

## THE 2017 MONCTON CANADA LABOUR CODE TRIAL AND THE FUTURE OF THE RCMP

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### Abstract

The killing of three and the wounding of two Mounties in Moncton in 2014 by a lone shooter led to the RCMP being charged under the Canada Labour Code for failing to adequately train, equip, and protect its members from foreseeable risk. This article analyzes the 2017 prosecution within the context of recent controversies involving the RCMP, its roles in New Brunswick, and the issue of the unionization of the rank and file. The trial's outcome was interpreted as a victory for the lower ranks and legitimized the argument that Mounties on patrol across Canada needed heavier weaponry.

### Résumé

Après qu'un tueur solitaire eut abattu trois agents de la Gendarmerie royale du Canada (GRC) et en eut blessé deux autres à Moncton, en 2014, la GRC était accusée, en vertu du Code canadien du travail, de ne pas avoir adéquatement formé, équipé et protégé ses membres contre les risques prévisibles. Dans le présent article, on analyse la poursuite intentée en 2017 dans le contexte des controverses récentes concernant la GRC, le rôle qu'elle joue au Nouveau-Brunswick et la question de la syndicalisation des membres ordinaires. On a interprété l'issue du procès comme une victoire pour les grades inférieurs et légitimé l'argument selon lequel les agents de la GRC en patrouille dans l'ensemble du Canada avaient besoin d'armes plus lourdes.

In June 2014, a heavily armed individual roamed through a residential neighbourhood of Moncton, NB, deliberately targeting police officers who responded to citizen calls. He killed three and wounded two members of the Codiac Regional RCMP, setting off a huge police operation that extended for thirty hours until he was captured. In 2015, after an investigation by Employment and Social Development Canada, the RCMP was charged with four counts under the Canada Labour Code (CLC). The most serious count was "Failing to provide RCMP members with appropriate use-of-force equipment and related user training when responding to an active threat or active shooter event." The subsequent trial ran from April 25 to July 4, 2017. The judge's decision, rendered on September 29, 2017, was the top Canadian news story of the day. The RCMP was found guilty of the count cited above and ordered to return to court in November for sentencing. The maximum penalty was a fine of \$1 million, but, as explained below, the judge agreed with defence counsel that this was an excessive amount. The media reported the outcome as a victory for the rank and file.<sup>1</sup>

Why examine the Moncton CLC trial? First, its outcome has the potential to legitimize further the use of semi-automatic long guns by front-line RCMP officers, enhancing a trend toward what many critics deem militarization. Together with the impending unionization of the rank and file, the decision could help move RCMP policies, operations, and culture toward the "common sense" crime-fighting model and away from the official institutional goal of community policing.<sup>2</sup> Second, the case highlights

the degree to which elected officials and the public are excluded from important questions such as how to arm the police with lethal and non-lethal weapons and how they are to be deployed. Third, evidence presented in court suggests that the RCMP's senior ranks, particularly under Commissioner Bob Paulson (2011–17), has been sensitive to governmental and public reactions to proposals to equip the force with new weapons without objective evidence to justify the decision. Whether this is a genuine attempt to reform traditional top-down RCMP decision making, or more of a public relations exercise, is an open question, as the Moncton trial heard.

The key issue in the trial was the RCMP's program to arm front-line officers with semi-automatic carbines. This became a public issue as a result of the 2014 shootings, joining a long list of controversies and scandals that reached back to the early 2000s. The shootings, and the trial, coincided with what appeared to be unprecedented dissatisfaction by much of the rank and file toward senior management, complicated by the fact that the Supreme Court of Canada in 2015 ruled that members have the right to collective bargaining. Despite the Moncton court decision, it seems unlikely that every general-duty Mountie in Canada will be equipped with a carbine. Like the regulation 12-gauge shotgun, the C-8 carbine is likely to remain a rarely deployed, secondary weapon. So its real significance in the current debate on policing may be symbolic. The rank and file, reflecting a "common sense" approach, sees it as a piece of safety equipment. The RCMP leadership has viewed the carbine as a potentially dangerous addition that could undermine its official doctrine of community policing. That the debate aired in public during the 2017 CLC prosecution is symptomatic of the current power struggle within the institution. It is also tied, in a complicated fashion, to academic, activist, and legal concerns over the arming of the Canadian police and use of deadly force against citizens, a major issue in police-community relations, especially with minority communities. In an ironic twist, the RCMP leadership attempted to use the threat of police militarization as a legal defence against charges that it had failed to adequately equip and train its members to deal with violent threats.

The Moncton trial, although not a criminal matter, offers academics, journalists, and the public a rare glimpse into a semi-secretive world, the leadership of the RCMP. During the trial, defence witnesses, including experts, attempted to portray the RCMP's approach to use-of-force questions starting in 2007 as reasonable, responsible, and based on research. The rollout of the patrol carbine was a time-consuming and detailed undertaking that had to pay attention to local needs and follow government procurement rules. According to the defence, RCMP management was sensitive to public anxieties—influenced by events in the United States—that the force was embracing militarization. As explained below, the defence made a tactical error by failing to introduce any evidence on this claim. The prosecution, with the apparent support of much of the rank and file, which was fighting for the right to unionize, argued that the employer's own use-of-force experts were aware of equipment deficiencies by 2006 or 2007. By delaying the distribution of the carbine and associated training to all detachments in Canada, management, the Crown contended, endangered the lives of RCMP members and the public they serve.

## Background

The RCMP has been the subject of media, legal, and political controversy in its past, particularly starting in the 1970s with revelations of a dirty tricks campaign against Quebec separatists. It has been associated with other failings, such as the botched investigation of the 1985 Air India terror bombing that killed 329 passengers and crew. The early twenty-first century was no different, except that evidence of internal tensions was more apparent. Each commissioner starting in 2000 was embroiled in

controversy, and it is not apparent that the institution was any better off when they left office. Giuliano Zaccardelli (2000–06), one of the first “ethnic” Canadians appointed commissioner, joined the force in 1970, and by 1998 had reached the rank of deputy commissioner. Zaccardelli was in command in 2001 when Canada responded to the 9/11 attacks in the United States with enhanced national security legislation and a revived security role for the RCMP. One of his first operational decisions was to authorize the use of conducted energy weapons (CEWs) or “tasers” for front-line officers. In late 2005 he embroiled the RCMP in a pre-election controversy having to do with the investigation of an alleged leak of news on forthcoming changes to income trusts. His downfall came in 2006 in connection with the Mahar Arar affair, in which the RCMP played a crucial role. Following contradictory testimony to a Parliamentary committee, he offered his resignation, which Prime Minister Harper accepted.<sup>3</sup> In 2007, RCMP members went public with allegations that their former leader and other senior Mounties had mismanaged and displayed nepotism with the RCMP pension and insurance plans. Zaccardelli appeared before Parliament’s public accounts committee and denied the charges.

One controversy that began under Zaccardelli and continued under his successors was the murder of four young officers in Mayerthorpe, Alberta, in 2005. In this case, officers guarding a crime scene, armed only with pistols and wearing soft body armour, had been killed at close range by a suspect armed with a prohibited .308 assault rifle. The RCMP completed an internal investigation of the tragedy in 2008, and in 2011 a public fatality inquiry into the deaths was carried out. Judge Daniel Pahl ruled that the ambush had been an unforeseen tragedy and that RCMP training had not been at fault. But his report urged better security planning for crime scenes, training in the use of long guns and how to respond to active shooters, the acquisition of carbines, and further research into protective equipment such as hard body armour.<sup>4</sup>

The killing of two RCMP officers at Spiritwood, Saskatchewan, in 2006 also raised the issue of training and weapons. Employment and Social Development Canada became involved because of the dangers responding officers faced when attempting to retrieve their fallen comrades who had been shot in their vehicles while pursuing a subject they had attempted to arrest. The suspect shot two officers in the head and wounded a third. Another issue was whether officers could safely operate in a rural environment in the dark with an active shooter at large. Following this incident, the RCMP voluntarily agreed to prepare hazard assessments relating to high-risk retrievals of wounded or dead officers in the absence of an emergency response team. These two incidents contributed to a growing list of Mounties killed on the job, usually in remote or rural areas and most often by rifles or shotguns. On the day of the release of the Pahl Report, a sergeant in the use-of-force section at RCMP headquarters wrote a briefing note to the deputy commissioner recommending exploring long-barreled-weapons needs.<sup>5</sup>

The next commissioner, William J. Elliot, came from a non-traditional background and would prove equally controversial. He was a lawyer, career bureaucrat, and former Harper political staff member with no police training. Although many within the force resented the appointment of an outsider, others saw it as an opportunity to tackle structural problems with the force and restore public confidence. Yet under Elliot’s leadership, public confidence in the federal force, based on opinion polls, began to reach a new low largely because of an internal problem that had been festering since the 1970s: harassment of female members, who by late 2014 were roughly one-fifth of sworn officers. Lawsuits by ex- and current female officers were disputed vigorously by government lawyers even as the RCMP was telling the public that it wanted to recruit more women and move female officers into senior positions. In 2011, the chair of the Commission for Public Complaints Against the RCMP opened a public interest investigation into how the force had handled allegations of harassment. Its report was issued two years later.<sup>6</sup>

Another controversy (which has a connection with the patrol carbine issue) was the RCMP's policy on CEWs. Although CEWs were adopted as "less-than-lethal" alternatives to firearms, the media began to report cases of individuals, many of them with mental health or addictions problems, who died after being shocked by the weapon. The RCMP and other police services appeared to be employing tasers not as a defensive weapon but a compliance tool. In 2007, three Mounties responded to a report of an agitated man at the Vancouver airport. Robert Dziekański, a Polish national, was subdued by the use of a taser and subsequently died. Police handling of the incident was questionable, and subsequent statements and actions by the RCMP hardly enhanced the reputation of the force. The issue gained wide notoriety because it had been filmed on a cell phone, which the RCMP had seized. The provincial government appointed an official inquiry, which heard testimony in 2009 and issued a report in 2010 that ruled that the use of CEWs against Dziekański had not been justified and concluded that the RCMP had misrepresented the facts of the case. The four officers who subdued the victim eventually were charged with perjury; the one who was convicted was sentenced to thirty months in prison.<sup>7</sup> Unknown to the public until 2017, the CEW, in terms of weapons, until at least 2009, was the focus of most attention at headquarters, where senior managers demanded objective research in order to defend tasers from public criticism.<sup>8</sup>

By the time Elliot resigned in 2011, two of his goals—a new system of oversight and a board of management to help develop policy—had yet to be realized. Pundits cited dissatisfaction in senior ranks over Elliot's management abilities and his lack of progress in making changes. One Liberal MP denounced him as a "lapdog" for the Harper government. Federal funding for the RCMP under the Harper government is a topic that needs more study. One issue that emerged during the Moncton trial was whether headquarters devoted sufficient people and resources in the crucial period 2007 to 2011 to studying the force's firearms needs. There were reports of budgetary restraint and of the force struggling to deliver basic services, and a number of regional crime labs were closed. Yet in early 2015, it was reported that the RCMP had actually returned \$1.7 billion to the federal government since 2007.<sup>9</sup> During the Harper era, annual spending on national security (the RCMP, CSIS, and related agencies) nearly doubled to several billion dollars, but there were cuts to National Police Services and reports of various divisions losing front-line officers of staff suffering from stress and burnout because of increased workloads.<sup>10</sup>

In the wake of the Elliot controversy, the media reported that senior RCMP officers expected that the appointment of the next commissioner would respect tradition. The traditionalists got their wish when the Conservative government named Bob Paulson the new leader. Paulson served several years in the Canadian military, studied at Simon Fraser University, and joined the RCMP in 1986. By 2005, he had reached the rank of inspector and was known for anti-gang work in British Columbia. Transferred to headquarters in Ottawa, by 2008 he was involved in important anti-terrorism duties. A former chief of staff for former Public Safety Minister Vic Toews (hardly an objective source) in hindsight praised Paulson for restoring calm and a sense of stability to the force.<sup>11</sup>

Paulson was articulate, intelligent, confident, and capable of projecting an aura of sincerity. But like his predecessors, he inherited a number of problems and others appeared during his tenure, many having to do with RCMP organizational culture. One was the harassment issue, which undermined public confidence in the force's leadership. The commissioner issued a public apology for decades of harassment, and in 2016 the government agreed to a settlement whereby affected women who had served on the force starting in 1974 were eligible for up to \$220,000 each in compensation. The deal was certified by the Federal Court in 2017. Another problem that emerged on Paulson's watch was the issue of missing and murdered Indigenous women. According to First Nations organizations and the relatives of missing women and girls, the police and the rest of the justice system, as well as the media and

politicians, had not taken decades of victimization and disappearances seriously because of racial prejudice. At Paulson's request, the RCMP began a study of the issue in 2013. It reported that in the period 1980–2012 the number of murdered Indigenous women was 1,017, and the number of missing women was 164. The report also indicated that in most cases the assailants had been husbands, boyfriends, and male acquaintances—in other words, mainly Indigenous men. The total number of unsolved cases of both types was 225, a more conservative figure than that claimed by activists. Needless to say, not everyone was happy with the report, but it was politically useful for the Harper government, which rejected calls for a national inquiry.<sup>12</sup>

A third challenge for the RCMP in the Paulson era was mounting pressure from the rank and file to gain the right to organize a union and bargain collectively, similar to provincial and municipal police. In 2015, the Supreme Court of Canada weighed in on a constitutional challenge that began in 2006 by striking down federal legislation that banned the RCMP from unionizing and bargaining collectively. For decades, labour relations have been handled through the RCMP Staff Relations Representative program, a type of company union. The court gave the federal government a year to enact new legislation to govern labour relations for up to 17,000 RCMP members. The Trudeau government prepared Bill C-7, which was rejected by the Senate in 2016 as too restrictive in terms how collective bargaining related to non-salary issues. Paulson, who testified before the Senate, insisted that these issues had to be excluded in order for the commissioner to manage the force according to the *RCMP Act*. In 2017 and 2018, the certification process continued, with the National Police Federation spearheading the effort. The unionization issue, combined with Paulson's reaction and allegations that the RCMP and the Treasury Board have been engaging in unfair labour practices, no doubt have influenced rank-and-file attitudes toward the senior ranks in terms of the patrol carbine issue.<sup>13</sup>

The Mounted Police Professional Association (MPPA), another rank-and-file organization, had a presence at the 2017 Moncton trial. Based on the reported success of the National Police Federation, it appeared that the MPPA's hopes to be certified as the bargaining agent for the new RCMP union would not be realized. Founded by uniformed and civilian members in British Columbia and Ontario in 2010, the MPPA assists members with job-related disciplinary matters, conducts media work, and advocates for unionization of the RCMP. It does not support the right to strike or the right to affiliate with the larger labour movement. The organization has claimed that the RCMP is understaffed and that members are working long hours of overtime, which affects their health. In a brief on Bill C-7, it recommended a less restrictive collective bargaining regime that would permit, for example, the issue of harassment to be handled through grievances. It also stressed that staffing levels and equipment should be included, as they are directly related to officer health and safety (one example would be whether patrol cars on overnight shifts should contain one officer or two). The brief cited other issues that should be subject to bargaining: "equipment standards, firearms, less-than-lethal weapons, or body armour."<sup>14</sup>

A fourth problem was operational: in the wake of two armed attacks in Quebec and Ottawa in late 2014 that resulted in the deaths of a soldier, a reservist, and two suspects, and an armed attack on the Parliament building, Paulson was pressured to assign several hundred officers to national security investigations. This came at the expense of ongoing investigations into white collar and organized crime.<sup>15</sup> According to many members, the RCMP, even if it reaches its authorized strength, does not have the resources to fulfill its municipal, provincial, and Aboriginal policing contracts. Within this thinly stretched force, many are working long hours of overtime. As of April 2017, 6.6% of funded positions were not filled, and an additional 5.5% of officers were on parental or sick leave. Once source suggested that the RCMP was underfunded to a level \$1 billion a year.<sup>16</sup>

Finally, the commissioner who had vowed to fix the RCMP and restore public confidence was hit with yet another problem: allegations that the force was not doing enough to assist members, retired officers, and their families suffering from post-traumatic stress disorder and other mental health issues. In recent years, the media has given increasing coverage to PTSD and related problems among serving and former members of the military, fire fighters, paramedics, and police. The RCMP's handling of Cpl. Ron Francis in New Brunswick was particularly damaging to its image. Francis, an Indigenous officer from Kingsclear First Nation, went public with his PTSD issue in a social media post where he smoked medical marijuana in his RCMP dress uniform. This was a protest against what he believed was a lack of support for members in crisis. There are no First Nations police services in New Brunswick, which has roughly 16,000 registered First Nations people (2018), 59.7% of them living on reserves. For the most part these communities are policed by the RCMP, but, because of its location, the St. Mary's First Nation has an agreement with the Fredericton Police Service.<sup>17</sup> Needless to say, because of the history of RCMP relations with Indigenous people and recent issues such as the 2013 anti-fracking protests in New Brunswick discussed below, the Francis situation was one of great sensitivity. Yet the RCMP brass, despite later sympathetic statements, responded with discipline typical of a paramilitary organization. Francis was forced to hand in his uniform and was charged with assaulting fellow officers and with breaching an undertaking. He pleaded guilty, but prior to the sentencing date he took his own life in November 2014.<sup>18</sup> Two years after this tragedy, a Toronto law firm, encouraged by the class action suit involving female members, announced that it intended to litigate on behalf of male officers who suffered from PTSD. A journalist reported that the class action suit could cover up to 80% of male employees, potentially a huge expense for the federal government.<sup>19</sup>

## The Moncton Incident

According to the RCMP, the events in Moncton in 2014 that led to the deaths of three of its officers and the wounding of two others were unprecedented in Canada: a heavily armed "active shooter" operating in an open environment who targeted only the police. During the CLC trial, the defence argued that given the unique and unanticipated circumstances of the attack, all reasonable steps had been taken in the Codiak detachment to train, equip, and deploy its officers. In 1997, the provincial government, in an unprecedented move, had imposed a regional police service on the communities of Moncton, Dieppe, and Riverview, in effect abolishing the departments of the first two municipalities (suburban Riverview was already protected by the RCMP). The RCMP became the contract force, and Codiak became one of the largest urban Mounted Police detachments in Canada, and the only large one in Atlantic Canada. The RCMP had reentered contract policing in the late 1920s, taking over provincial policing in Saskatchewan. Since the early 1930s, with the exception of the era of the New Brunswick Highway Patrol (1978–89), the federal force has been responsible for rural policing and highway safety. It has also taken over the policing of small communities such as Sackville.<sup>20</sup> Historically, one of the attractive features of the RCMP as a provincial or municipal contract service was that its members were forbidden from organizing a union and bargaining collectively. The policy dated from a 1918 order-in-council outlawing unionization among the Royal Northwest Mounted Police, based on the argument that the police were required to preserve "order in connection with strikes, lockouts or labour disturbances."<sup>21</sup>

For the most part, the public in New Brunswick has supported the Mounties, but there have been controversies, such as the RCMP's response to protests over feared school closures in the Acadian peninsula in the late 1990s, its handling of the Burnt Church fisheries dispute, its role in the Grand Manan Five case of 2005–06, and its actions against anti-fracking protestors near Rexton in 2013.<sup>22</sup>

Municipal politicians from time to time have questioned both the cost of RCMP protection and the level of service it provides. In 2012, the federal force and the province renewed the provincial contract for twenty years. Under the new contract, the provincial government gained more input into levels of service, standards, and the location of detachments. In a separate deal, the cities of Moncton and Dieppe and town of Riverview renewed their contract for a regional detachment. Starting in 2012, the three municipalities, which formerly paid 100% of the cost, were responsible for 90%, with federal taxpayers making up the difference. Given the large percentage of francophones in the Moncton Census Metropolitan Area, this means that Codiac members tend to be bilingual (which appears to be a requirement for New Brunswick in general).<sup>23</sup>

When the RCMP was imposed on greater Moncton by the McKenna government, the decision was not overly popular, but most of the Moncton and Dieppe police were absorbed into the Codiac force, which soon gained public acceptance. Crime rates in greater Moncton, like New Brunswick in general, are fairly low. In 2016, the police-reported crime severity rate was 75, close to the national rate. By 2014, the police-reported crime rate in the province had fallen to a thirty-year low, and the rate for Moncton was below the national level (which on one level would challenge the need for general-duty police officers to be issued heavier weapons). That year the Codiac detachment consisted of approximately 145 members. Relative to other urban police services in the region, turnover is fairly high. A CBC investigation revealed that between January 2014 and May 2016, sixty officers resigned, retired, or were transferred out of Moncton, a pattern no doubt related to the events of 2014.<sup>24</sup>

In 2014, 24-year old Justin Bourque was employed, and lived with a roommate in a trailer in Moncton's west end. He had no prior criminal record and was not known to the police. Bourque owned several firearms and held anti-police and anti-authority views, which he posted on social media. Recently he had been asked to move out of the home of his parents in part because of his growing gun collection. On June 4, dressed in camouflaged clothing and carrying two long guns and a hunting bow, Bourque left his trailer and walked deliberately through a quiet area of suburban Moncton. An alarmed neighbour called 911 and told the dispatcher that the suspicious individual seemed to be on a mission. This type of call is not rare in Moncton and other communities; citizens often contact police when they spot people with paintball guns or pellet rifles. But in this case the "subject of concern" had deadly intent; within twenty minutes, Bourque would shoot five RCMP officers, three of them fatally. The murdered men left behind wives and six children. The shooter had used a Poly Technologies Model M305, .308-calibre Winchester semi-automatic rifle, which is legal in Canada. He also had two illegal 20-round magazines.<sup>25</sup> The armoury of the Codiac RCMP included six semi-automatic C-8 carbines, but these were at Canadian Forces Base Gagetown, 160 kilometres away, where officers were being trained in their use. No local officer was certified on the C-8, and not a single Mountie was certified in the use of the detachment's rifles. Initially, the most powerful weapon available to responding officers was the standard-issue H870 shotgun with an effective range of 25–30 metres. Limited sets of hard body armour (HBA) were available, but many officers did not know that they were in the trunks of their patrol cars. Most responding officers had only 9-millimetre pistols and soft body armour.<sup>26</sup>

Following the initial confusion and panic, the RCMP rushed more officers and equipment into the western end of the city, where the terrified residents remained in their houses for thirty hours. The "lock down" zone, west of Mapleton Road, was a triangular area consisting of green space and residential streets that was bisected by Highway 15. The shooter was tracked by social media posts and photos taken by a news photographer and identified to the police by one of his parents. The RCMP made effective use of Twitter and Facebook to advise residents to stay in their residences or avoid the affected

area. Municipal emergency response team (ERT) officers arrived from Saint John, Bathurst, and Fredericton. Eventually at least a hundred ERT personnel were on scene, including RCMP units flown in from Ottawa. The manhunt involved tactical armoured vehicles, private armoured trucks, night vision and thermal imaging equipment, and a helicopter. In contrast to the typical critical incident where an armed suspect is barricaded in a building, Bourque's whereabouts were unknown until just before his arrest. In the end, after being seen by a resident of Mecca Drive, he peacefully surrendered to ERT officers just after midnight on June 6.<sup>27</sup>

## The Aftermath

Once in custody, Bourque explained that he had planned to target police in order to instigate a rebellion against the Canadian government, which he viewed as weak and corrupt. As the RCMP considered him a “lone-wolf” extremist but not a terrorist, his crimes were investigated as homicide and attempted homicide. Yet on many levels, he fit the definition of a “lone-actor terrorist” explored in a recent article by historian Steve Hewitt: a young white male motivated by “anger, alienation and a wider sense of grievance” who plans or executes violence against a supposedly corrupt institution, government, or society.<sup>28</sup> During a police interview, Bourque confessed to the murders; later he waived his right to a preliminary inquiry. In August, the prisoner pleaded guilty to three counts of first-degree murder and two counts of attempted murder. In late October, he apologized to the families of his victims and on Halloween he was sentenced to three consecutive life sentences of twenty-five years before parole eligibility—in other words, seventy-five years. This was permitted under a tough-on-crime Criminal Code amendment enacted by the Harper Conservative government in 2011. Bourque also was sentenced to two concurrent life sentences for the attempted murder of two officers. The greater Moncton community showed tremendous support and sympathy for the slain officers, their families, and the RCMP in general. The large and emotional regimental funeral service, which drew police officers from across the continent, was broadcast nationally and attended by the prime minister and other dignitaries. Two years later, a monument to fallen officers Dave Ross, Doug Larche, and Fabrice Gevaudan was unveiled in Moncton near the banks of the Petitcodiac River.

RCMP contract forces in New Brunswick, as elsewhere, are not under the jurisdiction of the provincial *Police Act* in terms of public complaints. New Brunswick does not have a provincial agency like Ontario's Special Investigation Unit or Nova Scotia's Serious Incident Response Team (SIRT); police-involved shootings are investigated by outside police agencies. As is usually the case following the killing of RCMP members on duty, the force launched an inquiry into the incident, which was officially considered “independent” because it was headed up by a retired assistant commissioner, Alphonse MacNeil. Critics such as the MPPA argued that a former senior Mountie could not really be objective; some called for an official inquiry, which the Harper government rejected. The mandate from Commissioner Paulson to MacNeil actually listed thirteen subjects that needed to be examined. Working with a team of current RCMP experts from across Canada, MacNeil, when contacted on June 30, was given three months in which to complete his assignment. He was unable to interview Bourque because of the ongoing legal matter. MacNeil acknowledged that the time allotted for the investigation limited the depth to which the issues could be explored.<sup>29</sup>

MacNeil's 180-page report, with a number of pages and images redacted for copyright and officer safety reasons, was submitted to the RCMP in October, and released to the public in early 2015. It concluded that officers responding to Bourque had been improperly equipped and protected, and that the

RCMP's rollout of carbines to its detachments, approved in 2011, had been too slow. In addition, there had been problems with supervision and communications, the monitoring of social media, and ammunition shortages. None of the first responding officers had donned HBA designed to protect from long guns. MacNeil also pointed out that the RCMP's annual qualification on the service pistol and shotgun was not really training. One possible reading of the report is that the lack of coordination early in the manhunt, combined with darkness, poor communications, and the ability of the shooter to take cover in the wooded environment, could have easily resulted in the loss of more lives. The report also revealed that some RCMP ERT officers initially believed that the incident had taken place at a school in the neighbourhood, and brought the wrong type of weapons. Although Superintendent Roger Brown, the senior Mountie in the province, expressed doubt that patrol carbines could have made a difference on June 4, 2014, the RCMP as an organization announced that it had accepted most of the report's recommendations.<sup>30</sup>

## The Canada Labour Code Prosecution

In May 2015, the public heard the dramatic news: provincial Crown prosecutors, following an investigation by Employment and Social Development Canada, were charging the RCMP with four counts under section 124 of the Canada Labour Code (CLC). The CLC, which derives from the earlier *Industrial Relations and Disputes Act*, governs collective bargaining, employment standards, and workplace health and safety in federally regulated industries. In 2013, for example, a Canadian National Railways employee was killed by a tank car at Utah Camp, BC. Four charges were laid against the company under the CLC, resulting in a conviction on one count in 2016. According to Employment and Social Development Canada, of thirty-five cases where charges were laid between 2000 and 2017, thirty-two resulted in guilty pleas or convictions.<sup>31</sup>

The Moncton charges did not include any direct allegation that the RCMP had caused the death and injuries of June 2014, only that it had failed to safeguard the health and safety of responding officers and their supervisors. Yet during the trial, the Crown would suggest that if the employer had respected its duty of care under the law, the death and injury toll could have been lighter. Prime Minister Harper had stated that he had confidence in the RCMP to handle the Moncton issue internally, but now New Brunswick Crown attorneys were taking Canada's national police to court based on an investigation by the federal agency. This unprecedented situation was difficult for the relatives and comrades of the murdered and wounded officers, but at least one widow told reporters that she was looking forward to the issues being brought into the open. Three of the charges had to do with the alleged failure of the RCMP to provide front-line officers and supervisors with the necessary "use-of-force" equipment, training, and information to respond to active shooter or critical incidents in a safe manner. The fourth was more sweeping, accusing the force of failing to protect the health and safety of "every person employed." There was speculation that the employer would plead guilty to one or more of the charges, but in May 2016, as the second anniversary of the shootings—and the unveiling of the Moncton monument—approached, defence lawyer Mark Ertel revealed that the RCMP would contest the charges. The two sides discussed preliminary matters in early 2017, and the trial was set to begin in the spring of that year. The dynamics would be not only interesting but also unprecedented, as most witnesses for both sides would be current or former Mounties, including officers who responded to the incident of 2014 in Moncton, and current and former senior officers from Ottawa. The judge in the case was Leslie Jackson, a supernumerary recently retired from the Provincial Court of New Brunswick. There would be thirty witnesses.<sup>32</sup>

The trial that commenced in the Moncton Law Courts on April 24, 2017, attracted a strong media presence. The Crown's strategy was to convince the judge that management was out of touch with the realities of policing, and had failed to properly arm, equip, and train officers and supervisors to respond safely to active shooter events. Lead prosecutor Paul Adams argued that the tragic events in Moncton in 2014, where responding officers had been outgunned, were the result of weak leadership, bureaucratic delays, unreasonable caution, and an obsession with optics or public image. The Crown entered two types of evidence: testimony and exhibits that suggested that the shootings were a predictable and preventable outcome of management's lack of attention to health and safety issues, and policy and expert evidence to show that RCMP headquarters had been aware of the firearms gap by 2010 if not earlier, but had responded half-heartedly and in too slow a fashion. On the first day, the Crown entered thirty-six documentary exhibits into the record.<sup>33</sup>

In his opening statement, Adams briefly summarized the evidence the Crown planned to call. Almost all of it consisted of documents generated by or for the RCMP, including the MacNeil Report. The point here was to prove that for several years the leadership had been advised that deficiencies in training and equipment were putting members and the public in danger and that the force was at risk of being charged under the CLC. Adams explained that the roots of the problem went back to 2006 and 2007, when the RCMP had adopted a new approach to active shooter incidents called immediate action rapid deployment (IARD). Previously it had been the job of specially trained and equipped ERTs to respond to active shooters. Under the new approach, responding officers were no longer to wait for the ERT to arrive, for example, at a school shooting. Instead, officers were trained to assemble in small teams and engage the threat. IARD training in the RCMP did not become mandatory, but a more tactical approach for front-line officers was a new trend in North America following the Columbine, Colorado, incident of 1999.

The Crown contended that the RCMP by 2007 was aware its standard weapons, the service pistol, the shotgun, and the rifle, all had limitations when suspects were armed with long-barreled automatic or semi-automatic weapons. RCMP ERTs starting in 2007 were equipped with the C-8 patrol carbine, a short-barreled semi-automatic rifle that was safer and more accurate than a shotgun and had more firepower and range (300 metres or more) than a pistol. A number of Canadian police services such as the Ontario Provincial Police, Adams told the court, had equipped patrol officers with carbines. He claimed that the RCMP had carried out a needs assessment on hard body armour in 2007. HBA, when worn over soft body armour, is the only effective protection from high-powered weapons. Adams also explained that the evidence would show that the defendant had both the ability to train its members on carbines by 2007, and the expertise to repair them.<sup>34</sup>

In 2009 the RCMP hired a consultant, Professor Darryl Davies, to advise on the firearms issue. Davies, who holds a Diploma in Criminology from Cambridge University, teaches at Carleton University. Formerly employed in the justice system, he also works as a consultant. Although he has criticized aspects of policing (and sparred with the Ottawa Police Association), Davies belongs to that minority of Canadian academic criminologists who support more and more powerful weapons for front-line police. His report "Aiming for Safety" was released in 2010; it recommended the adoption of the patrol carbine and an accompanying training program for all front-line officers. This was a fairly radical suggestion, especially as the consultant's expertise in the area was questionable. His suggestion that the RCMP consult with the Department of National Defence on the issue of "munitions" must have been particularly worrisome to headquarters staff. Davies testified as a Crown witness in Moncton, and criticized RCMP management when speaking to the media. After his testimony he went so far as to say that Paulson actually opposed the

carbine.<sup>35</sup> The response of senior management in 2010 was not positive: Paulson, then an assistant commissioner, criticized Davies for not providing a comprehensive study. The RCMP then turned to the Canadian Police Research Centre (attached to Defence Research and Development Canada) to prepare two reports on firearms needs. The first indicated that there had been no changes in RCMP long guns in forty years, but that front-line RCMP officers served in parts of Canada with higher levels of gun violence. Mounties, furthermore, were more likely than other police officers to be killed on duty, usually by shotguns and rifles. The report also found that the average wait time before the arrival of an ERT to a high-risk incident was two to three hours. The Canadian Police Research Centre (CPRC) experts found weaknesses in training, equipment, and communications systems, and warned that the RCMP could be penalized under the Canada Labour Code. Their report also cited the Mayerthorpe and Spiritwood incidents as evidence that the RCMP needed to close the “firearms capability gap.” The internal RCMP investigation that reported in 2008 and the Pahl inquiry of 2011 into the Mayerthorpe incident both made a case for more firepower and training. One senior officer who pushed the patrol carbine at this time was Acting Commissioner Rod Knecht, who in June of 2011 left the Mounties to take up a new job. In September 2011, the RCMP approved acquiring the C-8 for its members, but the details had yet to be worked out. Given that most front-line officers were serving in municipal, provincial, and Aboriginal policing contract forces, the cost of procurement and training was an unresolved issue at this point. The second CPRC report deemed the patrol carbine a superior “secondary weapon” after the pistol, as the latter had an effective range of only 25 metres. Shotguns also had a limited range and were dangerous to bystanders and hostages. An RCMP briefing note to the Minister of Public Safety in late 2012 explained that a general rollout of the C-8 would take roughly one year.

In terms of the situation on the ground in Moncton, the Crown produced evidence indicating that none of the officers in the Codiac detachment were certified in the C-8 as of June 4, 2014. As noted above, that weekend seven members were training on the detachment’s six carbines at CFB Gagetown. The trial would reveal that headquarters did not impose the patrol carbine uniformly across Canada, but allowed each division to decide on specific numbers based on a risk assessment for its province or territory. Senior Mounties had presumably determined that the province’s low crime rate and low rate of gun violence had not warranted a widespread arming of general patrol officers. Evidence from other parts of Canada, however, suggested that rural settings could be dangerous for thinly spread RCMP officers. In 1978, Corporal Barry Warren Lidstone and Constable Joseph Perry Brophy had been shot and killed by a rifle when answering a domestic call near Hoyt, NB.<sup>36</sup>

Prosecutor Adams also made effective use of the MacNeil Report, which had suggested that the carbine would have been more effective than pistols and shotguns for officers responding to Bourque. MacNeil found that the annual certification for the shotgun consisted of firing six shells from a static position. Cadets at the RCMP depot received eight hours training on the weapon. There was no training on shotgun slug ammunition, which was more effective at longer ranges. Many of the responding officers in Moncton in 2014 were no longer certified on the shotgun, and the detachment’s two rifles had not been serviced since 1992. The Crown pointed out that many of these deficiencies had been raised in the past, for example, by the federal Auditor General.<sup>37</sup>

Training was another failing of the RCMP’s leadership, according to the prosecution. As of December, 2010, only 1,002 out of more than 19,000 officers had completed the IARD course (most of them with pistols only). Furthermore, as MacNeil noted, this training simulated barricaded or enclosed environments, not open areas with mobile shooters. The evidence on HBA was not helpful for the defence. Although twenty-two Codiac detachment vehicles contained one set, there were often two

officers per vehicle. Most officers were unaware that HBA was in their vehicles, and none had been trained on its use, which was optional. Major crime unit (MCU) officers had no HBA (one of the victims had been assigned to the MCU). The rest of the HBA suits were with the ERT, so there were no spares at detachment headquarters. Adams also questioned the degree of training for supervisors at Codiak headquarters and for officers in charge of the scene. He cited the “dedication and courage” of responding officers and supervisors, but suggested that they responded to the evolving situation in an uncoordinated fashion, often acting on their own initiative and lacking sufficient knowledge of the situation. The result was that they put themselves and their colleagues in possible danger. MacNeil was the last witness for the Crown and his report was the most important document in the trial.<sup>38</sup> The defence attempted to exclude one important aspect of the report: MacNeil’s opinion that the RCMP had taken too long to roll out the carbine.<sup>39</sup>

Ian Carter opened the defence case on May 19 with a statement that Justin Bourque, not RCMP management, caused the deaths of the three officers. Carter informed the judge that the court’s only concern was whether the RCMP had violated the CLC, and that the case revolved around two issues: patrol carbines and active shooter training. The counsel for the RCMP adopted a due diligence defence—simply put, all it needed to do was convince the judge that reasonable steps or policies had been pursued to prevent “the wrongful act.”<sup>40</sup> Carter argued that the RCMP’s community policing approach served the best interests of members and citizens, that it had been conscientious in training and equipping all officers, and that its policies were based on “evidence-based” decision making. More specifically, he claimed that the RCMP had acted responsibly with its carbine program and that the timeline of the rollout and training was reasonable. The C-8, he reminded the court, was a lethal weapon, and its merits had to be carefully considered. “Increased tensions with the public” were a possible outcome of arming patrol officers with military-style weapons. Part of the explanation of perceived delays (as the MacNeil Report also discussed) were federal government procurement policies and procedures, such as dealing with the Treasury Board. Also, once management had decided to acquire a carbine, it was necessary to find the best model (as well as accessories and ammunition) for front-line officers. In addition, there was the issue of budgeting by provincial and municipal governments, the need to conduct a risk analysis for determining the specifics of the rollout, and a lack of appropriate indoor shooting ranges in places like New Brunswick for carbine training.<sup>41</sup>

The defence was in a delicate position, as many of the witnesses it had to cross-examine were members of the Codiak detachment, including officers who had witnessed their comrades being killed or wounded, or had come under fire from Bourque. These included Const. Eric Dubois who was hit in the arm and both legs by shrapnel when assisting Const. Martine Benoit. Under fire from Bourque, Benoit had taken shelter behind her disabled vehicle. Violating his training, Dubois had placed his car between her and the shooter. Cpl. Darlene Goguen was wounded in the head when sitting in her vehicle, but managed to drive herself to safety. Another local dynamic is that the widows and friends of the murdered officers attended court where they witnessed defence lawyers—and witnesses from headquarters in Ottawa—tell the court that management had done all it had to do under the law to keep Codiak officers safe. The resentment of the rank and file and their supporters toward management for even mounting a defence was later manifest when the verdict was rendered.

The first defence witness was former Deputy Commissioner Darrell Madill, who had been in charge of contract and Aboriginal policing. Madill testified that cost of new equipment and associated training for provinces and territories was an ongoing concern, particularly in light of the renewal of the provincial contracts in 2012. The RCMP could no longer make unilateral decisions about equipment. In

addition to the renewal of the contracts, headquarters in 2008 and 2009 was preoccupied with how to address the CEW issue, and use of force in general, in the wake of the Dziekański incident. Another priority was a plan to recruit Aboriginal officers as special constables in Nunavut, the Northwest Territories, and northern Manitoba. Madill summarized the decision to acquire some HBA for RCMP divisions after Mayerthorpe and other incidents. He also spoke of policy development on the issue of public complaints and how to restore declining public confidence in the force. Madill described the CEW as a useful “intervention tool” that when properly employed was a safer alternative to firearms. He described the potential loss of the taser by the RCMP as potentially “devastating,” but admitted that as of 2008 the force did not fully understand its medical risks. As for the carbine, he testified that at first the need for the weapon for general-duty officers was not commonly discussed, with the exception of the case of certain areas of British Columbia, where police faced gang violence. Yet as time went on, various divisional commanding officers expressed interest in the patrol carbine.<sup>42</sup>

Under cross-examination, Madill explained that although the RCMP was considering the merits of carbine by 2009, “We had to build a case.” He also admitted that at that time the force was facing negative public opinion—and a Commission for Public Complaints against the RCMP investigation—because of the CEW controversy.<sup>43</sup> Madill’s personal view was that by 2008, every member needed a taser for protection on every shift, whereas the typical encounter with the public did not require patrol officers to carry carbines. The lesson of the CEW was that police services required objective research on weapons, and needed to be able to explain to the public why new weapons had to be acquired and how they would be used. Like Paulson, he had been disappointed in the 2010 Davies Report, faulting it for not providing a risk assessment or public policy arguments for justifying the carbine as a general-use weapon. This witness set an important tone: that the RCMP supposedly was interested in “policing by consent” and in employing evidence-based decision-making.<sup>44</sup>

A full summary of the testimony of all Crown and defence witnesses is beyond the scope of this paper, but a few additional examples follow. Defence witness Professor Pete Blair, from Texas, was the executive director of Advanced Law Enforcement Rapid Response Training. He testified that a Moncton-type shooting was extremely rare, that the use of pistols in an active shooter incident was not necessarily unsafe, and that the RCMP’s IARD program was a “solid foundation” for tactical firearms training.<sup>45</sup> To underscore the commissioner’s already publicly stated concerns about public anxieties about police militarization, the defence brought in American criminal justice professor Peter Kraska, who admitted under cross-examination that he knew little about Canadian policing trends. He told the court that in his opinion police services should not be hasty in adopting new weapons because of short-term pressures, and that a more militarized approach may not be conducive to either increased safety or public support.<sup>46</sup> Assistant Commissioner Joseph P.B. Boucher’s testimony was aimed at projecting an image of policing as routine, fairly predictable, and safe. Only a tenth of 1% of all RCMP calls or incidents involved the use of force, Boucher testified, resulting on average in twenty-two uses of lethal force and six civilian deaths a year.<sup>47</sup>

Near the end of the defence case, the court heard about the specific plans for deploying carbines in New Brunswick. As a paramilitary organization with a chain of command, the RCMP makes policy in Ottawa but seeks input from the regions, especially in contract policing situations. In September 2011, headquarters decided to allow each division to determine the exact number of C-8s and the timing of their acquisition (which also took training into account). This was accomplished via a threat/risk assessment for each detachment. On June 13, 2017, Deputy Commissioner Brenda Butterworth-Carr testified that J Division (headquartered in Fredericton) had requested twenty-two guns for 2012, and a

dozen each year for four years. This would total seventy carbines for the seven hundred RCMP officers in the province by 2016. This likely approximated the total number of RCMP shotguns in New Brunswick, which suggests that both the detachments and senior officers in J Division envisioned the C-8 as a rarely deployed secondary weapon. When this decision was made, the division was commanded by Assistant Commissioner Wayne Lang, who retired in 2013. The first weapons arrived in New Brunswick in September 2013, but the first operator course was not set until June 2014. The role of J Division was obviously important for the C-8 rollout in New Brunswick, but other than this information, little evidence was introduced on the involvement of senior Mounties in New Brunswick or, for that matter, on the role of the provincial government.<sup>48</sup>

The last witness for the defence, on June 15, came as a surprise for a number of court watchers, including Employment and Social Development Canada employees monitoring the trial. Early on June 14, media sources revealed that the RCMP commissioner, whose retirement was imminent, would be testifying that day. In February, Paulson, when appearing before the Senate Committee on National Security, had expressed concerns about militarization of the police and its impact on relations with communities. He continued this message in his direct examination. The commissioner acknowledged the various controversies and challenges associated with the RCMP in recent years, and stressed the importance of restoring public confidence and working toward an institution that was modern, professional, accountable, and transparent. Traditionally the force had fostered an intuitive or “declarative” style of decision-making that was not always based on evidence. This approach had led to controversial decisions such as adopting the CEW in 2001, and issuing it not only to supervisors, but also patrol officers. Allowing each division to determine its carbine requirements, Paulson explained, respected the consultation requirements of the new provincial contracts. He described the MacNeil Report as “a credible and complete review,” and spoke of the difficulty of investigating the response of Codiac members to the Bourque incident without seeming to criticize members who had lost their lives or put them on the line. The witness also stressed that the example of Bourque, a disturbed, alienated youth who turned to violence, underscored the continued need to push a community policing model. He disagreed that the RCMP had a poor record on training, but testified to new training initiatives, some in response to the MacNeil Report, that were underway.<sup>49</sup>

Under cross-examination, Paulson continued to assert that the timeline of the carbine rollout was reasonable, and that his officers had been adequately trained to respond to “reasonably foreseeable things.” The Crown hammered away at his key points to weaken the argument that the RCMP, over a period of seven years, had exercised due diligence in equipping and training its members. Adams also queried why the commissioner’s apparent concerns about militarization had not resulted in any internal RCMP reports prior to 2014, implying that this type of analysis, usually employed by academics and civil liberties advocates, had been adopted for disingenuous reasons. Paulson’s last response to the Crown, made in front of Nadine Larche, widow of one of the murdered officers, was: “I am accountable for the safety of my officers.”<sup>50</sup>

Judge Jackson issued his decision in late September 2017, convicting the RCMP on the first count, but acquitting it on counts two and three. The fourth charge, which was redundant, was stayed. The judge ruled that the defendant had failed to show the exercise of due diligence in providing carbines, HBA, and associated training to its members in a timely and reasonable manner. He attributed most of the delays to poor management and insufficient resources, as well as “the almost hypervigilant need for research before taking action.”<sup>51</sup> The judge also concluded that at both the divisional and headquarters level, officer safety appeared to be trumped by financial considerations. In other words, J

Division in New Brunswick shared the blame with headquarters. A needs analysis for HBA indicated that the RCMP knew by 2007 that its officers “face rifle and shotgun threats, regularly, especially in rural areas.”<sup>52</sup> Headquarters realized that it had a problem, Jackson continued, but failed to institute mitigation measures pending the carbine rollout. This was complicated by a poor record—both in Moncton and nationally—for officers recertifying on pistols, shotguns, and IARD. As for the militarization issue raised by the defence, the judge found nothing in the evidence that this concern influenced headquarters’ decisions prior to the Moncton shootings. He was also critical of management witnesses, who appeared to be “repeating ‘talking points’ designed to be the justification for their position.” Even worse, they “paid lip service” to the ideal of officer safety, but their “inactions” put officers at risk.<sup>53</sup> The written decision was not all negative—Jackson described RCMP recruit and ongoing training as “first class” and noted that its IARD outdoor practical course had been adapted for police training in the United States.<sup>54</sup> The families and colleagues of the victims welcomed the conviction, with Nadine Larch stating that if the Codiak detachment had been properly equipped, “My husband would not have died.”<sup>55</sup>

Following the conviction, the two sides prepared arguments on sentencing. The Crown sought the maximum fine of \$1 million to send a strong message to RCMP management; the defence cited case law to suggest that this was excessive. Early in 2018, Jackson ruled the RCMP had to pay a fine of \$100,000, and donate \$450,000 to a number of charities, notably the Université de Moncton. A total of \$60,000 was earmarked for an educational trust fund for the children of the victims of the shooting. According to the judge, “A sentence must speak to future leadership of RCMP that duty to ensure member safety should be given high priority.” The families of the victims and members of the Codiak detachment had resented the fact that no RCMP brass had been present on the day Jackson rendered his decision. On the day of sentencing, the force did send senior officers to the Moncton Law Courts, and they spoke to the media, issuing a statement that management placed a high priority on the health and safety of employees.<sup>56</sup> In the wake of the trial, the focus in the Codiak detachment was on healing the tensions of 2014–17, continuing the rollout of and training on the C-8 carbine, and returning to normal routine. The memory of the fallen officers has been kept alive by the Three Fathers Memorial Run, which raises money for bursaries for local high school students. The Codiak Regional RCMP appears to be on a solid footing given that in 2019, Moncton, Dieppe, and Riverview agreed to provide funding for a new central police station for the force of over 130.<sup>57</sup>

## Conclusion

The conviction of the RCMP on the first count of the prosecution was a moral victory for the rank and file and the widows and families of the murdered officers. The provincial court ruling in Moncton could also open up the door to civil litigation by survivors and families of the victims. The trial itself was unprecedented, with a federal agency laying Labour Code charges against Canada’s national police force. The appearance of the outgoing commissioner as a defence witness also made history. Media coverage on the day of the decision stressed the gulf between the lower ranks and management, with the latter described as incompetent, out of touch, and more concerned about image than officer safety. Significantly, representatives from both the National Police Federation (NPF) and the MPPA spoke to reporters outside the courthouse. Jackson’s judgment no doubt exacerbated these tensions, which were being played out by the RCMP union drive and the impending establishment of collective bargaining under Bill C-7, which received assent in June 2017. On its website, the NPF asked potential

members if they believe that management should be able to make unilateral decisions on matters such as “kit and clothing (equipment)” and “member safety.”<sup>58</sup>

A union representing 18,000 police officers in eight provinces and three territories will definitely complicate police administration. The historical record indicates that police unions on the municipal and provincial levels generally oppose civilian oversight, robust complaints mechanisms, and independent investigations of alleged police wrongdoing. Think of the typical response of police unions when an officer is accused, investigated, charged, or convicted in the injury or death of a citizen. One recent example was the response of the Toronto Police Association to the 2013 shooting of Sammy Yatim on a streetcar by Const. James Forcillo. The officer was charged with first-degree murder and attempted murder. He was convicted on the second charge and sentenced to six years in prison.<sup>59</sup> In July 2019, the federal Public Service Labour Relations and Employment Board certified the NPF as the bargaining agent for RCMP members and reservists, excluding officers. The rank and file had voted 97% in favour of the NPF.<sup>60</sup>

The C-8 carbine is the first new firearm for general-duty Mounties since the semi-automatic pistol replaced the revolver in the 1990s. Although the CLC ruling was silent on what percentage of patrol officers should have access to and training on the carbine, after Jackson’s judgment it may become more than a secondary weapon (the shotgun, a secondary weapon, is carried in some vehicles, but principally stored in detachment armouries). The decision also could support demands for other lethal and less-than-lethal weapons in the name of officer safety, both within the RCMP and in other police services. A complicating issue for police accountability is that most Mounties who carry guns work not in federal policing or in national security, but in provincial, municipal, and Aboriginal policing. When a quasi-national police service is armed and trained in a uniform manner, this removes input and oversight from the communities it serves.<sup>61</sup>

A common sentiment among many rank-and-file officers (RCMP and others) is that the necessity for the patrol carbine is self-evident, and that the Moncton trial revealed a disturbing disconnect between senior management and the realities of front-line policing. Yet it is not certain that all Canadians will welcome seeing semi-automatic rifles in racks in local police vehicles, and at present many departments appear to place restrictions on their use. Both sides in the debate see the importance of public opinion. In 2016, a tactical firearms instructor writing in the professional magazine *Blue Line* recognized that the public has concerns about the weapon, and that police services should work carefully to “sell” the carbine by explaining that it is “designed to save lives.” In fact, “The more trained officers and the more patrol carbines available,” the article explains, “the less likely they will be used.”<sup>62</sup> Another perspective views the arming of general-duty officers with carbines as creeping militarization, part of which is the intimidation factor. In an article in *The Coast*, Rob Gordon questioned why several Halifax Regional Police officers, dressed in tactical clothing and carrying C-8s, mingled with the crowd at the 2015 Remembrance Day ceremonies. Regular police work, in his view, does not require military-grade weaponry:

Putting these guns into the hands of the police comes at an odd time. Crime in the municipality has been decreasing steadily over the past decade, and crime across Canada is at its lowest level since 1969. From 2011 to 2014 there were only three instances where Halifax Regional Police fired a gun at a person in the line of duty. Most of the time, triggers were pulled to euthanize injured deer hit by trucks.

On one level, it is difficult to accept the patrol carbine as a routine “tool” on a typical police tour of duty. Another way of justifying the equipping of patrol officers with ERT-type weapons is to portray the C-8 as a “necessary evil,” as the Halifax deputy chief did in 2016. Either way, the images from November 11, 2015, in Halifax were a jarring contrast to the supposed goals of community policing.<sup>63</sup>

Were Paulson’s concerns about public perceptions and militarization, expressed by the star witness for the defence in Moncton, legitimate? Or were they, as the trial judge believed, “a post facto justification for the delay in making carbines available”?<sup>64</sup> Only time will tell. Perhaps if the RCMP had called a Canadian expert as a witness and Canadian evidence on militarization, Jackson would have come to a different conclusion, but he had to rule on the evidence presented. In the wake of the Moncton shootings, sympathy for the victims created expressions of public support in the media and in social media for arming the RCMP with carbines. The elaborate, nationally televised funeral for the fallen officers, which was supported by senior management, contributed to this opinion. Prior to the murders, although carbines were an issue within policing circles, they had relatively low priority, and the public was not really aware of them. This may change once a carbine is used in a questionable “ballistic-force event.” On the other hand, not every shooting of police officers produces calls for heavier weaponry. In 2018, a man armed with a licensed long gun killed two civilians outside his Fredericton apartment building, and then fatally shot the first two responding officers. He was wounded by a third officer, arrested by the Fredericton ERT, and charged with four counts of first-degree murder. The incident has been investigated by the RCMP on the criminal side, and on the regulatory side by WorkSafe NB and Nova Scotia’s SIRT. At present the matter is before the courts, but there has been little public or media discussion of the need to arm the Fredericton Police Force with more powerful guns.<sup>65</sup>

The lesson of the CEW (whose deployment is still controversial) is that there can be unintended consequences when new equipment is adopted in the name of officer safety. As is the case with CEWs and pistols, the existence of weapons is often of less importance than how officers are trained to use them. The first fatal encounter between the Codiac police and a citizen after the acquisition of the C-8 involved a service pistol, not a long gun. In August 2019, an RCMP officer responding to a call to a Moncton apartment first deployed a CEW but ended up shooting a 24-year old man allegedly brandishing a knife. Nova Scotia’s SIRT was called in to investigate the matter.<sup>66</sup>

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## Notes

<sup>1</sup> R. v. The RCMP, 2017, NBPC06, Decision, 2017-09-29 (Decision).

<sup>2</sup> For recent debates on community policing, militarization, and the future of policing, see Leslie J. Wood, *Crisis and Control: The Militarization of Protest Policing* (Toronto: Between the Lines, 2014); Greg Marquis, *The Vigilant Eye: Policing Canada from 1867 to 9/11* (Halifax: Fernwood, 2016); Alok

Mukherjee with Tim Harper, *Excessive Force: Toronto's Fight to Reform City Policing* (Toronto: Douglas & McIntyre, 2018).

<sup>3</sup> CBC News, "RCMP's Embattled Chief Quits over Arar Testimony," Dec. 6, 2006. In 2002, Mahar, a Canadian citizen, was sent by the U.S. authorities to Syria on suspicion of being a terrorist. There he was jailed and tortured before being released. The RCMP had supplied misleading intelligence on Mahar and his wife to the Americans: Reg Whitaker, Gregory S. Kealey, and Andrew Parnaby, *Secret Service: Political Policing in Canada from the Fenians to Fortress America* (Toronto: University of Toronto Press, 2012), 481–84.

<sup>4</sup> Alberta, Report to the Minister of Justice and Attorney General Public Fatality Inquiry, March 2011; Robert Knuckle, *The Mayerthorpe Story: From Ambush to Aftermath* (Renfrew, ON: General Store Publishing House, 2009).

<sup>5</sup> R v. The RCMP, Testimony of Alphonse MacNeil, May 17, 2017; Decision, 10.

<sup>6</sup> Colin Kenny, "The RCMP Makes Women Its Enemy," *Ottawa Citizen*, June 10, 2013; Commission for Public Complaints Against the RCMP, Public Interest Investigation into RCMP Workplace Harassment Final Report (2013).

<sup>7</sup> Thomas Braidwood, *Why? The Robert Dziekanski Tragedy. Braidwood Commission on the Death of Robert Dziekanski* (Vancouver: 2010).

<sup>8</sup> Testimony, 12–14.

<sup>9</sup> Daniel Leblanc and Colin Freeze, "As Elliott departs, Search Begins for New RCMP Commissioner," *Globe and Mail*, Feb. 11, 2011; CBC News, Murray Brewster, "Defence, CSIS, RCMP Unable to Spend \$11 Billion of Their Budgets since 2007," Feb. 20, 2015.

<sup>10</sup> Colin Freeze, "Federal budget 2016: RCMP, CSIS see no significant support for operations from federal budget," *Globe and Mail*, March 23, 2016, <https://www.theglobeandmail.com/news/politics/rcmp-csis-see-no-significant-support-for-operations-from-federal-budget/article29374887/>; Terry Roberts, "Vacancies, budget cuts, stress: RCMP sources say it's all taking a toll in N.L.," CBC News, Sept. 21, 2017, <https://www.cbc.ca/news/canada/newfoundland-labrador/rcmp-vacancies-stress-1.4298648>. National Police Services include the Canadian Police College, the Forensic Laboratory Service and the Canadian Police Information Centre.

<sup>11</sup> CBC News, Alison Crawford, "RCMP Commissioner Bob Paulson wrestled with thorny issues of harassment, mental health," June 20, 2017.

<sup>12</sup> RCMP, *Missing and Murdered Aboriginal Women: A National Operational Overview* (Ottawa 2014). The Final Report of the National Inquiry into Missing and Murdered Indigenous Girls and Women, appointed by the Trudeau government, and other sources critiqued the earlier RCMP report as erroneous, biased, and incomplete. In contrast, Brenda Lucki, the Mountie who replaced Bob Paulson, apologized to the National Inquiry for the force's past failings to protect indigenous women and investigate their disappearance and murders. Lucki, citing the Truth and Reconciliation Commission, announced that the RCMP was striving to implement "bias-free" policing: National Inquiry into Missing and Murdered

Indigenous Girls and Women, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Girls and Women*, Vol. 1A (n.p., 2019), 648; 674–77.

<sup>13</sup> Mounted Police Association of Ontario v. Canada (Attorney General), 2015 SCC 1; Tonda MacCharles, “Senate approves changes to bill governing creation of RCMP union,” *Toronto Star*, June 21, 2016; Alison Crawford, “Thousands of Mounties sign union cards and remove the yellow stripes from their pants,” CBC News, April 10, 2017.

<sup>14</sup> Mounted Police Professional Association of Canada, website: <http://mppac.ca/>. Civilian employees are already unionized as federal public servants.

<sup>15</sup> Paulson explained this situation at the March 2015 summit on the Economics of Policing and Community Safety in Ottawa.

<sup>16</sup> CTV News, Laura Payton, “RCMP Shortages Leave Mounties in ‘Crisis,’ Officers Say,” Aug. 4, 2017.

<sup>17</sup> New Brunswick, Aboriginal Affairs, First Nations Communities; [https://www2.gnb.ca/content/gnb/en/departments/aboriginal\\_affairs/fnc.html](https://www2.gnb.ca/content/gnb/en/departments/aboriginal_affairs/fnc.html).

<sup>18</sup> CBC News, Alan White, “Cpl. Ron Francis Had No Business in Criminal Court, Judge Says,” Nov. 3, 2014.

<sup>19</sup> CBC News, Alison Crawford, “RCMP to Face New Class-Action Harassment Lawsuit, This Time on Behalf of Male Employees,” Oct. 26, 2016.

<sup>20</sup> CBC News, “Police Union Fighting RCMP Takeover,” Feb. 20, 2003: <https://www.cbc.ca/news/canada/new-brunswick/police-union-fighting-rcmp-takeover-1.374627>.

<sup>21</sup> Steve Hewitt, *Riding to the Rescue: The Transformation of the RCMP in Alberta and Saskatchewan, 1914–1939* (Toronto: University of Toronto Press, 2006), 24.

<sup>22</sup> Greg Marquis, “Public Order Policing in New Brunswick, 1972–2013,” unpublished paper, 2016; Andrew Crosby and Jeffrey Monaghan, *Policing Indigenous Movements: Dissent and the Security State* (Halifax: Fernwood: 2018), chapter 4.

<sup>23</sup> Public Safety, Office of the Premier, News release: New RCMP Deal Ensures Savings for Moncton Region and Sackville, 16 March 2012. The population of the Moncton CMA in 2016 was 144, 810. In 2011, 61.4% of the population identified as English “mother tongue” and 34.5% as French “mother tongue.”: Statistics Canada, Focus on Geography Series: 2011 Census, Census Metropolitan Area of Moncton, New Brunswick, Table 11: <https://www12.statcan.gc.ca/census-recensement/2011/as-sa/fogs-spg/Facts-cma-eng.cfm?LANG=Eng&GK=CMA&GC=305>.

<sup>24</sup> Statistics Canada, Police-Reported Crime Statistics in Canada, 2016 (2017); Statistics Canada, “Police-Reported Crime Statistics, 2014,” *The Daily*, July 22, 2015, Table 3: CBC News, Karissa Donkin, “More than 60 Officers Left Codiac RCMP since 2014,” June 6, 2016.

<sup>25</sup> Bourque also had a knife strapped to his leg and a Mossberg 500 SPX six-shot pump-action shotgun.

- <sup>26</sup> There was no formal training associated with the HBA sets; officers were informed about the equipment by an email message.
- <sup>27</sup> In forty-eight hours, the number of RCMP social media followers in the province jumped from 18,000 to 80,000. The RCMP also monitored social media posts dealing with the shootings.
- <sup>28</sup> Steve Hewitt, “‘Happy-Go-Lucky Fellow’: Lone-Actor Terrorism, Masculinity, and the 1966 Bombing on Parliament Hill in Ottawa,” *Canadian Historical Review*, 100 (1) (March 2019), 50. The author lists the Moncton shootings as one of nineteen lone-actor terror attacks in Canada after 1867.
- <sup>29</sup> It is probable that if MacNeil had been given more time, he would have engaged non-RCMP experts, but as he explained at the CLC trial, this would have taken more time, as non-Mounties would have had to learn about RCMP policies and history.
- <sup>30</sup> Independent Review—Moncton Shooting—June 4, 2014, submitted by Assistant Commissioner Alphonse MacNeil (ret’d). Available online at: <http://www.rcmp-grc.gc.ca/en/independent-review-moncton-shooting-june-4-2014>. CBC News, “Moncton RCMP Shooting: Report’s 64 Recommendations Include Swift Use of Patrol Carbines,” Jan. 16, 2015. The response to the MacNeil report can be found at: <http://www.rcmp-grc.gc.ca/en/rcmp-response-macneil-report-independent-review-moncton-shooting-june-4-2014>.
- <sup>31</sup> Government of Canada, Employment and Social Development Canada, Canada Labour Code Prosecutions, 2019: <https://www.canada.ca/en/employment-social-development/services/health-safety/prosecution.html>.
- <sup>32</sup> Jackson, who graduated from UNB with a law degree in 1970, was appointed to the provincial court in 1997, and as Associate Chief Justice of the provincial court in 2006. After his retirement in 2014, he served as a supernumerary judge.
- <sup>33</sup> R v. The RCMP, Proceedings, April 24, 2017. A summary of the Moncton shootings was provided in Exhibit 1, tab 1, Agreed Statement of Fact.
- <sup>34</sup> The C-8 magazine holds thirty rounds. The service pistol holds up to ten bullets.
- <sup>35</sup> Darryl Davies, Aiming for Safety: A Needs Analysis to Determine the Feasibility of Adopting the Patrol Carbine in the RCMP (Ottawa: March 2010); Decision, 17; CTV Ottawa, Power Play, Sept. 29, 2017.
- <sup>36</sup> CBC New Brunswick podcast: “Legacy of Slain Fredericton Officers Endures in RCMP Training 40 Years Later,” June 29, 2018: <https://www.cbc.ca/news/canada/new-brunswick/rcmp-hoyt-domestic-violence-1.4725654>.
- <sup>37</sup> Nationally, less than 10% of RCMP members were qualified on the rifle.
- <sup>38</sup> MacNeil testified as a Crown witness on May 16 and 17, 2017.
- <sup>39</sup> Testimony, May 17, 2017. In 2013, the RCMP began to provide one set of HBA per vehicle, with a reserve of 10% for RCMP cadets. A set of HBA is bulky and weighs 15 pounds. It was distributed

for optional use in high-risk vehicle stops and searches and when responding to armed and barricaded suspects.

<sup>40</sup> Peter Bowal and Lindsey Iss, “Whatever Happened to ... R. v. Sault Ste. Marie: The Due Diligence Defence” *Law Now*, January 1, 2013.

<sup>41</sup> Testimony, May 19, 2017. The chief armourer of the RCMP testified as to the pros and cons of the C-8, why it was chosen, and what had to be done before it could be made operational across the force.

<sup>42</sup> Testimony, May 19, 2017.

<sup>43</sup> The Commission’s report recommended removing CEWs from all officers with less than five years’ experience, a move that was operationally impossible for the RCMP because of its geographic distribution across Canada.

<sup>44</sup> Testimony, May 19, 2017.

<sup>45</sup> Testimony, June 14, 2017.

<sup>46</sup> Testimony, May 23, 2017.

<sup>47</sup> Testimony, June 13, 2017.

<sup>48</sup> Testimony, June 13, 2017; Decision, 27–29.

<sup>49</sup> Testimony, June 15, 2017.

<sup>50</sup> Testimony, June 15, 2017.

<sup>51</sup> Decision, 34.

<sup>52</sup> Decision, 39, 42.

<sup>53</sup> Decision, 56–57.

<sup>54</sup> Decision, 61.

<sup>55</sup> Aly Thomson, “RCMP Found Guilty of Violating Labour Code in 2014 Moncton Shooting,” *Toronto Star*, Sept. 29, 2017: <https://www.thestar.com/news/canada/2017/09/29/rcmp-found-guilty-of-violating-labour-code-in-2014-moncton-shooting.html>.

<sup>56</sup> CBC News, “RCMP Must Pay \$550K Penalty for Labour Code Conviction in Moncton Mountie Shootings,” Jan. 26, 2018.

<sup>57</sup> Shane Magee, “Moncton Buys Land for New RCMP Station,” CBC News, Jan. 29, 2019: <https://www.cbc.ca/news/canada/new-brunswick/moncton-codiac-rcmp-land-1.4987490>.

<sup>58</sup> National Police Federation website: <https://npf-fpn.com/>; Marquis, *The Vigilant Eye*.

<sup>59</sup> R. v. Forcillo, 2018 ONCA 402.

<sup>60</sup> National Police Federation website: <https://npf-fpn.com/>. The NPF hopes to negotiate a first collective agreement with the federal Treasury Board at the first opportunity.

<sup>61</sup> The New Brunswick *Police Act* allows the provincial government to regulate “equipment, firearm or ammunition” used by any police service under its jurisdiction: “Police Act,” *SNB*, 2005, c. 21, S1, 38 (a) (u).

<sup>62</sup> Dave Brown, “Selling the Carbine,” *Blue Line*, Dec. 22, 2016.

<sup>63</sup> Rob Gordon, “Weapons of Mass Intimidation,” *The Coast*, April 7, 2016.

<sup>64</sup> Decision, 53.

<sup>65</sup> Kevin Bissett, “Trial of Alleged Fredericton Shooter Set for 8 Weeks This Autumn,” *Global News New Brunswick*, March 20, 2019: <https://globalnews.ca/news/5077803/fredericton-shooter-trial-set/>.

<sup>66</sup> CBC News, “Moncton Man Shot Dead after Altercation with Police: RCMP,” Aug. 5, 2019, <https://www.cbc.ca/news/canada/new-brunswick/moncton-man-shot-dead-rcmp-altercation-1.5236667>.