

RELEASE DATE: August 8, 2018



Manitoba

THE PROVINCIAL COURT OF MANITOBA

IN THE MATTER OF: *The Fatality Inquiries Act C.C.S.M. c. F52*

AND IN THE MATTER OF: Roy Thomas Bell, Deceased

**Report on Inquest and Recommendations of
Judge Dale Schille
Issued this 2nd day of August, 2018**

APPEARANCES:

Ronald Toews, Inquest Counsel
Kimberly Carswell, Counsel for the Winnipeg Police Service
Stephan Thliveris, Counsel for Darlene Bell



Manitoba

THE FATALITY INQUIRIES ACT
REPORTED BY PROVINCIAL JUDGE ON INQUEST

RESPECTING THE DEATH OF: ROY THOMAS BELL

Having held an inquest respecting the said death on January 22, 2018, and March 5, 2018, at the City of Winnipeg in Manitoba, I report as follows:

The name of the deceased is: Roy Thomas Bell.

The deceased came to his death on the 18th day of December, 2007, at the City of Winnipeg, in the Province of Manitoba.

The deceased came to his death by the following means: multiple gunshot wounds.

I hereby make no recommendations for the reasons set out in the attached report.

Attached hereto and forming part of my report is a list of exhibits required to be filed by me.

Dated at the City of Winnipeg, in Manitoba, this 2nd day of August, 2018.

“ORIGINAL SIGNED BY:”

Judge Dale Schille
Provincial Court of Manitoba

Copies to:

1. Dr. John Younes, A/Chief Medical Examiner (2 copies)
2. Chief Judge Margaret Wiebe, Provincial Court of Manitoba
3. Honourable Cliff Cullen, Minister Responsible for *The Fatality Inquiries Act*.
4. Mr. David Wright, Deputy Minister of Justice & Deputy Attorney General
5. Michael Mahon, Assistant Deputy Attorney General
6. Ronald Toews, Counsel to the Inquest
7. Kimberly Carswell, Counsel for the Winnipeg Police Service
8. Stephan Thliveris, Counsel for Darlene Bell
9. Exhibit Coordinator, Provincial Court
10. Aimee Fortier, Executive Assistant and Media Relations, Provincial Court



Manitoba

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EXHIBIT LIST

I. MANDATE OF THIS INQUEST

[1] By letter dated January 21, 2015, the Chief Medical Examiner for the Province of Manitoba, Dr. A. Thambirajah Balachandra, (as he then was) directed that a Provincial Court judge conduct an inquest into the death of Roy Thomas Bell for the following reasons:

1. To fulfill the requirement for an inquest as defined in Section 19(3)(b) of *The Fatality Inquiries Act*;
2. To determine the circumstances relating to Mr. Thomas' death; and
3. To determine what, if anything, can be done to prevent similar deaths from occurring in the future.

[2] By virtue of section 33(1), *The Fatality Inquiries Act* requires that the presiding provincial judge:

- (a) make and send a written report of the inquest to the minister setting forth when, where and by what means the deceased person died, the cause of the death, the name of the deceased person, if known, and the material circumstances of the death;
- (b) upon the request of the minister, send to the minister the notes or transcript of the evidence taken at the inquest; and
- (c) send a copy of the report to the medical examiner who examined the body of the deceased person;

and may recommend changes in the programs, policies or practices of the government and the relevant public agencies or institutions or in the laws of the province where the presiding provincial judge is of the opinion that such changes would serve to reduce the likelihood of deaths in circumstances similar to those that resulted in the death that is the subject of the inquest.

[3] Section 33(2) of *The Fatality Inquiries Act* directs that I not express an opinion that any person is culpable in relation to the death under consideration. While the *Act* contains no prohibition in relation to opinion absolving any person of culpability in relation to the death under consideration, it is important to note that is not the mandate of any inquest.

II. INTRODUCTION

[4] Roy Thomas Bell was fatally shot by police on December 17, 2007, following a confrontation.

[5] A standing hearing was held on January 11, 2017, in which Darlene Bell, the wife of the deceased, and the Winnipeg Police Service were granted standing. The inquest was held on January 22, 2018, and March 5, 2018. The bulk of the evidence was filed by agreement of counsel with the only testimony tendered coming from the involved officers.

[6] An inquest in these circumstances is mandatory pursuant to section 7.1(1)(i) of *The Fatality Inquiries Act*.

[7] This inquest commenced approximately a decade after the death under consideration. Ten years is an unacceptable intervening period of time to precede an inquest. The issue of delay will be discussed later in this report but as a preliminary observation, the procedures applicable in similar circumstances have undergone wholesale change and the exceptional delay present in this case is unlikely to be repeated in my view.

[8] This inquest focused on the use of force by police which caused the death of Mr. Bell. Extensive evidence about the use of force training and protocols was not called including expert evidence. The bulk of the evidence concerning use of force came from the testimony of the officers involved. Given that an inquest is mandatory in relation to police involved fatalities, the unfortunate reality is there have been numerous similar inquests where the issue of use of force by the police has been the focus. In particular, a number of those inquests have dealt with the Winnipeg Police Service (WPS) and scrutinized the training, policies and equipment utilized by its members. Recognizing the comprehensive and proximate nature of prior inquests, a similar scope of inquiry was consequently not required in order to fulfill the mandate of this inquest. Given the significant time lapse since this death it must also be recognized that intervening inquests have generated recommendations.

[9] I extend thanks to counsel appearing in this matter for the efficient and sensitive manner in which this inquest was conducted. The family of Mr. Bell and the officers involved in his death were forced to relive this catastrophic event many years later. The manner in which counsel conducted themselves reflected

sensitivity to both the family of the deceased as well as the officers. As a result, to the extent possible, further trauma was minimized.

[10] I indicate at the outset of this report that in relation to the third ground upon which the inquest was directed, I make no recommendations to prevent similar deaths in the future.

III. CIRCUMSTANCES OF MR. BELL'S DEATH

[11] Mr. Bell was employed as a member of the Canadian Military for 23 ½ years until he was medically discharged in 2004 due in part to post traumatic stress disorder. Health records of the deceased were entered into evidence substantiating that Mr. Bell suffered from a variety of mental health issues for which he was seeking treatment which included medication. Given that this report has not resulted in any recommendations, the privacy of Mr. Bell and his family is a consideration not displaced by the need for a comprehensive review of his personal circumstances in order to found recommendations. Medical records of Mr. Bell were filed and subject to a sealing order. The review of Mr. Bell's medical circumstances will, by design, be brief. The evidence at this inquest confirms the findings of the investigation conducted by the office of the Chief Medical Examiner that Mr. Bell struggled with depression, anxiety and anger management issues. Toxicology results of blood samples taken during the autopsy indicate the presence of a street drug as well as a prescription drug in a quantity exceeding therapeutic levels. These drugs may have exacerbated the otherwise emotionally charged confrontation with police.

[12] Mr. Bell was married to Darlene Bell at the time of his death. The Bells socialized with another couple with whom they spent the evening of Saturday December 15, 2007. Although there was no verbal confrontation during the evening, subsequent events made clear that Mr. Bell took offence to some comment by his male guest, possibly in relation to the Canadian military.

[13] Mr. Bell demonstrated his upset by sending a series of text messages to his friend. Mr. Bell initially indicated that he was upset and in subsequent emails the tone escalated to threats. By Monday afternoon the couple was sufficiently concerned to contact the police to report the threats.

[14] Police were dispatched to the complaint just before 11:00 p.m. on December 17, 2007. Police arrived on scene and spoke to the complainants for approximately 25 minutes before a disturbance was heard outside. The complainant looked out the window and identified Mr. Bell as the person outside the building causing the disturbance. Mr. Bell appeared agitated and was armed with a baseball bat and shouting for the complainant to come out of his apartment.

[15] The officers left the apartment and went outside to confront Mr. Bell. Mr. Bell failed to follow repeated commands to put the bat on the ground and continued to advance on the officers. One officer discharged his Taser however, it was ineffective. The second officer discharged his handgun in response to what he perceived to be an imminent threat to himself and his partner. Mr. Bell fell to the ground after being struck by multiple gunshots. Mr. Bell was initially breathing after he was shot but quickly succumbed to his injuries. The autopsy confirmed that the cause of death was due to gunshot wounds.

[16] In addition to the baseball bat, police also located a handgun in close proximity to Mr. Bell after he was shot.

[17] It is an understatement to describe the confrontation with the police as constituting a short duration. Just 34 seconds elapsed between the police reporting to the communications center that a male was present with a baseball bat and when they reported that the male was down and unconscious.

IV. EVIDENCE RELATING TO THE USE OF FORCE

[18] The following summary is based on the testimony of Constables Johnson and Khan who were the two officers dispatched to the threat complaint. As previously indicated, other inquests have examined in greater detail the WPS policy on the use of force which generally reflects the national use of force framework (see, for example, Inquest into the death of *Craig Vincent McDougall* (May 7, 2017) para 228).

[19] The WPS trains officers to identify a threat and respond as necessary with force proportionate to the nature of the threat. Use of force training is one aspect of basic training that each recruit receives. Basic training also involves firearms training. Firearms training primarily focuses on proficiency in operation and handling of the weapon but also involves threat assessment as a component,

identifying when it is appropriate to discharge the firearm. Use of force training is not ongoing whereas officers are required to requalify in relation to firearms annually which includes a component of threat assessment.

[20] The basic principle in use of force training is that the officer must identify the level of resistance presented by the suspect and respond with an appropriate level of force.

[21] Levels of resistance are described as consisting of the following escalating levels:

- Officer intimidation - glaring, aggressive posturing;
- Verbal non-compliance, passive resistance (ie. suspect refusing to support their weight as an officer assists them to their feet);
- Active resistance (suspect pushing an officer's hand away as they reach to take hold of the suspect);
- Active aggression;
- Aggravated active aggression.

[22] Threat assessment consists of three components:

1. Weapon - can be a traditional weapon such as a firearm, knife or a bat but also includes hands and feet which can be used as a weapon.
2. Intent - the officer is required to assess the intention of the subject. (ie. A subject who is using a knife to prepare dinner during his interaction with the police would not likely be assessed as intending to use the knife against the police.)
3. Delivery system - involves an assessment whether the suspect has the present ability to carry out their intention. (ie. The suspect who is threatening to punch an officer but has their hands cuffed behind them would not possess a delivery system to carry out their intent.)

[23] The level of force available to an officer in ascending order is as follows:

Officer Presence - the presence of a uniformed officer often serves to de-escalate the situation.

Verbal Direction - when a police officer provides a suspect direction it is generally highly effective.

Soft Empty Hand Control - consists of such contacts as taking hold of a person's shoulder to effect an arrest, taking their arm to guide them or taking hold of their hand in order to apply handcuffs. It also encompasses more aggressive actions such as joint locks intended to immobilize and cause discomfort.

Hard Hand Control - encompasses any contact with the potential to cause physical injury to the suspect such as striking blows or joint locks applied to the point that tissue damage may result.

Intermediate Weapons - those available to WPS officers consist of:

Collapsible baton - a metal baton worn on the officer's belt which extends to a length of approximately 18 inches.

Pepper spray - designed to irritate the eyes and nasal system of the suspect and partially incapacitate them. This weapon has limitations as it can be overcome by a suspect who is immune to the effects, has decreased pain sensitivity such as results from drug or alcohol consumption. Pepper spray cannot be used in close proximity (within 3 feet) or at a distance exceeding approximately 10 feet.

Taser - Constables Johnson and Khan provided a general description of how the Taser works, when it would be used as well as its limitations. Other inquests have dealt with functioning and use of the Taser in significantly more detail (see Inquest into the death of *Craig Vincent McDougall* (May 7, 2017) and Inquest into the death of *Michael Brian Langdon* (July 11, 2016)). The Taser is a barrelled weapon designed to deliver an electrical charge. The Taser fires two probes with wires connected to the weapon. If the probes deploy appropriately on the suspect and lodge in close proximity to the skin a sufficient distance apart a circuit is created and a jolt of electricity is delivered. The electrical shock temporarily incapacitates the suspect.

Deadly force - use of firearm. Officers are trained to target center mass of the subject as this is most likely to stop the threat and it represents the greatest potential to successfully strike the target in a high stress situation.

V. POLICE EVIDENCE CONCERNING DECEMBER 17, 2007

A. Constable Wesley Johnson

[24] In December of 2007 Constable Johnson had been a member of the WPS for three years. On this date he was partnered with Constable Saif Khan who had been a police officer for two years. Constable Johnson was the passenger in the police car and according to standard WPS practice he assumed the role of primary investigator, notetaker as well as operating the onboard computer terminal, inputting and monitoring incoming information. Both officers were in uniform.

[25] At 10:41 p.m. the officers were dispatched to a complaint of threats received with the reporting person located at 34 Langside Street. Dispatch information included the name of Roy Thomas Bell as the person alleged to have made the threats and identified him as ex-military, suffering from mental health issues and known to carry a pocketknife. Officers arrived on scene at 10:46 p.m. and prior to entering the apartment building received additional information from the complainants that Mr. Bell had sent a subsequent text message indicating he was enroute to their location.

[26] The police went up to the apartment and spoke with the complainant and his girlfriend. It was explained to the officers that the couple were friends with Mr. Bell and his wife. On the previous Saturday they had been to the Bell residence to socialize. Although there was no verbal confrontation that evening, subsequent events clearly indicated that Mr. Bell had taken offence at something that occurred. After arriving home the couple started to receive angry text messages from Mr. Bell. The messages continued and escalated to threats to attack the complainant. On Monday, December 17, 2007, the couple was sufficiently concerned to contact the police to report the matter. Constable Johnson viewed some of the text messages which confirmed information received. Police were also told that Mr. Bell held a second-degree black belt in martial arts and had access to firearms. The complainants did not want the police to take any action other than generating a report to document the threats. It was felt that any action by the police

would further inflame the situation and it was the intention to ask Darlene Bell to intervene in an attempt to de-escalate the situation.

[27] Constable Johnson indicated that he and his partner were preparing to leave approximately 25 minutes after arriving when yelling was heard downstairs outside the apartment. The complainants looked outside and identified the person yelling as Mr. Bell and indicated he had a baseball bat. Constable Johnson notified dispatch that the suspect was on scene with a baseball bat. Constable Johnson assessed that Mr. Bell intended to attack the complainant and he instructed the couple to stay in their apartment. Constables Johnson and Khan went downstairs to confront Mr. Bell. Constable Johnson indicated he drew his firearm and his partner drew his Taser as they made their way downstairs. Exiting the side door of the apartment building with his partner, Constable Johnson observed Mr. Bell 30 - 40 feet away approaching from the rear of 38 Langside Street. Mr. Bell was carrying an orange aluminum baseball bat held in both hands in a ready cocked position. Constable Johnson yelled, "Roy it's Winnipeg Police drop the bat and get on the ground and show us your hands." Mr. Bell responded, "Fuck you I'm not doing anything." Constable Johnson also heard his partner issuing verbal commands. Mr. Bell continued to walk towards the officers down the sidewalk at the rear of 38 Langside Street and stopped in close proximity to the rear door of that building. Once stopped Mr. Bell commenced swinging the baseball bat and continued to yell at police. As Mr. Bell had stopped advancing Constable Johnson seized the opportunity to notify police dispatch they were in standoff with a male armed with a bat. Both officers continued issuing verbal commands to drop the baseball bat and Mr. Bell responded that he would drop the baseball bat if they dropped their guns. Constable Johnson responded, "That is not going to happen." Mr. Bell recommenced a slow advance towards the officers while swinging the baseball bat and ignoring commands to put the baseball bat down. Constable Johnson indicated that Mr. Bell came within the 15 - 21 foot security zone. The security zone was described as constituting a minimum distance at which sufficient time still exists to react to physical threat. When Mr. Bell was estimated to be 12 - 15 feet from the officers Constable Johnson advised Mr. Bell, "Stop and drop the bat or you will be shot." Mr. Bell commenced yelling repeatedly for the officers to shoot him. It appeared to the officer that Mr. Bell made a decision to attack as he commenced what he described as a charge, running towards them while swinging the baseball

bat. Constable Johnson indicated that he made the decision to fire his handgun as the window to respond to the threat was evaporating with Mr. Bell's continued advance.

[28] Constable Johnson indicated he feared for his safety and that of his partner so he fired his handgun four times at the center mass of Mr. Bell who immediately fell to the ground not moving.

[29] Constable Johnson did not see his partner fire the Taser but he saw the Taser had been fired when he looked over to check on his partner's wellbeing after he had discharged his firearm.

[30] Constable Jonson called dispatch requesting an ambulance and additional police units before attending to Mr. Bell to administer first aid. As he was placing Mr. Bell in the recovery position he noticed a black handgun approximately six feet from his head which was seized by his partner.

B. Constable Saif Khan

[31] At the time of this incident Constable Khan had been a member of the WPS for two years.

[32] Constable Khan confirmed the testimony of his partner concerning the information received through dispatch and from the complainants as well as time frames involved.

[33] Constable Johnson described hearing a loud bang on the window of the apartment. The complainant looked out and identified Mr. Bell present outside. The complainant looked out the window and indicated to officers that Mr. Bell was outside. Constable Khan looked out and saw a male yelling and swinging a baseball bat. He was not able to hear what Mr. Bell was yelling. Constable Khan confirmed that they went outside immediately after seeing Mr. Bell and directed the complainants to stay in the apartment. Constable Khan confirms the officers exited the side door of the building. Constable Khan indicates he drew his Taser prior to exiting the building while Constable Johnson drew his firearm once they had exited the building.

[34] On exiting the building Mr. Bell is observed approximately 25 feet away still yelling and swinging the baseball bat.

[35] Constable Khan indicates that he yelled to Mr. Bell, “Winnipeg Police drop the bat.” At the same time his partner was yelling similar directions. At this point Constable Khan indicates that Mr. Bell stopped advancing at approximately 15 - 20 feet distance with the baseball bat raised over his left shoulder and said to police, “Are you going to shoot me?” Constable Khan indicated he responded, “Winnipeg Police drop the bat or I will taser you.” Constable Khan indicated that Mr. Bell commenced moving towards him again with his partner on angle approximately three feet away. As the advance recommenced Constable Khan had his Taser ready and Constable Johnson had his handgun trained on Mr. Bell. Constable Khan indicated to Mr. Bell again, “I will taser you – drop the bat.” Mr. Bell responded, “Are you going to shoot me - shoot me - I will take you guys down.” The accused also looked up at the window of the complainants’ apartment yelling, “Come down you bitch.”

[36] Constable Khan indicates that Mr. Bell had advanced to within 7 - 10 feet before he deployed the Taser. The Taser discharged two probes only one of which lodged in the clothing that Mr. Bell was wearing and the other falling to the ground, resulting in the Taser being ineffective. Mr. Bell was wearing thick winter clothing. In discharging the Taser, Constable Khan indicated he feared that Mr. Bell would strike him or his partner and cause grievous harm or death. Once the Taser was fired Mr. Bell stopped walking and looked at the probe that had lodged in his clothing and started to yell something at Constable Khan. Immediately thereafter Mr. Bell recommenced his advance walking even faster causing Constable Khan to attempt to retreat. As he retreated, Constable Khan threw away his Taser and attempted to reach for his firearm. His partner was still yelling directions at Mr. Bell.

[37] Mr. Bell swung the baseball bat and appeared to release his grip throwing the baseball bat away while at the same time appeared to reach for something in his rear waistband. Constable Khan describes Mr. Bell as pretty close to him when he heard the sound of his partner discharging his firearm. He is not sure of how many shots were fired.

[38] Immediately after the shots were fired Mr. Bell fell to the ground. Constable Khan directed his partner to secure his firearm and attend to Mr. Bell indicating he would stand guard. Constable Khan saw his partner turn Mr. Bell from his side to his back into the recovery position. As Mr. Bell was moved a handgun became

visible in a location on the ground where he had previously lay. Constable Khan warned his partner about the presence of a handgun while kicking it away. Constable Khan retrieved the handgun and placed it in his waistband. Constable Johnson called for paramedics and other police units.

[39] When other police units arrived, Constable Khan was separated from his partner and transported separately to the police detachment pending preparation of a statement in relation to the incident. The separation of officers involved in a shooting is standard police procedure.

VI. DELAY

[40] This inquest took place 10 years after the death that is the subject of inquiry. The primary goal of any inquest is to generate recommendations that might later be implemented to prevent similar deaths in the future. The primary purpose of the inquest is significantly undermined if helpful recommendations are significantly delayed. The delay is perhaps best considered in terms of the lives that may be put at risk or lost as a result of potential changes not implemented in a timely manner.

[41] The calling of an inquest is a function of the office of the Chief Medical Examiner of Manitoba pursuant to *The Fatality Inquiries Act*. In circumstances where criminal charges are being considered or have been laid, the custom has been that the inquest will not be directed until such time as it is confirmed no charges will be laid or the charges have been dealt with in court. Without delving into the rationale, suffice to say logical justification exists for delaying until criminal charges are determined.

[42] This case is remarkable as Dr. A. Thambirajah Blachandra Chief Medical Examiner for the province of Manitoba (as he then was) declined to follow protocol and wait for a final decision to be reached concerning potential criminal charges. The letter dated January 21, 2015, addressed to the Chief Judge of the Provincial Court by the Chief Medical Examiner states: “As this case has been deferred for over six years; I have decided to proceed with calling the inquest, regardless of this office’s former practice and the reasons for the delay.”

[43] The bulk of the delay in this matter was associated with the process then in place governing determination of criminal charges. At the time, the process consisted of the WPS conducting an internal review and preparing a report which

was then considered by senior command. The report was then provided to an independent outside police agency for review and preparation of a separate report. The police reports were then provided to the Manitoba Prosecution Service for consideration. The Manitoba Prosecution Service in turn referred the case to the prosecutions branch of another province as the final arbiter regarding potential charges. This process frequently resulted in significant delay in calling an inquest.

[44] This procedure has been displaced by the establishment of the Manitoba Independent Investigations Unit (IIU). Among other functions the IIU investigates police involved fatalities and pursues criminal charges in a manner similar to most police agencies. In the *McDougall* inquest Mr. Zane Tessler, the director of the IIU, testified that his office had a staff of eight investigators and they try to resolve the investigation “in as timely a manner as possible”. Based on these developments my optimistic view is that the length of delay present in this case is unlikely to be repeated.

[45] In *McDougall* there were other circumstances that delayed proceedings apart from consideration of criminal charges. In *McDougall* Associate Chief Judge Krahn made a series of recommendations aimed at expediting the inquest process.

[46] Recognizing that the bulk of the delay in this matter results from consideration of criminal charges associated with a process no longer in place, as well as the fact previous recommendations have been offered to address delay, I decline to make any recommendations in this regard.

VII. DISCUSSION OF EVIDENCE

[47] At the outset I indicate that there are no credibility concerns arising on the evidence.

[48] Despite some discrepancies arising on the evidence of Constables Johnson and Khan, I accept their evidence. Constable Johnson never saw his partner fire the Taser or Mr. Bell throw the baseball bat away and reach toward the waistband of his pants. Constable Johnson actually discharged his firearm five times, not four as he testified at this inquest. Despite the material nature of these discrepancies they are understandable in my view given the differing vantage points of the officers, the pace at which the events unfolded and the passage of time. The testimony of the officers is supported in material ways by statements of independent witnesses

who either saw or heard the events. The physical evidence consisting of the handgun and baseball bat possessed by Mr. Bell as well as the discharged Taser are confirmatory of the central aspects of the officers' evidence.

[49] In framing the issues under consideration it is important to note that while both officers articulated that that they feared imminent grievous bodily harm when they acted, their threat assessment was not based on the fact that Mr. Bell was in possession of a handgun. Neither officer was aware that Mr. Bell was in possession of a handgun until after Constable Johnson had discharged his firearm. The handgun was confirmed to belong to Mr. Bell and later identified as an airsoft handgun replica of a 9 millimetre firearm.

[50] In an attempt to provide recommendations aimed at avoiding similar deaths in the future, this inquest focused on the actions of the officers involved. It is important to recognize that the WPS conducted a thorough review of this death scrutinizing the actions of the officers. That review was conducted by Sergeant R. S. Bell of the WPS Homicide Unit and concluded both officers acted in accordance with training and procedures and were justified in the actions taken. The WPS report was forwarded to an independent police agency for review. Acting Staff Sergeant R. Tuza of the Calgary Police Service reviewed the report prepared by Sergeant Bell and concurred that the officers were justified in the actions taken. It bears mention that Acting Staff Sergeant Tuza disagreed with the conclusion of Sergeant Bell that Mr. Bell was not deliberately provoking the police to shoot him.

I disagree with Sgt. Bell's opinion that this is not suicide by cop. I believe there is insufficient information to make a classification. There is no doubt that Mr. Bell was armed with three weapons and therefore prepared for a violent confrontation. Mr. Bell knew he was dealing with the police, Mr. Bell taunted the police to shoot him, and Mr. Bell's actions forced the officers into using deadly force against him.

[51] The other issue raised by Acting Staff Sergeant Tuza is the failure of the responding officers to call for backup when they received the update that Mr. Bell might be attending to the home of the complainant. Constable Khan recognized in his testimony that the failure to call for backup is something that could have been done differently and he would have done if he had the ability to do things over. The standard to which any professional should be held is not that of perfection. In my view, the failure to call for backup is not reflective of any systemic WPS issue that could be addressed through a recommendation issued in this report.

[52] While the focus of the two police reviews was different from the mandate of this inquest, any issues identified by police were quite likely to be issues of concern in this proceeding. This proceeding is completely separate and independent of the police reviews but it bears mention that this inquest is by no means the first scrutiny regarding the circumstances surrounding the death of Mr. Bell.

[53] The WPS is not static in training procedures and equipment provided to members. The WPS appears to be diligent in keeping abreast of any enhancements that might better equip officers to serve the public. Constable Johnson indicated that the police are now using a different model of Taser with significantly enhanced capabilities. The new Taser can deploy two separate sets of probes before requiring reloading versus one set in the Taser that was in use at the time. The current Taser also projects a red laser dot onto the target indicating where each of the probes is projected to land versus a single dot on the old Taser. In 2007 only one officer of a team of two would be equipped with a Taser, now both officers carry Tasers.

[54] An example of enhancements is the training related to verbal commands. The police receive training in a technique known as tactical communication. In this case both officers engaged in tactical communication with Mr. Bell. Tactical communication is aimed at enhancing compliance by informing the suspect of potential consequences of non-compliance. In this case, Constable Johnson told Mr. Bell “stop and drop the bat or you will be shot” as opposed to simply “stop and drop the bat”. Constable Khan was using tactical communication when he said to Mr. Bell, “I will taser you – drop the bat.” In 2007 officers received four hours of training on tactical communication. By 2017 the time devoted to tactical communication training had been tripled (see *McDougall*). The *McDougall* inquest released May 9, 2017, also included a recommendation that police evaluate tactical communication training to assess whether it is adequate.

[55] The officers’ use of tactical communication in this case represents an adherence to best practices in the face of rapidly developing, highly stressful events. Unfortunately, the use of tactical communication did not invoke compliance and actually appeared to further agitate Mr. Bell.

[56] A critical feature of the events culminating in the death of Mr. Bell is Constable Khan discharging his Taser in an attempt to incapacitate Mr. Bell without resorting to lethal force. Unfortunately, the Taser was not effective as one of the probes failed to lodge on the bulky clothing that Mr. Bell was wearing. This death occurred in Winnipeg in December and Mr. Bell was wearing winter clothing. Effective deployment of the Taser is negatively effected by multiple layers of heavy clothing. Unfortunately, multiple layers of heavy clothing constitutes both necessity and commonplace reality during the winter in Manitoba. As previously indicated, other inquests - including two relatively proximate in time - have examined in significant detail the functioning and use of the Taser. As described earlier, there have been enhancements to the Taser equipment since this death. On the evidence before me I would concur in the conclusion reached by Associate Chief Judge Krahn in *McDougall* at page 51, “I am satisfied that there has been continuous improvement to the weapons and tools made available to the officers of the WPS allowing them to do their jobs in a safer, more effective manner.” The Taser, while less than ideal, presently represents state of the art technology to immobilize a suspect via non-lethal force.

VIII. CONCLUSION

[57] Objective consideration of the evidence taken at this inquest does not support the view that modification or enhancements need to be implemented by the WPS in order to avoid similar deaths in the future. More specifically, it is my view that the tools the officers had to address the situation that confronted them were appropriate including: training, procedures and equipment. Accordingly, as indicated earlier in this report I offer no recommendations.

I respectfully conclude and submit this Report on this 2nd day of August, 2018, at the City of Winnipeg, in the Province of Manitoba.

“ORIGINAL SIGNED BY:”

Judge Dale Schille
Provincial Court of Manitoba



Manitoba

THE FATALITY INQUIRIES ACT
REPORT BY PROVINCIAL JUDGE ON INQUEST
RESPECTING THE DEATH OF: ROY THOMAS BELL

EXHIBIT LIST

<u>Exhibit No.</u>	<u>Description</u>
1-1	Letter from the Office of the Chief Medical Examiner dated January 21, 2015
1-2	Report of the Medical Examiner (Autopsy Report), dated April 7, 2008
1-3	Toxicology Report, dated July 24, 2008
1-4	Transcript of Sworn Statement of Derek Woosley, dated December 18, 2007
1-5	Transcript of Sworn Statement of Chelsea Pajot, dated December 18, 2007
1-6	Transcript of Sworn Statement of Darlene Bell, dated December 18, 2007
1-7	Transcript of Sworn Statement of Kimberly McLelland, dated December 18, 2007

- 1-8 Transcript of Sworn Statement of Patrick Murdock, dated December 18, 2007
- 1-9 Transcript of Sworn Statement of Alayna Moore, dated December 18, 2007
- 1-10 Psychological Assessment Report from Dr. N. Prober, dated October 26, 2006
- 1-11 Cst. R. Manguba's Winnipeg Police Service Forensic Identification Report, dated December 18, 2007
- 1-12 Sgt. R. S. Bell's Winnipeg Police Service Memorandum (Homicide Unit Review), dated September 18, 2009
- 1-13 Staff Sgt. R. Tuza's File Review of Police Related Shooting – Mr. Roy Thomas Bell, dated September 16, 2010
- 2 Winnipeg Police Service Call Log