RELEASE DATE: October 5, 2011

Manitoba

THE PROVINCIAL COURT OF MANITOBA

IN THE MATTER OF: ***THE FATALITY INQUIRIES ACT***

AND IN THE MATTER OF: AHMAD SALEH-AZAD

Report on Inquest and Recommendations of
The Honourable Judge Lee Ann Martin
Issued this 30th day of September 2011

APPEARANCES:

Mr. Martin Minuk, Counsel appointed to act for the Crown
Ms Kimberly Carswell, Counsel for the Winnipeg Police Service
Ms. Vivian Rachlis, Counsel for the Winnipeg Regional Health Authority
Mr. Arash Saleh-Azad, representative for the Saleh-Azad family

Manitoba

THE FATALITY INQUIRIES ACT
REPORT BY PROVINCIAL JUDGE ON INQUEST

RESPECTING THE DEATH OF: AHMAD SALEH-AZAD

SUMMARY

On March 27, 2007 shortly before 8:00 a.m., the Winnipeg Emergency Services received a 911 call from the staff and residents of the Madison Memorial Lodge, located at 210 Evanson Street in the City of Winnipeg, Manitoba. Mr. Ahmad Saleh-Azad, a resident at the Madison Memorial Lodge, and a diagnosed schizophrenic, was armed with a knife and stabbing another resident, Mr. Alexander Kolesnyk.

Within minutes, members of the Winnipeg Police Service arrived on scene. They were confronted by Mr. Saleh-Azad who was still armed with a knife. Ultimately, the members of the Winnipeg Police Service shot and killed Mr. Saleh-Azad. Mr. Kolesnyk also died that day as a result of fatal injuries to his neck.

On February 19, 2008, the Chief Medical Examiner, directed that an inquest be held into the death of Mr. Saleh-Azad pursuant to section 19(3) of *The Fatality Inquiries Act*., C.C.S.M. c.F52.

Having held an inquest with respect to the death of Mr. Ahmad Saleh-Azad on September 20th to 24th, 2010, March 23rd, 2011 and April 7th, 2011, at the City of Winnipeg, in the Province of Manitoba, I report as follows:

Mr. Saleh-Azad came to his death on March 27, 2007, in Winnipeg, Manitoba.

The cause of death was a gunshot wound to the chest fired by a member of the Winnipeg Police Service, in the course of his duties.

Given the circumstances relating to Mr. Saleh-Azad's death, I recommend that the Government of Manitoba undertake a review of *The Mental Health Act,* C.C.S.M c. M110 and in particular, sections 8(1) and 17(1), as well as its policies regarding support services and the availability of appropriate housing for those individuals with a mental disorder as defined under *The Mental Health Act,* to determine whether public safety issues are adequately addressed.

Attached to and forming part of this report are the following:

- **SCHEDULE I: EXECUTIVE SUMMARY**
- **SCHEDULE II: THE DETAILED EVIDENCE**
- **SCHEDULE III – MAP OF MADISON MEMORIAL LODGE (Exhibit 3)**
- **SCHEDULE IV – LIST OF EXHIBITS**
- **SCHEDULE V – DISTRIBUTION LIST**

Dated at the City of Winnipeg, Manitoba this 30th day of September 2011

"Original signed by:"

_____

Lee Ann Martin, Provincial Court Judge

Manitoba

THE FATALITY INQUIRIES ACT
REPORT BY PROVINCIAL JUDGE ON INQUEST

RESPECTING THE DEATH OF: AHMAD SALEH-AZAD

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SCHEDULE I – EXECUTIVE SUMMARY

I. INTRODUCTION

[1] On March 27, 2007, Ahmad Saleh-Azad was shot and killed by members of the Winnipeg Police Service. It is as a result of this shooting that on February 19, 2008 the Chief Medical Examiner directed that an inquest be held into the circumstances of this death pursuant to *The Fatality Inquiries Act*, for the following reasons:

1. to fulfill the requirement for a mandatory inquest as defined in section 19(3) of *The Fatality Inquiries Act*;

2. to determine the circumstances relating to Mr. Saleh-Azad's death; and,

3. to determine what, if anything, can be done to prevent similar deaths from occurring in the future.

II. SCOPE OF THE INQUEST

[2] At the time of his death, Mr. Saleh-Azad was living at the Madison Memorial Lodge, a housing complex for individuals with physical and mental disabilities. He had earlier been diagnosed with schizophrenia and was being followed by a psychiatrist and provided Home Care and community mental health support. Though the care provided to Mr. Saleh-Azad and his living arrangements in the community serve to explain the circumstances surrounding his death, they were not explored in great detail at the inquest given that the mandate of this inquest was limited to the police shooting of Mr. Saleh-Azad on March 27, 2007. No inquest was called into the death of Mr. Alexander Kolesnyk at the hands of Mr. Saleh-Azad, that occurred on this same date and that prompted the attendance of the police at the Madison Memorial Lodge.

[3] In accordance with the mandate set forth by the Chief Medical Examiner and section 33 of *The Fatality Inquiries Act*, this report sets forth when, where and by what means Mr. Saleh-Azad died, his cause of death, his name, and the material circumstances of his death. It also determines whether there are any recommended changes in the programs, policies or practices of the government or relevant public agencies or institutions or in the laws of the province that would serve to reduce the likelihood of deaths in circumstances similar to those that resulted in this death that is the subject of the inquest.

III. INQUEST ATTENDANCE BY INTERESTED PERSONS

[4] In accordance with section 28(1) of *The Fatality Inquiries Act*, Ms Deborah Chorney, former common-law spouse of Mr. Alexander Kolesnyk, and Mr. Arash Saleh-Azad, Mr. Ahmad Saleh-Azad's son, requested and were granted standing to attend and participate in the inquest. Only Mr. Arash Saleh-Azad attended the proceedings. He was not represented by counsel.

IV. SUMMARY OF THE EVIDENCE

Background

[5] Mr. Saleh-Azad was born March 14, 1945 in Iraq. He married, had a son and a successful career as an engineer. In 1995 he immigrated to Canada where he was only able to secure employment as a janitor until he went on social assistance.

[6] On February 3, 2005, following some unexplained assaultive behavior, Mr. Saleh-Azad was admitted to the PsycHealth Centre at the Health Sciences Centre for a court-ordered assessment. That assessment revealed that Mr. Saleh-Azad had been experiencing paranoid delusional thoughts and auditory hallucinations since 1997. The medical diagnosis was that of paranoid schizophrenia.

[7] Once stabilized, Mr. Saleh-Azad was discharged from the PsycHealth Centre on May 10, 2005. The discharge was done under the following conditions:

- Discharge to Madison Memorial Lodge, under Home Care for medication supervision, bubble-packed
- Discharge medication Olanzapine 200mg, Effexor XR 300mg at 1700
- Follow-up at the Forensic Outpatient Department May 16, 2005 (Exhibit 30, Tab 3, page 10)

[8] It is not known how or why the decision to discharge Mr. Saleh-Azad to the Madison Memorial Lodge was made. The evidence suggests that it was a social worker who assisted in this determination. What is known is that the Madison Memorial Lodge was a not-for-profit housing complex that provided a suite and three meals per day. It did not offer any support, supervision or services to its residents. It did however have policies that allowed for inspection of units for cleanliness, and evictions for violence or abusive behavior. (Exhibit 2A)

[9] Upon discharge from the Health Sciences Centre, both Home Care and mental health support services were arranged: a Home Care worker attended daily to ensure that all medication was taken; a nurse attended weekly to monitor his mental status; and a community mental worker attended bi-weekly to assist him in attending appointments and monitor his mental health status. (Exhibit 30, evidence of Ms Strutt)

[10] For approximately two years, Mr. Saleh-Azad's stay at the Madison Memorial Lodge was uneventful. He continued to be seen frequently by a psychiatrist and the community support workers. (Exhibit 30) His medications were varied over this time period, including the introduction of Seroquel 300 mg in May 2006. (Exhibit 30, Tab 3, page 157)

[11] In February 2007, Mr. Saleh-Azad's mental status seemingly changed. He became reclusive, refusing to eat with others in the dining room and hoarding food in his suite. Then on February 21, 2007, Mr. Saleh-Azad hit a Home Care worker who had

come to ensure that he was taking his medication. On February 22, 2007 he assaulted a nurse. The nurse was concerned that Mr. Saleh-Azad was decompensating. On February 23, 2007 as a result of these two assaults, Home Care decided that for staff safety reasons, no more services would be provided to Mr. Saleh-Azad. The psychiatrist was advised of this suspension of services. However, when he saw Mr. Saleh-Azad on that day, he was unable to elicit any delusions, hallucinations or thought disorders. He did however increase his dosage of Seroquel from 300 mg to 500 mg daily given that there was some indication that Mr. Saleh-Azad was becoming psychotic.

[12] No alternate arrangements were made to monitor Mr. Saleh-Azad's compliance with his prescribed medication. Importantly, the psychiatrist felt that there were no grounds to involuntarily admit Mr. Saleh-Azad for an assessment under *The Mental Health Act* and Mr. Saleh-Azad refused to voluntarily admit himself for one.

[13] As a result, Mr. Saleh-Azad continued to live in the community with the services only of the community mental health worker who attended approximately once a week and the psychiatrist who saw Mr. Saleh-Azad at scheduled appointments on February 26, 2007, February 28, 2007 and March 12, 2007.

[14] Mr. Saleh-Azad's medication appeared to the community mental health worker to be in order on February 27, 2007, March 6, 2007 and March 23, 2007 (Mr. Saleh-Azad was not at home on March 19, 2007 for a visit). (Exhibit 30) The Administrator at Madison Memorial Lodge did not have any issues with his behavior and his son had also noted some improvement on March 26, 2007.

March 27, 2007 – The Incident

[15] On March 27, 2007 shortly before 8 a.m., the staff members at Madison Memorial Lodge were beginning their day. Ms Caterina Ioculano, the cook, was busy preparing for breakfast with the assistance of Mr. Charles Bond, the kitchen aid. Several residents were already in the dining room waiting for breakfast to be served. Among them was Mr. Alexander Kolesnyk. Ms Brenda Lavallee, the building manager, was meeting with Mr. Rickey Lapointe, the maintenance person, discussing items that needed to be addressed that day.

[16] When Ms Ioculano and Mr. Bond looked up from their breakfast preparations they saw Mr. Saleh-Azad stabbing Mr. Kolesnyk about the neck with a 3 to 4 inch paring knife. Ms Ioculano began screaming which drew the attention of Ms Lavallee and Mr. Lapointe who came running into the dining room.

[17] Despite efforts by Ms Lavallee and Mr. Lapointe, Mr. Saleh-Azad continued stabbing Mr. Kolesnyk.

[18] There was no apparent reason for the assault; Mr. Kolesnyk and Mr. Saleh-Azad had no prior altercations and in fact kept to themselves. Mr. Saleh-Azad's demeanor on this day was that of someone who was not in his right mind: his eyes were vacant and his affect was flat. He was not deterred and did not flinch from the chairs,

trays or pails thrown at him by others in an attempt to stop his unceasing assault on Mr. Kolesnyk. In fact he lashed out at these people, stabbing another resident in the process. It was only when Mr. Kolesnyk had suffered fatal injury that Mr. Saleh-Azad sat down against the west wall facing the south hallway. The knife remained in his hand and he began mumbling something to himself in an unknown language.

March 27, 2007 – the 911 calls

[19] At 7:55 a.m. the first 911 call was made by Ms Ioculano. Several other staff and residents also called 911. The information relayed was as follows (Exhibit 9):

- A mentally challenged resident of Madison Memorial Lodge was armed with a knife.
- That individual had stabbed another resident in the throat.
- That victim was bleeding all over and was lying on the dining room floor.
- That same resident had stabbed a second individual.
- That resident was described as having gone “crazy”.
- He was described as anywhere from 5’1” to 5’5”, slim build, black hair, balding, with an olive complexion from either India or Iraq.
- The knife was a kitchen paring knife with a 4 inch blade and black handle.
- The dining room was located in the basement of Madison Memorial Lodge.
- To access the dining room the police would attend to the front doors of Madison Memorial Lodge, go down the staircase and then turn left or right and go down the hallway.

March 27, 2007 - Police Attendance

[20] Police were dispatched to the Madison Memorial Lodge within seconds of the first 911 call. Further units were dispatched at 7:56:21 a.m., 7:56:34 a.m., 7:58:23 a.m., 7:58:30 a.m., 7:58:58 a.m., 7:59:24 a.m., 7:59:41 a.m. and 8:00:15 a.m.. (Exhibit 27, Winnipeg Police Service call history) The first cruiser arrived at 8:02:34 a.m., the second at 8:02:50 a.m.

[21] At 8:03:06 a.m. after getting some preliminary information from residents and staff at the Madison Memorial Lodge, three uniformed members of the Winnipeg Police Service entered the front doors and proceeded to make their way to the dining room. Two of the officers had their service pistol at the ready. The third officer had his Taser drawn.

[22] At 8:03:45 a.m., after encountering an unknown male in the hallway and checking behind all of the unlocked doors, the three officers entered the south hallway that leads directly into the dining room. Two other officers arrived in the same hallway at 8:03:48 a.m. There were now five officers in the 58 inch wide, 27 feet long hallway.

[23] The officers had an unobstructed view of Mr. Saleh-Azad who was sitting in a chair up against the west wall of the dining room. He had a knife in his left hand and was covered in blood. At that same moment, Mr. Saleh-Azad, who would have also had an unobstructed view of the officers, got up from the chair and began walking toward the hallway where the members of the Winnipeg Police Service were stationed. The knife was in his left hand and he approached the members, making a stabbing motion with the knife raised above his head. Several officers announced their arrival and yelled at Mr. Saleh-Azad to drop the knife.

[24] The officers backed up. All of the officers were concerned for the safety of their fellow officers and willing and ready to shoot. However, given the confines of the hallway, only one of the officers had a clear shot: Constable Cooke.

[25] When Mr. Saleh-Azad was within approximately 15 feet of the officers, one of the members, Acting Patrol Sergeant Allard, discharged the Taser. One of the Taser probes made contact with Mr. Saleh-Azad. The other lodged into the wall. Mr. Saleh-Azad continued forward, mumbling to himself.

[26] When Mr. Saleh-Azad was within 8 – 10 feet, Constable Cooke fired his pistol three times, hitting Mr. Saleh-Azad in the arm, abdomen and chest. The knife fell from his hand and Mr. Saleh-Azad dropped forward, landing within 2 feet of the officers. The time was very likely 8:03:53 a.m.

[27] Other officers continued on into the dining room. Mr. Kolesnyk was found dead, nearly beheaded. Another resident was found injured.

The Search of Mr. Saleh-Azad's Room

[28] A search of Mr. Saleh-Azad's room at the Madison Memorial Lodge revealed prescription medications in his name. That medication was comprised of two compliance packs which were dispensed March 17, 2007. Each compliance pack contained a two week supply of the following: Apo-Propranolol, an anti-hypertensive agent, 20mg and 40mg to be taken each twice daily, morning and bedtime; Seroquel 200mg and Seroquel 300mg, an anti-psychotic, 1 tablet each to be taken daily at bedtime; Novo Venlafaxine XR (Effexor) 75mg 1 tablet to be taken daily at bedtime. Only one complete daily dose of those medications had been removed from the compliance packs. (Exhibit 14, page 15)

The Autopsy

[29] The autopsy performed on Mr. Saleh-Azad revealed that he died of gunshot wounds from a police service pistol. A toxicology report (Exhibit 24) found no evidence of any drugs in Mr. Saleh-Azad's blood or vitreous humor.

[30] The autopsy performed on Mr. Kolesnyk revealed that he died as a result of multiple and extensive sharp force injuries to the neck region.

The Examination of the Use of Force by Members of the Winnipeg Police Service

[31] Corporal Gregg Gillis, an expert in police use of force testified that he found the actions of the members of the Winnipeg Police Force who attended at the Madison Memorial Lodge on March 27, 2007 to exemplify those of similarly trained police officers elsewhere in Canada. According to him they made the appropriate choices from a use of force analysis standpoint. Realistically, the choice they made was the only one available to them.

V. CONCLUSIONS AND RECOMMENDATIONS

[32] Mr. Saleh-Azad, a man with a prior history of violence and a diagnosis of paranoid schizophrenia was living in the community under the care and supervision of a psychiatrist and community support workers under the umbrella of the Winnipeg Regional Health Authority. This support structure was designed to monitor Mr. Saleh-Azad's mental health status to ensure that he did not pose a risk to the public. In February 2007 when there was some evidence that Mr. Saleh-Azad was becoming psychotic and displaying assaultive behavior, such signs and symptoms seemingly did not fall within the scope of the provisions of *The Mental Health Act* that mandate a test of likelihood to cause "serious harm" for an involuntary admission. And, as a result of Home Care's decision to suspend services to Mr. Saleh-Azad for staff safety reasons, he was living in the community with sporadic monitoring.

[33] It was within this context that Mr. Saleh-Azad took Mr. Kolesnyk's life in a horrific and violent attack, and injured others, both physically and psychologically. At the time of the attack, the medication prescribed to Mr. Saleh-Azad was no longer in his system, meaning that he had stopped taking his medication.

[34] The evidence at the inquest is that the members of the Winnipeg Police Service who attended at the Madison Memorial Lodge on March 27, 2007 acted, not only in accordance with standard police practice, but in my view, appropriately given the situation that was presented to them on that morning. Mr. Kolesnyk had already been fatally stabbed. Another man who had attempted to save Mr. Kolesnyk's life had been stabbed, and several other staff and residents of Madison Memorial Lodge were within close proximity to Mr. Saleh-Azad and therefore within harm's reach. The police were likewise within harm's reach. Mr. Saleh-Azad was clearly psychotic that day and not responding to any attempts to get him to stop his violent actions. In the circumstances, I

find that the Winnipeg Police Service members had no other alternative on that day than to fire their service pistols at Mr. Saleh-Azad. There are no recommendations with respect to the Winnipeg Police Service programs, policies or practices.

[35] That said, the circumstances that led to the police shooting of Mr. Saleh-Azad cry out for government action so that similar deaths can be prevented from occurring in the future.

[36] The appropriateness of housing and support services in place for Mr. Saleh-Azad and the availability of other such services in the Province of Manitoba are not within the mandate of this inquest. That said, it is apparent from the evidence at the inquest that Mr. Saleh-Azad fell through the cracks at great cost: two lives were lost on March 27, 2007 and many others lives irreparably affected. The families of the deceased, the witnesses to the deaths and the police officers who were involved will forever be haunted by this day. Mr. Saleh-Azad's family had counted on the system to ensure that his mental disorder was being managed and that he was receiving adequate support and supervision. I cannot blame Home Care for wanting to ensure the safety of their staff from Mr. Saleh-Azad when he was becoming violent, especially given his past history for assaultive behavior. The problem here is that it appears as though the only solutions available were those under *The Mental Health Act* or the criminal justice system. Yet no one called the police when Mr. Saleh-Azad assaulted two Home Care staff and the provisions of *The Mental Health Act* are such that the psychiatrist did not feel that he had grounds to involuntarily admit Mr. Saleh-Azad for an assessment. Mr. Saleh-Azad was therefore living in a housing complex that, although welcoming of individuals with mental health and physical disabilities given the difficulty they face trying to find accommodations, was not designed nor equipped to provide any supportive or supervisory services.

[37] I therefore recommend that the Government of Manitoba undertake a review of *The Mental Health Act*, and in particular, sections 8(1) and 17(1), as well as its policies regarding support services and the availability of appropriate housing for those individuals with a mental disorder as defined under *The Mental Health Act* to determine whether public safety issues are adequately addressed.

SCHEDULE II - THE DETAILED EVIDENCE

I. THE EYEWITNESSES

[38] The evidence below reflects both the oral evidence provided to the court at the inquest and the videotaped evidence provided to the police immediately following the incident. It became clear during the inquest that due to the passage of time and the traumatic nature of the incident that the eyewitnesses' recollection of the details of the incident did not always accord with their evidence to the police immediately following the incident. Where there was a difference in the evidence, I gave more weight to the videotaped evidence as it was both closer in time to the incident and as it accorded more closely to the other evidence.

Joseph Rickey Lapointe

[39] Mr. Lapointe had been working in maintenance at the Madison Memorial Lodge for approximately two months before the incident.

[40] On March 27, 2007, he arrived at work at about 7:20 a.m. As usual, Brenda Lavallee, his boss, came to see him before 8 a.m. As the two of them were talking and smoking, they heard a scream from the dining room. Both he and Ms Lavallee exited the maintenance room, went down the south hallway and down two steps into the dining room.

[41] As he turned the corner, Mr. Lapointe saw Mr. Kolesnyk standing in front of the kitchen counter with blood coming from the back of his head. Mr. Saleh-Azad was in front of him. At first, he thought that Mr. Kolesnyk had fallen and hurt himself and that Mr. Saleh-Azad was helping him. He then saw Mr. Saleh-Azad stab Mr. Kolesnyk in the temple. Mr. Lapointe exclaimed: "Oh my God, what are you doing!" (Transcript, September 20, 2010, page 18, line 10) Mr. Kolesnyk fell and Mr. Saleh-Azad began slicing his throat.

[42] Despite Mr. Lapointe's efforts to divert Mr. Saleh-Azad, nothing worked. He threw chairs, tables, food trays and even a bucket at Mr. Saleh-Azad but he did not stop. At one point, he even put a table over Mr. Kolesnyk to stop Mr. Saleh-Azad from getting to him. Nothing worked. Although Mr. Saleh-Azad would sit down occasionally, he kept getting up to cut at Mr. Kolesnyk's throat over and over. In Mr. Lapointe's words, he was a 'madman'; he "really didn't look like he was there". (Exhibit 4, Mr. Lapointe's March 27, 2007 videotaped statement to the police, 2:57 p.m.)

[43] At one point, Mr. Saleh-Azad stabbed another resident by the name of 'Woody' (Mr. Woodward) in the forehead. Woody seemed quite disorientated and kept walking around the dining room until Mr. Lapointe managed to get him to sit down.

[44] Eventually Mr. Saleh-Azad sat down in a chair facing the south hallway leading into the dining room. He was muttering something to himself. He would also look at Mr. Lapointe and say something in a language he could not understand.

[45] A short while later, Mr. Lapointe heard the police announce their arrival. Mr. Saleh-Azad, who was still holding a knife in his hand, got an angry look on his face. He got up from his chair and went at a fast pace toward the south hallway and up the stairs and out of Mr. Lapointe's view. He heard a female shout loudly at least three times "drop the knife", then three or four gunshots.

Caterina Ioculano

[46] Caterina (Cathy) Ioculano had been working as the cook at the Madison Memorial Lodge for over ten years at the time of the incident. She usually began work at 7 a.m.

[47] On this particular morning, Ms Ioculano was working in the kitchen with Mr. William Charles (Charlie) Bond, the dishwasher. She had made biscuits that morning and was busy getting ready for breakfast which started at 8 a.m. Mr. Kolesnyk was already in the dining room sitting at a table just in front of the serving area. As Ms Ioculano was putting some biscuits on a tray she looked up and saw Mr. Saleh-Azad come up behind Mr. Kolesnyk and stab him in the throat with a knife. She began to scream. She thinks that she went into shock.

[48] Ms Lavallee came into the dining room with Mr. Lapointe and told Ms Ioculano to call the police. She picked up the phone and called 911. She remained on the line until the police arrived and she was told she could hang up the phone.

[49] While she stood looking into the dining room from the kitchen holding the phone, Ms Ioculano saw Mr. Lapointe throw chairs around the dining room to prevent Mr. Saleh-Azad from approaching Mr. Kolesnyk. She could not remember if he threw anything else.

[50] She saw other residents walking around the dining room, and in particular, a man by the name of "Rudy" (presumably Mr. Woodward) . She remembered that Mr. Saleh-Azad came close to him with a knife in his hand but could not remember if he stabbed him as well.

[51] She could not remember how many times Mr. Saleh-Azad stabbed Mr. Kolesnyk except that it was "a lot of time [sic] with his hands that go up and down". (Transcript, September 20, 2010, page 57, lines 19–20)

[52] She also could not remember much about the knife Mr. Saleh-Azad had in his hand except that it was not a kitchen knife and that he never dropped it. She explained that all of the knives at Madison Memorial Lodge were kept locked up in a room behind the kitchen. They were never left out and the residents did not have access to any knives other than butter knives.

[53] When the police arrived and 911 told Ms Ioculano that she could hang up the phone, she left the kitchen and went down a back hall. From her vantage point she could see Mr. Saleh-Azad sitting on a chair in the dining room against the west wall, directly facing the south hallway. She saw him stand up and walk toward the police with the knife in his right hand raised to the height of his shoulder to head. She does not remember hearing anything except for a gunshot.

William Charles Bond

[54] On March 27, 2007 at approximately 7:50 a.m. Mr. Bond, who was a kitchen aid at the Madison Memorial Lodge, was helping Ms Ioculano put out biscuits. Mr. Kolesnyk, who used a walker, was standing in front of the serving counter waiting for breakfast when Mr. Saleh-Azad lunged at him two to three times, stabbing him in the neck and shoulder area with what appeared to be a 4 to 5 inch paring knife. Blood began to appear on Mr. Saleh-Azad's hand. When Mr. Bond looked at Mr. Saleh-Azad, he noticed that his face was 'flat' and expressionless.

[55] He then saw Mr. Lapointe come into the dining room with another employee by the name of 'Frank' (Mr. Kroeis) and begin to throw chairs at Mr. Saleh-Azad. Frightened for his safety, Mr. Bond went into a back room at the rear of the kitchen and peered out of the door. He saw Mr. Saleh-Azad sit down in a chair against the west wall of the dining room, then get up and race toward the south hallway with the knife in his right hand raised above his head. Within ten to fifteen seconds he heard three gunshots. He could not remember hearing any words or shouting.

[56] Mr. Bond noted that he had never seen any prior altercations between Mr. Saleh-Azad and Mr. Kolesnyk.

Brenda Lee Lavallee

[57] Ms Lavallee was the building manager at the Madison Memorial Lodge at the time of the incident. As such, she was responsible for staffing, purchasing, building maintenance and food services. She described Madison Memorial Lodge as an apartment complex of 87 suites for both men and women with mental and/or physical disabilities. In addition to the rental units, meals are provided three times a day. That is the extent of the services available to the residents at Madison Memorial Lodge. Importantly there are no social workers, mental health counselors or medical practitioners either on site or made available to the residents. There are also no monitoring services provided by Madison Memorial Lodge. She did however state that in accordance with the Madison Memorial Lodge policies, there were inspections of rooms that Ms. Susan Hall-Amado, the Administrator, would do.

[58] On March 27, 2007 Ms Lavallee arrived at work at approximately 7:45 a.m. and began her day by meeting with Ricky Lapointe in the maintenance room located in the south hallway of the Madison Memorial Lodge (see Exhibit 3). A few minutes later she heard Ms. Ioculano scream. It was a "scream of terror". Worried for Ms Ioculano's well-being, Ms Lavallee and Mr. Lapointe ran toward the kitchen.

[59] When she arrived in the dining room, Ms Lavallee saw Mr. Saleh-Azad stabbing Mr. Kolesnyk in the neck with a black-handled knife. There was blood on Mr. Kolesnyk's face and clothes; blood was everywhere and there was lots of it. Ms Ioculano was standing there screaming.

[60] Without stopping to think, Ms Lavallee made her way directly to Mr. Saleh-Azad and grabbed him by the shoulder, moving him away from Mr. Kolesnyk. When she looked him in the face he "didn't look his normal self. He looked crazed. Something was wrong." (Exhibit 4, Ms Lavallee's videotaped statement to police, 1:08 p.m.) She testified that "his eyes were vacant, there was nothing there, there was no, there was no anger, no - - nothing. There was just nothing there." (Transcript, September 20, 2010, page 113, lines 12-14) Mr. Saleh-Azad pulled his arm away and walked back to Mr. Kolesnyk. Ms Lavallee told Ms Ioculano to call the police.

[61] Mr. Saleh-Azad got on top of Mr. Kolesnyk who was now on the floor and continued stabbing him about the neck. Mr. Lapointe was trying to get Mr. Saleh-Azad off of Mr. Kolesnyk by throwing things at him. No matter what was thrown at him, nothing deterred him.

[62] She saw Mr. Saleh-Azad put the knife to Mr. Kolesnyk throat and try to cut it. He then pulled the skin on Mr. Kolesnyk's throat out, stuck the knife through and pulled it forward. Mr. Saleh-Azad then continued to stab Mr. Kolesnyk about the throat. She was unsure how many times this occurred.

[63] Ms Lavallee looked up and saw Ms Ioculano standing there with the phone in her hand. She was not saying anything and looked as if she was in shock. As she was not certain whether the police had been called or, if they had, what information Ms Ioculano had given, she called 911 herself.

[64] Throughout this time, Mr. Saleh-Azad continued his assault on Mr. Kolesnyk. Ms Lavallee called 911 again. She eventually left the dining room and went to meet the police at the front of the building. She has no recollection of what transpired from that point forward other than her recollection of seeing police cruisers and lots of ambulances.

[65] Ms Lavallee testified that prior to this day, neither Mr. Saleh-Azad nor Mr. Kolesnyk had displayed any aggressive behavior towards others. She described Mr. Kolesnyk as "an old sweetie". She described Mr. Saleh-Azad as quiet, polite, and a good client. He had always been friendly and chatty to her. About a week to one month prior she had noticed that he hadn't "been that normal chatty [person]". (Exhibit 4, Ms Lavallee's videotaped statement to police, 1:17 p.m.) He also no longer 'paced' or walked around during the day as was his habit. She also recalled an incident at least one month prior where Mr. Saleh-Azad was found hoarding food in his room and eating only raw potatoes.

[66] Ms Lavallee also testified that although she knew that Mr. Saleh-Azad had some sort of disability, she was never made aware of what that disability might be.

Susan Hall-Amado

[67] At the time of the incident, Ms Hall-Amado was the Administrator at the Madison Memorial Lodge and as such, responsible for handling client affairs and finances.

[68] She explained that Madison Memorial Lodge was founded in 1972 by the Valour Road Branch of the Royal Canadian Legion and subsequently incorporated as a not-for-profit housing service for veterans and seniors in need. Since then, Madison Memorial Lodge has offered housing to individuals with physical and mental disabilities.

[69] The rooms available for rent are basically 8x10 foot rooms that contain a bed, clothes closet, night table and dresser as well as a sink. The washrooms are communal as well as the television and games rooms. Meals are available three times a day in the dining room.

[70] Madison Memorial Lodge has several policies in place that apply to the residents. Most notably are the zero tolerance violence and weapons policy that states:

> All residents are expected to behave in a socially acceptable manner. Abuse or intimidation of staff or residents by other resident [sic] will not be tolerated. Verbal abuse will result in a verbal warning, followed by written warning and then eviction, if it continues. The administrator will investigate any complaints. Under no circumstances will anyone be permitted to have a weapon of any kind in their possession. ...
>
> Illegal activities will not be tolerated and will result in immediate eviction. (e.g. Physical abuse of a resident or staff member [Police will be notified], ...) (Exhibit 2A)

[71] There is also provision for periodic room inspections to ensure that they are being kept clean or to investigate any suspicion of a breach of the rules. (Exhibit 2A) Ms Hall-Amado explained that she would typically inspect rooms once a month. The inspection was limited to ensuring cleanliness; she would not search the residents' drawers nor go through their personal effects.

[72] Ms Hall-Amado was very clear that room and board were essentially the only services provided to residents. She did interface with doctors and community support persons to advise of any changes in behavior or concerns she might notice. She did this, not because it was part of her duties, but because she cared. She added that she was not always privy to the disabilities the residents suffered from or their personal care regime other than the information provided to her at the time the resident filled out an application for residence at the Madison Memorial Lodge.

[73] In Mr. Saleh-Azad's case, the application for residence was submitted on May 4, 2005. Ms Hall-Amado testified that the information contained in the application was provided by Mr. Saleh-Azad and another individual who Ms Hall-Amado believed

was a social worker. The application (Exhibit 8) indicates that at that time, Mr. Saleh-Azad was residing at the Health Sciences Centre and was ready for discharge. His disability is indicated on the application as depression. There is no indication of schizophrenia. It was not until later that she became aware that he might be suffering from post-traumatic stress disorder and possibly schizophrenia but she was not certain. She only knew that he had Home Care and a mental health worker.

[74] Ms Hall-Amado described Mr. Saleh-Azad as a pleasant individual with whom she had a good rapport. She described him as quiet and a loner who would often spend much of his day walking back and forth in the parking lot.

[75] She had never seen Mr. Saleh-Azad demonstrate any violence though she had heard from his mental health worker a few weeks prior to March 27, 2007 about an assault against a worker. Ms Hall-Amado explained that she had contacted the mental health worker about Mr. Saleh-Azad not eating in the dining room and hoarding rotting food in his room. She had in fact found out that he had been subsisting on raw potatoes. When a worker attended to check up on him, Mr. Saleh-Azad assaulted him. The worker did not want to involve the police. Ms Hall-Amado told him to inform his supervisor. She commented however that after confronting Mr. Saleh-Azad about the food, he returned to the dining room and she did not notice anything amiss. In fact, she commented that the night before the fatality he appeared in good spirits.

[76] Her evidence at the inquest and in her statement to the police on March 27, 2007 was clear that she was at a loss to explain the March 27, 2007 fatalities. She described both Mr. Kolesnyk and Mr. Saleh-Azad as very likeable persons who kept to themselves. In fact, she did not think that the two had much contact with one another. On the day in question, Ms Hall-Amado arrived at work after the incident occurred. She was not able to provide much evidence in this regard.

II. THE WINNIPEG POLICE SERVICE MEMBERS

Shane Bradley Cooke

[77] Constable Cooke, a member of the Winnipeg Police Service for the past 13 years, testified that on March 27, 2007 he was partnered with Constable Nicholas Bisson. They started their day sometime between 7:30 a.m. and 7:50 a.m. and were in their cruiser, in uniform, preparing to leave on patrol when a call came in over the radio about an incident at 210 Evanson Street, the Madison Memorial Lodge – a residence known to them for housing mentally challenged and disadvantaged people. The information was that of a possible stabbing.

[78] As they made their way to the Madison Memorial Lodge, they were provided with more information: two males had now been stabbed and the suspect, an older East Indian male, was still on the scene in the dining room, armed with a knife.

[79] They arrived at the Madison Memorial Lodge shortly before or at about the same time as Acting Patrol Sergeant Allard. The three of them got out of their vehicles

and made their way to the front doors. Acting Patrol Sergeant Allard told them that he had his Taser.

[80] The scene was one of panic; there were people gathered outside as well as people running out of the building. One man ran outside with blood on him. He told Constable Cooke: “That guy just killed someone in there. You got to get in there. He’s still got the knife and he’s in the dining room.” (Transcript, September 22, 2010, page 10, lines 31–33). Constable Cooke asked how to get to the dining room and made his way there.

[81] With his weapon now drawn, Constable Cooke went down into the basement and turned left into the north-south hallway. He immediately encountered a white male standing in a doorway with his hands tucked behind his back. After repeated demands to show his hands and no response from the male, Constable Cooke inched his way around him only to determine that there was nothing in his hands.

[82] As he moved further down the hallway with Constable Bisson and Acting Patrol Sergeant Allard behind him, he checked all doors to see if someone was in them. When he reached the south hallway, he turned right; the south hallway led directly into the dining room. It was then that he saw Mr. Saleh-Azad:

> “I saw a male sitting at the table. He appeared East-Indian, older. It looked like he had blood on him and he was sitting at the table and he had the knife in his hand like this. He was just sitting there sort of relaxed with the knife up.” (Transcript, September 22, 2010, page 15, lines 27-31)

[83] According to Constable Cooke, Mr. Saleh-Azad was approximately fifteen to twenty feet away, if that. He immediately yelled ‘police’. Mr. Saleh-Azad “was up out his chair right away and he was advancing in a quick walk.” (Transcript, September 22, 2010, page 16, lines 31-32) In his left hand, at shoulder to head height was a knife. Mr. Saleh-Azad advanced toward Constable Cooke making back and forth shaking motions with the knife. Constable Cooke yelled “drop the knife, drop the knife, drop the knife, drop the fucking knife, drop the knife, drop the knife…” (Transcript, September 22, 2010, page 17, lines 30-32) He didn’t. He continued advancing at a steady pace without any hesitation and with a very angry look on his face. His lips were moving but there were no words coming out:

> “-- he seemed very – he seemed really calm but very mad, and he was just coming towards me, and it seemed like he was just livid with me. It’s the only way I can describe it. He was just like focused and he was mad and he was coming at me and he was like this, and like I said, his mouth was moving but I, I couldn’t hear any words coming out. It was just constant.” (Transcript, September 22, 2010, pages 37-38)

[84] Constable Cooke described the situation as very threatening. He had no idea where Constable Bisson or Acting Patrol Sergeant Allard were but assumed that they

were behind him. He could hear Acting Patrol Sergeant Allard behind him fumbling with something in his hands muttering “Fuck, fuck”. To Constable Cooke, it sounded panicked, scared. He could not remember hearing a Taser discharge, however he did remember hearing the ticking sound a Taser produces after being discharged.

[85] When Mr. Saleh-Azad was within five to ten feet, Constable Cooke fired three quick shots. In his mind, he had no choice; he could not back up and there was nowhere to go:

> “In my mind it wasn't an option: (a) because there were people behind us. I didn't know who was in those rooms; (b) I was thinking someone said he just killed someone. If we back out of there, I don't know what the state of that person is. I don't know if they're dying, if they're dead. I don't know if they need help. I don't know who else is in the dining room. I really don't know what's going on at that point. Backing up just -- it's an option, I guess but I don't think -- it's, it's not a, it's not a very smart one because it puts other people at risk and that's, that's not, in my mind, that's not what I'm there to do. I mean I had people behind me. I didn't know what was going on in the dining room. There was no -- I had to –"
> (Transcript, September 22, 2010, page 24, lines 11-23)

[86] In addition, had he backed up, Mr. Saleh-Azad would still have gotten to them: “We would have had to run because he was coming quick.” (Transcript, September 22, 2010, page 24, lines 31-32)

[87] He explained that given the risk presented to him the pistol was the only appropriate weapon of choice. He added that he had probably allowed Mr. Saleh-Azad to get too close to him:

> “…I wasn’t even thinking when I’m going to shoot or if I have to shoot. It just, it just happened, and it was just it was too close.” (Transcript, September 22, 2010, page 39, lines 31-33)

[88] When he discharged the weapon, he aimed for center mass as he was trained to do:

> “One of the first reasons, obviously, is you want to stop the threat. That's the biggest thing. And when you have a short timeframe and, you know, closing distance like that, you need to stop the threat. If you're trying to shoot in the leg, if you're trying to shoot in the arm, especially under stress, especially when you're tunnel-visioned, your odds of missing are pretty good. Even when you're calm and you're in the firearms range and you're just practising stuff, you still miss big targets. And under stress, we're taught to shoot centre mass: (a) because that's, that's going to stop the

> threat. The majority of the time we deal with things like this, we don't have a lot of time to react and that's why they teach us that is my understanding. The other part of it, as well, is if you're injured, they may still get to you. You can shoot them in the stomach and they'll still get to you." (Transcript, September 22, 2010, Page 28, lines 9-24)

[89] It was also because of the risk and the situation that was presented to him that day that he could not use any of his mental health training:

> "…As we got closer and closer, we were going to be addressing a potentially lethal encounter because someone was still armed with a knife and for whatever reason, you know, a second person had been stabbed so it was still escalating. I wasn't really thinking in terms of if I'm going to change any tactics with that." (Transcript, September 22, 2010, page 34, lines 25–30)

[90] Had Mr. Saleh-Azad put down the knife, this situation would have been different - Constable Cooke would have been able to de-escalate his force option.

Nicholas Bisson

[91] Constable Bisson has been a member of the Winnipeg Police Service since 2005. On March 27, 2007, he and Constable Cooke arrived, in uniform, at the Madison Memorial Lodge shortly before Acting Patrol Sergeant Allard. As the three of them entered the building a male told them that the dining room was down the stairs to the left. Constable Bisson drew his pistol, a decision he felt was appropriate given the information they had been provided at that time. Acting Patrol Sergeant Allard told him that he had his Taser.

[92] When they reached the bottom of the stairs and turned to the left, they saw a white male poking his head out of a room. After asking him several times to show his hands, they realized it was not the male they were looking for and moved on. Constable Bisson was in the lead until he stopped to check inside one of the bathrooms. It was at that point in time that Constable Cooke took the lead and continued down the hallway and turned right into the south hallway leading to the dining room.

[93] By the time Constable Bisson reached the turn in the hallway, Constable Cooke was five to seven feet ahead of him. Constable Bisson moved in a couple of feet behind him and to the left. Mr. Saleh-Azad was walking up the stairs from the dining room and had almost reached the hallway; he was covered in blood and had a knife with a 4 or 5 inch blade in his left hand held slightly above waist height and a little to the left, making up and down motions and talking to himself.

[94] Constable Bisson heard Constable Cooke yell at him: "Stop", "Stop", "Police", "Drop the knife". Constable Bisson joined in yelling loudly at Mr. Saleh-Azad to drop his knife. Mr. Saleh-Azad continued to advance approximately 30 to 40 feet into the hallway

without ever dropping the knife. He had a “really angry aggressive look on his face” and he was talking to himself. (Transcript, September 22, 2010, page 60, lines 8–9)

[95] Constable Bisson felt that Constable Cooke’s safety was in jeopardy. He knew that someone needed to fire their pistol at Mr. Saleh-Azad: he could not as Constable Cooke was in front of him and he did not have a clear shot. It was at that point, when Mr. Saleh-Azad was about ten feet away, Constable Cooke fired three shots.

[96] After Mr. Saleh-Azad went to the ground Constable Bisson looked around: Acting Patrol Sergeant Allard was to his right and other officers were behind him. He had not noticed them before. Acting Patrol Sergeant Allard approached Mr. Saleh-Azad and kicked the knife away. Constable Bisson then went into the dining room where he saw Mr. Kolesnyk lying on the dining room floor with extensive wounds to the throat area. It was apparent to him that Mr. Kolesnyk was dead.

Gerard Allard

[97] Constable Allard, a member of the Winnipeg Police Service for the last 23 years, was on duty as the Acting Patrol Sergeant of District 2 on March 27, 2007. When two of his officers were dispatched to 210 Evanson Street, he decided to attend. He arrived just shortly after Constables Cooke and Bisson. As he was alone in his cruiser he had only received information voiced over the radio. That information was of a possible stabbing.

[98] Acting Patrol Sergeant Allard knew the Madison Memorial Lodge, having previously attended there 30 times. He was aware that many of the residents suffered from mental health issues and might be unpredictable. When he noticed Constables Cooke and Bisson un-holster their pistols, he took out his Taser, thinking that it might come in handy.

[99] The three uniformed officers made their way to the basement, past the white male standing in a doorway and to the south hallway. As he rounded the corner he came up behind Constable Cooke stationing himself immediately to his right.

[100] Directly in front of them, in the dining room was Mr. Saleh-Azad. He was sitting in a chair up against the west wall of the dining room looking down at his feet. He was holding a knife in his left hand. There were red blotches on his neck and shirt area at the top consistent with blood stains.

[101] Constable Cooke yelled at Mr. Saleh-Azad to drop his weapon. Mr. Saleh-Azad’s eyes came up from the floor. He stood up and walked very quickly towards them; the knife was in his hand at mid-chest level at a 90 degree angle. Constable Cooke yelled: “Police, please drop your weapon”.

[102] Mr. Saleh-Azad did not stop. He went straight for Constable Cooke, causing Acting Patrol Sergeant Allard to fear for Constable Cooke’s safety. He bent over to click

on the safety latch of the Taser, drew it up and fired as Mr. Saleh-Azad passed through the doorway leading into the south hallway. Given the angle from which he fired, only one Taser probe made contact with Mr. Saleh-Azad; the other lodged in the wall. Mr. Saleh-Azad continued forward and Constable Cooke fired his pistol. He estimated that Mr. Saleh-Azad had got within eight to ten feet of Constable Cooke.

[103] Acting Patrol Sergeant Allard went to Mr. Saleh-Azad to begin resuscitation; he had fallen forward, landing within two feet of Constable Cooke. It was then that he noticed Constables Langrell and Welsh.

Tyson Langrell

[104] On March 27, 2007 Constable Langrell, an officer for the past seven and a half years, was partnered with Constable Christine Welsh.

[105] As the two of them pulled up to 210 Evanson Street in their marked cruiser, they saw Constables Cooke and Bisson and Acting Patrol Sergeant Allard entering the front doors of the Madison Memorial Lodge. Constables Welsh, Langrell and several other uniformed officers followed suit, some turning to the right and some turning to the left. When Constable Langrell heard someone shout “Over here”, he turned and made his way to the south hallway, his service pistol at the ready.

[106] As he entered the south hallway, Constable Langrell came up behind Constable Cooke, who was to his left, and Acting Patrol Sergeant Allard who was to his right. He looked down the hallway and saw Mr. Saleh-Azad standing in the dining room at the bottom of the steps and holding a knife in his left hand; the blade was 3 to 4 inches long. Everyone yelled at him to drop the knife and he began walking towards them at a fast pace, his hangs swinging at his sides. The officers began to back up but were stopped by the back wall.

[107] Acting Patrol Sergeant Allard fired his Taser but Mr. Saleh-Azad continued to advance. A couple of seconds later, when Mr. Saleh-Azad was about fifteen feet from them, which is well within the 21 foot reactionary gap, Constable Cooke fired his pistol. Constable Langrell remembers hearing two shots but recalls seeing three casings on the floor.

[108] When Mr. Saleh-Azad fell to the ground, Constable Langrell walked by and kicked the knife further away from the left side of his body. He then went into the dining room he found Mr. Kolesnyk. He was lying “in a pool of blood. He was lifeless, his neck was cut, he had several stab wounds to his chest as well as to his forehead.” (Transcript, September 22, 2010, page 86, lines 9-11)

[109] Constable Langrell commented that the whole incident took place in under a minute. There was no time to negotiate with Mr. Saleh-Azad:

> “No. From the time I seen him coming down the hallway, he didn't stop at all. He started marching toward us. We asked him to stop, drop the knife.

He didn't respond. We had no other action.

Q All right. Did he ever say anything to you?
A No.
Q Did you hear him say anything during this?
A No.
Q Can you describe how he looked to you?
A When he looked at us his eyes were full and focused, like he was starting at us. I believe the word I used in my statement was deranged, he had a deranged look on his face. He was full and focused and I put terrifying, as well.
Q All right. Terrifying?
A Yes.
Q You were frightened.
A Yeah --
Q Or concerned, perhaps, is a better word.
A -- definitely concerned, yes. Like I said I've never dealt with this male before and the look on his face I knew that something was wrong, so he was obviously agitated at the time."

(Transcript, September 22, 2010, page 89, lines 7-29)

Christine Welsh

[110] Constable Welsh, a member of the Winnipeg Police Service with thirteen years experience was partnered with Constable Langrell on March 27, 2007.

[111] On that day, the two of them attended the Madison Memorial Lodge in uniform at about the same time as Constable Mark Ducharme. Unsure of the location of the dining room, Constable Welsh went to the basement and headed north until she heard someone yell from the south: "Over here".

[112] As she made her way to the south hallway with her weapon drawn, she saw Constable Cooke and Acting Patrol Sergeant Allard ahead of her. To her, it looked as if they both had their service pistols at the ready. At the end of what appeared to be the hallway sat Mr. Saleh-Azad. He got up and began advancing toward them, a knife in his left hand making a stabbing motion down from shoulder height.

[113] She heard Constable Cooke say at least two times to drop the knife. He never did. He continued to advance and the officers began backing up. Though she was prepared to use her pistol Acting Patrol Sergeant Allard was in her line of fire. When Mr. Saleh-Azad was within ten feet of Constable Cooke she heard four 'bangs' – the first one was the Taser. The last three were Constable Cooke's service pistol.

[114] When Mr. Saleh-Azad was down, she then proceeded to the dining room to attend to Mr. Kolesnyk. After noting that he was deceased, she returned back to Mr. Saleh-Azad and assisted in providing first aid to him.

Mark Ducharme

[115] Constable Mark Ducharme, a member of the Winnipeg Police Service with eighteen years service, was working alone on March 27, 2007.

[116] Constable Ducharme testified that he arrived at 210 Evanson Street just shortly after Constables Welsh and Langrell. Together the three of them entered the front doors of the Madison Memorial Lodge. Rather than turning right with Constables Welsh and Langrell however, Ducharme turned left. As he approached the other officers, he saw them backing up and heard several voices repetitively shout "Drop the knife, drop the knife, police". He also heard the Taser go off and then seconds later, three gunshots. He never went into the south hallway and therefore never saw what happened in that hallway. Rather, he turned in the other direction and ran around to another entrance to the dining room with the intention of coming up behind Mr. Saleh-Azad. On his way there, he found one stabbing victim as well as Mr. Kolesnyk who was dead on the floor.

III. THE FORENSIC REPORTS AND THE ORAL EVIDENCE OF SERGEANT MARK ALAN O'ROURKE

[117] Sergeant O'Rourke was one of the forensic identification officers that dealt with the evidence from the March 27, 2007 incident. His role was to map out and photograph the scene and the evidence. His findings are compiled in a report entered as Exhibit 10.

[118] In addition to Sergeant O'Rourke, Constable Leveille, exhibit officer, collected and catalogued all of the exhibits, including those found in Mr. Kolesnyk's and Mr. Saleh-Azad's rooms. His report was entered as Exhibit 14.

[119] Further, Sergeant Buck, the forensic imaging officer, located, reviewed and synthesized the surveillance images from the video surveillance cameras that were set-up at the Madison Memorial Lodge. His report was entered as Exhibit 15.

The Video Surveillance

[120] Madison Memorial Lodge is equipped with 16 video cameras; they are motion-sensor activated. All images are saved to a disk. One video camera is placed in the north-south hallway at the south end. It captures the arrival of the members of the Winnipeg Police Service into the Madison Memorial Lodge in the direction of the dining room. Another camera is placed in the dining room on the south wall. It captures the incident of March 27, 2007, including the assault on Mr. Kolesnyk and Mr. Saleh-Azad's later movement toward the south hallway in the direction of the police. There is no camera located in the south hallway such that the interaction between the members of the Winnipeg Police Service and Mr. Saleh-Azad is not captured on video.

[121] Sergeant Buck's forensic imaging report (Exhibit 15) which is consistent with the video surveillance evidence notes the following salient points:

- The time stamp on the video surveillance was found to be slow by 4 minutes and 15 seconds. The time stamp was therefore re-calculated to reflect the real time.

- At 7:30:32 a.m. on March 27, 2007 Mr. Woodward (also known as “Woody”) enters the dining room and sits down at a table in front of the dining room.

- At 7:38:32 a.m. Mr. Kolesnyk enters the dining room and sits down opposite Mr. Woodward at the same table.

- At 7:52:31 a.m. Mr. Saleh-Azad leaves his room and is subsequently seen to head in the direction of the dining room. Nothing is seen in his hands.

- At 7:53:15 a.m. he is seen entering the dining room and walking north towards Mr. Kolesnyk’s table. Sergeant Buck comments that “It’s not entirely clear from the video, but appears the suspect may pull his left hand from a left side pant pocket as he is crossing the dining room. At the same time, his right hand comes across his body to the front, as if he might be handling an object.” (Exhibit 15, page 22)

- At 7:53:32 a.m. Mr. Saleh-Azad positions himself directly behind Mr. Kolesnyk and “immediately begins a “stabbing-motion” with his left arm, at least five (5) strikes down on the head/neck area, until [Mr. Kolesnyk] is able to stand up.” (Exhibit 15, page 29)

- At 7:53:44 a.m. an unknown resident appears to “raise his cane and engage” Mr. Saleh-Azad. “However he is off balance, and appears to be pushed away…and falls backwards and sideways to the ground”. (Exhibit 15, page 29) Mr. Saleh-Azad returns to stabbing Mr. Kolesnyk at least two more times.

- At 7:53:46 a.m. Ms Lavallee and Mr. Lapointe enter the dining room. Ms Lavallee rushes past Mr. Lapointe and takes Mr. Saleh-Azad by the right arm and leads him away from Mr. Kolesnyk.

- At 7:53:59 a.m. Mr. Kolesnyk falls to the ground.

- At 7:54:05 a.m. Mr. Saleh-Azad returns to Mr. Kolesnyk and continues his attack. Mr. Lapointe begins to throw trays at Mr. Saleh-Azad.

- At 7:54:07 a.m. Mr. Saleh-Azad continues to cut at Mr. Kolesnyk’s throat, this time in a two-handed sawing motion. Blood begins to pool around Mr. Kolesnyk’s head. Mr. Woodward attempts to intervene but is pushed away by Mr. Saleh-Azad.

- At 7:54:15 a.m. Ms Lavallee appears to be getting something from her right hip. Sergeant Buck assumes that it is a cell phone. (Exhibit 15, page 30)

- At 7:54:23 a.m. Mr. Saleh-Azad returns to Mr. Kolesnyk and begins to saw away at his throat. Mr. Lapointe rams a chair into him which temporarily knocks Mr. Saleh-Azad off balance. Once balance is regained, he returns to Mr. Kolesnyk and continues to cut at Mr. Kolesnyk's throat. From this point forward, Mr. Lapointe and Mr. Frank Kroeis, the Madison Memorial Lodge caretaker, continue to throw chairs and other items at Mr. Saleh-Azad but nothing deters him.

- At 7:55:05 a.m. Mr. Saleh-Azad turns his attention to Mr. Woodward. Mr. Lapointe pushes a table between the two of them but Mr. Saleh-Azad walks around it and assaults Mr. Woodward. Mr. Lapointe then throws a chair at Mr. Saleh-Azad who leaves Mr. Woodward but advances on Mr. Lapointe. Mr. Lapointe and Mr. Kroeis continue to throw chairs, tables and other items at Mr. Saleh-Azad until the latter sits down on a chair along the west wall, facing the south hallway; this is at 7:56:01 a.m.

  Sergeant Buck notes in his report that the first 911 calls were made at 7:55:16 a.m., by Ms Lavallee and then at 7:55:45 a.m. (Exhibit 15, page 33)

- At 8:02:56 a.m. Acting Patrol Sergeant Allard arrives at the Madison Memorial Lodge. As he is getting out of the cruiser, Constables Cooke and Bisson walk quickly to the front doors.

- At 8:03:06 a.m. Constables Cooke and Bisson and Acting Patrol Sergeant Allard enter the front doors. Constable Cooke is in the lead, followed by Constable Bisson, then Acting Patrol Sergeant Allard.

- At 8:03:17 a.m. the three officers are seen entering the north-south hallway of the basement with their pistols at the ready. Acting Patrol Sergeant Allard has his Taser in his right hand. The three proceed to the south hallway, checking behind doors as they go.

- At 8:03:42 a.m. Constable Cooke arrives at the south hallway and looks west. He proceeds down the south hallway, now out of sight of the video surveillance. Acting Patrol Sergeant Allard is behind him, then Constable Bisson. Constables Welsh and Langrell are now seen entering the basement.

- At 8:03:45 a.m. Acting Patrol Sergeant Allard and Constable Bisson move into the south hallway. At this same time, Mr. Saleh-Azad, who had been sitting in the chair along the west wall, is now seen moving toward the south hallway raising and lowering his arm with an object in his hand.

  Sergeant Buck notes that it takes Mr. Saleh-Azad four seconds to reach the steps to the south hallway. (Exhibit 15, page 39)

- At 8:03:48 a.m. Constables Langrell and Welsh are now in the south hallway.

- At 8:03:52 a.m. Constable Ducharme is seen approaching the south hallway but is backed-up by Constables Langrell and Welsh who are moving sideways out of the south hallway and into the north-south hallway. Constable Langrell has his pistol at the ready. Constable Welsh's pistol is holstered.

- At 8:03:53 a.m. Mr. Lapointe is seen to jump. Sergeant Buck surmises that this must be a reaction to the gunfire. As the jump occurs only once, he notes that this is consistent with rounds being fired in quick succession. (Exhibit 15, page 47)

- At 8:23:06 a.m. ambulance or paramedic personnel come into the north-south hallway from the south hallway with Mr. Saleh-Azad on the stretcher. Two seconds later, shell casings appear on the floor. Sergeant Buck comments that this indicates that the ambulance/paramedic personnel must have moved the shell casings when they moved Mr. Saleh-Azad. He also notes that at 8:23:14 a.m. a paramedic appears to become entangled with his feet and something on the floor, likely the fine wires from the Taser cartridge. He notes another paramedic later standing up with an object in his left hand which would be the discharged Taser cartridge with fine wires hanging from it. (Exhibit 15, pages 5 – 6)

The Measurements

[122] Constable O'Rourke was responsible for photographing the scene at the Madison Memorial Lodge. He also prepared diagrams of the basement area of Madison Memorial Lodge which is to scale and which provides several distances of the relevant portions of the basement. He also determined the field of view of the various security cameras. A copy of the map is reproduced in Schedule III (Exhibit 3). Of note are the following measurements:

- The length of the south hallway is 27 feet.

- The distance from the chair in which Mr. Saleh-Azad was seated facing the south entrance to the landing of the south hallway is 16 feet, 8 inches, and from the chair to the top step of the south hallway, 19 feet, 5 inches.

- The distance from where Mr. Saleh-Azad was seated facing the south hallway to the moment at which he would come into view of the camera located on the south wall is 9 feet.

- The distance from the chair to the point where the police entered the south hallway, 44 feet, 11 inches.

- The distance from the dining room doorway of the south hallway to the pool of blood from Mr. Saleh-Azad's body is 9 feet, 6 inches.

- The width of the hallway is 58 inches.

- Mr. Saleh-Azad would have been visible to the police officers as they entered the south hallway and vice versa.

[123] Constable O'Rourke also marked and indicated the places in the south hallway where he found evidence of weapon use. The items were listed by Constable Leveille as follows:

- Taser probe and length of lead wire which had fallen from Mr. Saleh-Azad's clothing. Constable Leveille notes that it is not known where the probe had been in the clothing.
- Two pieces of copper jacket from a pistol round noted as having fallen from Mr. Saleh-Azad's clothing on his right side.
- One small copper jacket fragment noted as falling from the upper clothing of Mr. Saleh-Azad.
- One brass shell casing located in the north-south hallway.
- One Taser cartridge and lead wires located in the north-south hallway.
- In the south hallway:
    - one empty shell casing along the south wall;
    - one empty shell casing from the middle of the floor;
    - one bullet on the floor against the north wall;
    - one small black-handled knife against the north wall;
    - one Taser probe in the drywall of the door return at the entrance to the dining room;
    - one Taser cartridge door on the floor;
    - one length of blue broom handle at doorway to boiler room;
    - ambulance debris on the floor;
    - Taser aphids with serial number H06-273844 on floor. This serial number corresponds to the Taser in Acting Patrol Sergeant Allard's possession that day.

[124] At the autopsy of Mr. Saleh-Azad, Constable Leveille recovered one copper jacket from the upper chest wound and one bullet core from the upper chest wound as well as one complete bullet, jacket and core from the lower groin wound.

Observations

[125] On the basis of Sergeant O'Rourke's investigation, it was his opinion that when the members of the Winnipeg Police Service attended Madison Memorial Lodge, they would have first seen Mr. Saleh-Azad when they entered the south hallway. Given the dimensions of the south hallway, they would have been extremely close to one another with no way of backing-up or escaping. With Mr. Saleh-Azad approaching them in a matter of seconds, the situation presented to the officers was an extremely dangerous one.

[126] From the location of Mr. Saleh-Azad's body, and assuming that the officers did not advance into the south hallway, Sergeant O'Rourke estimated that the police officers would have been between 8 and 10 feet when the Taser was deployed and at approximately 8 feet, 3 inches away when they shot and killed Mr. Saleh-Azad.

The Search of Mr. Saleh-Azad's Room

[127] An examination of Mr. Saleh-Azad's room at the Madison Memorial Lodge revealed prescription medications in his name, including two Shoppers Drug Mart compliance packs issued March 17, 2007 containing a two week supply of the following:

- Apo-Propranolol 20mg and 40 mg to be taken twice daily, morning and bedtime;
- Seroquel 200mg and 300 mg, 1 tablet each to be taken daily at bedtime;
- Novo-Venlafaxine XR 75mg 1 tablet to be taken daily at bedtime. (Exhibit 14, page 15)

[128] Constable Leveille noted that only one complete daily dose of the medications listed had been removed from the compliance packs. (Exhibit 14, page 15)

IV. WINNIPEG EMERGENCY MEDICAL SERVICES MEMBERS – RUSSELL MCKENZIE AND TOM HUDSON

[129] On March 27, 2007, several members of the Winnipeg Emergency Medical Services Department attended at the Madison Memorial Lodge. Russell McKenzie and Tom Hudson were two such members.

[130] Mr. McKenzie testified that on March 27, 2007, at approximately 8 a.m., he and his partner attended to the Madison Memorial Lodge. As they approached the front entrance doors, he heard three gun shots fired in rapid succession. When it was safe to do so, they entered the Madison Memorial Lodge where they first attended to Mr. Kolesnyk, who was lying on his back. Upon examination he had no pulse or respiration and the wounds to the neck were such that he was almost decapitated. He was pronounced dead.

[131] Mr. McKenzie then made his way to Mr. Saleh-Azad who was in the south hallway lying on his back. A police officer was attempting to resuscitate him.

Mr. McKenzie took over. In the process, he noticed a knife lying to the right of Mr. Saleh-Azad near his leg. In cutting away his clothes, he also found a Taser probe that fell away. He was uncertain as to where on the body it might have been.

[132] A short while later, Tom Hudson attended and took over the attempt at resuscitation. He also assisted in the transportation of Mr. Saleh-Azad to the hospital where he was pronounced dead.

V. THE PATHOLOGIST – DR. CHARLES DAVID LITTMAN

[133] Dr. Littman, a medical practitioner licensed to practice medicine in the Province of Manitoba with an expertise in pathology, provided evidence on the pathology reports prepared by both himself and Dr. Phillips, the pathologist who performed the autopsy on Mr. Kolesnyk.

[134] Dr. Littman testified that the autopsy performed on Mr. Kolesnyk (Exhibit 7) revealed multiple injuries. There were minor sharp force non-threatening injuries to the scalp, face and hand and there were multiple sharp force lethal injuries to the front of the neck and soft tissues. In Dr. Littman's opinion, there were likely in excess of twenty such injuries, though the autopsy report only noted fourteen. He described the wounds as a result of an assault "in a frenzy" (Transcript, September 20, 2010, page 79, lines 23-24). He also testified that:

> "Those stab -- slash wounds were so severe that almost all major vessels in the neck were severed and if not completely severed also almost partially severed and that would lead to tremendous blood loss, quite rapid blood loss, a loss of consciousness and ultimately death.
>
> In addition to the, the blood vessels being severed, they also – the airway was severed and that would lead to some of the blood being aspirated into the, the airways. And there were even injuries to the spinal column, the actual spinal column wasn't penetrated but there were – there was evidence of score marks from the, the knife that was used on the, the, the cervical spinal column. (Transcript, September 20, 2010, pages 79 - 80, lines 27-5)

[135] Put simply, the injuries were such that Mr. Kolesnyk's head was almost severed.

[136] As for Mr. Saleh-Azad, the autopsy report (Exhibit 6) revealed some bruising consistent with chairs, trays and pails having hit him, as well as some bruising over his right chest consistent with Taser use. There were also three bullet entries – to the right arm, abdomen and chest. The bullet wounds to both the right arm and abdomen were not life threatening, though the wound to the abdomen was significant. The gunshot wound to the chest was however lethal as it damaged the airways and hit the aorta, causing massive bleeding. Dr. Littman was unable to state with any degree of accuracy, the distance from which the gun was fired.

[137] Dr. Littman also testified that the forensic toxicology report (Exhibit 24) which examined the blood and vitreous humor, revealed no evidence of drugs or alcohol. He clarified that the lack of drugs comprised lack of any prescription drugs, such that he was of the opinion that Mr. Saleh-Azad had not been taking his medication. He was not able to say with any degree of certainty when he last took his medication but indicated that drugs usually remain in the blood system between 24 and 48 hours.

VI. THE EXPERT IN USE OF FORCE - CORPORAL GREGG GILLIS

[138] Corporal Gregg Gillis testified at the inquest as an expert in police use of force.

[139] Corporal Gillis provided some background about the training that members of the Winnipeg Police Service receive. Initially, once having been recruited, members receive instruction at the police academy. They are instructed in their legal authority to conduct arrests and use force, including the amount of acceptable force, in doing so. In addition to the technical instruction, members are provided with experiential learning. This experiential learning gives them hands-on instruction in firearms training and self-defence as well as how to exercise their judgment in deciding how much force to use in a given situation. Members are also provided with scenario-based training or reality-based training which requires them to act out a variety of scenarios: first, with a video, then, with other people.

[140] Once successful at the academy and on active duty, members are assigned a coach or partner who assists them through the first initial months of work experience so that they learn and observe how to conduct their duties. If they successfully complete their first months on the job, the members are accredited and become part of the regular working shift.

[141] From that point forward, every member continues to receive in-service courses. Corporal Gillis explained that in addition to these courses, members are expected to communicate the type of force they use during the course of their employment, both verbally and in writing, and explain why it was necessary. The use of force by the members is reviewed by their immediate supervisor as part of the departmental review process.

[142] Corporal Gillis explained that to assist members in making appropriate use of force decisions a graphic matrix or diagram referred to as the ‘National Use of Force Framework’ is used. He explained that situations presented to members on duty are not static and vary in severity. As a result, what could be considered an appropriate response depends on the behavior with which the member is confronted. He explained that as behavior or conduct escalates, so does the appropriate use of force. Conduct at the higher end of the spectrum which is characterized by resistant and assaultive behavior authorizes members to use one or several intermediate weapons in response. These comprise oleoresin capsicum spray, also known as pepper spray, the baton and the Taser.

[143] Corporal Gillis testified however that if there is a risk of death to the officer or another person, these intermediary tools would not be a primary choice: the service pistol would be. The only exception would be in the case where there were other police officers on scene who had their service pistols drawn. In that case, an intermediate weapon might be used by an officer.

[144] Dealing with the incident at the Madison Memorial Lodge on March 27, 2007, Corporal Gillis was of the opinion that intermediate weapons would not have been appropriate as the primary weapon.

[145] With respect to the pepper spray he explained:

> "No, that wouldn't be the option for choice. If we observed an officer doing that, we would probably afterwards at a debriefing have a discussion about that and assist him with a risk assessment ability and, and suggest to them that was an inappropriate choice for the reasons that I've alluded to, is that it takes -- when you deploy OC spray, it still takes a few seconds for it to activate and work.
>
> So, if you're deploying it on a person, you've got to get to a very close distance to them if they're armed with a edged weapon. Officers are trained that they shouldn't get closer than 30 feet. Twenty-five to 30 feet is the closest distance they want to get to somebody with an edged weapon and the reason for that is, is that standing -- if a person's standing static 25 to 30 feet away from you with an edged weapon, suddenly decides to close that distance, that you need that amount of space to be able to assess and react. Whether that reaction is producing your pistol and firing it, try and stop the person -- because you need to take and make use of the tool. It gives you the greatest likelihood of stopping that or immediately incapacitating that person, and that's the pistol for our purposes, for what we're talking about here with patrol officers.
>
> Secondarily, if you weren't going to fire your pistol, for you to be able to tactically move because you're moving backwards -- as bipedal human beings we do not move effectively backwards. So, we take two people of equal stride, equal level of fitness, and we put them an equal distance apart, 10 feet for our purposes or 20 feet.
> It really doesn't matter. And we blow a whistle and tell the person simply at a regular walking gait, just walking forward, to walk -- and it is a simple walking gait to walk backwards for the person who has to retreat backwards. The person who is walking towards them, if they've got roughly the same gait, will overtake that person in 10 feet within three strides strictly because we don't move effectively as human beings backwards. We're not designed that way…
>
> So, that would be another impacting factor, that if I'm going to deploy OC and have to tactically re or reposition myself backwards to give the product

> time to work and if it doesn't immediately incapacitate the person, to then transition to the secondary option, for a number of reasons it's not the appropriate choice. And then with inside -- as we've talked about inside a confined space, I put everyone else in that immediate area that's with me at risk of cross-contamination. If there's other victims or people who aren't directly involved, I -- not police officers and the primary person or persons that we're dealing with, those people can be cross-contaminated. And because the product remains ambient in the air for a period of time afterwards, additional persons that may come to assist, so other police officers, other public safety personnel, are equally going to be affected and take away from their effective ability to do their job if they're cross-contaminated with the material."(Transcript, September 24, 2010, pages 29-30)

[146] Use of the baton posed similar concerns:

> "The baton would have required the officers to get too close to a person armed with an edged weapon. That they could have suffered serious injury. And if they become injured and they -- and incapable of responding, they now are part of the problem, they're not part of the solution because they're now another victim at the scene as opposed to somebody who can manage the risk for the greater public. So, that would eliminate the baton as an option." (Transcript, September 24, 2010, page 58, lines 17-24)

[147] As for the Taser, he explained that it was an appropriate choice given that other officers had their service pistol. He explained however that Tasers do have limitations; it fails 20% of the time. For the Taser to work properly not only do the two probes from the Taser need to reach the intended target, the probes also have to attach to the target's body in a manner that would allow the electrical energy to transfer. Further, the officer discharging the Taser needs to be between 12 and 18 feet away from the target to ensure an optimum operational distance. These conditions were not present on March 27, 2007:

> "Taser was a good option. Unfortunately in this case this is one of those cases where the device didn't work, partially because of the limitations of the environment the officers were firing it, on, on a bit of an angle as opposed to straight on, and that the, the technology, the way it works, requires those two probe contacts and we didn't get that in this case so that's why that was not a, a device that had a successful outcome." (Transcript, September 24, 2010, page 58, lines 25-32)

[148] According to Corporal Gillis, the primary choice of weapon on March 27, 2007 was the service pistol; it is a weapon that allows officers to immediately stop or incapacitate a person. He explained that the pistol should be aimed to shoot at center mass, that is, at the torso area of the intended target to increase the likelihood of achieving their goal of immediately stopping or incapacitating the target. He explained:

“Now, with the pistol there's a high degree of ability to deliver accurate fire. The pistol will accurately hit out to 50 meters, point of aim, point of impact. So, in other words, if the sights are lined up at a target 50 meters away, the pistol -- all police service pistols, the Glock pistol included, can easily deliver rounds exactly to the point that's being aimed at.

What impacts the ability as to where rounds hit are the movement because when you put a handgun in somebody's hand, we've got movement at the wrist, potentially movement at the elbows and the shoulders and, so, as a result there's a degree of movement there. And there's also the movement as the person presses the trigger.

So, we accept that that makes it very difficult for somebody who's not under stress, who's mastered all the various components and processes that have to be engaged to accurately fire a firearm to hit exactly the spot that they're trying to hit. So, in other words, I don’t want to simply hit the centre of myself, that we would want to hit the button that's in the specific spot…

The next challenge is, is that in a real life environment, unlike static targets, static targets on a range stay still for you. In the real world people move. And, so, something as simple as somebody waving the baseball bat simply just in a very small motion, like I'm mimicking here, of three to four inches of up and down movement would make it extremely difficult for even the most accomplished shooter to manage to strike that very small area of three to four inches on their wrist.

So, that's the -- one of the reasons why we don't try and shoot at weapon systems or at limbs controlling weapon systems.

The next issue at hand is what our goal is when we shoot -- discharge a service pistol or a rifle is not to kill the person or take their life but the goal is to incapacitate them and get them to stop doing what they're doing. And, so, as a result the best way for that to occur if we don't psychologically defeat them by shooting at them is the rapid loss of blood pressure in relation to blood that's available to the brain to continue with motor movements and making the body focus on injury management and thought processing (inaudible) take away from the ability for them to do what they're doing (inaudible) extremities, to continue hitting somebody, to continue stabbing somebody, to continue pointing and firing a firearm.

Final portion of this is that we have to be concerned as police officers every time we discharge a firearm where that bullet is going to go because a missed bullet out of a handgun has serious consequences for one to two kilometers away from where we're shooting. Certainly within hundreds of meters or yards. So, as a result for all those

> reasons we have to try and manage that risk.
>
> So, we train officers on how to manipulate and fire the pistol. We ensure that they have a mastery degree of how to control all the various components of shooting a pistol, manipulating the trigger, aligning the sights, controlling the pistol, those sort of issues…
>
> We train them to shoot centre mass because a person who's dynamic and moving, that's the largest area and it's the area that's hardest to move away from, where they're potentially aiming at. So, while it's very easy for me -- as we talked about to move my arms and change the location of those from one split second to the next, it's not as easy for me to change my torso.
>
> And the final point is, is that when we do make the decision to discharge the firearm, what we're trying to accomplish with the controlled expansion ammunition that we're firing is to incapacitate the person. The greatest likelihood that we have for incapacitation with handgun rounds is centre mass hits. The other side of that is the greatest likelihood of survivability for a gunshot injury is from a handgun round versus a rifle round. So, that's the other portion that -- as -- when we're doing evaluation for weapon systems that we take into consideration for what we're choosing to equip our officers with, is something that minimizes the risk to the rest of the public but that also tries to minimize the wound (inaudible) that we're going to cause to the person we're shooting because ultimately once the person is incapacitated, our goal and our duty is to look after them medically and try and help them have that (inaudible) permanent injury rather than a loss of life." (Transcript, September 24, 2010, Pages 48-50)

[149] Corporal Gillis also explained that officers will usually fire more than one round of ammunition into the intended target. He explained that this is because often the target is not stopped or incapacitated by that one round of ammunition: more are needed.

[150] In reviewing police action on March 27, 2007 he found that it was appropriate in all regards:

> "Your Honour, the first issue at hand is, is that there's no question the officers have a duty to enter into the premise. The reason being is in Canadian society they are the people that are equipped and trained, that we call upon to immediately intervene to stop this sort of event from occurring, in other words, if there's persons engaged in serious violence against other, other persons and, and the public, in other words it's not a person simply armed with a weapon that's alone and contained, that there's a duty on those officers to respond to (inaudible) risk to public safety.

As, as further training and the training that the -- I speak to now is not necessarily specific to the Winnipeg city police but an industry standard, so what I would expect from a similarly trained police officer elsewhere in Canada, is that the drawing of the service pistol or service pistol, more specifically, would be the appropriate option. That for the officer equipped with the taser, seeing that there's two other officers with pistols out, it's appropriate for that person to leave their pistol holstered and to draw the (inaudible) because they've got somebody there that if they use the taser for the conduct energy weapon -- if they use the taser and it fails to work, that they've got other, other persons there to intervene to protect the safety of other persons or of that officer if need be, those being the officers who have their service pistols out.

That as the officers enter the building, consistent with their training, they're possibly expecting to find one person in a given location but what they're trained is to expect the unexpected. So, if your information is, is that there's one person, be prepared, there could be more. If you're expecting to find the person in the courthouse on the fourth floor, be prepared that you could step -- because of the delay of information, things dynamically changing, that you could step in the front door of the courthouse and find the person standing right there in the lobby. So, for those reasons it's appropriate as well for their pistols to be out on initial entry into the building.

From there again as part of that assessment phase that we talked about at the beginning, while there's three officers there, each of those individual officers is conducting an individual risk assessment. And part of the equation that comes to that assessment that wasn't discussed in the technical issues that when we talked about the model, the other variable is that of experience. So, the options that we would expect deployed by an officer with one to two years' service would be different from potential that we would see from an officer with 10 or 15 years' experience, simply because that officer with more experience draws upon more actual real life experiential (inaudible). No different than any of us in our day-to-day lives, things that we do at home on a day-to-day basis that we do differently now than we did 15 years ago based on experience.

So, appropriate for the officers to draw their pistols. Appropriate for one officer to, to not draw his pistol and draw the taser. Appropriate to enter. Appropriate to take the most direct route to the scene and to stay together as a, as a team.

Reason for taking the most direct route is because the information you got in this case is (inaudible) there's persons' lives are at risk or there's serious harm occurring to persons. So, to delay your response and not take the most direct route to the scene wouldn’t be viewed as the appropriate

> conduct if it was subject to internal review. That we would say, No, look, you -- we want you to take the most direct route. Much like a fire truck. My house is on fire. I want the local fire department coming the fastest and most direct route, not the most scenic route. Not the route that maybe leads them to their favorite fire hydrant. I want them there fast. Same concept for the police. Your safety's at risk. You want the police officers to come there directly.
>
> The other reason that we want them to stay together is that the very -- one of the reasons that we're talking about. (Inaudible) the three officers split up, it would preclude the one officer from having the taser as the potential option to resolve the situation. He would have to transition to his pistol, which is a higher level of intervention.
>
> Equally, we could have three officers approach and find that only one ends up in the correct location. The other two takes routes that don't lead them to where they're supposed to be.
>
> And the final one is, is that if all three do take different routes, all three do arrive at the same location and all three are now confronted with a situation where they need to respond with their firearms, they have to not only be concerned about where the rounds, if they choose to fire, are going to go in relation to the person that they're intending to strike with those rounds, but they have to be concerned about the backdrop, other persons in the area. So, if I take this room, for example, and officers come in from three different angles, there's the potential if one officer was to step through that door and move to there and the other officer was to step to there and move to where counsel's at, that they're actually pointing their firearms at each other, which increases the risk to the public and to themselves.
>
> So, for all those reasons it's appropriate for the first three responding officers to respond as a team and to respond directly to the area of concern." (Transcript, September 24, 2010, Page 33-36)

[151] He concluded by stating the following:

> "Yes, I would agree that the officers made the appropriate choices in this case from a use of force analysis standpoint. It's the actions I would expect of a similarly trained police officer elsewhere in Canada. And faced with the specifics of this case, the officers were really left with no other options but the ones that they chose to respond with."
> (Transcript, September 24, 2010, page 60 lines 5-11)

[152] Corporal Gillis added that in this particular case, any additional training the officers would have received to be able to deal with persons with mental health issues, would not have been of assistance.

VII. DIRECTOR OF THE MENTAL HEALTH PROGRAM FOR THE WINNIPEG REGIONAL HEALTH AUTHORITY - CAROLYN STRUTT – AND DOCUMENTS OF THE WINNIPEG REGIONAL HEALTH AUTHORITY (EXHIBIT 30)

[153] Ms Strutt, director of the mental health program for the Winnipeg Regional Health Authority, testified generally about the mental health services available under the Winnipeg Regional Health Authority as well as more specifically about the services that were provided by Mr. Saleh-Azad from 2005 to 2007.

[154] Ms Strutt explained that the mental health program in Winnipeg offers a variety of services that are delivered in both acute care facilities and in the community. The services are organized under various structures but overseen by a regional mental health team to ensure integration of services across both hospitals and the community. In addition, the services work collaboratively with other service partners such as Home Care.

[155] Mr. Saleh-Azad required the services of both the mental health program and Home Care as a result of his coming into contact with the Criminal Justice system in 2004; he had been arrested for several incidents of unprovoked violence, which included throwing rocks at a bus, striking a male victim over the head with a bag of rocks, as well as several incidents of spitting in the face of various individuals. A psychiatric assessment was ordered by the Court, and Mr. Saleh-Azad was admitted to the Health Sciences PsycHealth Centre on February 3, 2005.

[156] His psychiatric history revealed that Mr. Saleh-Azad had no formal mental health history though his son had reported a prior five year decline in his level of functioning which included prominent delusional beliefs that his food had been poisoned by the police. He had also been seen talking to himself and admitted to hearing voices. While at the PsycHealth Centre, Mr. Saleh-Azad was diagnosed with paranoid schizophrenia.

[157] Prior to his discharge, there was some concern expressed about the safety of Home Care workers given Mr. Saleh-Azad's prior history of violence. That said, it was determined that Mr. Saleh-Azad's risk level was low as long as he remained taking his medications. (Exhibit 30, Tab 2, page 4)

[158] After a course of treatment and stabilization, Mr. Saleh-Azad was discharged on May 10, 2005. The discharge plan was for Mr. Saleh-Azad to live at the Madison Memorial Lodge and to take medication daily that was to be provided to him bubble-packed. Ms Strutt explained that another option for the medication would have been to have it injected at a mental health facility (depot medication). This option was not chosen by the psychiatrist.

[159] Home Care was assigned the task of providing a Home Care worker through the Med-Ensure Program, to attend Mr. Saleh-Azad's residence daily to ensure that he was taking his prescribed medication. This service was overseen by the Home Care case coordinator. In addition, Home Care also provided the services of a nurse to ensure, from a clinical perspective, that his medication was in place.

[160] The mental health program assigned a community mental health worker to attend Mr. Saleh-Azad's residence to check on his mental status and assist him in attending his regularly scheduled psychiatric appointment.

[161] The discharge plan, including regular visits to the psychiatrist, proceeded without incident until February 2007.

[162] On February 22, 2007, a Home Care nurse attended Mr. Saleh-Azad's residence to ensure he was taking his medicine and was punched by Mr. Saleh-Azad. The nurse indicated that Mr. Saleh-Azad may be decompensating and therefore pose a risk to others. (Exhibit 30, Tab 2, page 62) A similar incident had occurred on February 21, 2007. (Exhibit 30, Tab 2, page 43) On February 22, 2007, the Home Care case coordinator put all future services on hold. Also on this same date (or the following day, see Exhibit 30, Tab 3, page 150), the Home Care case coordinator called the psychiatrist to advise him of the assault and the suspension of services. She also left a message with Susan Hall-Amado at the Madison Memorial to use caution her when dealing with Mr. Saleh-Azad. She also advised the community mental health worker who replied that he would see Mr. Saleh-Azad immediately. (Exhibit 30, Tab 2, pages 20, 48)

[163] On February 23, 2007, the community health worker took Mr. Saleh-Azad to see the psychiatrist. Mr. Saleh-Azad admitted to having been more reclusive as of late but denied delusions or hallucinations and stated that he had been compliant with his medication. The psychiatrist apparently felt that he could not involuntarily admit Mr. Saleh-Azad to the PsycHealth Centre for a psychiatric assessment. Mr. Saleh-Azad was asked to do so voluntarily but refused. He did however agree to a voluntary admission on February 26, 2007. (Exhibit 30, Tab 2, page 20; Tab 1, page 5). The psychiatrist increased Mr. Saleh-Azad's Seroquel medication from 300 mg to 500 mg. (Exhibit 30, Tab 3, page 150)

[164] On February 26, 2007, the psychiatrist spoke with the community mental health worker who advised that since the two assaults there had not been any other problems. On examination, the psychiatrist found that Mr. Saleh-Azad was not exhibiting any psychotic symptoms, dementia or delusion. (Exhibit 30, Tab 3, page 149) According to the community mental health worker however, he appeared to be responding to internal stimuli. (Exhibit 30, Tab 1, page 5)

[165] On February 27, 2007, the community mental health worker apparently informed Home Care that although the psychiatrist agreed that Mr. Saleh-Azad was mentally unstable, they were not compelled to admit him and he was refusing to voluntarily admit himself to the PsycHealth Centre. Although Mr. Saleh-Azad had told his community mental health worker that he would not assault Home Care workers anymore, the Home Care case coordinator decided not to reinstate Home Care services given his mental state and unpredictability. She noted that the nursing provided by Home Care was only to monitor Mr. Saleh-Azad's mental health status and mood once a week and given that there was both a community mental health worker and a psychiatrist who were doing this, nursing services were not required. She further noted

that as there were no reported concerns that Mr. Saleh-Azad was not taking his medication she preferred a wait and see approach to Mr. Saleh-Azad's treatment of his current psychosis. (Exhibit 30, Tab 2, page 19)

[166] On February 28, 2007, Mr. Saleh-Azad was once again seen by his regular psychiatrist. The psychiatrist noted that at that visit Mr. Saleh-Azad continued to deny any psychosis. (Exhibit 30, Tab 3, page 147)

[167] The community mental health worker continued to attend Mr. Saleh-Azad's residence. On March 6, 2007 his medication package appeared to be in order. (Exhibit 30, Tab 1, page 9)

[168] On March 12, 2007, Mr. Saleh-Azad returned to see the psychiatrist. He acknowledged that he had been experiencing increasing nervousness but that he now felt better on the increased dose of Seroquel. (Exhibit 30, Tab 3, page 147)

[169] On March 19, 2007 when the community mental health worker attended Mr. Saleh-Azad's residence he was not present. (Exhibit 30, Tab 1, page 7)

[170] On March 23, 2007, when the community mental health worker attended again he noted that Mr. Saleh-Azad's medication appeared to be in order although there was still an odor of rotting food in his room. Mr. Saleh-Azad told the worker that he had returned to eating downstairs with the other residents of the Madison Memorial Lodge. Ms Hall-Amado confirmed much of this information adding that she had no issues with him; he was friendly, affable, very polite. (Exhibit 30, Tab 1, page 7) It was also the same information provided by Mr. Saleh-Azad's son to the psychiatrist; he was gradually improving. (Exhibit 30, Tab 3, page 146)

[171] It was pointed out to Ms Strutt that given Home Care's decision to suspend services, Mr. Saleh-Azad was essentially in the community and still living at the Madison Memorial Lodge, responsible for taking his medication himself. She responded as follows:

> A Yeah, the decision about the monitoring of medication is really the physician decision, I mean, obviously, in consultation with other individuals who, who may be involved in the care. But primarily, it is the physician's decision.
>
> Home care is really just acting on a recommendation and an order that that's the service to be put in place. It's not really their decision to determine whether that service needs or should be in place. They would simply be providing the service and then reporting any issues or incidents about the service and, and perhaps providing feedback about the service delivery. But it -- the determination that that was required would be -- would rest with the physician.

Q Now, not only would that rest with the physician, but a determination of whether or not Mr. Saleh-Azad's health was such that he had to go back into the hospital and couldn't live at Madison Lodge any longer would also be a medical decision, not a –

A Yeah. That is strictly a psychiatrist decision under *The Mental Health Act*.

Q And the inference I would draw, knowing that Mr. Saleh-Azad was in the community, at least until the incident on the day where he had his contact with the police, we could infer from that that the medical team…concluded that Mr. Saleh-Azad could still live at the Madison Lodge?
They --

A That is correct.

Q -- didn't make a decision that he needed to come into hospital?

A Right."
(Transcript, March 23, 2011, pages 17-18)

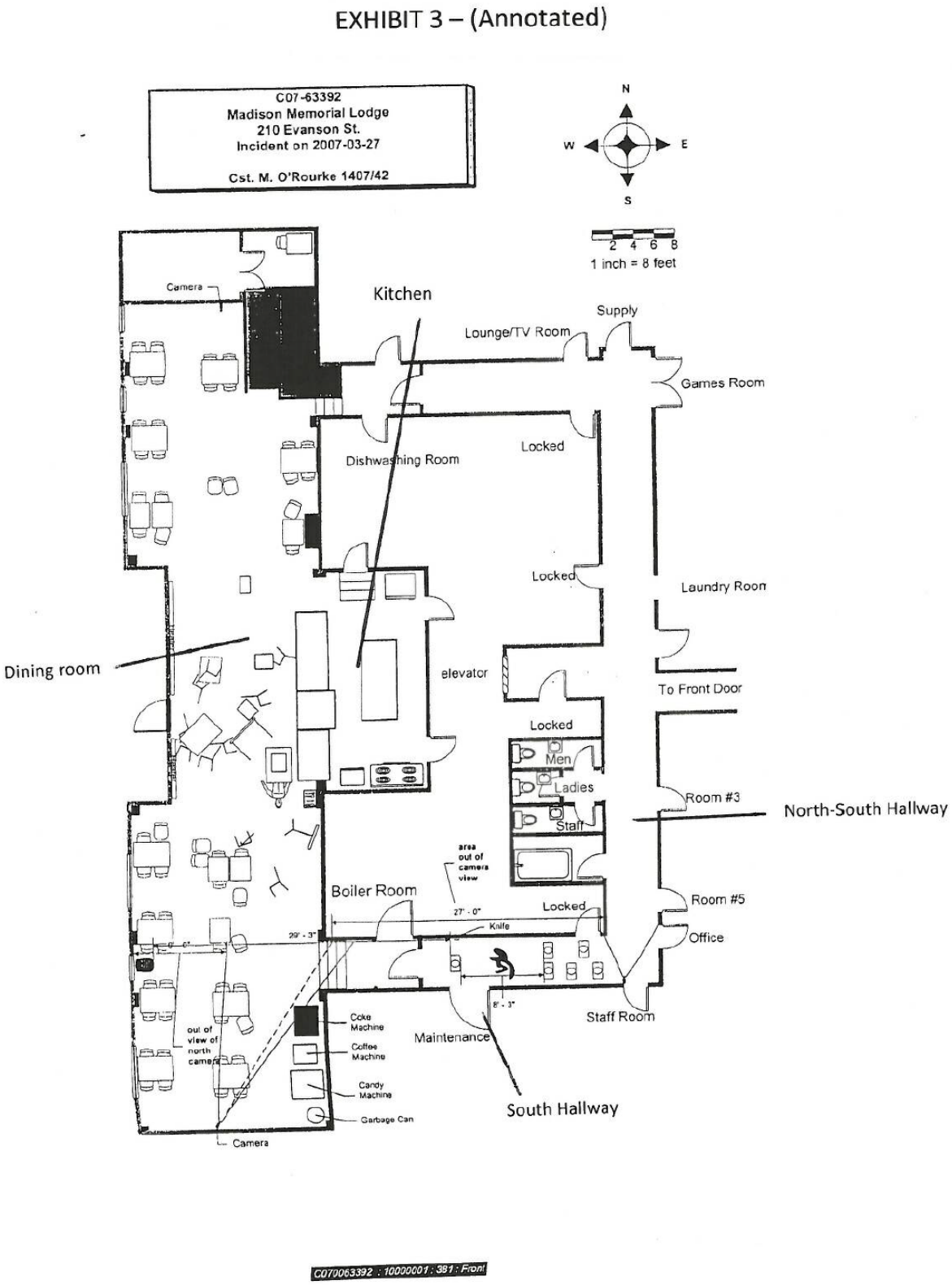
[172] Ms Strutt added that had the psychiatrist felt that supervision of medication compliance was required, he could have followed up on that; he could have spoken to Home Care to open a dialogue, or he could have required depot medication.

Dated at the City of Winnipeg, in Manitoba, this 30th day of September 2011.

"Original signed by:"

Judge Lee Ann Martin

SCHEDULE III - MAP OF MADISON MEMORIAL LODGE (Exhibit 3)



SCHEDULE IV – LIST OF EXHIBITS

Exhibit No.	Description
1.	Letter dated February 19, 2008 to Chief Judge R. Wyant from Dr. Balachandra calling the inquest
2A.	Information for Madison Memorial Lodge residents
2B.	Fire plan for residents – 210 Evanson Street
3.	Diagram of Madison Memorial Lodge
4.	Video witness statements
5.	2 Discs containing photographs
6.	Autopsy report of Saleh-Azad, Ahmad
7.	Autopsy report of Alexander Kolesnyk
8.	Application for residence at Madison Memorial Lodge
9.	Audio-tape of 911 call and document breakdown of calls and time stamps
10.	Winnipeg Police Service forensic identification report of Sergeant O'Rourke
11.	Winnipeg Police Service forensic identification report of D. Murphy and Sergeant Weiss
12.	Winnipeg Police Service forensic identification report of Constable Bell
13.	Winnipeg Police Service forensic identification report of Sergeant Weiss
14.	Winnipeg Police Service forensic identification report of Constable Leveille
15.	Winnipeg Police Service forensic imaging report of Sergeant Buck
16.	Enlarged version of the diagram of Madison Memorial Lodge

17. Color coded 8 X 14 diagram of Madison Memorial Lodge
18. Paring knife with a black handle

19. Fire paramedic service rescue company report

20. Incident report of paramedic R. McKenzie

21. Incident report of paramedic T. Hudson

22. Madison Memorial Lodge surveillance video

23. File No. 0763/07 compiled by the Chief Medical Examiner

24. Forensic laboratory toxicology report prepared by Jennifer Findlay of the RCMP dated December 18, 2007

25. Forensic laboratory report prepared by John Marshall of the RCMP Regina, Saskatchewan with his *curriculum vitae* attached

26. Forensic laboratory report prepared by Meagan Clark of the RCMP Regina, Saskatchewan

27. Winnipeg Police Service call history

28. Video of Winnipeg Police Service super text file

29. *Curriculum vitae* overview for Gregg Gillis

30. Grey binder containing documents of the Winnipeg Regional Health Authority

SCHEDULE V – DISTRIBUTION LIST

Dr. A. Thambirajah Balachandra, The Chief Medical Examiner

The Honourable Ken Champagne, Chief Judge Provincial Court of Manitoba

The Honourable Andrew Swan, The Minister Responsible for *The Fatality Inquiries Act*

Mr. Jeffrey A. Schnoor, Q.C., Deputy Minister of Justice & Attorney General

Ms. Lorraine Prefontaine, Acting Director of Specialized Prosecutions and Appeals

Mr. Michael Mahon, Assistant Deputy Attorney General

Mr. Martin Minuk, Crown Appointed to act for the Crown

- Mr. Arash Saleh-Azad
- Ms. Deborah Chorney

Ms. Kimberly Carswell, Counsel for the Winnipeg Police Service

Ms. Vivian Rachlis, Counsel for the Winnipeg Regional Health Authority