect of security at intergovernmental conferences, in terms of its interactions with other police agencies. However, while the authority rests with the RCMP to make a final decision specifically in respect of such a matter, the police force of local jurisdiction will consequently be relieved of any responsibility relating to that matter. In such a situation, a police force of local jurisdiction has no obligation to participate in a matter where it disagrees with a final decision made by the RCMP pursuant to its authority as conferred by the *Foreign Missions and International Organizations Act*, and the RCMP is not afforded the power to give binding orders to that police force.

Due to the uncertainty that may be created in such a situation, agreements such as memoranda of understanding between involved police forces are desirable. Given the difficulty of attributing policing powers and responsibility in an integrated, federal-provincial setting, an agreement establishing authorities and responsibilities of involved police agencies would clearly and transparently attribute primary policing jurisdiction. The Commission recommends that the RCMP develop and implement policy requiring best efforts to be made respecting entering into comprehensive agreements with other police agencies prior to beginning integrated operations. Such agreements should address such issues as command structure, strategic, tactical and operational levels, and the operation and application of policies and operational guidelines.

(SOURCE: andrewarchy/Flickr)

RCMP Public Order Unit members in Toronto's Financial District.

Recommendation No. 6

That the RCMP develop and implement policy requiring best efforts to be made respecting entering into comprehensive agreements with other police agencies prior to beginning integrated operations, addressing such issues as command structure, strategic, tactical and operational levels, and the operation and application of policies and operational guidelines.

Public Order Units

In its review of Public Order Units (POUs), the Commission examined documentation including the RCMP POU policy, RCMP and Toronto Police Service POU operational plans, standard operating procedures, officers' notes and training material. In addition, the Commission interviewed RCMP POU commanders and POU planners.

The RCMP *Tactical Operations Manual* states that:

> Where the RCMP has jurisdiction or the responsibility for the protection of Internationally Protected Persons (IPPs)/VIPs, the RCMP is responsible for the preservation and restoration of peace in the case of a demonstration, an unlawful assembly or a riot.
>
> When officially requested, the RCMP may assist other police agencies in the preservation and restoration of peace but any deployment will be in accordance with RCMP directives.

In this regard, the G8 and G20 operational plans called for multiple POUs to be made available for deployment during the Summits for the purpose of maintaining safety and security both within and outside the secure zones. The RCMP assigned 240 public order members to the G8 and 320 public order members to the G20.[72] This was in addition to the POUs from other police services, including those of the police forces of local jurisdiction (the Ontario Provincial Police for the G8 and the Toronto Police Service for the G20).

As with most specialized teams assigned to the Summits, members of the POUs arrived trained: all tactical troop members were required to have been certified with current validation in all tactical troop training.

The RCMP trains and equips its POUs according to the RCMP *Tactical Operations Manual*, which sets out the standards and training proficiencies required for members of the POUs. In addition to basic RCMP training, some specialized training was also required. For example, the RCMP POUs assigned to the G20 trained with the Toronto Police Service to familiarize RCMP members with the use of mounted units and Toronto Police Service water projection systems. RCMP POU commanders were also brought to Toronto in advance of the G20 Summit to be familiarized with the venue and location.

The Commission saw no indication that the RCMP POU members assigned to the Summits did not meet the required training standards.

The Commission's investigation revealed that no RCMP (or other) POUs were deployed during the G8 Summit. Although the units were in Huntsville, events at the Summit did not necessitate the engagement of tactical troops. The same cannot be said for the G20 Summit.

On June 26 and 27, 2010, several RCMP POUs were deployed in the Outer Zone (beyond the Interdiction Zone) under the command of the Toronto Police Service MICC following a request from the Toronto Police Service for RCMP assistance. The request was made via the MICC Commander to the RCMP Liaison Officer in the MICC. The request was then forwarded to the TACC Commander, an RCMP member, who made the decision to allow RCMP POUs to work under the control of the Toronto Police Service on both days. The expectation of the TACC Commander was that the POUs would take direction from the Toronto Police Service Commander, but that they would operate within the established practices and policies of the RCMP.

There was no contact between the TACC Commander and the MICC Commander to communicate what the RCMP POUs were being tasked to do, but the TACC Commander told the Commission he had confidence that the RCMP POU commanders knew the extent of their legal authority and would not exceed it. It must be recalled, as outlined in the legal opinion previously referenced, that the fact that the RCMP POUs assisted the Toronto Police Service beyond the Controlled and Restricted Access zones did not subordinate the RCMP's Code of Conduct or policies to those of the Toronto Police Service.

Specific Incidents of Arrest, Detention and Use of Force

Dispersal of Protesters at Queen's Park on June 26, 2010

In the late afternoon of June 26, 2010, individuals returned to the grounds of Queen's Park, which had been designated a protest zone. An earlier march had degenerated into property damage and violence. Police, in the wake of the events that had occurred that afternoon, began attempting to clear the zone, and a number of physical altercations ensued. A number of individuals were arrested.

The RCMP did not make or assist in any arrests at Queen's Park. The Commission was informed that an RCMP POU was directed to Queen's Park just prior to the arrests; however, that POU was re-deployed by the MICC Commander prior to arriving at the location.

Finding No. 11

The RCMP did not make or assist in any arrests at Queen's Park.

72 Each tactical troop contains 80 members.

Although the RCMP was not directly involved in the arrests, RCMP-led JIG information did play a role in the events of June 26, 2010. An undated briefing note to an RCMP Deputy Commissioner stated:

> The June 26 protests resulted in many broken windows at downtown businesses and the burning of four police vehicles. The JIG investigations provided timely information on the location of protests and movement of protest groups enabling commanders to plan effectively.

This is confirmed by the sitboard entries reviewed by the Commission, which reveal that both the JIG Event Monitoring Units and the MICC were providing near real-time updates on the protest events as they unfolded, leading up to the arrests. While the arrests were occurring, the primary source for information, according to the sitboard entries, was the Toronto Police Service video feeds.

Detentions and Arrests at The Esplanade on June 26, 2010

The Commission determined that an RCMP POU was briefly at Yonge Street and The Esplanade at approximately 8:30 p.m. on June 26, 2010. However, within 30 minutes of arrival, the MICC redeployed this troop to another location. The RCMP POU Commander confirmed that his troop did not make any arrests, nor was it involved in detaining the crowd.

Finding No. 12

The RCMP did not make any arrests, nor was it involved in detaining the crowd at The Esplanade on June 26, 2010.

Kettling at Queen Street and Spadina Avenue on June 27, 2010

According to the Toronto Police Service After Action Review, in the late afternoon of June 27, 2010 the MICC responded to a protest moving along Queen Street West. At Spadina Avenue, that group was blocked on all sides at the direction of the MICC Commander. Video of the event indicates that the group was first blocked by Toronto Police Service bicycle police officers, and later by POUs. At approximately 5:25 p.m., an RCMP POU, under the direction of the MICC, was ordered to the intersection of Queen Street and Spadina Avenue to "box in" and arrest the protesters for conspiracy to commit mischief. Although the crowd was already boxed in or kettled, the RCMP POU can be seen on RCMP aerial surveillance moving through the middle of the crowd, thus creating two kettles.

The Commission's jurisdiction does not extend to an examination of the MICC and its decisions to employ this particular crowd control tactic. However, to the extent that an RCMP POU was involved in the containment or kettling of individuals, the Commission reviewed the conduct of the RCMP members who took action as part of that POU, notwithstanding that it was under the control of the Toronto Police Service at the time, as well as the conduct of RCMP commanders on duty at the time.

> **"[K]ettling] should . . . be used in moderation and only if and when deemed necessary"**
>
> **- 2009 report by Her Majesty's Chief Inspector of Constabulary following the 2009 G20 Summit in London**

Kettling is a crowd control tactic whereby the police surround protesters to keep them in a particular area and to control any exit or entrance to the area. Its intended use is to prevent disorder or protect public safety. It is believed that kettling was first used by police in Germany in the 1980s,[73] and subsequently in the UK sometime after 1990. The tactic is based on the idea that police officers would be in physical contact with the outermost circle of contained protesters, while those closer to the centre would be surrounded by protesters and therefore become effectively self-policed (assuming protesters do not turn on one another). Kettling is now also used by western police services. Kettling gained notoriety after its use during the 2009 G20 Summit in London, England.

73 Clements, Warren, "The kettle lands in a new hot spot," *The Globe and Mail*, June 11, 2011.

Policing policy in the UK, as set out by the Association of Chief Police Officers, originally endorsed the unconditional use of kettling.[74] However, a 2009 report by Her Majesty's Chief Inspector of Constabulary following the 2009 G20 Summit in London recommended that the tactic should instead be used in moderation and only if and when deemed necessary.[75] While the practice of kettling has not yet been evaluated by the Canadian courts, a 2011 case from the UK High Court of Justice, Queen's Bench Division in response to the use of kettling during the G20 protests in 2009 summarized the general principles with respect to the legality of kettling in that country as follows:

1. Kettling *may* be permissible in order to prevent a breach of the peace occurring in the presence of the police, or if they reasonably believe that a breach of the peace is *imminent*.
2. What is imminent depends on the circumstances and is not an inflexible concept; a breach of the peace is imminent if it is likely to happen.
3. The action taken must be necessary, reasonable and proportionate.
4. Action may lawfully be taken even if it affects people who are not themselves going to be actively involved in the breach of the peace.[76]

The UK courts have condoned some uses of the tactic, and deemed others unlawful. In the above noted case, the use of kettling was considered to be premature, as a breach of the peace was not

74 *Manual of Guidance on Keeping the Peace*, Association of Chief Police Officers, United Kingdom; and, HMIC at 44-45.
75 HMIC at 10-11.
76 *Moss & Anor, R (on the application of)* v. *Police of the Metropolis* [2011] EWHC 957 (Admin) (14 April 2011).

(SOURCE: Screen capture of RCMP video)

An aerial shot from the RCMP's Stetson aircraft of the kettling at Queen Street and Spadina Avenue on June 27, 2010.

"imminent," but the court recognized that the tactic may have become justifiable at a later time.

Regarding the events of June 27, 2010, the Commission learned that the RCMP Lower Mainland District POU was deployed to the corner of Queen Street and Spadina Avenue in full riot gear, arriving at the east side of the intersection at 5:52 p.m. According to the scribe notes of the Lower Mainland District POU, the kettle had already been formed, with POUs positioned to cover the entire intersection. The RCMP POU Commander stated during his interview with the Commission that he was ordered to box in the protesters, as they were all under arrest for conspiracy to commit mischief.

Once on the scene, the RCMP POU Commander had his Toronto Police Service liaison officer (who was embedded with the unit)[77] confirm these orders with the MICC. The RCMP POU Commander was attempting to understand whether the decision to make the mass arrests was based on articulable grounds. He was also concerned with the order to box in, as neither he nor the troop Non-Commissioned Officer (who was a seasoned tactical troop member) had previously employed this technique. According to RCMP POU policy and training, crowds should be provided an egress route.

While the orders were being confirmed, the RCMP POU Commander attempted to locate the on-site tactical commander, an Ontario Provincial Police officer. The Ontario Provincial Police Commander was to be in charge of the scene (i.e. Incident Commander) and direct the assembled POUs (believed to include the Toronto Police Service, the RCMP, the Ontario Provincial Police and the London Police Service). Because he could not initially locate the tactical commander, the RCMP POU Commander, along with the other POU commanders, came to an agreement on how to proceed, including having a Toronto Police Service POU commander serve as the Incident Commander (as he had direct contact with the MICC) until such time as the Ontario Provincial Police Commander could be located. The concern of the RCMP POU Commander was that absent a clear chain of command, one POU could receive different orders than another, which would lead to greater confusion.

> **"In the absence of somebody telling me what to do, we just worked it out amongst ourselves"**
>
> **- Commander, Lower Mainland District Integrated Tactical Troop**

Following the discussion with other POU commanders, the RCMP POU positioned itself on the northeast side of the intersection, boxing the crowd in. Although the RCMP POU Commander had some concerns about the order, as a practical matter, where one police service is supporting another in situations that require quick and decisive action, it is difficult for the supporting agency to act contrary to the instructing agency or to refuse to follow through with the provision of support. While there may be legitimate questions surrounding the approach taken by the instructing agency, to act contrary to their instructions could jeopardize the safety of all involved. In light of the foregoing, the Commission is satisfied that the RCMP POU Commander took reasonable steps to ensure that his orders were legitimate in the circumstances. Accordingly, the Commission also finds that the POU members acted reasonably in executing the orders from the Toronto Police Service MICC to surround the protesters.

Finding No. 13

The RCMP POU Commander involved in the kettling of individuals at Queen Street and Spadina Avenue on June 27, 2010, took reasonable steps to ensure that his orders were legitimate in the circumstances.

77 The RCMP POU Commander related that he did not have radio communications with the MICC and had to rely on information provided to him by a Toronto Police Service member assigned to act as a liaison between the POU Commander and the MICC. It should be noted that RCMP POU Commanders had radio communications with their own units/troops, but were unable to speak directly with the MICC Commander when under Toronto Police Service control, or the RCMP TACC Commander during the G20 generally. Their sole means of communicating with the command centres was by mobile phone, which would force the POU commanders to remove their helmets and expose themselves to the risk of injury. Because of this, the Toronto Police Service provided liaison officers with mobile police radios to allow the POU Commander, when under Toronto Police Service control, to obtain orders from and provide real-time information to the MICC.

Finding No. 14

The RCMP POU members involved in the kettling of individuals at Queen Street and Spadina Avenue on June 27, 2010, acted reasonably in executing the orders from the Toronto Police Service Major Incident Command Centre.

As the troop held the line, the RCMP POU Commander continued to look for the Ontario Provincial Police Incident Commander. Meanwhile, the RCMP Arrest Rank Team had begun to arrest people and turned them over to the Toronto Police Service, reasonably believing that those were their orders. The RCMP POU Commander also related to the Commission that his unit had removed a number of people from the kettle because of medical issues, in addition to escorting some media personnel out of the kettle.

Sometime before 8:00 p.m., nearly two hours after arriving, the RCMP POU Commander located the Ontario Provincial Police Incident Commander. When the RCMP POU Commander told the Ontario Provincial Police Commander that they had made arrests, the latter confirmed that it was the Toronto Police Service who was to go through the line and make arrests. The RCMP Commander then ordered his team to stop making arrests. In total, the RCMP arrested five individuals before being told to stop.

In his interview with the Commission, the RCMP POU Commander stated that some of his members had expressed concern about whether those being detained in the intersection had been told that they were under arrest. When the RCMP Commander raised this with the Incident Commander, the Ontario Provincial Police officer told him that the crowd had been warned three times to leave the location or they would be under arrest. The Commission interviewed a number of persons in the kettle; some indicated that they did not hear such warnings, while others said they did but that the warning came after the kettle was already formed, leaving the crowd no way out. The Commission was unable to confirm whether the warning had been provided and at what time, as the RCMP did not give the warning, nor were any RCMP members present when the warning was reportedly issued.

In his ongoing discussion with the Ontario Provincial Police Commander, the RCMP POU Commander also questioned why individuals continued to be held, as the G20 Summit was nearly over. He was told that Toronto Police Service Command (i.e. MICC) wanted everyone arrested. At this point, the RCMP POU Commander asked for his troop to be relieved, as they were wet and needed to let their equipment dry before taking an early flight back to Vancouver the next morning. The Ontario Provincial Police Commander relieved the RCMP POU at approximately 8:00 p.m. At that time, the crowd was still confined in the kettle.

> **"The five arrested individuals were singled out because it was felt that they may pose a risk to the tactical troop"**
>
> **- POU Commander**

In interviews with the UCC and TACC commanders, who were all RCMP members, it was confirmed that neither the UCC nor the TACC were involved in the decision-making process related to this event. This was further confirmed by the Commission in interviews with a Toronto Police Service officer assigned to the UCC that night as well as a Toronto Police Service Deputy Chief. Since these interviews, the Toronto Police Service After Action Review of the G20, dated June 2011, confirmed that the MICC ordered the boxing in.

Through the course of its investigation, the Commission learned that of the five individuals arrested by the RCMP team, two of them were plain-clothes police officers with the Toronto Police Service. According to the RCMP POU Commander, the RCMP arresting officers were not aware, at the time, that these two individuals were plain clothes officers with the JIG Event Monitoring Unit (described earlier on page 30).

The notes of the arresting officers were not detailed, there were no names provided, and no indication that two of the individuals were police officers. In the past, the Commission has commented on the need for better note-taking by RCMP members. In March 2011, the Senior Deputy Commissioner of the RCMP issued a broadcast in advance of a formalized, updated policy regarding members' notebooks. The broadcast highlights the importance of notes in documenting relevant details, refreshing members' memories after a period of time has passed, and articulating actions that have been taken. A formal policy in this regard was implemented in January 2012. In light of the broadcast and policy, neither of which were in place at the time of the Summits, it is not necessary to make a recommendation in this regard.

In his interview with the Commission, the POU Commander indicated that the five arrested individuals were singled out because it was felt that they may pose a risk to the tactical troop: for example, one individual was intoxicated while another was believed to have a weapon. During the interview, as in the arresting officers' notes, the POU Commander did not indicate that two of those arrested were plain-clothes officers, later stating that he did not believe it to be significant. It was only through an inadvertent comment that the Commission was made aware of the incident. That being said, the RCMP was forthcoming in providing additional details upon request by the Commission. There was no indication in the information provided that the two plain-clothes officers were acting in a provocative manner, thus prompting the arrests.

There is insufficient information available to enable the Commission to assess the appropriateness of the arrests made by the RCMP POU.

Despite the Commission's finding that the actions of the RCMP members involved in the kettling at Queen Street and Spadina Avenue were reasonable, the Commission notes, as above, that RCMP POU policy and training maintains that crowds should be provided an egress route.

In this regard, the RCMP policy may have been inconsistent with the Toronto Police Service policy. In his interview with the Commission, a deputy chief of the Toronto Police Service stated that the use of containment as a tactic by the Toronto Police Service ". . . wasn't unknown, but it wasn't standard practice." However, nearly a year after the 2010 G20 Summit in Toronto, the Toronto Police Service reportedly terminated its use of this tactic.[78]

The legal opinion sought by the Commission addressed the issue of inconsistencies in operational policy among police agencies conducting integrated operations. As previously outlined, RCMP policies continued to apply to members while exercising their policing duties. Given the inconsistencies in the policies of the two agencies, however:

> To expect RCMP police officers deployed as POUs to take common briefing instructions together with other [Toronto Police Service] police officers from [Toronto Police Service] command and then conduct the very same police operations shoulder-to-shoulder in the field in support of [Toronto Police Service] responsibilities, but somehow identify conflicting procedures and conduct themselves differently, may not be a realistic expectation.[79]

In light of the foregoing, and consistent with its earlier recommendation regarding entering into comprehensive agreements prior to the onset of integrated policing operations, the Commission recommends that the RCMP make best efforts to establish, together with its partners, clear operational guidelines prior to an event where integrated policing will occur to ensure consistency of application. In this manner, inconsistencies may be addressed by prior amendment or agreement.

78 "Exclusive: Toronto police swear off G20 kettling tactic", June 22, 2011, *Toronto Star*, www.thestar.com/news/article/1012959--exclusive-toronto-police-swear-off-g20-kettling-tactic?bn=1.

79 Legal opinion of Eugene Meehan, Q.C. (October 25, 2011).

It is difficult to hold individual police officers to account if the policy and directions they are to follow are not clear and consistent.

The Commission spoke with a number of senior RCMP officers regarding the kettling incident. Some said they were not aware of the ongoing kettle because they were preoccupied with the movements of Internationally Protected Persons to the airport or with the movement of resources from Ottawa to Toronto. Others said they saw the video of the kettle, but did not ask questions because the incident occurred in the outer area of the Summit and was therefore the responsibility of the Toronto Police Service, not the RCMP. This was echoed by the ISU Lead. When asked what his expectations were of the UCC Commander and the TACC Commander in this situation, the ISU Lead stated that he would only expect the UCC Commander to get involved if there had been a strategic need to do so (e.g. need for additional resources). The ISU Lead was clear that the kettling was a tactical decision—that is to say, it was made by the Toronto Police Service. The ISU Lead went on to add:

> The TACC is a different… Now, our expectation from them was that they would be very well in tune with what was happening on the streets in Toronto. And if they had a concern, they would be raising it to the UCC. Although the TACC wasn't directly responsible for the streets of Toronto, we did have liaison people from the TACC in that command centre [i.e. the MICC].

However, when the Commission interviewed the TACC Commander who worked the night shift on June 27, 2010, he stated categorically: "I wasn't aware. I never made a call to find out what was going on or to question it."

A similar response was received from the RCMP Liaison Officer in the MICC who indicated that although he was aware that there was an RCMP tactical troop at Queen Street and Spadina Avenue, he was preoccupied with the movement of resources from Ottawa to Toronto. However, an entry on the sitboard at 6:21 p.m. on June 27, 2010, states: "On June 27, 2010, at 1818 hrs, RCMP Supt. . . . (MICC) updated the crowd is still at Queen and Spadina where POU units, and [Toronto Police Service] Mounted Units are monitoring." A second entry eleven minutes later goes on to note: "On June 27, 2010, at 1829 hrs, RCMP Supt. . . . advises that the crowd is contained, ongoing extraction and arrests." This suggests that the senior RCMP officer in the MICC was aware of the situation at the time.

The Commission accepts that the decision to contain the crowd at Queen Street and Spadina Avenue was made by the Toronto Police Service and that neither the UCC nor the TACC were part of that decision-making process. However, there is an apparent disconnect between the RCMP POU Commander on the ground, who had concerns with the ordered tactic, and senior RCMP commanders, including the Liaison Officer in the MICC, who either were not aware of the ongoing situation, or were aware but did not have or did not express concern. In any event, their responsibility and authority did not extend to public order issues in the outer area which did not affect Summit security or Internationally Protected Person protection.

Finding No. 15

The involvement of the RCMP POU members in the kettling of individuals at Queen Street and Spadina Avenue on June 27, 2010, while inconsistent with RCMP POU policy and training, which maintains that crowds should be provided an egress route, was reasonable under the circumstances.

Recommendation No. 7

That the RCMP make best efforts to establish, together with its partners, clear operational guidelines prior to an event where integrated policing will occur to ensure consistency of application.

Police Conduct Outside the Eastern Avenue Detention Centre on June 27, 2010

The RCMP was not present outside the Prisoner Processing Centre on Eastern Avenue on June 27, 2010.

Finding No. 16

The RCMP was not present outside the Prisoner Processing Centre on Eastern Avenue on June 27, 2010.

Arrests at the University of Toronto on June 27, 2010

In the morning hours of June 27, 2010, police entered the gymnasium of the University of Toronto Graduate Student Union, where a number of individuals who had traveled to Toronto for the G20 Summit, mainly for the purpose of attending demonstrations, had been sleeping. Police arrested approximately 70 persons.

According to documentation reviewed by the Commission and statements made in interviews, RCMP members did not participate in the June 27, 2010, arrests at the University.

Finding No. 17

RCMP members did not participate in the June 27, 2010, arrests at the University.

Use of Force by the RCMP

The Commission found no information to suggest that RCMP members were engaged in the unreasonable use of force.

Finding No. 18

The Commission found no information to suggest that RCMP members were engaged in the unreasonable use of force.

Individual Complaints Received by the Commission

As noted above, the Commission received five complaints relating to specific instances of RCMP member conduct during the incident at Queen Street and Spadina Avenue on June 27, 2010, all of which have been disposed of by the RCMP. The complainants generally alleged that on that date, unidentified police officers:

1. Improperly detained a number of persons for five hours in the area of Queen Street and Spadina Avenue.
2. Only told the detainees that they were being arrested for breach of the peace after the five hours had passed.[80]
3. Failed to provide adequate care to the people who were detained.

Essentially, all of the complainants indicated that they were among those “peacefully protesting” or passing through the area when they were suddenly boxed in by the police and not permitted to leave the area. They were held in that area for several hours and allegedly not told what was to happen to them.

One complainant, who was arrested and will be referred to as Complainant A, made the following additional allegations regarding his treatment and personal observations, stating that unidentified police officers:

4. Grabbed protesters in an unnecessarily forceful manner and arrested them.
5. Improperly arrested Complainant A.
6. Performed an improper search of the personal effects of Complainant A.
7. Damaged the personal effects of Complainant A.
8. Failed to provide proper care to Complainant A following his arrest.
9. Detained Complainant A for an unnecessarily long period of time following his arrest.
10. Failed to caution Complainant A when he was detained.

80 Alleged by one complainant.

11. Failed to permit Complainant A to retain counsel without delay.
12. Assaulted another handcuffed prisoner who was being held in the same police van as Complainant A.

While none of the complainants have requested a review by the Commission to date, in the interests of providing a full accounting of RCMP involvement in the events surrounding the G20, the Commission assessed the RCMP's disposition of the public complaints cited above. The allegations were considered in two groups: a) the detention and treatment of those held in the kettle at Queen Street and Spadina Avenue; and b) the subsequent arrest, treatment and observations of Complainant A.

Detention and Treatment of Those Held at Queen Street and Spadina Avenue

The RCMP issued a similar Final Report to all of the complainants. The Final Report indicates that the first task was to determine whether any RCMP personnel were deployed to that area on the date and during the time in question, since there were many officers from different police agencies working at the G20 Summit. They determined that there were two[81] RCMP POUs present at different times in that area during the relevant time period. However, the report notes that their attendance was at the request of the Toronto Police Service and both units were under the command of the Toronto Police Service. To determine the issue of jurisdiction and command authority, the RCMP looked at the Toronto Police Service After Action Review in which the Toronto Police Service "took full responsibility for the command decision and action taken against protesters" at the location in question. On that basis, the RCMP did not support the allegation against the unidentified members in question.

In the Commission's view, the RCMP's Final Report is not fulsome in that it fails to address the complaint about "boxing in" and why this is contrary to RCMP policy, and also in its approach to the jurisdiction and command decision issue. As discussed above, there is at least some onus on the RCMP to ensure that any actions taken—even at the command of another police force—have a reasonable basis in law and some justification from a policing perspective.

Despite the limited analysis provided by the RCMP in response to these specific complaints, the Commission reiterates its general findings regarding the kettling incident, stated above.

Arrest, Treatment and Observations of Complainant A

Complainant A made a number of allegations about police conduct that included his arrest, search subsequent to arrest, detention in the prisoner transport vehicle, etc.

The RCMP's Final Report indicates that after consultation with the Toronto Police Service Professional Standards Unit, it was determined that no RCMP members were involved with the arrest of Complainant A. It was also determined that all aspects of prisoner transport, detention, and access to counsel were handled by the Toronto Police Service and that no RCMP personnel were involved. As such, the RCMP found that none of its members were responsible for any of the allegations numbered 4 to12, above.

During its investigation of the RCMP's conduct during the G8 and G20 Summits, the Commission interviewed Complainant A and received a number of documents that confirmed that Complainant A was arrested by an officer from a police force other than the RCMP. In addition, the record indicates that the RCMP was not involved in prisoner transport, detention, or access to counsel. As such, there is no indication that any RCMP member was involved in any of the alleged conduct, and therefore the RCMP's disposition of the complaint was reasonable, albeit not for the reason stated in the Final Report.

81 The Commission did not review the actions of the "E" Division POU members at Queen Street and Spadina Avenue on June 27, 2010, as they arrived at the location, according to the unit's scribe, at 8:49 p.m., approximately 10 minutes after the Toronto Police Chief ordered an end to the containment.

FOURTH ISSUE: EASTERN AVENUE DETENTION FACILITIES

Through interviews with RCMP personnel and its review of documentation, the Commission has learned that the RCMP played no role in the planning for, or management of, incidents at or near the Eastern Avenue Detention Facility. Nothing in the documents examined by the Commission or the interviews carried out by its investigator indicated that the concept for the design, size, processing of prisoners and management of the detention facility involved the RCMP. Accordingly, this question falls under the jurisdiction of the Office of the Independent Police Review Director.

Finding No. 19

The RCMP played no role in the planning for, or management of, incidents at or near the Eastern Avenue Detention Facility.

CONCLUSION

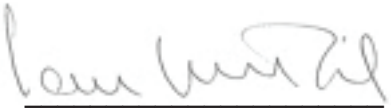
As has been outlined throughout the Commission's report, the actions of RCMP members in the context of the 2010 G8 and G20 Summits were, in a general sense, reasonable and appropriate. Planning was thorough, and the structure of intelligence operations and use made of gathered information were appropriate, with attention paid to ensuring the rights of demonstrators. No incidents of unreasonable force by RCMP members were identified. The involvement of RCMP POUs in the kettling of individuals downtown was found by the Commission to be reasonable; while kettling itself is inconsistent with RCMP policy, the POUs reasonably acted pursuant to the direction of another police agency.

In keeping with the Commission's stated goal of making recommendations for improvements in RCMP policy and practice in order to consequently inform member conduct, the Commission recommends an enhanced approval and reporting structure for intelligence investigations dealing with sensitive sectors. The Commission also makes recommendations emphasizing comprehensive record-keeping, consistent post-event integrated debriefing, and clarification of policies with policing partners. In addition, the Commission emphasizes the importance of appropriate document management and storage, so as to facilitate later review.

It is apparent that the planning and policing of major international events continues to evolve, and that significant challenges faced those charged with the tasks for the 2010 G8 and G20 Summits. The Commission's investigation was similarly challenged due to difficulties in obtaining relevant documentation in a timely manner. Critical to future such events and post-event review is the development of clear agreements between involved police agencies that have the effect of addressing inconsistencies in policy, including those involving the retention and organization of contemporaneous records such as police officers' notes.

Nonetheless, the Commission, pursuant to its mandate and jurisdiction, is charged with the examination of RCMP member conduct, and it is satisfied that its review in that respect, as outlined in this report, has been thorough. The RCMP, as the lead police agency, ably fulfilled its planning responsibilities relating to this large-scale international event, and it is hoped that the issues and practices identified throughout the planning process, during the Summits and in the context of the Commission's public interest investigation will serve to enhance such events in the future.

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



Ian McPhail, Q.C.
Interim Chair

APPENDIX A

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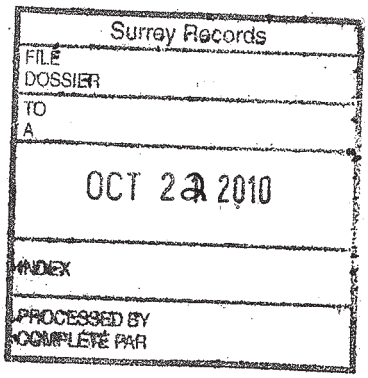
MARIE-ÈVE SYLVESTRE
WALTER THOMPSON
THE VERY REV. LOIS WILSON

General Counsel Emeritus
Avocat général émérite
A. ALAN BOROVOY

October 18, 2010

Mr. Ian McPhail, Commission Chair
Commission for Public Complaints
Against the RCMP
7337 137 Street, Suite #102
Surrey, BC V3W 1A4



Dear Mr. McPhail:

On behalf of the Canadian Civil Liberties Association, I am writing to lodge a formal complaint under Section 45.35 of the *Royal Canadian Mounted Police Act* in relation to the RCMP's conduct during the G8 and G20 Summits held in Toronto and Huntsville, Ontario. As you are undoubtedly aware, police activity during these Summits resulted in significant violations of Canadians' constitutional liberties. The RCMP was the lead police agency for both the G8 and G20 Summits and played a significant role in the planning and implementation of Summit security. Until the RCMP is held accountable for its actions during the G8 and G20 Summits, lingering questions will remain that threaten to further erode the public's already fragile confidence in the service. The CCLA had 50 independent human rights monitors at the G20 Summit. Based on their observations, we published a preliminary report on G20 policing on June 29th, a copy of which is enclosed for your review. Our monitors observed many troubling incidents during the G20 Summit, some of which are further described below.

While the CCLA considers a federal public inquiry to be the best mechanism to address this situation, we also believe that the Commission for Public Complaints Against the RCMP (CPC) has a vital role to play in ensuring accountability for the RCMP's actions during the G8 and G20 Summits. Accordingly, the Canadian Civil Liberties Association requests that the Commission provide for an investigation of the extent to which the RCMP was involved in the following matters and the extent to which its members' conduct breached constitutional, international and professional standards:

THE RCMP's ROLE IN G8 AND G20 SECURITY PLANNING

As a key member in the Integrated Security Unit, the RCMP was primarily responsible for securing the Summit site and surrounding areas and ensuring the safety and security of Internationally Protected Persons. These responsibilities encompassed a significant decision-making role with respect to the location of the massive fence surrounding the G20 Summit site and the measures that were taken to secure that fence and the area within it. Cordoning off large areas of the city impairs vital democratic rights and freedoms. Section 7 of the *Charter* guarantees individual liberty, including freedom of movement. Sections 2(b), (c) and (d) of the *Charter* guarantee freedom of expression, freedom of peaceful assembly and freedom of association. The *Charter* requires that any infringement of individual rights and liberties – including restrictions due to the establishment of security perimeters – impair rights as little as possible. The establishment of security perimeters was addressed at the APEC Inquiry. In the Commission's Interim Report, Mr. Hughes noted that a fence line designed to significantly distance protesters and maintain a "retreat-like atmosphere" could well violate the *Charter*. To the extent that the conduct of the RCMP contributed to such conditions during the G20, the service and its members must be held accountable.

RCMP INFILTRATION AND SURVEILLANCE BEFORE AND DURING THE SUMMITS

According to the Parliamentary Budget Office, the RCMP was allocated $507-million for summit security and deployed nearly 5000 officers. An untold number of CSIS agents were also deployed. Both agencies participated in infiltration/surveillance operations in the months preceding the Summits to gather intelligence on protest groups.

The use of such tactics, particularly in relation to non-violent political groups, raises troubling concerns for civil liberties. As such, it is imperative that the CPC review the RCMP's surveillance activities prior to and during the Summits to determine whether they were in accordance with Canadians' rights to freedom of expression and association. Such a review should inquire into how many groups were subject to infiltration/surveillance and whether those groups had an actual connection to criminal or injurious conduct. Particular attention should be given to the RCMP's role in the surveillance of student groups from Québec and the extent to which such groups may have been unwarrantedly targeted for heightened scrutiny.

Many protesters have complained to the CCLA about being approached by police officers prior to the Summit, voicing concerns that police may have overstepped appropriate boundaries in pursuing pre-Summit intelligence at individuals' homes or places or work. As such, the CPC's

investigation should inquire into whether there were any limits on the scope of activities that RCMP informants could engage in while working undercover in protest groups. Specifically, the CPC should probe whether there were limits imposed on the scope of intelligence gathering strategies, the encouragement of particular demonstration tactics, or the organization of particular demonstrations leading up to the Summits.

EXCESSIVE FORCE, MASS DETENTIONS AND MASS ARRESTS

By the end of the G20 Summit, 1105 people had been arrested on the streets of Toronto and a far greater number had been detained. Peaceful protests had been aggressively dispersed and constitutional rights had been curtailed. In many case, police responses were completely disproportionate to any potential security threats. Indeed, excessive force was used against crowds of peaceful protestors and passersby. To our knowledge, the RCMP was not the lead police service involved in these actions beyond the perimeter of the fence; however, the RCMP *was* responsible for developing much of the G20 policing strategy and it must be held accountable for its involvement in these actions. Below we draw your attention to some of the many examples of excessive policing practices during the G20 Summit. We respectfully ask that you inquire into whether the RCMP participated in, was consulted as part of, or communicated intelligence or information that justified these actions:

1. The Dispersal of Peaceful Protesters at Queens Park on June 26th, 2010

   Prior to the G20 Summit, the Integrated Security Unit announced that Queen's Park was a "designated protest zone". Protestors were strongly encouraged to congregate at Queen's Park and use this site for peaceful assemblies and demonstrations. However, by 6pm on June 26th, over one hundred police in riot gear had advanced upon the crowd of peaceful protestors gathered at Queen's Park and ordered them to leave. Police beat their batons against their shields, proceeding in an 'advance and wait' pattern upon protestors, forcing them from the designated protest space at Queen's Park. Police on foot and/or mounted on horses advanced blocking the crowds from moving south on University, and pushing the crowds north. A large presence of unmarked police cars and minivans were lined up south of the perimeter.

   Protestors remarked "why are you doing this" and "this is a peaceful protest". Witnesses observed one individual being pushed to the curb, face on the pavement, while an officer kept a knee on the person's head. Other individuals were pulled from the crowd by police, dragged behind police lines, pushed to the ground, had their

hands restrained, and were arrested. One of the CCLA's monitors observed a horse running over a protestor. Observers also witnessed police firing guns with what appeared to be blanks or rubber bullets.

At approximately 7:50pm, police continued to push the crowds north, and stated "Move back or you will be arrested. The police are advancing"; "back up, back up"; or "move, move. Now. Move it", and "Please clear the park". Protestors were heard asking "This is the designated protest area, why do we have to leave the park?". The police continued to advance upon the crowd, stopping, and then resuming their advance. One officer in the line had his gun raised and pointed at the crowd. The crowd was eventually pushed out of the park in this manner, with three lines of officers forcing the crowd's dispersal. Police were seen holding their shields up, wielding batons, and pushing protestors back.

2. Detentions and Mass Arrests at the Esplanade

A large crowd of protestors gathered in front of the Novotel on the Esplanade, on the evening of June 26th, 2010. Most of the crowd was sitting, following chants by some of the protestors to "sit down" and "peaceful protest". The police engaged some members of the crowd to ask questions, and observers noted the conversations to pass peaceably and uneventfully. Suddenly, pairs of police began to approach the crowd, grab seated demonstrators, and remove them with their arms behind their backs. It became clear that the protestors were not allowed to leave the area, which was blocked by buildings or by police dressed in riot gear. A member of the crowd announced to the police "we are not under arrest; you do not have the right to contain us here with no way out".

Over a twenty-minute period police began to move periodically forward, confining the crowd to a smaller and smaller space. No announcement was made to the crowd, until the police called upon the crowd to be quiet, and announced that everybody was under arrest. Over the next three hours, individuals trapped on the Esplanade in police lines were arrested – their hands restrained by metal cuffs and then, after processing which in many cases took hours, by plastic zip ties – and removed from the Esplanade by bus or van to the Eastern Avenue Detention Centre. Two CCLA monitors were arrested despite their identification.

3. Prolonged Detention and Mass Arrest at Queen and Spadina

On the evening of June 27th, 2010, individuals who were protesting peacefully, journalists, and passersby at Queen St. W. and Spadina Avenue were contained by police, hemmed in, and not allowed to leave. During this time, the Canadian Civil Liberties Association received calls from members of the public who reported that they had not been protesting, wanted to go home, but were boxed in on all sides by the police and not permitted to leave. These individuals expressed fear and frustration, and were at a loss as to how to get out of the situation.

The police charged on peaceful protestors, preventing a peaceful demonstration. Mass arrests occurred and individuals were transported to the Eastern Avenue Detention Centre. Others were detained on site, in the rain, or kept for hours in vans, and denied requests to use washroom facilities. Some individuals report being taken to a police station in Scarborough and then released hours later into the night. Some individuals reported that their property was damaged as a result of long-term exposure to the rain. Three of the CCLA's legal monitors were arrested.

4. Arrests and Police Conduct Outside the Eastern Ave. Detention Centre

Approximately 100 protestors gathered the morning of June 27th, 2010 at the Eastern Avenue Detention Centre, in a "celebratory" atmosphere. There was cheering as individuals were released from inside the Detention Centre; a demonstrator played guitar. Protestors also chanted peacefully, including the chant "peaceful protest". Initially, there were only minimal police – about 5-10 – between the crowd and the Detention Centre.

Then more police arrived in unmarked vans. Several (approx. 5) plain-clothed police jumped out of one of the vans and ran into the crowds, where they proceeded to grab at least three people and roughly remove them from the crowds. One of the people was thrown into the back of the van, and the van sped off extremely quickly. Two other people were pulled out of the crowd, one man and one woman. They were treated roughly, and forced to lie on the ground with a police officer's knee in the woman's back, and a police officer's boot on the man's head. These people were held down against the pavement.

Riot police began to appear in dozens. The riot police lined up in front of the detention centre. Some kind of weapon was fired upon the crowd emitting white smoke.

Protestors were ordered to leave. Protestors and monitors were very confused as to why the police used excessive force by firing indiscriminately upon the crowd, and dispersing the legal and peaceful demonstration.

5. Mass arrests at the Graduate residence

Police raided the University of Toronto's Graduate Students' Union building early in the morning on Sunday June 27th, arresting a large number of individuals who had been billeted in the building's gymnasium over the weekend. The raid was reportedly executed on the basis of "information" rather than as a result of a disturbance at the building. A CCLA monitor present on the scene counted 97 people being arrested, many of whom were in their pyjamas. One RCMP officer was observed at the site of the arrests, which resulted in the detention of a large group of people from Québec.

In the CCLA's view, these incidents constitute a failure to protect and facilitate peaceful assembly and the exercise of freedom of expression through protest. They also constitute illegal containment, detention and mass arrest. The CCLA calls upon the CPC to investigate and examine the role that RCMP officers and staff played in decisions involving the use of force, arrests and detentions during the G8 and G20, both in the context of the above mentioned incidents and beyond.

UNLAWFUL CONDITIONS OF DETENTION

Many persons arrested during the G20 Summit were subsequently sent to a temporary detention centre which police had established on Eastern Avenue in Toronto's east end. Reports about the conditions at this detention centre are highly troubling, indicating a widespread lack of respect for both detainees and their *Charter* rights. Many persons detained at the Eastern Avenue detention centre were kept with their hands bound for the duration of their detention. Although some detainees complained that their hands were bound too tightly, the hand ties were not adjusted in a timely manner. Inappropriate comments, including sexually inappropriate comments, were apparently made by police to detainees and several individuals complained of being taunted by police. Some detainees were not given adequate water – over an eighteen hour period one detainee tells us only two Dixie-sized cups of water were provided and one of those cups contained brown, undrinkable water. At least one detainee was diabetic and requested insulin for hours before being attended to, and then apparently was administered the wrong type of insulin for his condition.

Chaotic conditions prevented access to lawyers and family members in an appropriate timeframe. Indeed, many persons held at the Eastern Avenue detention centre were not permitted to phone anyone during their detentions, including legal counsel. There was a failure to provide adequate food, water, proper medical attention, and bathroom conditions/facilities. The conditions did not comply with basic standards of detention. For example, a special needs person was deprived of his wheelchair, and released over ten hours after detention into the street without his wheelchair.

The CCLA believes that the detention conditions at the Eastern Avenue detention centre contravened due process rights guaranteed by the *Charter,* and Canadian and international standards of detention given the lack of access to counsel, lack of food, inadequate availability of water, and inadequate medical attention. It is unclear to what extent the RCMP was involved in running the Eastern Ave. detention centre; however, in the CCLA's view, the RCMP's primary role in organizing and planning security for the G20 Summit imposes upon it an obligation to ensure the presence of adequate detention facilities.

The CCLA believes that the above-mentioned police action violated constitutional rights guaranteed in the ***Canadian Charter of Rights and Freedoms*** including:

- The right to peaceful assembly and association;
- The right to freedom of expression;
- The right to be free of unreasonable search and seizure;
- The right to be free from arbitrary arrest and detention;
- The right to liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice;
- The right to due process including the right to legal counsel upon arrest;
- The right to be free from discrimination, including on the basis of age, sex, and national origin.

The CCLA is also concerned that police action during the G8 and G20 Summits violated ***international standards of policing*** including:

- The duty of police to protect and facilitate peaceful protesting;
- The duty of police to ensure that any arrests made during an assembly are based upon a reasonable suspicion that an individual is about to commit a crime or offence; arrests

made during an assembly must be limited to persons engaging in conduct that is creating a 'clear and present danger of imminent violence';

- The duty of police to ensure that adequate food, water and hygiene – including gender appropriate washroom facilities -- are provided for detainees and that adequate facilities are provided to ensure access to a lawyers and family.

At this point, a thorough investigation of the RCMP's conduct during the G8 and G20 Summits is required to clear the air and ensure that public confidence in the RCMP is not further eroded. This investigation must examine the policy and conduct of RCMP officers prior to and during the G8 and G20 Summits, with a focus on the above-mentioned issues and incidents. Accordingly, the Canadian Civil Liberties Association calls upon the Commissioner to treat this letter as an official complaint and to launch an investigation at the earliest opportunity.

Sincerely,

Nathalie Des Rosiers
General Counsel

APPENDIX B

PUBLIC INTEREST INVESTIGATION INTO RCMP MEMBER CONDUCT RELATED TO THE 2010 G8 AND G20 SUMMITS

TERMS OF REFERENCE

General Scope

The Commission for Public Complaints Against the RCMP (CPC) will conduct a public interest investigation pursuant to subsection 45.43(1) of the *Royal Canadian Mounted Police Act* (RCMP Act) into a complaint lodged by the Canadian Civil Liberties Association (CCLA) regarding the recent G8 and G20 Summits (Summits). The complaint makes a number of allegations about the conduct of unidentified RCMP members to the extent they were involved in the following matters:

1. G8 and G20 Summits security planning (including the location of the security fences);
2. Infiltration and surveillance (if any) of individuals or groups before and during the Summits;
3. Use of force, detentions and arrests during the Summits in particular with respect to the following:
    a. the dispersal of protesters at Queen's Park on June 26, 2010;
    b. detentions and arrests at The Esplanade on June 26, 2010;
    c. detentions and arrests at Queen Street West and Spadina Avenue on June 27, 2010;
    d. arrests and police conduct outside of the Eastern Avenue Detention Centre on June 27, 2010;
    e. arrests at the University of Toronto's Graduate Students' Union building on June 27, 2010.
4. Conditions of Eastern Avenue detention facilities in Toronto.

In conducting its public interest investigation, in order to assess the degree of involvement of members of the RCMP, the CPC will consider to what extent members of the RCMP participated in, were consulted as part of, or communicated information that led to, actions taken by other law enforcement agencies during the Summits related to this complaint.

Standards Against Which Conduct is to be Assessed

1. Whether in carrying out any of the activities listed above the involved RCMP members complied with appropriate statutory requirements, policies, practices and procedures relevant to such events;
2. Whether the conduct of these same RCMP members adhered to the standards set out in section 37 of the RCMP Act and respected the rights and freedoms guaranteed by the *Canadian Charter of Rights and Freedoms* (Charter); and
3. Whether existing RCMP policies, practices and procedures related to major events such as the Summits are adequate, accord with established police practices, and respect the rights and freedoms guaranteed by the Charter.

APPENDIX C

SUMMARY OF FINDINGS AND RECOMMENDATIONS

FINDINGS:

Finding No. 1

The RCMP planning process was robust and thorough. The Commission found no indication that planning was influenced by anything other than legitimate security concerns.

Finding No. 2

The Commission saw no indication that security zones were created or sized to ensure that protesters were kept farther away from Internationally Protected Persons than was necessary, or that RCMP decisions in their respect were based on any inappropriate considerations.

Finding No. 3

The Public Affairs Communications Team employed appropriate strategies to provide information to the public leading up to and during the Summits.

Finding No. 4

The official G20 Summit security website should have contained information regarding the *Public Works Protection Act* inasmuch as it would potentially affect the public.

Finding No. 5

The Commission found neither intent nor action on the part of the Community Relations Group to obtain intelligence aimed at preventing groups from having their issues heard.

Finding No. 6

Community Relations Group members' records were not consistently stored in the Event Management System database.

Finding No. 7

The Joint Intelligence Group (JIG) fulfilled its mandate by conducting intelligence investigations and preparing and/or contributing to analytical reports.

Finding No. 8

The JIG appropriately identified and assessed criminal threats to the Summits.

Finding No. 9

Human rights were appropriately considered by JIG management.

Finding No. 10

The Commission saw no indication that RCMP undercover operators or event monitors acted inappropriately or as agents provocateurs.

Finding No. 11

The RCMP did not make or assist in any arrests at Queen's Park.

Finding No. 12

The RCMP did not make any arrests, nor was it involved in detaining the crowd at The Esplanade on June 26, 2010.

Finding No. 13

The RCMP Public Order Unit (POU) Commander involved in the kettling of individuals at Queen Street and Spadina Avenue on June 27, 2010, took reasonable steps to ensure that his orders were legitimate in the circumstances.

Finding No. 14

The RCMP POU members involved in the kettling of individuals at Queen Street and Spadina Avenue on June 27, 2010, acted reasonably in executing the orders from the Toronto Police Service Major Incident Command Centre.

Finding No. 15

The involvement of the RCMP POU members in the kettling of individuals at Queen Street and Spadina Avenue on June 27, 2010, while inconsistent with RCMP POU policy and training, which maintains that crowds should be provided an egress route, was reasonable under the circumstances.

Finding No. 16

The RCMP was not present outside the Prisoner Processing Centre on Eastern Avenue on June 27, 2010.

Finding No. 17

RCMP members did not participate in the June 27, 2010, arrests at the University of Toronto.

Finding No. 18

The Commission found no information to suggest that RCMP members were engaged in the unreasonable use of force.

Finding No. 19

The RCMP played no role in the planning for, or management of, incidents at or near the Eastern Avenue Detention Facility.

RECOMMENDATIONS:

Recommendation No. 1

That the RCMP more effectively integrate into its planning function for major events an awareness of the possibility of *ex post facto* review and adopt commensurate document organization practices and guidelines for appropriate disclosure.

Recommendation No. 2

That the RCMP reflect in its agreements with other police agencies, to the extent possible, that RCMP note-taking guidelines require members to retain notes for, among other things, subsequent review of their conduct.

Recommendation No. 3

That all contacts be recorded and reported in a comprehensive and consistent manner to ensure proper and adequate recording of actions taken.

Recommendation No. 4

That the RCMP ensure that a formal, integrated post-incident process is established for all major events to ensure that deficiencies as well as best practices are identified.

Recommendation No. 5

That the RCMP consider the establishment of an enhanced approval and reporting structure for sensitive sector criminal intelligence investigations as a best practice for future major events where such investigations are contemplated.

Recommendation No. 6

That the RCMP develop and implement policy requiring best efforts to be made respecting entering into comprehensive agreements with other police agencies prior to beginning integrated operations, addressing such issues as command structure, strategic, tactical and operational levels, and the operation and application of policies and operational guidelines.

Recommendation No. 7

That the RCMP make best efforts to establish, together with its partners, clear operational guidelines prior to an event where integrated policing will occur to ensure consistency of application.

APPENDIX D

LEGAL OPINION: JURISDICTION OF AUTHORITY AT THE 2010 G8/G20 SUMMITS

EXECUTIVE SUMMARY

Security for the June 2010 Summit in Toronto was principally provided by the RCMP and TPS (Toronto Police Force), with the support of other police forces.

IPPs (Internationally Protected Persons) were protected by a series of concentric rings:

- CAZ ("Controlled access" zone) in the middle
- RAZ ("Restricted access" zone) beyond that
- IZ ("Interdiction zone") beyond that
- OZ ("Outside zone") beyond that.

The (federal) *Foreign Missions and International Organizations Act*:

- gives "primary responsibility" to the RCMP for security of intergovernmental conferences
- the RCMP "may take the appropriate measures, including controlling, limiting or prohibiting access to any area and to an extent and in a manner reasonable in the circumstances", but not to be "read as affecting the powers that peace officers possess at common law or by virtue of any other federal or provincial Act or regulation".

The (provincial) *Public Works Protection Act* expands police powers of provincial jurisdiction in or around a "public work", including search and arrest without warrant in or approaching a public work; the Government of Ontario passed a regulation defining a certain G20 area as a public work.

There are three points on the continuum of police empowerment:

- no authority to act
- authority to act
- required to act.

RCMP officers

- are peace officers for every part of Canada
- have "all the powers, authority, protection and privileges that a peace officer has by law"
- may enforce provincial laws where they are employed.

This authority is not exclusive, but concurrent with the police of (local) jurisdiction.

Ontario provincial police officers have authority anywhere in Ontario.

A municipal police force in Ontario (e.g. TPS) is required to act within their municipality.

With regard to swearing in RCMP officers as special constables:

- they are then able to enforce Ontario law
- they can enforce the laws in the province (or territory) if the officer is "employed" in that jurisdiction, which is understood to mean not the classic employer-employee relationship, but a jurisdiction with whom the RCMP has a (contractual) arrangement
- there is no RCMP-Ontario arrangement, so RCMP officers are not "employed" in Ontario, and do not have that type of consequential authority to enforce Ontario law
- however, swearing in RCMP officers as special constables (pursuant to Ontario's *Police Services Act* gives that authority).

Terms of deployment between police forces are generally expressed in a MOU (memorandum of understanding),which would indicate whose command, legislation, policy and operational guidelines deployed personnel are subject to.

Swearing in as special constables under the (Ontario) *Interprovincial Policing Act*, is a different situation, as RCMP officers are statutorily excluded from same.

The provincial disciplinary exposure of a special constable is different from that of a "full" police officer.

For constitutional law reasons, as well as statutory authority, there remain grey division lines between:

- exclusive versus concurrent jurisdiction
- responsibility,

which lines could be clarified in an express MOU between the RCMP and police of jurisdiction.

Though there was a Command and Control Document (C^2 Document) and a Strategic Concept of Operations (SCO Document) there was no RCMP-TPS MOU to cover what was missing, including:

- neither police force relinquished their respective authority or responsibility
- the RCMP had primary, but not exclusive, responsibility
- the TPS remained the police force of jurisdiction, with the assistance of the RCMP and other forces.[1]

In addition, no formal "arrangement" *per* the *Foreign Missions and International Organizations Act* was entered into between Canada and Ontario, the reason given that existing mutual support and efforts among security partners was already "outstanding".

The constitutional doctrine of paramountcy indicates that when federal-provincial division of powers is imprecise, resulting in overlapping laws within the competence of their respective legislators, the federal law will prevail to the extent of the inconsistency. An alternative doctrine called 'interjurisdictional immunity' is now regarded as having very limited application. Indeed, in the *PHS Community Services Society* decision of September 30, 2011, the Supreme Court of Canada emphasizes that the more flexible concepts of double aspect and cooperative federalism permit significant overlap between federal and provincial areas of jurisdiction, making recourse to either doctrine less likely.[2]

The Command and Control (C^2) Document was signed by all security partners, whereby the RCMP is:

- responsible for overseeing security planning and operations
- co-ordinating operational security requirements
- lead security agency
- responsible for operational resolution of any 'incidents', and
- retained overall responsibility

The Strategic Concept of Operations ("SCO") Document was prepared (by the RCMP) as an internal strategic planning guide, and does not appear to have been the subject of any specific agreement with security partners, though does describe the RCMP as being the "lead agency".

Though RCMP officers could have been authorized to enforce provincial laws in any and all zones (by being sworn in as special constables pursuant to the Ontario *Police Services Act*) we understand they were only deployed as special constables:

- during the June 20-23, 2010 pre-summit period
- prior to the security perimeter coming into effect June 25, 2010.

There is no judicial consideration of "primary responsibility" to assist in interpreting same in the context of joint police operations, though it may be that "primary responsibility" contemplates other security partners having "secondary responsibility".

The RCMP were required to control and act in both the CAZ and RAZ. Had a threat to Summit security or IPPs have manifested itself in the IZ or OZ, the RCMP would equally be required to act.

One police force does not have the power to direct another (police) force. Inter-police work is a matter of cooperation and agreement - the C^2 Document both recognizes the RCMP's lead responsibility, including authority to direct, (in the CAZ and RAZ, not the IZ and OZ) and the relative responsibilities. The TPS, through the police jurisdiction, agreed to the command authority established by the RCMP.

1 There was a time-limited RCMP-TPS MOU re traffic and public order pre-summit.

2 *Canada (Attorney Genera) v. PHS Community Services Society,* 2011 SCC 44

Because it is not clear whether statutory provisions confer authority or requirement on the RCMP to direct other forces, the C² Document is left as the only source of authority and requirement. It can be questioned whether the C² Document is legally enforceable by any signatory. The C² Document also expressly provides each police force (provincial, regional, municipal) retains their responsibilities as police of jurisdiction.

Protection of IPPs and securing international summits is a federal jurisdiction.

There is some authority for the principle that police forces have a professional and binding obligation to cooperate.

TPS is, and it was agreed, that the TPS

- was the police of jurisdiction in Toronto
- would "support the RCMP in its federally legislated mandate".

The TPS:

- was authorized and required to act in the CAZ and RAZ though did not have primary responsibility and was required (pursuant to the C² Document) to follow RCMP direction
- was authorized and required to act in the IZ and OZ.

The TPS:

- was not authorized to direct the RCMP in the CAZ and RAZ
- was authorized to direct the RCMP in the IZ and OZ, by agreement.

As to regulatory codes of conduct, each force remains bound by their own, irrespective of which zone they were policing in – for example, even if the RCMP officers were operating under the direction of TPS in the IZ or OZ.

As the G20 area was designated as a "public work":

1. peace officers (provincial, municipal, and arguably federal) properly had the additional powers (to stop, search, refuse entry) conferred by the (Ontario) *Public Works Protection Act* ("*PWPA*")
2. the *PWPA* does not impact (or conflict with) existing federal legislation providing authority and responsibility to the RCMP, as additional powers (to the extent applicable) are given, not inconsistent ones.

BACKGROUND

During the G20 Summit in Toronto in June 2010, security was principally provided by the RCMP and the Toronto Police Service (TPS), with the support of other police services arranged for by the TPS (including the Ontario Provincial Police, Calgary Police Service, London Police Service.) Approximately 300 RCMP members were sworn as Special Constables under Ontario's *Police Services Act*, (*PSA*) to support the TPS with pre-Summit policing but most, including the members of public order units (commonly called "riot squads" or "tactical units") were not. Most RCMP members worked within the inner controlled access zones, however, the 300 noted above, as well as several public order units, were deployed in the Outside Zone (described below).

Internationally Protected Persons (IPPs) were protected by a series of concentric rings:

- The "controlled access zone" (CAZ) referred to the areas of downtown Toronto in which the G20 summit took place and in which most IPPs were housed. The CAZ was encircled by a fence.
- A second fence designating a "restricted access zone" (RAZ) was also erected, and encircled the CAZ, as well as hotels in which delegates were lodged, certain other locations, and certain transportation corridors between those areas.
- Encircling the CAZ and the RAZ was a third fence delineating the "interdiction zone" (IZ). The IZ was the outer security area as designated by the RCMP and its partner agencies during planning for the G20 Summit.

The term "outside area" shall be used to describe the area beyond the interdiction zone, being the "outside zone" (OZ).

In addition to the *Criminal Code*, other statutes and common law, certain statutory provisions confer specific powers on RCMP members when ensuring the security of IPPs. These include section 18 of the *RCMP Act*, section 17 of the *RCMP Regulations 1988*, section 6 of the *Security Offences Act*, and the UN *Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents.*

The *Foreign Missions and International Organizations Act* (*FMIOA*) provides:

> 10.1 (1) The Royal Canadian Mounted Police has the primary responsibility to ensure the security for the proper functioning of any intergovernmental conference in which two or more states participate, that is attended by persons granted privileges and immunities under this Act and to which an order made or contained under this Act applies.
>
> (2) For the purpose of carrying out its responsibility under subsection (1), the Royal Canadian Mounted Police may take appropriate measures, including controlling, limiting or prohibiting access to any area and to the extent and in a manner that is reasonable in the circumstances.
>
> (3) The powers referred to in subsection (2) are set out for greater certainty and shall not be read as affecting the powers that peace officers possess at common law or by virtue of any other federal or provincial Act or regulation.

In Ontario, the *Public Works Protection Act* (*PWPA*) provides for a number of expanded powers that may be exercised in or around any area designated a "public work". Notably, a guard appointed under the Act or a peace officer is empowered to search and arrest without warrant within an area specified as a public work or on approach to that area. On June 2, 2010, the Government of Ontario passed regulation 233/10[3] pursuant to the *PWPA* defining the area within a certain perimeter as a public work for the purposes of the *PWPA*. The regulation was filed on June 14, 2010. The regulation was not publicized although it was posted on the Ontario government website e-laws on June 16. It was not Gazetted until July 3, 2010, after the event had terminated[4]. The regulation was revoked on June 28, 2010.

ISSUES

The Commission seeks a legal opinion with respect to the following questions:

1. To what extent are RCMP members (including those sworn as Ontario Special Constables) authorized and/or required to exercise police powers within each of the controlled access zone, restricted access zone, interdiction zone and outside area? To what extent are RCMP members authorized and required to direct local police within those zones?
2. To what extent are local police authorized and/or required to exercise police powers within each of the controlled access zone, restricted access zone, interdiction zone and outside area? To what extent are local police authorized and/or required to direct RCMP members (including those sworn as Ontario peace officers) within those zones?
3. Within each of the controlled access zone, restricted access zone, interdiction zone and outside area, and for both RCMP members (including those sworn as Ontario peace officers) and municipal police officers, does a particular police agency's policy (regarding acceptable standards of conduct) become paramount? Do police officers continue to be bound by the policies of their respective agencies?
4. What impact, if any, does the *FMIOA* or other relevant federal legislation have within the area designated a public work pursuant to the *PWPA*?

3 See Report of the Ontario Ombudsman, dated December 2010.

4 Report of the Ontario Ombudsman, dated December 2010, paras. 160, 161.

SCOPE OF OPINION

This opinion is limited to answering the four specific questions, as stated above, in the context of the G20 Summit held in Toronto in June 2010.

This opinion is not a direct response to the complaint lodged by the Canadian Civil Liberties Association with the Commission, dated October 18, 2010, but rather a background legal advisory on issues of concern to the Commission. There is no intention, nor instruction, in our preparation of this opinion to evaluate the actual conduct of the RCMP or other police forces in discharging police duties during the G20 Summit.

ASSUMED FACTS

Our assumptions include:

a) In reaching the conclusion we have assumed/relied on the accuracy of the information provided in the reviewed documents.

b) We assume that control of the CAZ and the RAZ was required to ensure the security for the proper functioning of the G20 Summit , and that control of the IZ and OZ was not required.

c) We assume that a RCMP officer is "employed" in the sense of " the prevention…. of offences against the laws in force in any province in which they may be employed" (s.18(a) of the *Royal Canadian Mounted Police Act*), where the officer is working in a province with which the RCMP has an arrangement under s.20 of the *Royal Canadian Mounted Police Act*. This is sometimes called "contract policing". There is no such arrangement in Ontario which has its own provincial and municipal police forces.

QUALIFICATIONS

This opinion is subject to the following qualifications:

a) This opinion is limited to the laws of Ontario and federal laws applicable therein.

b) The information, estimates and opinions contained herein are obtained from sources considered to be reliable, however, no representation is made with regard to the reliability thereof.

c) This opinion contemplates facts and conditions existing as of **July 2011**. Events and conditions occurring after that date have not been considered.

DISCUSSION AND ANALYSIS

A. Basic Principles

The following principles are foundational to our analysis:

1) There is a continuum of empowerment of a police force, from no authority, to authority, to being required to act.

We see three points on the continuum of police force empowerment: 'no authority', 'authority', and 'required to act' between which the lines, to use a legal phrase more used in the U.S., are not always bright.

- We must understand what the different steps on the continuum are.
- **No authority**: e.g. A police officer from the Calgary police force has no authority to act Ontario (unless special measures are taken, such as swearing in as a special constable).
- **Authority to act (or 'have jurisdiction')**:
  - RCMP have authority to act anywhere in Canada:

    Statute

    "9. Every officer and every person designated as a peace officer under subsection 7(1) is a peace officer in every part of Canada and has all the powers, authority, protection and privileges that a peace officer has by law…" [Emphasis added] (*RCMP Act*, s.9)

    Cases

    "10 In reviewing the scheme and object of The *Royal Canadian Mounted Police Act* it clear that section 3 and section 9 of that Act operate to render the Royal

Canadian Mounted Police officers part of a "police force for Canada" and peace officers "for every part of Canada" with "all the powers, authority, protection and privileges that a peace officer has by law". The language used by parliament is clear, broad and unambiguous as it was their obvious intention to create a police force that operates without jurisdictional barriers throughout the entire country of Canada. There is nothing in the scheme or object of The *Royal Canadian Mounted Police Act* that derogates from that basic presumption. This court notes that when there is a limitation on their duties it is clearly stated. For example, section 18 of The *Royal Canadian Mounted Police Act* limits the Royal Canadian Mounted Police to enforcing only the provincial laws of the province in which they are employed.

[…]

19 When examining [*sic*] Section 21 of The *Police Act* 1990 [of Saskatchewan] one notes there is no clear language to imply derogation from the rights of an R.C.M.P. peace officer. The Act simply states that the R.C.M.P. are responsible for policing when there is an agreement between the province and the federal government. It further states that they are not responsible for policing a municipality unless there is an agreement. They certainly do not use words that the R.C.M.P. officer cannot or shall not provide police services in the municipality. As well, given the ultra vires statute construction doctrine, it would not be appropriate for provincial legislation to take away powers given by Federal legislation. This court therefore reads the provincial legislation in a manner in which the legislature is not taken to have exceeded it's jurisdiction. Therefore clearly The *Police Act* must be read in context as providing a manner of funding policing not a manner of taking away jurisdiction granted to R.C.M.P. officers by The *Royal Canadian Mounted Police Act*.

20 In coming to this conclusion the court is of a view that there is no good public policy reason for the R.C.M.P. to be excluded from operating in any specific geographic area. It would not make sense for the legislature to limit the opportunity for policing of a community by making sure that fewer police officers are able to act in any particular setting within the province." [Emphasis added] (*R v Abrametz*, (2000) 7 MVR (4th) 133 (Sask Prov. Ct.), paras. 10 and 18-20, affirmed in 2001 SKQB 129)

"34 Therefore, Cp. Popoff did have the lawful authority as a member of the RCMP to conduct the investigation of the accused's conduct and to make the breath demand, even though all of that occurred within the corporate limits of the City of Saskatoon, and when he was off duty. Neither the pertinent legislation nor the federal/provincial agreement act to preclude that nature of conduct, even in the absence of a specific policing contract between the RCMP and the City of Saskatoon." (*R v Figley McBeth*, 2004 SKPC 119, at para. 34)

"19 A member of the R.C.M.P. could make such a demand anywhere in Canada, as his territorial jurisdiction extends through out Canada under the *R.C.M.P. Act*, R.S.C. 1970, c. R-9." (*R v Soucy*, (1975) 23 C.C.C. (2d) 561 (N.B.C.A.) at para. 19)

- Note that this authority is not exclusive authority, but is rather concurrent jurisdiction with any other police force's local jurisdiction.[5]
- Ontario provincial police officers have authority to act anywhere in Ontario:

5 *R v Abrametz*, (2000) 7 MVR (4th) 133 (Sask Prov. Ct.), para. 20.

Statute

"[42.](2) A police officer has authority to act as such throughout Ontario." (Ontario *Police Services Act*, s.42(2))

Cases

"Section 56 of the *Police Act*, R.S.O. 1980, c. 381 provides:

> Every chief of police, other police officer and constable, except a special constable or a by-law enforcement officer, *has authority to act as a constable throughout Ontario*.

[Emphasis added by the court] This section alone clothes O.P.P. officers with jurisdiction province-wide". (*R v Giancarlo*, (1992) 36 M.V.R. (2d) 141 (Ont. C.A.) at para. 4)

- **Required to act** (or 'have responsibility' to act):
  - A municipal police (e.g. TPS) is required to act within their municipality (e.g. Toronto):

Statute

"4.(1) Every municipality to which this subsection applies shall provide adequate and effective police services in accordance with its needs." (Ontario *Police Services Act*, s.4(1))

Cases

"[6] Section 19(1) of the Police Services Act, R.S.O. 1990, c. P.15 provides that the Ontario Provincial Police have the responsibility to provide policing services to municipalities, which do not have their own police force. Section 19(1) of the Police Services Act provides that the Ontario Provincial Police have the responsibility to provide policing services to municipalities, which do not have their own police force. Section 19(1) provides:

> 19.(1) The Ontario Provincial Police have the following responsibilities: 1. Providing police services in respect of the parts of Ontario that do not have municipal police forces other than municipal law enforcement officers.

[7] The City of Toronto has its own police force, and therefore the Ontario Provincial Police do not have the responsibility to provide policing in Toronto." [Emphasis added] (*Foster v ADT Security Services Canada Inc.*, 2006 CarswellOnt 5157 (S.C.J.), affirmed in 2007 ONCA 653)

  - Please note that being required to act is also not an exclusive jurisdiction. Different police forces could theoretically be required to act in a particular situation.

- "**Duty**" can be an ambiguous word because it has different meanings in different contexts. Distinguish requirement to act:

> "17. (1) In addition to the duties prescribed by the Act, it is the duty of members who are peace officers to: […] (b) maintain law and order in the Yukon Territory, the Northwest Territories and national parks and such other areas as the Minister may designate;" (*RCMP Regulations*)

from having general duty to preserve the peace and enforce crime:

> "18. It is the duty of members who are peace officers, subject to the orders of the Commissioner,
>
> (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 […]" (e.g. *Royal Canadian Mounted Police Act*)

Officers who are working their shift are also said to be "on duty". Because of the possible confusion with respect to the meaning of duty, it will be avoided.

This document will instead use the more precise expressions of "do not have authority to act", "have authority to act" (or "have jurisdiction") and "required to act" (or "have responsibility").

2) The impacts of swearing in special constables

The swearing of RCMP officers as special constables has two potentially material impacts:

- The first impact of swearing in RCMP officer as a special constable is that they would be able to enforce the laws of Ontario.

- RCMP officers are peace officers in every part of Canada per s.9 of *RCMP Act*. However, section 18(a) of the *RCMP Act* states that RCMP officers are only empowered to enforce federal laws, unless the officer is "employed" in a particular province in which circumstances they may also enforce the provincial laws of that province.

  "18. It is the duty of members who are peace officers, subject to the orders of the Commissioner,

  (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;" (*RCMP Act*, s.18(a))

  "[19 …] It is of interest to note that by s. 18 of the said Act [*the Royal Canadian Mounted Police Act]*, R.C.M.P. constables are restricted in enforcing the laws in force in any province in that they are given jurisdiction only in relation to provincial laws of the province in which they are employed." (*R v Soucy*, (1975) 23 C.C.C. (2d) 561 (N.B.C.A.)

  "[10 …] This court notes that when there is a limitation on their duties it is clearly stated. For example, section 18 of The Royal Canadian Mounted Police Act limits the Royal Canadian Mounted Police to enforcing only the provincial laws of the province in which they are employed." *R v Abrametz*, (2000) 7 MVR (4th) 133 (Sask Prov. Ct.)

- We understand that "employed" in this context does not mean an employer-employee relationship. Rather, "in which they are employed" means only a province with which the RCMP has an "arrangement" under section 20 of the *RCMP Act*[6]:

  "Arrangements with provinces

  20. (1) The Minister may, with the approval of the Governor in Council, enter into an arrangement with the government of any province for the use or employment of the Force, or any portion thereof, in aiding the administration of justice in the province and in carrying into effect the laws in force therein.

  Arrangements with municipalities

  (2) The Minister may, with the approval of the Governor in Council and the lieutenant governor in council of any province, enter into an arrangement with any municipality in the province for the use or employment of the Force, or any portion thereof, in aiding the administration of justice in the municipality and in carrying into effect the laws in force therein." (*RCMP Act*)

- The RCMP does not have an arrangement pursuant to section 20 with Ontario (in contrast to the arrangement the RCMP has with Alberta or Saskatchewan, for example). Therefore, RCMP officers are not "employed" in Ontario and do not have the authority to enforce provincial laws in Ontario.

- Swearing RCMP officers in as special constables under section 53 of Ontario's *Police Services Act* empowers RCMP officers with

6 See Assumed Fact #3

the additional authority to enforce Ontario's provincial laws.

"Appointment of special constables

By board

53. (1) With the Solicitor General's approval, a board may appoint a special constable to act for the period, area and purpose that the board considers expedient. R.S.O. 1990, c. P.15, s. 53 (1); 1997, c. 8, s. 33 (1).

By Commissioner

(2) With the Solicitor General's approval, the Commissioner may appoint a special constable to act for the period, area and purpose that the Commissioner considers expedient. R.S.O. 1990, c. P.15, s. 53 (2); 1997, c. 8, s. 33 (2).

Powers of police officer

(3) The appointment of a special constable may confer on him or her the powers of a police officer, to the extent and for the specific purpose set out in the appointment." (*Police Services Act*)

- Depending on the particular details of the appointment, section 53(3) of the *Police Services Act* can confer on the special constable the power to enforce provincial laws:

  "48 Pursuant to the *Police Services Act*, R.S.O. 1990, c.P15, a police services board may appoint special constables. The power to appoint is provided for in section 53(1) of the Act. Section 53(3) of the Police Services Act provides that "the appointment of a special constable may confer on him or her, the powers of a police officer, to the extent and for the specific purposes set out in the appointment". Section 30 of the Agreement between the Police Services Board and the Toronto Transit Commission dated May 9, 1997, confers on the special constables the powers of a police officer to enforce a certain number of statutes that are listed in that section of the Agreement. Suffice it to say that these powers extend, among others, to the *Trespass to Property Act*, and to sections 146 and 149 of the *Provincial Offences Act*. Therefore, when reading the *Trespass to Property Act* as well as the provisions of the *Provincial Offences Act* that allow a police officer to make an arrest pursuant to the *Provincial Offences Act*, special constables of the TTC have the powers of a police officer." (*Ye v Toronto Transit Commission*, 2009 CarswellOnt 8512 (S.C.J.))

- In addition to any limitations stipulated in the appointment of RCMP officers pursuant to section 53(1) of the *Police Services Act,* the terms of deployment of RCMP to another police service (and *vice versa*) are typically expressed in a memorandum of understanding or agreement including whose command, legislation, policy and operational guidelines such deployed personnel will be subject to.

- Note that swearing in as a special constable is different than being appointed under the *Interprovincial Policing Act*. These are different legislative schemes, both of which confer the powers of a police officer in Ontario. However, RCMP officers are explicitly excluded from being appointed under the *Interprovincial Policing Act*:

  "Definitions

  1. In this Act, […]"extra-provincial police officer" means a police officer appointed or employed under the law of another province or a territory, but does <u>not include a member of the Royal Canadian Mounted Police</u>;

  […]

  Appointment

  8. (1) The appointing official may make the requested appointment if he or she is

of the opinion that it is appropriate in the circumstances for the extra-provincial police officer to be appointed as a police officer in Ontario." (*Interprovincial Policing Act*)

- The second impact of swearing in an RCMP officer as a special constable, is that the RCMP officer would become subject to the limited discipline set out for Ontario special constables. A special constable is not subject to the full discipline of a police officer under the Ontario *Police Services Act*. This is because of a combination of the *PSA*'s definition of "police officer" and the scope of application of this statute's misconduct provisions per s.80.

- The *PSA* defines a "police officer" as excluding special constables.

  "Definitions
  2 (1) In this Act, […]
  "police officer" means a chief of police or any other police officer, including a person who is appointed as a police officer under the Interprovincial Policing Act, 2009, but does not include a special constable, a First Nations Constable, a municipal law enforcement officer or an auxiliary member of a police force;" [Emphasis added] (Ontario *Police Services Act*, s.2)

- The *PSA* states that only a "police officer" can be guilty of misconduct.

  "Misconduct
  80. (1) A police officer is guilty of misconduct if he or she […]"

- The only discipline to which special constables are subject is much more general. It is contained in *PSA* s.25

  "Actions taken, auxiliary member, special constable, municipal law enforcement officer
  (4.1) If the Commission concludes, after a hearing, that an auxiliary member of a police force, a special constable or a municipal law enforcement officer is not performing or is incapable of performing the duties of his or her position in a satisfactory manner, it may direct that,
  (a) the person be demoted as the Commission specifies, permanently or for a specified period;
  (b) the person be dismissed;
  (c) the person be retired, if the person is entitled to retire; or
  (d) the person's appointment be suspended or revoked." [Emphasis added] (Ontario *Police Services Act* (s.25(4.1))

- Therefore RCMP officers sworn in as special constables would be subject to facing a hearing and potentially having their special constable status revoked, thus returning the officer to the RCMP to consider other discipline as the employer.

3) Inter-Police Cooperation

The Canadian model of policing with federal, provincial and municipal police forces that (Quebec aside) share the same common law police powers and duties, as codified or varied by statutory authority, not surprisingly leaves some grey division lines between areas of exclusive versus concurrent jurisdiction and responsibility. This may be unavoidable, Canada's constitutional fulcrum lying as it does somewhere between Britain's federally centred policing authority and the U.S. (by virtue of U.S. constitutional law) state centred policing authority.

In a nutshell, the provincial power over the administration of justice under s.92(14) of the *Constitution Act, 1982* includes the provision of police services. Ontario established a provincial police force and certain municipal police forces (like the TPS) which can enforce the federal *Criminal Code*, provincial statutes and municipal by-laws. Federally, Canada has established a federal police force, the RCMP, which can police all federal statutes passed under various s. 91 heads of power, including offences under the *Criminal Code.* Only in those provinces where the RCMP is under contract to provide provincial or municipal police services (not Ontario or Quebec), is the

RCMP authorized to enforce provincial statutes or municipal by-laws.

As a practical matter this means that large scale international events, and in this particular case the G20 Summit involving IPPs, necessarily entail consultation and cooperation between different levels of police forces. This means joint planning and collaboration on security arrangements in advance of such events and joint command structures and understandings in place to maintain overall security and to manage specific incidents during the event.

Depending on respective sources of jurisdiction and responsibility, one policy agency may take the lead and another play a supporting role, but they typically refer to each other as "partner agencies" or "security partners". This reflects mutual respect and a common purpose to maintain the peace and protect life and property during a highly charged international summit, always having regard to the *Charter*'s guarantee of freedom of expression and other rights and liberties.

The SCO Document and the C^2 Document leave no doubt that much planning and effort went into ensuring the security for the proper function of the G20, even if on relatively short notice, but in the end the G20 Summit security command structures and the roles of the RCMP and the TPS were premised on these basic understandings:

- Neither police force relinquished their respective authority or responsibility;
- Whilst the RCMP had primary responsibility to ensure the security for the proper functioning of the G20 Summit, this was not exclusive responsibility
- And whilst the TPS remained the police force of jurisdiction for the City of Toronto before, during, and after the G20 Summit, they were assisted in meeting the increased demands of the Summit by deployment of RCMP and other police forces
- No express Memorandum of Understanding (MOU) was signed between the RCMP and TPS governing the period of the G20 Summit
- No formal "arrangements" within the meaning of s. 10.1(4) of the *FMIOA* were made between the federal Minister of Public Safety and Emergency Preparedness, with the approval of Cabinet, and the Ontario government to facilitate consultation and cooperation between the RCMP and TPS re performance of duties assigned to peace officers in relation to s. 2 offences under the *FMIOA* .

Indeed as close to the June 26-27 Summit dates as June 11, the Deputy Minister of Public Safety (Canada) wrote the Deputy Minister of Community Safety (Ontario) to recognize the consultation and cooperation between all provincial and municipal security partners with the RCMP:

> "Thank you for your correspondence of May 7, 2010, in relation to the *Foreign Missions and International Organizations Act* (*FMIOA*).
>
> Consultation and cooperation between all security partners is, of course, critical for the success of the upcoming G8 and G20 Summits. Extensive security planning has taken place over the past year and a half. As a result, security preparation efforts are well-advanced and have been tested through several formal exercises amongst the security partners. Implementation of the integrated security plan by the respective police agencies will soon take place as the Summits are unfolding shortly.
>
> I understand that, after further assessment and extensive discussions amongst officials and security partners, it was agreed that a separate *FMIOA* arrangements is not required for the Summits as it would not grant further authorities to local police of jurisdiction. In addition, it was also concluded that the current suite of powers and authorities that peace officers possess at common law or by virtue of any other federal or provincial Act or regulation were sufficient for the G8 and G20 Summits. Furthermore, the premise of the *FMIOA*

provision, upon which a separate arrangement could be based, is to facilitate consultation and cooperation between the Royal Canadian Mounted Police and provincial and municipal police forces and such consultation and cooperation is already well advanced.

To date, the support and efforts demonstrated by provincial and municipal security partners have been outstanding. The Government of Canada looks forward to continued excellent cooperation with Ontario in securing and ensuring the success of the upcoming Summit."

4) Doctrine of Paramountcy and Interjurisdictional Immunity

(a) Paramountcy doctrine

The *Constitution Act, 1867*, divides legislative powers between the federal (s.91) and provincial (s.92) governments. This division of powers can be imprecise, resulting in overlapping federal and provincial legislation.

Assuming that both of the overlapping laws are within the competence of their respective legislators, when the overlapping laws are inconsistent determining which law applies is often resolved with the doctrine of "federal paramountcy". This doctrine states that the federal law will prevail[7].

Most recently the Supreme Court of Canada in *Canada (Attorney General) v. PHS Community Services Society*[8] stated:

> [70] In summary, the doctrine of interjurisdictional immunity is narrow. Its premise of fixed watertight cores is in tension with the evolution of Canadian constitutional interpretation towards the more flexible concepts of double aspect and cooperative federalism. To apply it here would disturb settled competencies and introduce uncertainties for new ones.
>
> [71] In the case of a conflict between a federal law and a provincial law, the doctrine of paramountcy means that the federal law prevails to the extent of the inconsistency: *Canadian Western Bank*, at para. 69. … The doctrine of federal paramountcy applies when there is operational conflict between a federal and provincial law, or when a provincial law would frustrate the purpose of a federal law.

Determining inconsistency between laws

The most obvious example of an inconsistency between laws is where both laws cannot be complied with[9]. For example, if a provincial law allocated exclusive responsibility over a subject to one authority, and federal law allocated exclusive responsibility over the same subject, to a different authority, there would be an inconsistency. On the other hand, if one level of government legislates a standard, and the other government legislates a higher standard, meeting the higher standard also meets the lower standard, and the laws are not inconsistent.

A more subtle example of an inconsistency is where overlapping laws can both technically be complied with, but that such compliance would "frustrate the purpose" of the federal law[10]. In one case[11], the federal government legislated that a person could be represented by a lawyer or a non-lawyer before a particular tribunal. The provincial legal legislation prohibited non-lawyers from representing a person before any tribunals. Both laws could be complied with by having a lawyer represent the party. The court found that while dual compliance was possible, some of the purposes of the federal Act were to make the tribunal more informal, accessible and speedy. Using only lawyers before the tribunal would defeat these purposes. The provincial law was therefore inconsistent with the federal law.

7 Peter Hogg, *Constitutional Law of Canada*, 5th ed. (looseleaf) (Scarborough: Carswell, 2007) [Hogg] at p. 16-2.
8 *Canada (Attorney Genera) v. PHS Community Services Society,* 2011 SCC 44 (released September 30, 2011)
9 Hogg, p. 16-4.
10 Hogg, p. 16-7.
11 *Law Society of B.C. v Mangat,* [2001] 3 S.C.R. 113.

Provincial law is inoperative to the extent of the inconsistency

To resolve the inconsistency, federal paramountcy makes the provincial law inoperative. This means that the provincial law does not govern the topic that is the subject of overlapping laws. Non-compliance with the provincial law has no effect, whereas non-compliance with the federal law has its usual full effect.

It is important to note that provincial law is affected only insofar as it is inconsistent with the federal law[12]. This may mean the effect is quite narrow, such that a particular section of provincial law is inoperative for so long as the federal law is not repealed.

(b) Alternative solution: Interjurisdictional Immunity

The doctrine of interjurisdictional immunity means that one level of government cannot legislate in a way that impairs the "basic, minimum and unassailable content"[13] of a subject which s.91 allocates to the federal government[14], even when the legislation in general is constitutional.

While provincial governments have the constitutional power to legislate generally regarding subjects under s.92(13) (property and civil rights), that constitutional power cannot hinder federal constitutional powers. In the past this doctrine has meant that provincial laws requiring protective reassignment of pregnant workers did not apply to an interprovincial telephone company[15], and that provincial labour laws have been inapplicable to postal workers[16].

This doctrine is discussed by the Supreme Court of Canada in *PHS Community Services Society* (released September 30, 2011)[17] and, described as having been narrowed, though not abolished, by recent jurisprudence, in favour of the "emergent practice of cooperative federalism, which increasingly features interlocking federal and provincial legislative schemes." The Chief Justice for a unanimous Court writes:

> [58] The doctrine of interjurisdictional immunity is premised on the idea that there is a "basic, minimum and unassailable content" to the heads of powers in ss. 91 and 92 of the *Constitution Act, 1867* that must be protected from impairment by the other level of government: *Bell Canada v. Quebec (Commission de la santé et de la sécurité du travail)*, [1988] 1 S.C.R. 749, at p. 839. In cases where interjurisdictional immunity is found to apply, the law enacted by the other level of government remains valid, but has no application with regard to the identified "core".
>
> [59] It is not necessary to show that there is a conflict between the laws adopted by the two levels of government for interjurisdictional immunity to apply: *Quebec (Attorney General) v. Canadian Owners and Pilots Association*, 2010 SCC 39, [2010] 2 S.C.R. 536, at para. 52 ("*COPA*"). Indeed, it is not even necessary for the government benefiting from the immunity to be exercising its exclusive authority: *Canadian Western Bank*, at para. 34.
>
> [61] Recent jurisprudence has tended to confine the doctrine of interjurisdictional immunity. In *Canadian Western Bank*, the majority stated that "although the doctrine of interjurisdictional immunity has a proper part to play in appropriate circumstances, we intend now to make it clear that the Court does not favour an intensive reliance on the doctrine, nor should we accept the invitation of the appellants to turn it into a doctrine of first recourse in a division of powers dispute" (para. 47). More recently, in *COPA*, the majority held that the doctrine "has not been removed from the federalism analysis", but rather remains "in a form

12 Hogg, p. 16-19.
13 *Canadian Western Bank v. Alberta*, [2007] 2 S.C.R. 3, at para. 33.
14 Or arguably, which s.92 allocates to the provincial government, see *Hogg,* pp. 15-38.2 through 15-38.4.
15 *Bell Canada v Quebec*, [1988] 1 S.C.R. 749.
16 *Letter Carriers' Union of Can. v Can. Union of Postal Workers*, [1975] 1 S.C.R. 178.
17 *Canada (Attorney General) v. PHS Community Services Society,* 2011 SCC 44

constrained by principle and precedent" (para. 58).

[62] This caution reflects three related concerns. First, the doctrine of interjurisdictional immunity is in tension with the dominant approach that permits concurrent federal and provincial legislation with respect to a matter, provided the legislation is directed at a legitimate federal or provincial aspect, as the case may be. This model of federalism recognizes that in practice there is significant overlap between the federal and provincial areas of jurisdiction, and provides that both governments should be permitted to legislate for their own valid purposes in these areas of overlap.

[63] Second, the doctrine is in tension with the emergent practice of cooperative federalism, which increasingly features interlocking federal and provincial legislative schemes. In the spirit of cooperative federalism, courts "should avoid blocking the application of measures which are taken to be enacted in furtherance of the public interest": *Canadian Western Bank*, at para. 37. Where possible, courts should allow both levels of government to jointly regulate areas that fall within their jurisdiction: *Canadian Western Bank*, at para 37.

[64] Third, the doctrine of interjurisdictional immunity may overshoot the federal or provincial power in which it is grounded and create legislative "no go" zones where neither level of government regulates. Since it is not necessary for the government benefiting from the immunity to actually regulate in the field in question, extension of the doctrine of interjurisdictional immunity risks creating "legal vacuums": *Canadian Western Bank*, at para. 44.

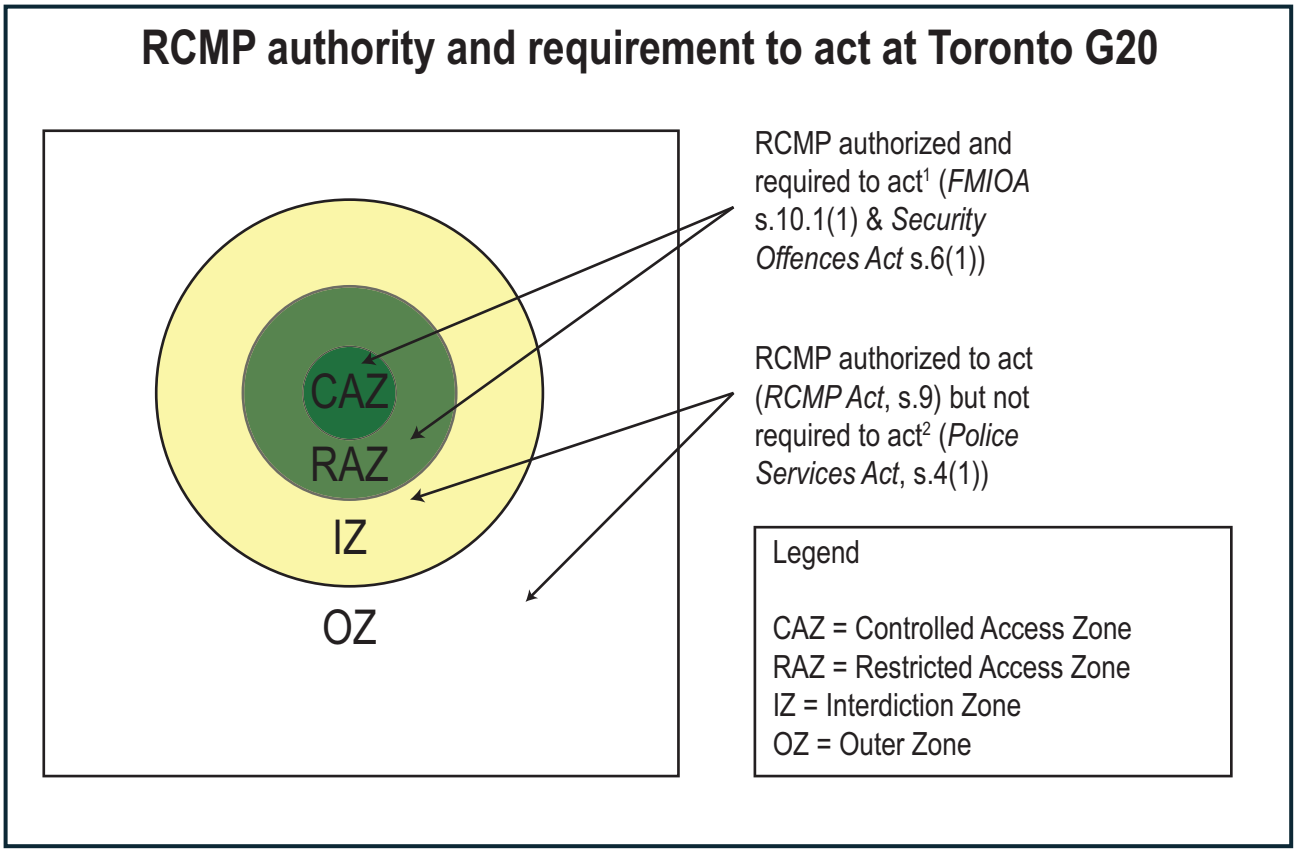
[65] While the doctrine of interjurisdictional immunity has been narrowed, it has not been abolished. Predictability, important to the proper functioning of the division of powers, requires recognition of previously established exclusive cores of power: *Canadian Western Bank*, at paras. 23-24. Nor, in principle, is the doctrine confined to federal powers: *Canadian Western Bank*. However, in areas of overlapping jurisdiction, the modern trend is to strike a balance between the federal and provincial governments, through the application of pith and substance analysis and a restrained application of federal paramountcy. Therefore, before applying the doctrine of interjurisdictional immunity in a new area, courts should ask whether the constitutional issue can be resolved on some other basis.

B. Issues

The Commission seeks a legal opinion with respect to the following questions:

1) To what extent are RCMP members (including those sworn as Ontario Special Constables) authorized and/or required to exercise police powers within each of the controlled access zone, restricted access zone, interdiction zone and outside area? To what extent are RCMP members authorized and required to direct local police within those zones?

a) RCMP authority or requirement to act in different zones



1. TPS retained their municipal policing responsibilities as the police force of jurisdiction.
2. RCMP retained their authority and primary responsibility with respect to ensuring the security for the proper functioning of the G20 Summit and protection of IPPs. Therefore, if some threat to the security of the Summit or to IPPs had manifested in the IZ or OZ, the RCMP would equally be required to act in the IZ or OZ to address that threat, even though the threat was outside the RAZ and CAZ.

(i) Key Document Statements

C^2 Document – Federal Responsibility and RCMP

The ISU-GIS 2010 Summits Command and Control (C^2) Document is the 'capstone document' for command and control for the G20 Summit dated March 25, 2010, but finally signed as amended by all Integrated Security Unit (ISU) partner agencies on June 3, 2010.

The C^2 Document outlines the role of the RCMP at the G20 Summit as follows:

> "…the RCMP is responsible for overseeing security planning and operations as well as the coordination of operational security requirements with federal, provincial and municipal law enforcement agencies.
>
> The RCMP, as the lead security agency, is mandated to provide protection to the visiting IPPs and security of the Sites. The RCMP will also provide support assistance to its policing partners. These services will be provided under the direction of the UCC Incident Commander. If a critical incident or terrorist activity occurs during the G8 or G20 Summit that would constitute a threat to the security of Canada or to an IPP, the UCC will ensure that immediate actions are taken to safeguard life and property.
>
> In accordance with the *Security Offences Act*, the RCMP will be responsible for the operational resolution of the incident subject to the policy direction of the Government of Canada. The RCMP will also ensure, through the appropriate Government agencies/departments/ services, that the National Counter Terrorism Plan is implemented.
>
> The RCMP will ensure the democratic right of individuals to demonstrate peacefully while maintaining proper security. "
>
> "As the Commanding Officer of the leading agency, the Royal Canadian Mounted Police (RCMP) Commission retains overall responsibility for the 2010 G8 and G20 Summits and is responsible to the Government of Canada for the security and operations of the Summits.

SCO Document – RCMP Authority

The Strategic Concept of Operations G20 Summit June 26-27, 2010 document (SCO Document), prepared by the RCMP as an internal strategic planning guide to facilitate more detailed planning of the key security functions, does not appear to have been the subject of any specific agreement with partner agencies and, as such, has no express bearing on the question of RCMP and TPS authority or requirement to act in the various zones.

However, as a matter of internal record in advance of the Summit, it provides:

> "The RCMP is Canada's national police service, and the sole agency with federal policing jurisdiction. The RCMP derives its authority from the RCMP Act, and takes direction from the Minister of Public Safety. The RCMP is mandated to provide security and to ensure the safety of Canadian dignitaries, Internationally Protected Persons (IPPs), designated sites, and Major Events.
>
> The RCMP has been tasked as the lead agency responsible for the security of the G8 Summit. The knowledge and practices relevant to safeguarding visiting heads of state and foreign diplomats resides with the RCMP's Protective Policing Branch. 'O' Division has the responsibility of delivering the operational requirements for the G8 Security."

And further that:

> "The RCMP is the lead and supported agency for Security of the Summit. RCMP will work in close partnership with

federal partners and police services of jurisdiction within the province."

"The RCMP is responsible for the security and movement of Internationally Protected Personnel (IPP)."

"The RCMP will establish Controlled Access Zones (CAZ) in relation to venues and as required. The RCMP will establish Controlled Access Zones (CAZ) in relation to venues and as required. The RCMP will direct the establishment of additional security zones to be policed by supporting security partners as required."

(ii) Where the RCMP were authorized to act

RCMP officers are peace officers in every part of Canada (*RCMP Act* s.9).

- RCMP are authorized to exercise all common law and statutory powers of peace officers with respect to enforcing federal laws across Canada[18], including all zones in Toronto during the G20.
- However, unless appointed as Special Constables in Ontario RCMP officers would not be authorized to enforce provincial laws in any zone because the RCMP is not employed in Ontario[19].
- Depending on the details of appointment as a special constable, RCMP officers could have been authorized to enforce provincial laws in any or all zones by virtue of appointment as special constables and the powers thereby conferred under s. 53(3) of the *Police Services Act*. We understand though that RCMP were only deployed as special constables during the pre-Summit period of June 20-23, 2010, and prior to the security perimeter coming into effect on June 25.

(iii) Where the RCMP were required to act

- The RCMP is not responsible for enforcing all laws across Canada because the provinces have the power to establish provincial and municipal police forces responsible for enforcing provincial laws and municipal by-laws (*Constitution Act 1867,* s.92(14)).

  See also the *a contrario* implication from *Royal Canadian Mounted Police Regulations* sections 17(1)(a) and (b):

  "17. (1) In addition to the duties prescribed by the Act, it is the duty of members who are peace officers to […]

  (b) maintain law and order in the Yukon Territory, the Northwest Territories and national parks and such other areas as the Minister may designate;

  (c) maintain law and order in those provinces and municipalities with which the Minister has entered into an arrangement under section 20 of the Act and carry out such other duties as may be specified in those arrangements;"

- The RCMP had primary responsibility to ensure the security for the proper functioning of the Summit per *FMIOA* s.10.1(1)

  "10.1 (1) The Royal Canadian Mounted Police has the primary responsibility to ensure the security for the proper functioning of any intergovernmental conference in which two or more states participate, that is attended by persons granted privileges and immunities under this Act and to which an order made or continued under this Act applies."

- The RCMP were also required (had primary responsibility) to protect IPPs per *Security Offences Act* s.6(1):

  "6. (1) Members of the Royal Canadian Mounted Police who are peace officers have the primary responsibility to perform the duties that are assigned to

18 *Royal Canadian Mounted Police Act* s.18(a); *R v Abrametz*, (2000) 7 MVR (4th) 133 (Sask. Prov. Ct.) para. 10; *R v Soucy,* (1975) 23 CCC (2d) 561 (N.B.C.A.), para. 19.

19 *Royal Canadian Mounted Police Act* s.18(a); *R v Abrametz*, (2000) 7 MVR (4th) 133 (Sask. Prov. Ct.) para. 10; *R v Soucy,* (1975) 23 CCC (2d) 561 (N.B.C.A.), para. 19.

peace officers in relation to any offence [where the victim is an IPP] referred to in section 2 or the apprehension of the commission of such an offence."

- The RCMP is also required to protect IPPs pursuant to the *Royal Canadian Mounted Police Regulations* section 17(1)(f)(i):

  "17. (1) In addition to the duties prescribed by the Act, it is the duty of members who are peace officers to […]

  (f) protect, within Canada, whether or not there is an imminent threat to their security,

  (i) any person who qualifies under the definition "internationally protected person" in section 2 of the Criminal Code,"…

- The strategic planning assumption was that controlling the RAZ and CAZ were necessary to ensure security for the proper functioning of summit and to protect IPPs.

- Having so identified the key geographical zones central to the RCMP's primary responsibility under the *Security Offences Act* and *FMIOA*, the RCMP were <u>required</u> to control and act in the CAZ and RAZ[20].

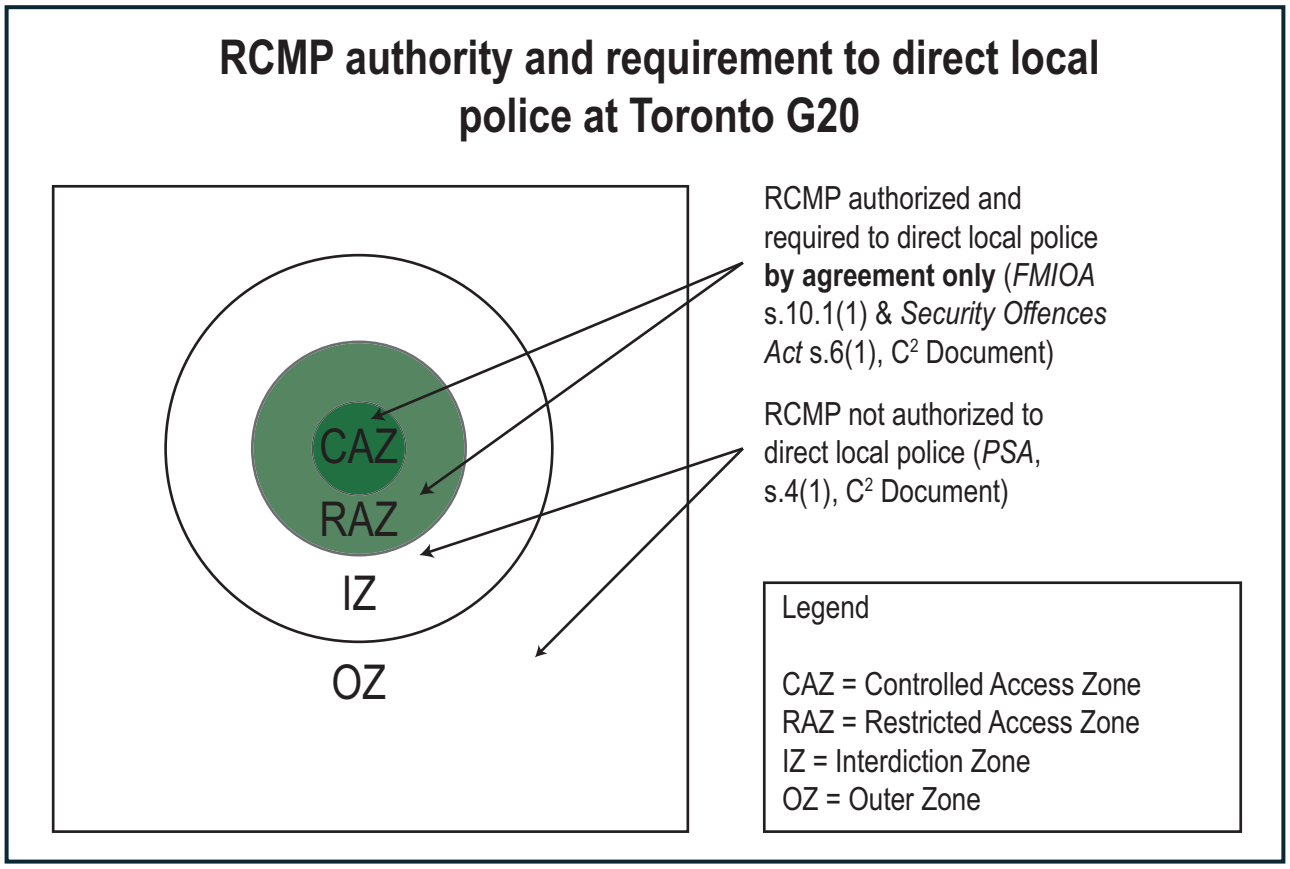
- It bears emphasis that the requirement to act imposed by section 10.1 of the *FMIOA*, section 6 of the *Security Offences Act* and section 17(1)(f)(i) of the *RCMP Regulations* pertains to *subject matter*, rather than any arbitrary geographical limitation. Thus, if some threat to the security of the Summit or to IPPs had manifested in the IZ or OZ, the RCMP would equally be required to act in the IZ or OZ to address that threat, even though the threat was outside the RAZ and CAZ.

- Hypothetically, the RCMP's primary responsibility could require them to act somewhere far from the summit site. For example, if the RCMP knew that someone in another province was orchestrating an attack on the summit, the RCMP would be required to act against that person in the other province.

- To this extent, the scope of the RCMP's primary responsibility to act is geographically elastic — it depends on the RCMP's risk assessments and strategic judgment as to what appropriate measures, including establishing fenced zones, are reasonably necessary in the circumstances.

20 C2 Document; Transcript of Standing Committee in Public Safety Oct. 25, 2010, testimony of C/Supt. Alponse MacNeil.

b) RCMP required or authorized to direct local police



(i) Key Document Statements

As a general proposition, while Canada's federal and provincial police forces have separate sources of authority and requirements to act which may overlap geographically or subject matter wise (eg. enforcement of *Criminal Code*), one police force does not have the power to direct another police force. Accordingly, inter-police work is a matter of cooperation and agreement.

- The police forces in question recognized the importance of cooperation, and created the RCMP-led ISU and approved the C² Document which lays out the relative responsibilities.
- The police forces recognized the RCMP's lead responsibility in the CAZ and RAZ[21], particularly via the C² Document.
- Based on the C² Document, it is apparent that the RCMP regarded itself as not only authorized but required to direct other police forces assigned to the RAZ and CAZ for purposes of G20 security or protection of IPPs. Likewise, the TPS as local police force partner agreed to the command authority established for the RCMP zones (CAZ and RAZ) and the TPS zones (IZ and OZ) and thereby agreed to follow RCMP directions in the RAZ and CAZ (subject to the limits of law, including the regulation-based codes of conduct).
- What is not clear is whether the *FMIOA* or *Security Offences Act* provisions assigning "primary responsibility" on the RCMP confers any statutory authority or requirement to direct other police forces who may have secondary responsibilities in the locality of a summit. Absent express statutory language

21 Transcript of Standing Committee in Public Safety Oct. 25, 2010, testimony of C/Supt. Alponse MacNeil; Toronto Police Service After-Action Review, p. 8.

and *intra vires* legislative competence, we do not believe so. This leaves only the general obligation of police forces to cooperate and the specific C^2 Document intended to integrate the work of all key security partners as the source of RCMP authority and requirement to direct local police.

- As we question whether the C^2 Document is legally enforceable by any signatory, the authority and requirements of the RCMP to direct local police in the CAZ and RAZ rests on a cooperative agreement only.

- Significantly, ss. 1.3 of the C^2 Document expressly provides that each police service (provincial, regional, municipal) will retain their responsibilities as police force of jurisdiction.

(ii) <u>RCMP's primary responsibility and required leadership role</u>

- Protection of IPPs and securing international summits, because of international nature, is constitutionally federal jurisdiction (*Security Offences Act* s. 6, *Royal Canadian Mounted Police Regulations* s.17(1)(f)(i), and *FMIOA* s.10.1).

- *FMIOA* and *Security Offences Act* give the RCMP "primary responsibility" for protecting IPPs and ensuring security for the proper functioning of international summits.

- The addition of the word "primary" is significant, and requires the RCMP to play a leadership role with respect to their areas of "primary responsibility", which the RCMP did assume[22].

- There has been no judicial consideration of either the *FMIOA* s.10.1 (introduced in 2001 amendments to this Act) or the *Security Offences Act* s.6 (introduced in 1984). This means there is no judicial assistance in interpreting "primary responsibility" and what that means for joint police operations.

- A survey of *Hansard* recording statements in the House of Commons as well as Minutes of the Standing Committee of Foreign Affairs and International Trade in October-November 2001 and February 2002 indicate the legislative view that codifying the RCMP's role for assuming primary responsibility simply clarified the lead (but not sole) responsibility of the RCMP for security at such international events but that consultation, co-operation and collaboration with local police would continue as in the past.

> …primary responsibility of the RCMP does not suggest that the Royal Canadian Mounted Police will now be solely responsible for security at international events.
>
> The amendments also accurately reflect the practical arrangements between the RCMP and the local police, either provincial, local or regional, in sharing responsibilities for security measures.
>
> As in the past, the RCMP would continue to share responsibility with the police forces of local jurisdictions and would continue to consult and co-operate with each police force to determine who will be responsible for specific activities.[23]
>
> As in the past, the RCMP will continue to work in close partnership with provincial and municipal police forces in providing security for the events.[24]
>
> With reference to your concern here, primacy doesn't go to sole ownership of the problem. We recognize there's a requirement for partnership, because there are local police responsibilities.
>
> Within the very inner circle would be the protection of the internationally protected person, for which the RCMP is responsible. That event, though, is

22 C2 Document; Transcript of Standing Committee in Public Safety Oct. 25, 2010, testimony of Hon. Vic Toews & testimony of C/Supt. Alponse MacNeil; Toronto Police Service After-Action Report, pg. 33 & 41.

23 37th Parliament, 1st Session Edited Hansard Number 116, Mr. Lynn Myers [Waterloo-Wellington, Lib.].

24 Standing Committee on Foreign Affairs and International Trade, Evidence, Tuesday, October 30, 2011, Ms. Colleen Swords (Deputy Legal Advisor and Director General, Legal Affairs Bureau, Department of Foreign Affairs and International Trade).

going to be surrounded by a series of other events that occur, which can require, maybe, public unrest or mischief charges, assault charges—things that occur on the streets surrounding an event. Those in fact would be handled by the local police of primary jurisdiction; they will handle those particular events.

I've indicated it wouldn't change how that duty is actually currently performed, which is in collaboration with our partners.

But clearly, in other areas, we work in partnership because there are different activities that have to be played out by different forces. They have primary jurisdiction for something that occurs outside the perimeter around an event[25]

The RCMP takes the lead in providing security and close consultation and collaboration with municipal and provincial police at all levels.[26]

The RCMP always had the final say in respect of protection of internationally protected people, IPP. At these sites, there are zones. The inner zone is the IPP and that is the primary responsibility for which the RCMP has the lead. The other areas or zones that extend out from the site would reflect dialogue with the other police jurisdictions.[27]

- In summary, Parliament appears to have intended the use of the word "primary"[28] to create lead responsibiliity in the RCMP but "primary responsibility" contemplates there being other entities with "secondary responsibility" in ensuring the security for the proper functioning of the summit, and in protecting IPPs. These entities with a lesser degree of responsibility were intended to be other police forces, including the police force of local jurisdiction.

- Conceivably an international summit could be held on federal lands at an airport where the IPPs and delegates stayed at airport hotels and met at an airport conference centre, leaving the RCMP with complete federal jurisdiction to undertake security. Likewise, in a province where the RCMP are under contract to provide provincial and municipal policing, the RCMP could have full control of policing at an event site. However, this was <u>not</u> the case for the G20, and, invariably, such summits will involve cooperation with the police force of local jurisdiction and others.

(iii) <u>Police forces have an obligation to cooperate</u>

There is some authority for the principle that police forces have a professional obligation to cooperate.

- The police have an obligation to take proper and reasonable steps in the prevention of harm to IPPs in an international visit, *per R v Knowlton*, [1974] S.C.R. 443 at 447:

> According to the principles which, for the preservation of peace and prevention of crime, underlie the provisions of s. 30, amongst others, of the Criminal Code, these official authorities were not only entitled but in duty bound, as peace officers, to prevent a renewal of a like criminal assault on the person of Premier Kosygin during his official visit in Canada. In this respect, <u>they had a specific and binding obligation to take proper and reasonable steps</u>. The restriction of the right of free access of the public to public streets, at the strategic point mentioned above, was one of the steps—not an unusual one—which police authorities considered and adopted as necessary for the attainment

25 Standing Committee on Foreign Affairs and International Trade, Evidence, Tuesday, October 30, 2011, Mr. Paul Kennedy (Senior Assistant Deputy Solicitor General, Policing and Security Branch).

26 Proceedings of the Standing Senate Committee on Foreign Affairs Issue 22 – Evidence, Ottawa, Wednesday, February 20, 2002, The Honourable Bill Graham (Minister of Foreign Affairs).

27 Proceedings of the Standing Senate Committee on Foreign Affairs Issue 22 - Evidence, Ottawa, Wednesday, February 20, 2002, Mr. Paul Kennedy (Senior Assistant Deputy Solicitor General, Policing and Security Branch).

28 Primary: "Of the highest rank or importance; principal, chief", Oxford English Dictionary (3d) June 2007; online version September 2011. <http://oed.com/view/Entry/151280>; accessed 13 September 2011; Report on the Review of the *Public Works Protection Act*, p. 30.

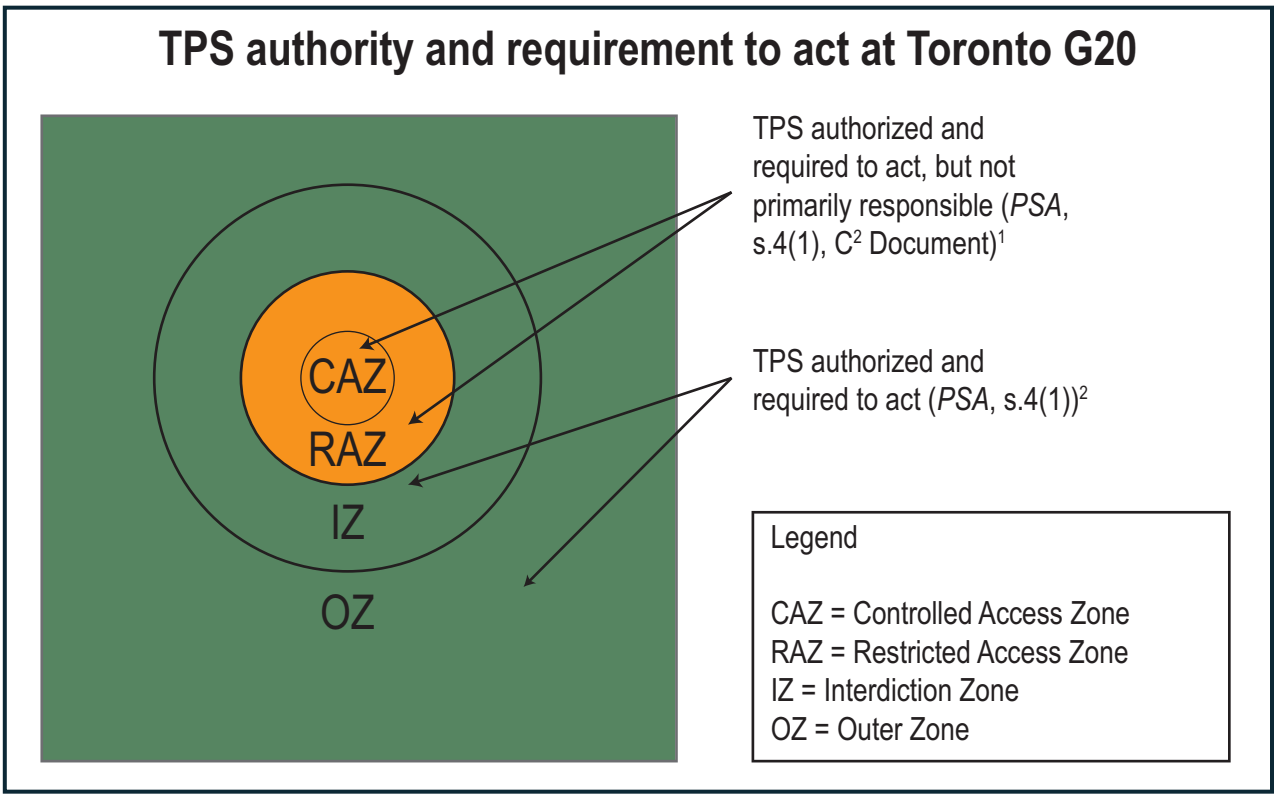
> of the purpose aforesaid. In my opinion, such conduct of the police was clearly falling within the general scope of the duties imposed upon them.

- Cooperation amongst the various police forces in the area is likely such a proper and reasonable step.
- Moreover, Ontario's municipal police forces, such as TPS, are required to be "adequate and effective", including in offering Public Order maintenance (Ontario *Police Services Act*, s.4).
- Effective police forces will cooperate rather than getting in each other's way or acting at cross purposes.
- The concept of a duty to cooperate does not have express definition under statutory or common law and so any evaluation of the nature and extent of such an obligation, by a local police force in support of a federal police force having primary responsibility, would depend on what was reasonable in the circumstances. Factors, in the context of a request by the RCMP to the TPS to cooperate in devising and implementing a security plan for the G20 Summit, we expect would include: the overall policing needs for the Summit, the relative resource capacity of the RCMP and TPS, identified gaps in the authority or responsibility of the RCMP to meet the overall security plan needs, and competing core demands on TPS. The extent of the TPS duty to cooperate would not mean, we think, its dropping any other core local policing responsibilities to redirect to Summit policing and might well be conditional upon additional funds being provided federally or provincially to recompense the TPS for mobilizing additional police services for the Summit.
- We emphasize that we do not regard such a duty to cooperate to mean a "duty to follow" the directions of a separate police force - in our view, absent valid and express statutory provisions, a duty to direct or to follow directions as between separate police forces in Canada must be premised on voluntary agreements or undertakings. We note in passing that there was debate in Parliament in 1984 leading to the enactment of the *Security Offences Act* and creation of CSIS, wherein a motion was brought to amend Bill C-9 to include a positive "duty to consult". The motion which failed would have expressly obliged the RCMP to consult with provincial and municipal police forces in exercising the RCMP's primary responsibility to investigate national security offences.[29]
- There is no statutory bar to police agencies entering into agreements such as memoranda of understanding or the C[2] Document used in this circumstance to better define and coordinate the mandates, roles and responsibilities for all participating police agencies.

29 Hansard evidence relating to the *Security Offences Act* – 32nd Parliament, 2nd Session, excerpts of statements in the House of Commons, February and June 1984.

2) To what extent are local police authorized and/or required to exercise police powers within each of the controlled access zone, restricted access zone, interdiction zone and outside area? To what extent are local police authorized and/or required to direct RCMP members (including those sworn as Ontario peace officers) within those zones?

a) Local police forces being authorized or required to act in which zones



1. TPS a provincial partner in RCMP-led Toronto Area Command Centre (TACC) addressing federal level responsibility. TPS led Major Incident Command Centre (MICC) addressing city level responsibility. TPS retained its responsibility for non-G20 policing in the RAZ and CAZ because TPS remained the police force of local jurisdiction.
2. Subject to RCMP primary responsibility with respect to ensuring the security for the proper functioning of G20 Summit and protecting IPPs.

(i) Key Document Statements

C² Document – Provincial Responsibility and TPS

The C² Document outlines the role of the TPS at the G20 Summit as follows:

> "The Toronto Police Service (TPS) is the police force of jurisdiction in Toronto. TPS has the responsibility to fulfill its mandated obligations under the 'Police Services Act' of Ontario. Through the ISU, TPS will support the RCMP in its federally legislated mandate. During the G20, TPS will assist in protecting the Internationally Protected Persons (IPP's) and VIP's, as well as ensuring the integrity of the Interdiction Zones (IZ) or outside perimeters of all identified G20 Toronto sites and hotels. TPS will ensure the democratic right of individuals to demonstrate peacefully while maintaining proper security. Additional TPS responsibilities include: crime management, traffic management, public order maintenance, business continuity, prisoner processing and community relations."

> "The MICC is the central point of command, control, communication and information for the Toronto Police Service (TPS). The MICC Incident Commander, will have a full perspective of all resources under the Command of the TPS, and tactical control of those resources, in its function of ensuring the integrity of the Interdiction Zones beyond the Restricted Access Zones under the protection of the RCMP. Additionally the MICC will be responsible for the continuity of policing services throughout the City of Toronto and liaising with the City's Emergency Operations Centre (EOC).

SCO Document – TPS Responsibility

As a matter of internal RCMP record the SCO Document acknowledges that:

> "TPS is the police service of jurisdiction within the City of Toronto. Through an Integrated Security Unit, TPS will support the RCMP in its federally legislated mandate. TPS has the responsibility to fulfill its mandated obligations under the *Police Services Act of Ontario*, which include:

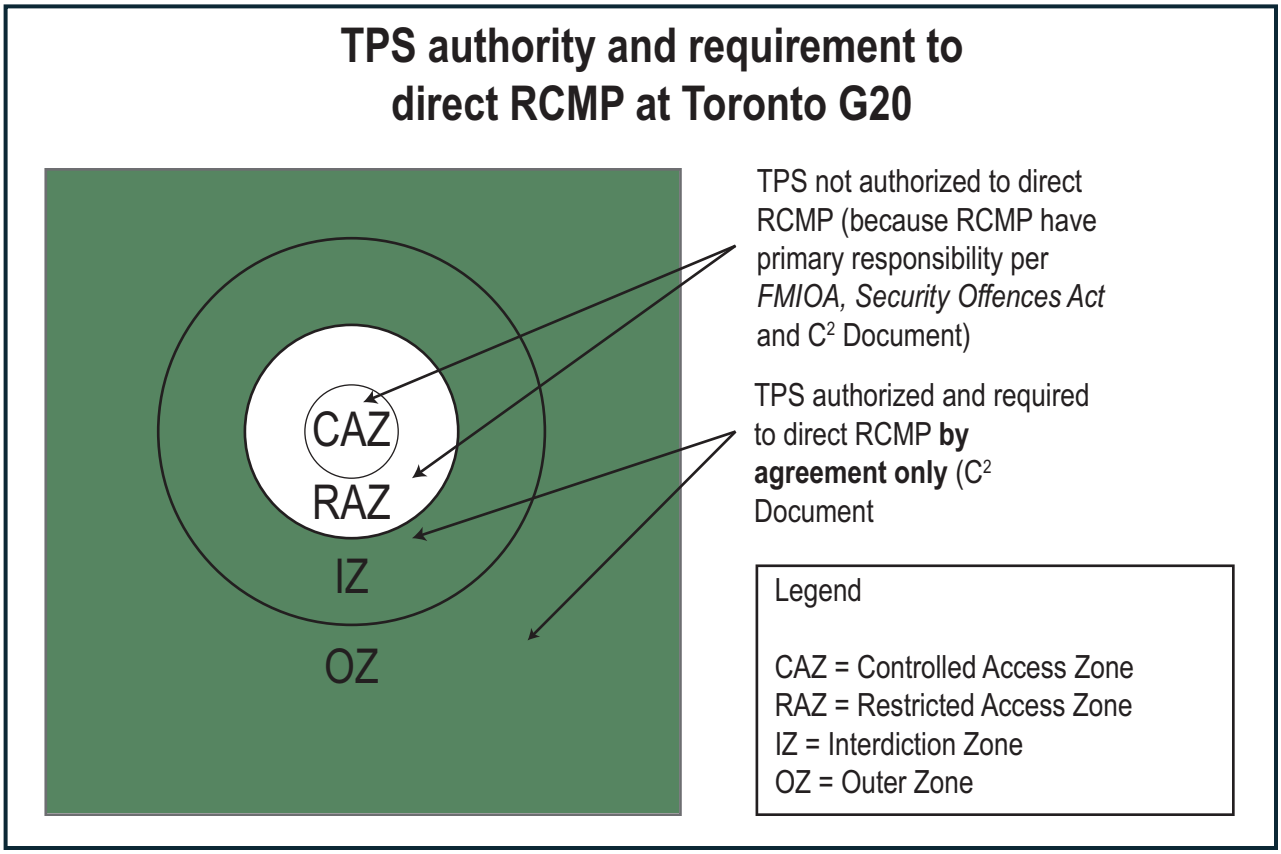
- Law enforcement
  - Public Order Maintenance
  - Assistance to Victims of Crime
  - Emergency Response, and
  - Crime Prevention"

(ii) <u>TPS was required to act in all zones regarding policing unrelated to the G20, and required by agreement to act in the OZ and IZ regarding all G20 related policing.</u>

- TPS is authorized and required to act across the city because they are responsible for policing Toronto (Ontario *Police Services Act*, s.4).
- All zones (RAZ, CAZ, IZ, OZ) are parts of Toronto. TPS remained solely responsible for policing all zones regarding non-G20 matters.
- Under the C^2 Document, the TPS were also required to act in the IZ and OZ regarding G20 matters. "TPS site commanders will be in tactical control of foot, bicycle, and mobile assets in the IZ, the Path (which runs under both the IZ and OZ) and the OZ, being supported by Public Order Sections, and under the operational direction of the MICC."[30]
- While the TPS remained responsible for policing unrelated to the G20 in the RAZ and CAZ, TPS was required under the C^2 Document to follow RCMP directions in those two zones when doing G20 related policing.

30 C2 Document; TPS Site at p. 31; Transcript of the Standing Committee on Public Safety and National Security, Oct 25, 2010, testimony of Ward Elcock; Transcript of the Standing Committee on Public Safety and National Security, Nov 3, 2010, testimony of Chief William Blair; Toronto Police Service After-Action Review, p. 8.

b) To what extent are local police authorized and/or required to direct RCMP members within those zones?



(i) Key Document Statements

- Section 4(1) of the *Police Services Act* gives TPS responsibility for all policing throughout Toronto. Control of the IZ and OZ was not required to ensure the security of the Summit, therefore the *FMIOA* does not give the RCMP any general requirement to act in the IZ and OZ. TPS remained responsible for all policing in those two zones.

- The C2 document confirms that TPS would control the IZ and OZ, because these were designated as "TPS Sites" and the TPS-led MICC was given jurisdictional command and tactical control of resources in its function of ensuring the integrity of the IZ and OZ.[31] By this agreement, all police forces in the IZ and OZ were required to follow the direction of the TPS (subject to the limits of law, including the regulation-based codes of conduct).

  We note that the C2 Document does contemplate that the RCMP support assistance to its police partners would be "provided under the direction of the UCC Incident Commander" but once directed to the IZ and OZ zones, command and control appears to devolve to MICC and the TPS.

- The RCMP's requirement to act, which derived from the *FMIOA* and the *Security Offences Act*, is subject matter specific. Therefore a situation could exist where the RCMP was required to be involved in the IZ, OZ or beyond, so as to protect the IPPs or ensure the security for the proper functioning

31 C2 Document; Transcript of the Standing Committee on Public Safety and National Security, Oct 25, 2010, testimony of Ward Elcock; Transcript of the Standing Committee on Public Safety and National Security, Nov 3, 2010, testimony of Chief William Blair; Toronto Police Service After-Action Review, p. 8.

of the summit (e.g. identified aircraft threats or cyber attack). Such a situation would give the RCMP primary responsibility to act wherever the threat arose and would change the allocated responsibilities.

(ii) By agreement, TPS was required to direct RCMP and the RCMP was required to follow directions in IZ and OZ.

- Based on the duty as expressed in *R v Knowlton* to take reasonable measures in fulfilling their duty, police forces who act in the same theatre must cooperate. The C[2] Document was consistent with this duty, the express goals of this agreement being to ensure a coordinated effort of forces and resources with a common organizational structure, standardized terminology, a scalable response, integrated timely communications, and a consolidated plan of action, with command and control delivered at the strategic, operational, and tactical levels. The use of such agreements is an appropriate means of ensuring integration of police force capabilities and synchronization of security operations.

3) Within each of the controlled access zone, restricted access zone, interdiction zone and outside area, and for both RCMP members (including those sworn as Ontario peace officers) and municipal police officers, does a particular police agency's policy (regarding acceptable standards of conduct) become paramount? Do police officers continue to be bound by the policies of their respective agencies?

(a) Members continue to be bound by their own force's codes of conduct and policies

- Each force's regulatory codes of conduct remained binding on their respective members (including RCMP sworn as Ontario Special Constables) (RCMP: *Royal Canadian Mounted Police Regulations* 1988, SOR/88-361, ss.37-58.7, Provincial/municipal police: O Reg 268/10, in the schedule).
- This is because there is no authority for something like the agreement in the C[2] Document or a duty to cooperate, overriding binding regulations which have the force of law.[32]
- The RCMP and TPS signed a MOU dated June 14, 2010 to document the arrangements regarding deployment of RCMP police officers to TPS as Ontario Special Constables. They were made available to support TPS in carrying out traffic central duties and respond to public order incidents prior to the G20 Summit. This MOU was time limited to the dates June 20-23, 2010. Notably at section 5.1 under Terms of Deployment it provided that:

  > "Deployed personnel shall be subject to the Ontario *Police Services Act* and TPS policy and operational guidelines, wherever they do not conflict with legislation and procedures governing the deployed personnel…Public complaints and disciplinary matters involving deployed personnel will be processed in the usual course pursuant to the legislation applicable to them."[33]

- There was no similar use of RCMP as Special Constables during the June 26-27 Summit period. If indeed the MOU used for June 20-23 was capable of subordinating RCMP officers to TPS policy and operational guidelines during this temporary appointment, no such subordination of any RCMP members to TPS policy and operational guidelines was agreed to in relation to the G20 Summit itself.
- As a practical matter it may be difficult to clearly distinguish between the code of conduct and terms of employment governing the RCMP member and the applicable policy or operational procedures called for on the ground. To expect RCMP police officers deployed as POUs to

32 *Martineau v. Matsqui Institution*, [1978] 1 SCR 118, paras. 21&22:
"21 I have no doubt that the regulations are law. […]
22 I do not think the same can be said of the directives. It is significant that there is no provision for penalty and, while they are authorized by statute, they are clearly of an administrative, not a legislative, nature."

33 Memorandum of Understanding for Deployment of Police Officers to the City of Toronto for the Purpose of the G20 Summit.

take common briefing instructions together with other TPS police officers from TPS command and then conduct the very same police operations shoulder-to-shoulder in the field in support of TPS responsibilities, but somehow identify conflicting procedures and conduct themselves differently, may not be a realistic expectation. This is an issue deserving more consultation and clarity to ensure such expectations are workable.

- Internal police documents such as policy documents or operational manuals must be distinguished from legal instruments like statutes and regulations[34]. These internal documents have little legal significance. Courts have accorded little weight to such when judging if an officer has acted properly[35]. Moreover, these documents cannot affect, interpret or describe the legal authority a peace officer has[36].

- We find no legal basis, including anything in the C[2] Document or otherwise, to conclude that one force's policies and operational guidelines would override the other force's policies/ procedures in different zones. Therefore, in our view, each force remained bound and guided by their respective policies and operational guidelines irrespective of which zone they were policing in. This means that even those RCMP officers operating as POUs in the IZ or OZ under command and control of the TPS would remain bound by RCMP policy and operational guidelines in the absence of express agreement to the contrary.

4) What impact, if any, does the *FMIOA* or other relevant federal legislation have within the area designated a public work pursuant to the *PWPA*?

a) The G20 area was legally identified as a public work

The G20 area was properly designed as a public work at the time of the G20 summit. Regulation 233/10, made under the *Public Works Protection Act* (*PWPA*), which designated the area as a public work, was effective at the time of the G20. Pursuant to section 23(2) of Ontario's *Legislation Act*[37], the effective date of a regulation is decided in the following manner:

> (2) Unless otherwise provided in a regulation or in the Act under which the regulation is made, a regulation is not effective against a person before the earliest of the following times:
>
> 1. When the person has actual notice of it.
>
> 2. The last instant of the day on which it is published on the e-Laws website.
>
> 3. The last instant of the day on which it is published in the print version of The Ontario Gazette.

Although the regulation was only published in the Gazette on July 3, 2010[38], prior publication on the e-Laws website on June 16, 2010[39] made this regulation effective during the G20 Summit, on June 26 and 27. This means that peace officers had the additional powers conferred by the *PWPA* with respect to the area set out in regulation 233/10.

b) *PWPA* does not impact on *FMIOA* or other relevant federal legislation

Even though the G20 area was validly identified as a public work at the time of the G20 Summit, this did not impact the *FMIOA* or other federal legislation providing authority and responsibility to the RCMP in relation to their police services during the G20 Summit.

The *PWPA* was enacted in 1939. It was a wartime measure in response to concerns of sabotage of Ontario's hydroelectric and other facilities.[40] Today the *PWPA* is seldom used. The main application of the *PWPA* is with regard to ensuring courthouse security via searches[41]. This use of the *PWPA* has been upheld as constitutional in relation to a

34 *Uni-Jet Industrial Pipe v Canada (Attorney General)* 2001 MBCA 40 at para. 37.
35 *R v Yazlovasky*, [1995] 5 WWR 334 (Alta. Q.B.), at para. 77.
36 *Uni-Jet Industrial Pipe v Canada (Attorney General)* at para. 38.
37 *Legislation Act*, 2006, SO 2006, c 21, Sch F.
38 Request for Legal Opinion, p. 2.
39 *Ibid.*
40 Report on the Review of the *Public Works Protection Act*, p. 3.
41 Report on the Review of the *Public Works Protection Act*, p. 4.

s. 8 *Charter* challenge of a warrantless search of person entering an Ontario courthouse[42].

The passing of O Reg 233/10, which designated the G20 area as a public work began with concerns from the City of Toronto Solicitor's office that police may not have legal authority to take the measures required to ensure the integrity of the Interdiction Zone[43]. The Government of Canada and the RCMP were of the opinion that they had sufficient powers under the common law and the *Criminal Code*[44]. Nonetheless the Chief of the TPS requested the Lieutenant Governor in Council to pass a regulation under the *PWPA* designating the G20 area as a public work[45]. This request was granted in the form of O Reg 233/10.

The most important part of the *PWPA* is section 3, which reads:

> "3. A guard or peace officer,
>
> (a) may require any person entering or attempting to enter any public work or any approach thereto to furnish his or her name and address, to identify himself or herself and to state the purpose for which he or she desires to enter the public work, in writing or otherwise;
>
> (b) may search, without warrant, any person entering or attempting to enter a public work or a vehicle in the charge or under the control of any such person or which has recently been or is suspected of having been in the charge or under the control of any such person or in which any such person is a passenger; and
>
> (c) may refuse permission to any person to enter a public work and use such force as is necessary to prevent any such person from so entering." [Emphasis added]

The main effect of the *PWPA* is to confer on peace officers additional powers to stop, search and refuse a person entrance to a public work.

The term "guard" is defined in the Act but not "peace officer". *Per* s.9 of the *RCMP Act*, RCMP officers are peace officers in every part of Canada. The *PWPA* does not expressly limit these additional powers to provincial peace officers although constitutionally this may well be the *intra vires* limit. If indeed and to the extent this provincial statute is capable of affecting federal peace officers, the *PWPA*would do nothing more than confer extra powers on the RCMP to stop, search and refuse a person entrance into a public work.

The *FMIOA* allocates primary responsibility to the RCMP for the security relating to the proper functioning of the Summit. There is no conflict or interaction between the *PWPA* and relevant federal legislation, and therefore there is no need to have recourse to doctrines of paramountcy (or interjurisdictional immunity) to resolve an operating inconsistency. Nothing in the *PWPA* weakens or inhibits the enforcement of federal legislation by the RCMP much less creates any actual conflict.

42 *R v Campanella*, (2005) 75 OR (3d) 342 (Ont.C.A.); Report on the Review of the *Public Works Protection Act*, p. 4.
43 Email from TPS to RCMP dated August 19, 2011.
44 Letter from Deputy Minister of Public Safety to Deputy Minister of Community Safety, June 11, 2010; Report on the Review of the *Public Works Protection Act*, p. 10.
45 Report on the Review of the *Public Works Protection Act*, p. 11; Email from TPS to RCMP dated August 19, 2011.

CONCLUSION

Issue 1

During the G20 Summit RCMP members had authority to exercise police powers in relation to federal level responsibilities and federal offences within each of the CAZ, RAZ, IZ and OZ. However, RCMP members were only required to exercise police powers within the CAZ and RAZ (as contemplated by the C^2 Document) and, in the event of security threats to the G20 Summits or IPPs arising outside these two zones then to the extent deemed necessary in the IZ or OZ. Operationally, by reason of the RCMP's primary responsibility with respect to ensuring the security for the proper functioning of the G20 Summit and protecting IPPs the RCMP were in charge of command of G20 related policing in the CAZ and RAZ. As contemplated in the C^2 Document, TPS forces made available in these zones for G20 policing agreed to take direction from the RCMP-led Toronto Area Command Centre (TACC).

Those RCMP members in public order units who were deployed to help support TPS in delivery of police services (principally in the IZ), even though operating under the command and control of the TPS, remained RCMP and were only "required to act" in relation to enforcing federal legislation, as they were not sworn as Ontario Special Constables.

Issue 2

During the G20 Summit, the TPS retained their full authority and responsibilities to exercise police powers for local policing. However, in relation to policing within the CAZ and RAZ the RCMP-led TACC directed the TPS with respect to G20 security and protecting IPPs, jurisdictional matters for which the RCMP were primarily responsible under federal legislation. This command structure was recognized in the C^2 Document. Outside these two zones, the TPS-led Major Incident Command Centre (MICC) and the TPS were in charge, unless and to the extent that the RCMP identified security threats to the G20 or IPPs falling within their federal mandate.

The RCMP deployed public order units in the IZ to assist the TPS discharge TPS responsibilities in this zone pursuant to the C^2 Document. These public order units were subject to TPS command and control.

Issue 3

The RCMP and TPS each retained their respective regulatory codes of conduct and policies and operational guidelines. The fact that some RCMP members assisted the TPS in the IZ as public order units did not subordinate RCMP codes or RCMP policies and operational guidelines to those of the TPS and *vice versa* for the TPS when policing in the CAZ and RAZ.

Issue 4

The enactment of a special regulation under the *PWPA* to expand police powers during the G20 Summit did not conflict with or derogate from the federal legislation governing the RCMP mandate.

Eugene Meehan, Q.C.

GLOSSARY OF ABBREVIATIONS

Abbreviation	Full Meaning
APEC	Asia-Pacific Economic Cooperation 1997 Summit
C/Supt	Chief Superintendent
C^2 Document	Command and Control Document
CAZ	Controlled Access Zone
CCLA	Canadian Civil Liberties Association
CPC	Commission for Public Complaints Against the Royal Canadian Mounted Police
EOC	Toronto's Emergency Operations Centre
FMIOA	*Foreign Missions and International Organizations Act*
Hon.	The Honourable
IPP	Internationally Protected Person
ISU	Integrated Security Unit
IZ	Interdiction Zone
MICC	Major Incident Command Centre
MOU	Memorandum of Understanding
OPP	Ontario Provincial Police
OZ	Outer Zone
PSA	Ontario's *Police Services Act*
PWPA	*Public Works Protection Act*
RAZ	Restricted Access Zone
RCMP	Royal Canadian Mounted Police
SCO Document	Strategic Concept of Operations Document
TACC	Toronto Area Command Centre
TPS	Toronto Police Service
VIP	Very important person

APPENDIX E

INTEGRATED SECURITY UNIT

The following information was taken from the G8-G20 Integrated Security Unit (ISU) website.

> The RCMP has created the Summit Integrated Security Unit, which is comprised of the RCMP, the [Ontario Provincial Police] (in the G8 context), the Canadian Forces, Toronto Police Service, Peel Regional Police and other law enforcement and security experts who will work collaboratively to ensure the safety of the International Protected Persons (IPP), VIPs and the community. To every extent possible, the Summit Integrated Security Unit will work to minimize to the fullest extent possible, the potential of impact of police security operations as well as impact on the city of Toronto and surrounding areas.
>
> As the Toronto Police Service (TPS) is the police force of jurisdiction in Toronto, they will assist in protecting the Internationally Protected Persons and VIPs as well as, secure the outside perimeter of the G20 Controlled Access Zones for the guests of the Canadian Government and the community. Other law enforcement partners are also part of the security measures for the G20 Summit. In addition, it will be the responsibility of the TPS to deal with any protests outside the security perimeter established by the RCMP or disruptions such as those involving road closures not under the highway jurisdiction of the OPP.
>
> G8-G20 2010-ISU is responsible for all aspects of security planning including but not limited to:
>
> - accreditation
> - aviation security
> - tactical emergency response
> - working with RCMP units responsible for Internationally Protected Person (IPP), VIP security
> - aviation management over G20 site
> - communications security
> - sites and venues security
> - community relations
> - traffic control
> - mobilization
> - training
>
> For those not familiar with the G20, in 1998 RCMP and its partners successfully carried out G7 protective operations in this same location – in the same year as we secured the Calgary Winter Olympic Games. As there are many obvious similarities, it serves as a relevant example for 2010.

Mandate and responsibilities of the Royal Canadian Mounted Police:

- General coordination of Security
- Close personal protection of Heads of State and VIPS
- IPP Motorcades and bodyguards
- Site security (event site area perimeter, airspace)
- Access Control
- Federal Liaison
- Operational support
- Accreditation
- Border integrity
- Liaison with federal departments
- Intelligence coordination
- Communications Coordination
- Unified command with the TPS and CF et al

Anticipated mandate and responsibility of the Toronto Police:

- Jurisdictional duties in Toronto including participation in motorcades.
- Traffic safety on impacted road networks
- Crowd management
- Crime management
- To secure the outer perimeter of the MTCC Controlled Access Zone and all other Toronto CAZ areas for guests of the Canadian government at the Summit
- Assistance to the RCMP upon request
- Providing specialized services such as:
- Explosive Disposal Unit
- Canine Unit
- Underwater Search and Rescue
- Marine patrol
- Obstruction Removal Team
- Chemical, Biological, Radiological, Nuclear and Explosives Team
- Law enforcement through the Public Order Unit
- Emergency Response Team
- Joint intelligence coordination
- Unified command participation with the RCMP
- Liaison to municipal government

Peel Regional Police:

Jurisdictional duties in PEEL Region including security coordination on the tarmac and controlled areas of Pearson Airport.

Anticipated Mandate and responsibility of Ontario Provincial Police:

- Policing services pursuant to the Police Services Act of Ontario
- Traffic safety on impacted highway networks
- Assistance to the RCMP upon request
- To provide policing services in aid of other police forces in Ontario as may be required by the Operational Commander of the Integrated Security Unit.

APPENDIX F

INCIDENT COMMAND SYSTEM

The Incident Command System (ICS) is a process developed in the United States. According to the website[1] of the United States National Response Team, the ICS is:

> . . . a standardized on-scene incident management concept designed specifically to allow responders to adopt an integrated organizational structure equal to the complexity and demands of any single incident or multiple incidents without being hindered by jurisdictional boundaries.
>
> In the early 1970s, ICS was developed to manage rapidly moving wildfires and to address the following problems:
>
> - Too many people reporting to one supervisor;
> - Different emergency response organizational structures;
> - Lack of reliable incident information;
> - Inadequate and incompatible communications;
> - Lack of structure for coordinated planning among agencies;
> - Unclear lines of authority;
> - Terminology differences among agencies; and
> - Unclear or unspecified incident objectives.

The ICS is considered by the RCMP as well as many other police services to be a workable set of protocols for the management of major incidents or events, and it was upon the ICS model that the RCMP and its policing partners went forward to plan for the security of the G8/G20 Summits.

INCIDENT MANAGEMENT SYSTEM

Based on the ICS model, the RCMP initiated an Incident Management System consisting of three incident management levels, which were horizontally and vertically integrated.

- At the tactical level, the system addressed support to local police of jurisdiction and first response to certain emergencies.
- At the operational level, the system addressed support to the tactical level in terms of facilities, personnel, equipment and process, and contemplated integration with partners and provincial Emergency Operations Centres. The operational level also contemplated coordination of responses and operational-level first response within a divisional scope of responsibility.
- Finally, at the strategic level, the system addressed support to the operational level and major events, national and international, in terms of facilities, personnel, equipment and process. The system also envisaged coordination of responses between regions and divisions, and first response to emergencies within the purview of the RCMP's national headquarters.

1 See http://www.nrt.org/production/NRT/NRTWeb.nsf/AllAttachmentsByTitle/SA-52ICSUCTA/$File/ICSUCTA.pdf?OpenElement, p. 9.