

From: Kent County Council of Canadians, Elsipogtog First Nation via Kobit Lodge,
Notre Environment, Notre Choix

The Honorable Minister David Lametti
Department of Justice,
Government of Canada

July 9, 2021

Dear Minister Lametti:

In consultation with members of Elsipogtog First Nation, the Kent County Chapter of the Council of Canadians, (formerly the Upriver Environmental Watch) and Notre Environment, Notre Choix, we are writing to lodge a formal complaint regarding the Final Report and many of its findings of the Civilian Review and Complaints Commission of the RCMP (CRCC) investigation into the complaints regarding the RCMP's actions during the Kent County, NB Shale Gas Protests in 2013. (Report)

We three Kent County, New Brunswick groups, who were participants and observers of the events in question, are grateful to the CRCC for its persistence in obtaining RCMP records and in persevering and finally publishing this Report after a seeming eternity of 7 long years.

But, after a very careful reading of the findings and the supporting testimony of witnesses in the interim Report, we are unable to accept many of the Report's findings. They are not consistent with what we saw and experienced.

Further, they are not even consistent with RCMP testimony itself. The CRCC investigators didn't ask 'why' certain questionable decisions were made. Inconsistencies in the RCMP statements were ignored or dismissed as errors of judgment and never challenged. It also appears to us that the RCMP made false statements that may have coloured the investigators' interpretation of the facts.

To begin with, for context, we wish to restate for the Department of Justice that the anti-shale gas protests in New Brunswick were always meant to be peaceful and non-violent. And they remained so from 2010 until Oct 17, 2013. Demonstrations of over a thousand people, and even civil-disobedience actions, were all peaceful. The last thing that anti-shale gas protesters would have planned to do was to deliberately riot, or burn police cars.

The following has two parts. The first deals briefly with our observations of the Report's conclusions on bias and excessive force. By their nature, observations involve one's subjective perspective, but we are dismayed that the CRCC generally accepted RCMP accounts of events, even if they differed from accounts of numerous eyewitnesses, unless there was specific documentary evidence that confirmed the public's statements. This in itself is a form of institutional bias.

The second is our reconstruction of a timeline of events, taken from the Report and testimony, which illustrates the shortcomings of the investigation, and its unanswered questions.

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Part 1. Anti-indigenous bias - The CRCC Report found no evidence of RCMP bias or use of excessive force during arrests and other interactions with Indigenous protesters.

Although the CRCC did find that the RCMP infringed on citizen's rights when they conducted illegal searches or traffic stops, the investigators failed to observe that Indigenous people were overwhelmingly the targets of these actions.

In 2013, systemic racism was a concept that was essentially not discussed. Prime Minister Harper happily declared that Canada was not a Colonial country. Indigenous peoples asserting their Treaty Rights were perceived to be an affront to Canada's greatness and a threat to its prosperity.

Per academic studies of the Kent County incident ("*Policing Indigenous Movements: Dissent and the Security State, Monaghan and Crosby, Fernwood Publishing, 2018*"), systemic racism in New Brunswick began in the premier's office and filtered down from the RCMP leadership, to the ranks of the constables who were tasked with ensuring that the gas company Southwestern Energy (SWN) was able to complete its "legally mandated" work.

New Brunswick government documents demonstrate that in the perception of the provincial and federal governments and the RCMP, white protesters were "Concerned citizens" while the Mig'maw and other Indigenous protesters were "dangerous extremists".

Like systemic racism, police violence toward racial minorities has recently become visible largely because of the ability of ordinary citizens to film incidents on their phones that would never before have been made public. These were less common in 2013.

Witnesses in Kent County watched officers force non-violent protesters, who had clearly and purposefully submitted to arrest, facedown on the road to be handcuffed. One indigenous person, who was arrested twice over a period of months, had to be taken to hospital both times as a result of those arrests. It is hard to accept that this behaviour was not excessive.

Part II.

The CRCC Report - Lack of facts, contradiction, unexplained actions, and questionable reasons

The CRCC investigators appear to have diligently asked RCMP witnesses what happened, what decisions were made, what they did, and what they saw, but never seemed to ask 'when' these things happened.

The absence of a real timeline of events in the CRCC summary of the "riot" and burning of police cars results in conflating events that happened at 10:00 AM with other events that occurred 3 hours later, as if they were of one piece.

This creates the false impression of an ever-increasing and uncontrollable level of confrontation between the protesters and the RCMP leading up to an inevitable "riot" and unfortunate burning of RCMP vehicles.

We have reconstructed two of the main incidents of the day, the start of the 'riot' and the burning of police cars to highlight the weakness of the investigation and its conclusions.

The Riot

- In fact, nothing was happening at the site for at least an hour prior to the breakout of violence near 1:00 PM. **At one point in the morning, one videographer is heard to ask "Why are they still here?"** The trapped thumper trucks, which were the ostensible reasons for the RCMP raid, were gone, the arrested prisoners were gone, and there was, in fact, no reason for the RCMP to remain.
(<https://www.youtube.com/watch?v=IGCNZLnatgc> 3:57 - 4:20
Rexton Oct1713 Shots in the woods, crazy cops, and why don't they go home)

The CRCC obtained an account of how the "riot" began from RCMP Cst. Galienne, at the front of the police line, (verified by publicly available video). From approximately 11:50 AM to approximately 12:50 PM three rows of RCMP officers faced one line of women standing arm-in-arm. During that time, they were engaged in a form of peaceful and symbolic stare-off. **(A still unanswered question – why was the RCMP still there?)**

Cst. Galienne stated that a group of men suddenly declared that they were taking over and immediately began to shove the officers, one raised his fists aggressively, and the officer pushed back then deployed his pepper spray. And so, the riot began.

- In order to answer questions surrounding the identity and motives of the men who provoked this crisis, it would have been logical for the investigators to establish whether or not these men were recognized as being regular protesters, if they were among the 40 people arrested that day, and/or if they later faced charges. Police photographers were present. However, that line of inquiry does not appear to have been pursued. **We still don't know who started the incident or what, if anything, happened to them as a result of their actions.**

The Burning Cars

Two RCMP vehicles were parked across Route 134, at what the RCMP called the West Gate to form a "soft Barricade" according to the Incident Commander, Superintendent Gilles Maillet. This barrier was established a bit more than a kilometer west of the RCMP command centre near the blockaded compound, which the RCMP designated as the "East Gate"). The site was chosen because it was at the edge of the occupied part of the village and just west of a small bridge that narrowed the road.

This "soft Barricade" was established on the first day that the SWN Seismic equipment was blocked in, and the RCMP maintained it thereafter. It was apparently convenient, because it was adjacent to an Irving Co. business and its parking lot, where the RCMP were able to park

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some of their vehicles. The 4 vehicles that had been parked at this site before the RCMP raid, and 2 others moved there later in the day, were those that were destroyed at approximately 1:00 PM.

Located on the opposite side of the road from the Irving business, a short distance farther west, were a day care centre and the Bonar Law High School. A few hundred meters farther West, were the Fire Hall and just beyond that the corner of Beattie St. and Rt. 134 (designated as the 2nd West Gate). The whole field of the RCMP operation was between 2 to 3 kilometers of straight road, which afforded some visibility of the whole area.

- In addition to the vehicles that originally created the road barricade, **two of the vehicles destroyed in the afternoon appear to have been brought there at approximately 10:00 AM, at great inconvenience and, for no apparent reason.**

The Incident Manager, Superintendent Maillet describes being ordered by Commander Brown, at the Command Centre, (or the East Gate), to gather a few officers to provide urgent support to the police line at the West Gate. This Police line was struggling to hold back protesters, including the Elsipogtog Chief and Band Council, who wanted to gain access to the area where their fellow protesters were being arrested and taken away. Maillet proposed that he and his men would walk the few hundred, unimpeded meters, along Rt. 134, directly to the back of the police line.

- **Maillet could offer no explanation for what happened next.** He stated that Commander Brown, ordered him to instead take some cars. This required that Maillet and the RCMP officers he had recruited, to collect 2 cars, drive to the Rt. 11 Exit North, then along Rt. 11 to the next village of Richibucto, then take the exit back East through Rexton to the police barricade, and park their cars. They then had to walk through the crowd of protesters confronting their colleagues, to finally get to the back of the police line.

All of this was done while their colleagues frantically pleaded for assistance. A Constable who also described this action offered the wonderfully understated observation that this action was neither 'usual nor ideal'.

The result of this inexplicable order was to delay urgently needed assistance to their colleagues, and expose the RCMP officers to unnecessary risk. It also led to the abandonment of 2 police vehicles, which were destroyed 3 hours later.

Questions about the burned cars.

Because, for some reason, they remained in place and unprotected from Thursday until Saturday, **local citizens were able to examine the remains of the burned-out vehicles and found that some of them had been stripped of all equipment.** They believed that these cars had not even been road-worthy.

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- Superintendent Maillet vehemently denied that there were “dud cars” there, “no, no, no”, he testified. Later however, he seemed to forget what he had said and told investigators that it was lucky that the first 2 vehicles that burned were the old cars (or “dud cars”). **The investigators do not appear to have questioned this inconsistency nor asked what possible reason the RCMP would have had to bring these wrecks to the protest site.**

It is probable that the investigators did not know that on the previous day, the 16th of October, anyone shopping at the Cartier Mall in Richibucto, would have seen several unexplained rusted-out police vehicles in that parking lot. **This led many of the local residents to believe that these were the cars that were burned the next day. Maillet’s testimony would seem to indicate that at least two of them probably were.**

Why and when were all the police vehicles left unattended?

Because the CRCC investigators never established a clear timeline of the day’s events, the Report doesn’t specify when all the officers finally left their vehicles. The summary of the events of that day, therefore, leads to the false impression that the vehicles had been left unattended since 10:00 AM until they were destroyed at approximately 1:00 PM.

However, dozens of local residents saw officers with their vehicles, minutes before the outbreak of the “riot” that preceded the destruction of the vehicles. At some point in the morning, after the 10:00 AM confrontations, the RCMP officers returned to their vehicles but were no longer preventing people from walking through the “West Gate” to the police line, which was still in place.

Shortly before the “riot” the RCMP leadership appear to have somehow intuited that the protesters would soon want to leave the area. Maillet explains to the investigators that the RCMP decided to move the West Gate farther West along Rt. 134 to the corner of Rt.134 and Beatties (approximately 1 km away), in order to facilitate the exit of protesters from the site.

In his statement Maillet fails to explain, and the investigators do not seem to have asked, what time this happened or, why they didn’t take their cars with them. If the goal were to make it easier for protesters to leave the area, it would seem to make sense to at least remove the vehicles that blocked the road.

This description of their withdrawal, accords with witnesses’ accounts of seeing officers climbing into a large gray van and, driving farther west in the direction of the high school. This occurred shortly before they became aware of a crisis at the police line. **The use of the van, confirms that the RCMP had previously planned to leave these cars unattended, not because the police were overwhelmed by an unruly mob.**

Were any attempts made to retrieve the vehicles? Yes and No.

Maillet told CRCC investigators that they became concerned about the vehicles, and wanted to send people to retrieve them, but were unable to find their keys. **It's important to note that they had literally just left these cars.**

He goes on to explain that, upon reflection, they decided that this action would have posed too much risk to their officers and the plan was abandoned. **This account does not appear to be entirely true.**

- An RCMP Affidavit states, and local residents observed, that a RCMP vehicle with a driver and 3 other officers attempted to retrieve 3 of the vehicles before they were destroyed. Why didn't RCMP managers send the grey van back with enough officers to retrieve all their vehicles? A probable answer is that (as mentioned above) at least 2, if not more, of the vehicles were not road-worthy.

The RCMP presented the following account of this attempt to retrieve their vehicles in an affidavit to the Provincial Court, (which you will find attached). "On Oct. 17, 2013 PM Cpl. M Gaudet was tasked, at approximately 12:45PM, to remove the RCMP vehicles that were left unattended at the site of the anti-shale gas..." (55, p. 30) *It is likely that the vehicles were already being set alight as Cpl Gaudet and the three officers sent with him, approached the scene.*

What did local residents see when the RCMP vehicles were destroyed?

In the minutes leading up to destruction of the vehicles, witnesses described seeing protesters suddenly fleeing the RCMP line when the RCMP officers began to pepper spray and shoot sock rounds at them. As the fleeing people approached the barricade cars, 3 men stopped and began to damage one of the police cars with their fists, feet and later with a board. These three men eventually stopped pounding on the vehicle, and ran past the local witnesses in time to intercept the car that Cpl. Gaudet was driving and, prevented him from reaching the stranded cars.

While this scene was playing out near the Bonar Law High School, other men with their faces covered, in what appeared to be a kind of tag team action, came behind the first 3 men and set fire to the unattended police cars.

- **At no time did other officers attempt to intervene, although, according to Superintendent Maillet, they were only a few hundred meters away. The men who damaged the cars were unknown to the protesters and local witnesses. To our knowledge, despite 40 arrests leading to criminal charges that day, no one has ever been arrested or charged with destroying the vehicles.**

Other puzzling aspects

The RCMP saw that their vehicles were burning at 1:09 PM but didn't call the Fire Dept until 1:20 (by which time they were probably completely engulfed in flames). (Affidavit, 58.5 p.33).

It is difficult to understand why the RCMP had to call the Fire Department at all. Their new West Gate, according to Maillet, was at the corner of Beatties and RT. 134, offered a clear view of the burning cars and was literally just metres away from the Fire Hall.

- **It would have made more sense and, probably been faster, to walk over to the firehall so that they could directly discuss the situation and plan their intervention with the Fire Chief.**

When the RCMP called to report the burning cars to the Fire Chief, he told them that, "Earlier in the day," men, **whom he presumed were protesters, had threatened to burn his fire truck too, if he answered the call to a fire they planned to set.** (Affidavit 58.5 p.33.) Accordingly, he asked the RCMP for an escort for his truck to respond to the burning cars.

- **For reasons not given, and difficult to understand, the RCMP did not send officers to escort the fire truck, whose driver was thus prevented by a few men from reaching the fire until there was little left to save.**

According to this account, the burning of the cars appeared to be a planned event and not, as has been generally believed, the result of a spontaneous explosion of rage. And it is also not entirely beyond the scope of possibility, that the men who planned to do this already knew that they would have access to unattended cars.

- **The protestors would not have known in advance that there would even be a police raid, let alone have knowledge that the cars would be abandoned and easy to access, and could warn the fire department earlier in the day.**

A witness with an expert knowledge of how metals burn went to the RCMP after seeing the burned-out vehicles, and told them that he believed that the accelerants available to ordinary citizens could not have done the damage he'd seen. They assumed he was accusing them of burning their own cars and threw him out of the Detachment. **The CRCC investigators also appear to have dismissed his account.**

- Superintendent Maillet adamantly asserted to the CRCC that the RCMP had not burned its own cars. But he was answering the wrong question. **The question was, and still is: did anyone in a position of authority in the RCMP enable other entities to start a riot and/or burn several police vehicles?**

Protesters would have had little to gain for their cause by planning such an uncharacteristic and violent action. However, other stakeholders would have benefited from discrediting the protests, and especially by removing Indigenous protesters from participation in the resistance to shale gas development in New Brunswick.

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To summarize, we find the RCMP account to the CRCC of the events and their actions on Oct.17, 2013, to be incomplete, incoherent, at times inexplicable and sometimes false. This applies primarily to the testimony of RCMP managers such as Commander Maillet's. The line officers usually appear to be honestly describing what they saw and experienced though without being able to explain it.

It is confounding that the CRCC investigators accepted even truly bizarre and inconsistent RCMP accounts of their decisions and actions without question, while overwhelmingly dismissing the concerns and questions of local witnesses as simply conspiracy thinking.

The CRCC Report does help somewhat to complete the picture of what happened, for which we are grateful. But, it is difficult to make others understand how traumatic those months were for those who participated in the protests. We had hoped that our words and experiences would be treated with more respect. This Report is truly disappointing, as well as being unconvincing.

As the CRCC appears to be the end of the normal complaint process, short of filing a lawsuit, we are asking you, as Minister of Justice, to direct that your department re-examine our complaints, to review the quality of the RCMP's dismissive response to the CRCC, and the potential biases and attitudes that prevented the CRCC from even entertaining the possibility that the New Brunswick witnesses had correctly interpreted what they saw and experienced.

We ask that someone from your ministry and/or the CRCC meet with us to explain and discuss the matters we raised here.

And please address this entire process. Having taken 7 years means that it is greatly flawed. Thank you for your attention to this important matter.

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CC.
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