

Release Date: December 1, 2009

**THE PROVINCIAL COURT OF MANITOBA**

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

**AND IN THE MATTER OF:**            **An Inquest into the Death of  
RUSSELL COOK  
D.O.D. October 26, 2006**

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**Report on Inquest and Recommendations of  
The Honourable Judge Linda Giesbrecht**

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**APPEARANCES:**

Mr. M. Minuk, Counsel to the Inquest  
Ms Kimberly Carswell, Counsel for the Winnipeg Police Service  
Ms Joan Jack & Ms Lorie Thompson, Counsel for the Cook family  
Mr. W. Haight, Counsel for Doctor K. Nguyen

**THE FATALITY INQUIRIES ACT**  
**REPORT BY PROVINCIAL JUDGE ON INQUEST**  
**RESPECTING THE DEATH OF: RUSSELL COOK**

Having held an inquest respecting the said death on May 21, 22, 25, 26, 27, 28 & 29, 2009 at the City of Winnipeg in Manitoba, I report as follows:

The name of the deceased is:     **RUSSELL COOK**

The deceased came to his death on the 26<sup>th</sup> day of October 2006 at the City of Winnipeg in the Province of Manitoba.

The deceased came to his death by the following means:

Cardiac arrest as a result of atheromatous coronary artery disease.

I hereby make the recommendations as set out in the attached report.

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

Dated at the City of Winnipeg, in Manitoba this 26<sup>th</sup> day of November 2009.

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Linda Giesbrecht  
Provincial Judge

**THE FATALITY INQUIRIES ACT  
SCHEDULE ATTACHED TO PROVINCIAL JUDGE'S REPORT**

**RESPECTING THE DEATH OF: RUSSELL COOK**

**EXHIBIT LIST**

**Description**

1. Letter dated November 22, 2007, signed by Thambirajah Balachandra – 2 pages
2. Report with photocopies of photographs, report by Cst. Bullee – 7 pages
3. Report with photocopies of photographs of the exterior, report by Cst. Armit – 2 pages
4. Copy of disclosure material – DVD and index of contents of Disk
5. Video from St. Regis Hotel – DVD – 4 video files with index
6. Eleven telephone calls – audio files from Winnipeg Police Service – Disc and grid specifying time of calls and I.D. of who the callers are
7. Mr. Cook's medical file by Dr. Nguyen
8. Report of Constable Taylor
9. Copy of transcript of 911 calls – C.R.# C06-239993
10. Statement of Doreen Daniels – 2 pages
11. One page medication list contained in Exhibit 8
12. Blood Glucose logbook, Lifescan approximately 3" x 6"
13. Manitoba Security Guard Training Program Participant's Manual

14. Server Manual – It's Good Business – 79 pages
15. Event chronology #060239984 beginning at 14:13:05 and ending at 15:50:59
16. Event chronology #06239993 beginning at 14:29:57 and ending at 15:58:21 re vehicle collision
17. Statement by Maureen Campeau incident number C06-23993, 2 pages
18. Statement by Jane Flett incident number C06-239993 – 2 pages
19. Statement by Roger Spence incident number C06-239993 – 3 pages
20. DVD of Roger Spence and Brian Elder statements
21. Report of the Medical Examiner, case #06/2510, 21 pages signed by Dr. Charles Littman
22. One page, handwritten note by Dr. Balachandra

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## INTRODUCTION

[1] Russell Cook was a 55 year old aboriginal man who was a diabetic. On October 25, 2006 he returned home from work and complained to his wife that he wasn't feeling well. He was confused and talking nonsense at times. He indicated that his blood sugar levels were low. He wanted his sister to come over. When his sister arrived, he told her that he thought he was going crazy. Later in the evening he appeared to be normal and feeling better.

[2] On the morning of October 26<sup>th</sup> Mr. Cook's blood sugar level again was low. He ate a large breakfast and went back to bed. Later in the morning his wife took him to see his doctor at a walk-in clinic because of his low blood sugar levels. They returned to the family home and at about 1 p.m. Mr. Cook again became irrational. He was confused. He was yelling and crying and running around the house. He talked about wanting to see his mother who was deceased. He was pale and sweating and rocking back and forth. His wife called 911, although he did not want her to do so.

[3] Paramedics arrived shortly after 2 p.m. but Mr. Cook locked the door and would not allow them into the house. When paramedics were able to gain entry to the house Mr. Cook was yelling and swearing at them and throwing pots and pans around the kitchen. He refused to be treated or to go with them. He was swinging his arms and stated that he was going crazy. Shortly after that he left his home driving his vehicle. The police were called.

[4] Over the next few minutes the police received reports of a possible impaired driver. This person was described as driving all over the road, almost passing out behind the wheel, and appearing to be impaired. A check of the license number of this vehicle confirmed that the vehicle belonged to Russell Cook. Mr. Cook ended up outside the St. Regis Hotel in downtown Winnipeg. He drove his vehicle onto the sidewalk and hit a pedestrian who was walking in front of the hotel. He went into the hotel carrying a Club (steering wheel locking device).

[5] While Mr. Cook was initially calm when he was in the lobby of the hotel, his demeanor changed and he became agitated, raising or waving his arms and saying that he was crazy or going crazy. He then went into the lounge/bar area. At this time the manager of the hotel called for hotel staff to stop him. One of the hotel staff pushed Mr. Cook and brought him down to the floor. A struggle ensued during which time several hotel staff and bystanders became involved in trying to forcibly restrain Mr. Cook who was strongly resisting. Mr. Cook was on his

stomach with his arms and legs restrained. Eventually his hands were tied behind his back. He was described by witnesses as being unexpectedly strong and difficult to restrain.

[6] When police officers arrived at the hotel, Russell Cook was observed to be lying on the floor on his stomach, his hands tied behind his back, his feet crossed and his legs folded up and pressed against his buttocks. Three or four people were holding him. He was not moving or speaking at this time. One police officer advised the male holding Mr. Cook's legs to let them go and placed his handcuffs on Cook's wrists. This occurred at 2:36 p.m. When the males who had been holding Mr. Cook let go of him, after the handcuffs were applied, he slumped to the floor and appeared to be unconscious. He was turned over and it appeared that he was not breathing. The handcuffs were removed, and a police officer began chest compressions. Paramedics had attended the scene at the same time or within moments of the arrival of the police and they provided emergency care and treatment. At this time Mr. Cook had no pulse or respiration. He was taken by ambulance to the Health Sciences Centre. Attempts at resuscitation were unsuccessful and at 3:17 p.m. Russell Cook was pronounced deceased.

[7] An autopsy determined that the cause of death was atheromatous coronary artery disease. A significant condition contributing to the death but not causally related to the immediate cause of death was hyper-excitability state with agitation. Three main arteries of Mr. Cook's heart showed significant occlusion, which means that the vessels were narrowed greater than 75%. His heart was significantly enlarged due to heart disease. According to Dr. Littman, the pathologist who conducted the autopsy, Mr. Cook's condition was a ticking time bomb, which could have caused a cardiac arrest at any time. Any event causing his blood pressure to increase, thus putting additional stress on his heart could have caused a coronary event.

[8] In the various documents that were filed as exhibits at this inquest the spelling of Russell Cook's first name is not consistent. In most of the documents including the file from the Chief Medical Examiner's office, his first name is spelled as Russel. In fact on the cover page of the Autopsy Report Form, the name was first spelled as Russell and then later was apparently corrected to Russel. On the certificate of death his name was initially spelled as Russell C. Cook and was later changed to Russel C. Cook. On his vehicle registration his name was listed as Russel C. Cook. On his dated criminal record his name is listed as Russell Charlie Cook. That record indicates that Cook died on October 26, 2006 and his identity was confirmed by fingerprints. In terms of the accurate spelling of his name, there

is no definitive evidence before me. Nothing of significance turns on the spelling of Mr. Cook's name, and there is no question of his identity.

[9] In this report I have chosen to refer to Mr. Cook as Russell Cook as that is the name and the spelling that was used by his son Jeremy Cook in various letters that he wrote to the Office of the Chief Medical Examiner.

## **THE CALLING OF THIS INQUEST**

[10] The Chief Medical Examiner for the Province of Manitoba Doctor A. Thambirajah Balachandra sent a letter dated November 22, 2007 to the Chief Judge of the Provincial Court directing that in accordance with *The Fatality Inquiries Act* an inquest be held into the death of Russell Cook for the following reasons:

1. to fulfill the requirement for a mandatory inquest as defined in section 19(3) of the legislation;
2. to determine the circumstances relating to Mr. Cook's death; and
3. to determine what, if anything, can be done to prevent similar deaths from occurring in the future.

Section 19(3) of the Act provides:

19(3) Where as a result of an investigation, there are reasonable grounds to believe

(a) that a person while a resident in a correctional institution, jail or prison or while an involuntary resident in a psychiatric facility as defined in *The Mental Health Act*, or while a resident in a developmental centre as defined in *The Vulnerable Persons Living with a Mental Disability Act*, died as a result of a violent act, undue means or negligence or in an unexpected or unexplained manner or suddenly of unknown cause; or

(b) that a person died as a result of an act or omission of a peace officer in the course of duty;

the chief medical examiner shall direct a provincial judge to hold an inquest with respect to the death.

[11] The reference to the requirement for a mandatory inquest under s.19 (3) of the Act must be an error. Clearly s. 19(3) (a) does not apply, as Mr. Cook was not

a resident in a correctional institution or any of the other facilities mentioned. Thus apparently the inquest was called pursuant to s. 19(3) (b). There is no evidence to suggest that Mr. Cook died as the result of any act or omission of a peace officer in the course of duty. Accordingly, there was in my view no requirement for a mandatory inquest in this case.

[12] Counsel for the Winnipeg Police Service, submitted that the calling of an inquest under section 19(3) (b) of the Act implies fault. She noted that in the present circumstances, where the police officers did everything they could for Mr. Cook, this implied fault has created some hardship for the officers involved. Had the inquest not been called under that section there might not have been any need for counsel to appear at this inquest on behalf of the Winnipeg Police Service. Her suggestion was that it might be of assistance to the Chief Medical Examiner's Office for the court to provide some guidance in this regard.

[13] The same issue was addressed by my colleague The Honourable Judge Marvin Garfinkel in a December 6, 2006 inquest report into the death of Melford Nickoshie. Judge Garfinkel held that s.19(3) of the Act did not apply in the circumstances he was dealing with, and that using that section as a reason for directing an inquest must have been an error. He concluded that s. 19 (1) & (2) of the Act are sufficient to enable the Chief Medical Examiner to direct that an inquest be held in the appropriate circumstances.

[14] Section 19(3)(a) of the Act mandates that an inquest be held when the deceased was a resident in a variety of what could be called 'government' facilities, including correctional institutions, mental health facilities (if an involuntary resident) and developmental centres. This section could generally be interpreted as being designed to address any deaths (other than those due to natural causes) that occur while a person is in some form of government institution or state 'custody'.

[15] Section 19(3)(b) addresses the situation where there are reasonable grounds to believe that a person has died as a result of some conduct (either an act or omission) by a peace officer while in the course of duty. This section might mistakenly be interpreted as a requirement for a mandatory inquest any time a person dies while in police custody. In my view, that is not an accurate interpretation of that section.

[16] It is apparent to me that when s.19 (3) was stated to be one of the reasons for directing that an inquest be held into the death of Russell Cook it was because of a mistaken interpretation of s. 19(3)(b). In letters dated November 28, 2007 from the

office of the Chief Medical Examiner to members of Russell Cook's family, they are informed that an inquest is being called into Mr. Cook's death. One of the reasons given for the calling of the inquest is: "to fulfill the requirement for a mandatory inquest as defined in Section 19(3) of Manitoba's *Fatality Inquiries Act* (**died while in police custody**)". (Emphasis added) (These letters can be found on the Chief Medical Examiner's file which was provided to the court by his office.)

[17] In my view these letters clearly establish that the Chief Medical Examiner's Office operates on the understanding that all deaths of individuals who are in the custody of the police require a mandatory inquest pursuant to s. 19(3) of the Act. As I have indicated above, in my view, this is not an accurate interpretation of that section. An inquest may be quite appropriate when a death occurs while a person is in police custody. The Chief Medical Examiner has the authority under s. 19(1) & (2) of the Act to direct that an inquest be held. However, in my view, in those circumstances an inquest ought not to be called on the basis that it is a mandatory inquest pursuant to s. 19(3) of the Act, unless there is some evidence that the death was a result of an act or omission by a police officer.

## **THE MANDATE OF THE INQUEST**

[18] Inquests in Manitoba are governed by *The Fatality Inquiries Act* and are presided over by judges of the Provincial Court of Manitoba. The duties and limitations of a judge presiding at an inquest are set out in s. 33 of the Act. The primary role of the judge at an inquest is to determine the identity of the deceased, when, where, and by what means, the deceased person died, the cause of death, the material circumstances under which the death occurred and whether the death could have been prevented. Further, a judge may recommend changes in the programs, policies or practices of the government and relevant public agencies or institutions or in the laws of the province, where the judge is of the opinion that such changes would serve to reduce the likelihood of deaths in similar circumstances in the future. There is no authority under the Act for a judge to make recommendations to private individuals, businesses or corporations.

[19] There is a statutory limitation placed on a judge presiding at an inquest in Manitoba. Section 33(2) of the Act prohibits a judge from expressing any opinion on or making a determination with respect to culpability in respect of the death that is the subject of the inquest. In other words a judge at an inquest is not permitted to make a finding or express an opinion that someone is responsible for or legally blameworthy in the death of the person that is the subject of the inquest.

[20] The mandate of this inquest is to determine the material circumstances relating to Russell Cook's death and to determine what, if anything can be done to prevent similar deaths from occurring in the future.

## **STANDING**

[21] *The Fatality Inquiries Act* provides in section 28 (1) that a person who, "is substantially and directly interested in the inquest" may attend in person or by counsel and may examine or cross-examine the witnesses called. A number of parties applied for and were granted standing at this inquest at a Standing Hearing on June 25, 2008.

[22] Standing was granted to the following individuals and organizations:

- The family of Russell Cook;
- The Winnipeg Police Service; and
- 3293719 Manitoba Ltd. operating as the St. Regis Hotel.

[23] On February 23, 2009 I received a letter from Anthony Fletcher, indicating that his firm was withdrawing as counsel for 3293719 Manitoba Ltd. operating as the St. Regis Hotel, and that he would play no role at the inquest. The numbered company did not retain alternate representation and did not participate at the inquest.

[24] On May 22, 2009 during the hearing of evidence at the inquest, limited standing was granted to counsel on behalf of Doctor Khai Nguyen, who testified as a witness. Mr. W. Haight participated at the inquest only during the testimony of Dr. Nguyen, and played no other role in these proceedings.

## **THE INQUEST**

[25] This inquest was held over a period of 7 days in May of 2009, ending on May 29<sup>th</sup>. Twenty five witnesses were called. In addition the statements of several other witnesses were filed as exhibits. Notwithstanding the best efforts of police agencies, two of the significant witnesses to the events at the St. Regis Hotel could not be located. Their video and written statements provided to the police were filed as exhibits. Moreover, the complete police investigation file in this matter was filed as an exhibit in these proceedings; that file contains statements of witnesses, photographs, police reports, and police officers' notes. All of this

material has been considered in my deliberations, even though not every piece of this information will be specifically referred to in this report.

## **DETAILED REVIEW OF THE EVIDENCE**

[26] For the sake of convenience, when I am reviewing the evidence I will refer to individuals by their last names only, where possible. I mean no disrespect to anyone in doing so.

[27] Much of the evidence I heard during the inquest is not contested. There is no question that Russell Cook (hereafter referred to as Cook) had suffered from diabetes for a number of years, and was on medication to control his blood sugar levels. While his diabetes was generally well managed, from time to time his blood sugar levels were too low. His blood sugar levels were at times dangerously low on the day of his death and the day before his death. It is not disputed that Cook exhibited abnormal behaviour, in that he was at times confused, disoriented, agitated and aggressive. He said at various times that he thought he was going crazy. He refused to be treated by paramedics who attended his house. He fled the house in his vehicle. All of this evidence is not in dispute.

[28] There is also no question that Cook was in some kind of medical distress when he left his house and while he was driving his vehicle. While the evidence is clear that Cook had not consumed any alcohol or other intoxicants, he appeared to witnesses to be impaired or intoxicated. He was reported to be driving all over the road. People who saw him and interacted with him at the hotel thought he was drunk or high on drugs.

[29] For some reason that we will never know, Cook went to the St. Regis Hotel. The fact that he drove his car onto the sidewalk in front of the hotel, and hit a pedestrian, is not in dispute. He went into the hotel carrying a Club. He was calm at first but appeared disoriented or lost when he was in the lobby of the hotel. He attended to the front desk clerk and put the Club down on the desk. When it was suggested to him that he had hit a lady outside the hotel, his demeanor changed and he became upset and agitated. He was described by a number of witnesses as waving his arms in the air, shaking his head and saying words to the effect that he was going crazy.

[30] It is clear from the evidence of most of the witnesses who observed the incident in the hotel that the scene in the lobby was confused and chaotic with people running in and out and yelling that a man had hit a lady with his car. Some

were yelling that the man had a gun. This was obviously wrong – there was no gun. People were apparently scared and in shock at what had happened. The scene was described as bedlam. The police were immediately called.

[31] When Cook went into the bar there is no question that he was forcibly prevented from continuing further into the bar. He was pushed into a wall and tossed to the floor. A struggle ensued and eventually he was held face down on the floor, with a number of males involved in attempting to restrain him. The witnesses involved in restraining Cook all commented on how surprisingly strong he was and how hard it was to hold him.

[32] The circumstances surrounding the restraint, Cook's position during the restraint, the nature of the restraint, the force used and at what time Cook ceased to struggle are all issues that require detailed examination.

[33] As is to be expected when witnesses are describing an event that occurred some years ago under difficult circumstances, the details provided are not identical and in some instances are inconsistent or even contradictory. While there are differences between the witnesses' accounts as to the sequence of events, the time that passed, and the precise details of what occurred, I do not conclude as a result that witnesses were being untruthful.

[34] What this illustrates is that an event can be viewed by literally dozens of people and when those people are later asked to recall and describe the event there may be many differences in their description. There are many reasons why witnesses give different versions of an event. It is not necessarily because they are not telling the truth. Witnesses may have seen the event from different positions or different perspectives. They may have seen a different part of the event. They may have seen only a portion of the event. Witnesses may have different powers or abilities to observe and to recollect the events. Sometimes witnesses are under the influence of liquor or other substances which may impact on their ability to accurately recall what they saw or heard.

[35] Witnesses may also have some difficulty recollecting certain details of an event with the passage of time. This was illustrated at this inquest where some of the witnesses who testified did not recount all of the information or all the details they had provided in statements given to the police 2 and ½ years earlier. Witnesses may be mistaken about what they saw or heard. Honest witnesses can be mistaken. People who make observations try to make sense of what they are seeing – they may rationalize what they saw and may fill gaps in what they saw by drawing inferences. Or witnesses may hear someone else saying something about

the event and may then unconsciously or otherwise adopt someone else's observation as their own.

[36] These are just some of the reasons why people seeing the same event may describe it and believe it to have happened so differently. I found all of the witnesses I heard at this inquest to be credible. While there are some inconsistencies in the evidence, I do not conclude that any of the witnesses were attempting to mislead the court or were being untruthful.

[37] I will provide a summary of the evidence given by each of the witnesses who were called at the inquest, as well as those whose statements were filed as exhibits. (When I am summarizing the evidence of witnesses who did not testify at the inquest, their names are preceded by an asterisk.) I will also refer to other evidence that was filed, including the 911 call history, video evidence, and police reports among other items. This summary of evidence will be much more detailed than would ordinarily be required to fulfill the mandate of the inquest, having regard to the fact that much of the evidence is not in dispute. There may in fact be a fair bit of repetition as I review the evidence, which ordinarily should be avoided. In my view, a detailed review of the evidence is necessary in this case in order to provide Russell Cook's family with a full understanding of the circumstances of his death and a clear understanding of the findings made. Mr. Cook had a large family. Several family members were present at various times during the inquest, but not all of them were present for all of the proceedings. Some were only able to attend for a short time. Obtaining a transcript of evidence is beyond the means of most individuals. Accordingly, a detailed review of the evidence in this report may be the only way for many family members to know what happened.

[38] The majority of the witnesses described the events surrounding the death of Russell Cook. There were also witnesses called to discuss generally the training that is required of staff working in licensed premises in Manitoba under *The Liquor Control Act*, and to address the issue of the licensing and training of security guards. Finally, there were medical witnesses called who testified as to Cook's medical condition and the cause of his death.

## **ELIZABETH MICHELLE**

[39] Elizabeth Michelle (Michelle) was the common law wife of Russell Cook and they had been together for 9 years at the time of his death. They lived together in a house on Lipton Street in Winnipeg. She testified that Cook was employed

doing hard physical construction work for the last few months before his death. Prior to that time he was employed doing asbestos work for a few years.

[40] She indicated that Cook was a diabetic from a time before she met him, so for at least 9 years. He was taking 3 different types of prescription medication for his diabetes. Dr. Nguyen was his doctor at the Sargent Avenue walk-in clinic. Although Cook was diabetic, he was managing his diabetes appropriately and he was otherwise in good health. She testified that he always took care of himself and that he had even quit drinking and that he had never smoked. She stated that Cook used to have a bad liver before he quit drinking. Michelle testified that there was never any suggestion that Cook had any heart trouble or any other problems that she was aware of. In her statement to police Michelle mentioned that a month before his death Cook had gone to the Health Sciences Centre to a free clinic where his vascular lab test was abnormal and he was told that he would be referred to the Grace Hospital for a follow up.

[41] The Saturday before Russell Cook died he had seen an aboriginal healer who gave him some herbal medicine to take to balance his blood sugar and to bring the sugar levels down. Michelle described this as an herb that was steeped in water like tea. Cook had taken this herb once before in the past, although he did not take it regularly. This herbal tea did not seem to have any effect on him. He also continued to take his prescribed medication. Michelle is also diabetic and she indicated that she also used this herbal tea.

[42] According to Michelle, Cook always tested his blood sugar level in the morning although sometimes he tested it in the evening as well. He was only required to test once a day.

[43] On October 25, 2006 Cook went to work. When he came home in the late afternoon he said that he had felt sick at work but stayed to finish the day. He told her that he had gotten confused while he was driving home and that it was as if he had gotten lost because he drove past their house and had to drive back again. He was kind of laughing and not acting right. He did not eat supper or have a shower as was his normal routine but went straight to bed.

[44] After about 15 minutes he got up. He appeared confused and started talking nonsense. He was crying and said that he had cramps in his legs and his arms. He asked her if there was anything on his arms and legs and he was rubbing them. He asked her to call his sister Evelyn Cook to come over as he wanted to see her. He was sweating so Michelle gave him a banana and he also had some juice. He said he felt better, took a shower then went back to bed but continued to be restless.

Michelle called Evelyn Cook, and then left to go to the bus depot to pick up a friend, Sylvia Waytiuk (Waytiuk) who was coming from Brandon to visit.

[45] When Michelle and Waytiuk returned home Cook was out of bed watching TV. Evelyn Cook was there. He seemed fine at that time and was calm but kind of pale. He was making sense and was acting normal, but was still in some pain with his legs still cramping. The three women had supper but Cook didn't eat. He was having tea and was joking around with Waytiuk.

[46] After supper the three women went to bingo. Michelle called once while she was gone and he was ok. The women arrived home at 9:30 p.m. Cook still complained of having cramps in his legs but he did not want to go to see a doctor at that time. Everyone went to bed.

[47] On October 26<sup>th</sup> at 5:30 a.m. Cook woke Michelle up and told her his blood sugar level was very low – it was 1.9. He drank some juice and when he again checked his blood sugar level it was up to 2.9. At about 8 a.m. everyone got up and Michelle cooked breakfast. Cook ate a large breakfast of eggs, sausage and toast. After breakfast his blood sugar was up to 4.7. Michelle testified that this was somewhat low but it was ok as normal levels would be expected to be between 4 and 7. Cook was still pale but seemed ok. Evelyn Cook and Sylvia Waytiuk left the house after breakfast. Cook went back to bed. (It should be noted that Russell Cook's Blood Glucose Log Book was filed as an exhibit. The readings for October 26, 2006 are recorded as follows: at 5 a.m. 2.7; at 8 a.m. 1.9; at 1 p.m. 4.2. Presumably those readings were recorded at the time they were taken. This does not mean of course that additional tests as referred to by Michelle were not taken; they may simply not have been recorded.)

[48] Because Michelle was still worried about his blood sugar level, at about 10 a.m. she took him to the walk in clinic to see Dr. Nguyen. Cook went into the clinic by himself while she waited outside for him with their grandson for about two hours. Cook told her that the Doctor told him to take his regular medication but not the herbal medicine and that he could go back to work the next day. They stopped at the grocery store to get some fruit and juice then went home. Cook went to bed. At about 1 p.m. he started getting sick again and was acting different. He was confused and said that he couldn't go back to work anymore - that he was sick. He phoned his boss to tell him to lay him off so he could stay home. He also phoned his son Jeremy. He said he was going to take a shower but he never did. He started to get worse. He asked Michelle to check his neck because he said it felt like there was something going down his neck. When she checked his neck, there was nothing there.

[49] Michelle testified that Cook was sweating and rocking back and forth. She gave him a cold cloth for his face and told him she would call 911 as he was sick. He said no and got upset saying he did not want to go to the hospital. He told her not to touch the phone. Cook also said he was going to see his mother who was deceased. He was confused. He was yelling and laughing and she could not understand him. She took the cell phone and her baby grandson outside the house and called 911. (According to other evidence at the inquest at 1:55 p.m. Winnipeg Fire Paramedics Service (WFPS) received a 911 call regarding a diabetic male at the Lipton Street address. In the transcript of that telephone call Michelle tells the operator that her old man's blood sugars are low and that "it's like he's going to lose his mind.")

[50] Michelle did not go back inside the house as she testified that she did not want to see him that way. She could hear Cook inside the house running around yelling, crying and calling for her. He was loud. Michelle testified that she thought the ambulance came about 15 – 20 minutes later. (According to other evidence at this inquest, the ambulance arrived at the Cook residence on Lipton Street at 2:04 p.m. which would be about 10 minutes after the call was received.) Cook came out of the house but when he saw the paramedics he went back inside and locked the front door so they couldn't come in.

[51] Michelle and the paramedics went into the house through the back door. Cook was jumping around and told paramedics to 'F off.' He did not want to go with them. While she did not say this in her evidence in court, in her statement given on October 26<sup>th</sup> Michelle indicated that Cook was saying that he was going crazy and that he was going to die. It seemed like he was drunk.

[52] Michelle testified that Cook went into the kitchen and was throwing or hitting pots and pans all over the floor. He put up his arms and fists and was swinging them. At this point Michelle and the paramedics went outside and back to the front of the house. A short time later one of the paramedics saw a vehicle driving down the street. Apparently Cook went out the back door while they were at the front of the house. He was not wearing any shoes. Michelle told the paramedics to phone the police as Cook might hit someone or have an accident because he was sick. She told them that he was not drunk, just sick. The ambulance left. (Other evidence shows that paramedics contacted the police about this incident at 2:11 p.m. requesting service at the address on Lipton Street for a diabetic male who was acting abnormal. Police officers were dispatched to that address, but before they arrived officers were advised that the male had been seen driving on Garry Street.)

[53] Michelle testified that she did not hear anything further until later in the evening when Cook's sister called her from The Pas saying that she had heard from another brother that Russell Cook had passed on. Michelle indicated that this was how she learned of his death.

[54] The transcripts of 911 calls on October 26, 2006 show that at 3:50 p.m. and 4:30 p.m. Michelle called 911 to ask about Russell Cook and whether he had been found. She was told that her concerns would be passed on to police officers who would be in contact with her. During the phone call Michelle indicates that it has already been 3 hours since she first called and she has been waiting to be contacted. She also indicates that her husband's blood sugars were low and "it was just like he was crazy".

[55] Michelle testified that Cook had never acted like this before October 25<sup>th</sup> and 26<sup>th</sup>. In her view his blood sugar level was always normal and she stated that he would write down his blood sugar levels. She indicated that she would check to make sure that he ate and took care of himself. According to her, Cook was normal till the day before he died. She said that his behavior on October 26<sup>th</sup> was not normal for him. She agreed that on that day he looked like he was drunk or something; that for a stranger who did not know him or know that Cook was a diabetic he would probably have looked like he was drunk.

## **EVELYN COOK**

[56] Evelyn Cook (Evelyn) is the older sister of Russell Cook. She also has diabetes and she knew that he was diabetic. In 2006 she lived in Winnipeg. On October 25<sup>th</sup> Michelle called her to come over as there was something wrong with her brother. She was told that there was something wrong with his head or his mind, that he was not thinking properly and he was not feeling well. Michelle told Evelyn that Russell had asked her to call as he wanted to see his sister and wanted her to come over.

[57] Evelyn went to Cook's house at about 6 p.m. Cook was sitting in the living room and he looked alright to her. She asked him what was wrong. He was holding his head and saying "I don't know I'm going crazy". She told him not to talk like that and that they should pray. So they started praying. They had some tea. She thought he was acting like this because of his diabetes and she asked him if he had taken his medication that day and he said yes. He was not sweaty and was not slurring his words.

[58] Michelle and Waytiuk then came home. All four of them, including Cook had soup for supper. He was joking around and laughing and was feeling better. He decided to lie down and the three women went to bingo. Evelyn didn't see Cook again that evening. She stayed overnight at the Cook house. In the morning she saw Cook at 5:30 a.m. He did his blood sugar test and told her that it was low. She checked the blood sugar monitor and the reading was 1.9. She told Cook that was too low and that he should have something sweet. He had some candy.

[59] Michelle made breakfast and all of them including Cook had a big breakfast of sausage and eggs. She then left the house with Michelle and Waytiuk. Cook stayed at home. He looked alright when they left and she was not concerned about him at that time. Later she got a call from Michelle who told her there was something wrong with Cook again - that he was not well. Evelyn could hear Cook hollering in the background but doesn't know what he was saying. She told Michelle to call 911 and said she would come over as soon as she could.

[60] Michelle called her back a while later and told her that Cook had taken off on the ambulance attendants. Evelyn suggested that they call the hospitals to see if he had gone there for help. The next time she heard from Michelle she was told that her brother had passed away.

[61] Evelyn Cook testified that this was the first time to her knowledge that her brother had a problem like this. She said that he was always taking his blood tests every day using his monitor. Michelle made sure that he did so. Because this witness is diabetic herself she indicated that she is aware of what happens when your blood sugar gets too low – you get sick. She testified that she never had that problem but that the whole time she lived in Winnipeg, Cook used to tell her that his blood sugar level was going up and down. This was over a period of about a year. Cook would complain to her about doctors and would say that they just give you Tylenol and send you home.

[62] Evelyn Cook testified that her brother could speak and understand Cree. She also indicated that Cook had been to the St. Regis Hotel lots of times to visit someone in the past, and that he knew a lot of people that come and go from The Pas. She does not know why he would have gone to the St. Regis Hotel on the day he died. She thought that he probably recognized the place as he had been there lots of times before.

## **SYLVIA WAYTIUK**

[63] Sylvia Waytiuk (Waytiuk) was a friend of Russell Cook. They grew up together near The Pas. She had known him for about 30 years. On October 25, 2006 she came by bus from Brandon to see her sister who was in the hospital having surgery the next day. Michelle picked her up from the bus depot in Winnipeg at about 5:30 p.m. On the way to the house Michelle mentioned that Cook wasn't feeling well and that his blood sugar level was out of whack. Waytiuk is also a diabetic and she indicated that she had known for about 5 years that Cook was diabetic. In her statement to police she mentioned that Michelle told her that she did not know what was wrong with Cook, but he was acting weird and talking strange.

[64] When they arrived at the house Cook's sister, Evelyn was there. Russell Cook said that his blood sugar level was a little low but he felt alright. Waytiuk told him he should see a doctor. Cook appeared to be ok and was watching TV. They had supper, but Cook did not eat. He went to bed. Later that evening the three women went to bingo. Cook stayed at home with his baby grandson. The women got home at about 9:30 p.m. at which time Cook was in bed.

[65] On October 26<sup>th</sup> Waytiuk had breakfast with the others. Cook ate a good breakfast. He told Waytiuk that his sugar level was 1.9 that morning. She told him that he should take some juice when his sugar is that low. In her view 1.9 was a dangerously low level. She told him to see his doctor that day and he joked with her and said that she was being stubborn. After breakfast Cook's blood sugar level was 4.9 which the witness said is low but close to normal. Waytiuk testified that Cook knew that it was dangerous for his blood sugar level to be too low. He knew that the consequences could be that he could pass out or it could kill him.

[66] After breakfast Waytiuk went to the hospital to be with her sister and she was there all day. She later called the house at about 4:30 p.m. and Michelle told her that Cook had died. Waytiuk provided a statement to police later that day.

[67] Waytiuk testified that Cook's behaviour was normal when she saw him on October 25<sup>th</sup> & 26<sup>th</sup>. There was nothing wrong with him that she saw. Her understanding was that Michelle was going to take him to the doctor. Waytiuk indicated that she had seen Cook about a month before when he was working in Brandon and had visited with her. He seemed fine at that time.

[68] Waytiuk testified that if a diabetic's sugar level is too high the person will feel light headed and when it is too low the person will shake. Cook was not

shaking when she saw him. He did not seem to be very ill when she left the house. He was laughing and seemed fine. She stated that she was shocked when she later learned that he had died.

### **ELIZABETH ANNE WOOD**

[69] Elizabeth Wood (Wood) was a customer at the St. Regis Hotel on October 26, 2006. She had been there since 10:30 – 10:45 a.m. and indicated that she had two drinks. In the early afternoon she and her friend Doreen Daniels were standing outside the hotel having a cigarette. Wood was standing almost right in front of the doors of the hotel. She saw a dark blue coloured car with a man driving come out of the parking lot and turn right. She had not seen the car earlier. The vehicle turned onto the sidewalk and was driving very slowly down the sidewalk in front of the hotel. Wood pushed her friend out of the way of the vehicle. Wood noted a woman coming out of the hotel who was hit by the car in the knee area. The woman broke the heel of her shoe and fell. The driver of the car did not speak to the woman. Wood knelt beside the woman and asked if she wanted water. The woman said no and ran away.

[70] Wood noted that the man in the car put his head down on the steering wheel for about a minute or two. He then got out of the car and walked into the hotel. That was the last she saw of him. She did not see him carrying anything at the time. She did not know this man from before. Wood also ran away as she testified that she was shy. She left before the police attended to the hotel. Later her friend Daniels came to get her at another hotel and Wood came back to talk to the police.

### **\* DOREEN DANIELS**

[71] Doreen Daniels (Daniels) did not testify at the inquest. Her statement to police which she provided on October 26<sup>th</sup> was filed. She told police that on October 26<sup>th</sup> at about 2:30 p.m. she was standing in front of the St. Regis Hotel having a cigarette. She saw a purple car driving slowly down the sidewalk in front of the hotel. Daniels also saw a woman walking on the sidewalk in front of the car. The car hit the woman from behind and the women fell to the ground. The woman then took off running down the street.

[72] Daniels indicated that the man driving the car got out of the car and started laughing. He did not try to help the woman that he had hit. Daniels saw that the man was carrying something in his hand which she described as being like a stick

or something. The man then walked into the hotel and that was the last Daniels saw of him. She was asked to describe the man and she did so. She was asked if the man appeared sober or coherent. She indicated no, that he was moving slow, like in slow motion and was “kind of shaking and acting weird”.

## **MARIVIC SANSANO**

[73] Marivic Sansano (Sansano) moved to Canada with her family in August of 2005. On October 26, 2006 she was on her way to the St. Regis Hotel for a job interview. It was close to 2:30 p.m. when she was crossing the parking lot next to the hotel. When she was about 10 meters from the building she saw a car coming from behind her down the driveway portion of the parking lot. She was walking on the edge of the driveway. The car was very close to her almost touching her side. She did not know why the driver was driving so close to her.

[74] She is not sure if the window was already rolled down or if the driver rolled it down at that time, but the male driver said ‘Hi’ to her. She indicated that she is taught in her culture to respond with respect so she looked at him very fast and said ‘Hi’ as well. She testified that she was very scared so she walked very fast until she was on the sidewalk. The man never said anything else to her.

[75] As she was walking on the sidewalk she saw people ahead of her on the sidewalk in front of the building looking behind her and appearing to be shocked. She looked behind her and saw that the car was now following her on the sidewalk. She was very scared as she thought he might hit her. She noted that there was a narrow steel sign pole and she stood behind the pole trying to hide. The driver stopped the car and was just sitting in the car staring at her and holding the steering wheel. She thought he was just waiting to see what she was going to do. The man did not show any emotion – he was just staring.

[76] Sansano testified that she was in front of the hotel and was trying to decide where she should go. The wheel of the car had stopped on her foot and was squeezing her left foot. She tried to get her foot out and she managed to do so by leaving her left boot behind as the man got out of the car. Her boot was broken. She was scared that the man would hit her because when he got out of the car he was holding something in his right hand. He was looking at her. The item in his hand was kind of brown or yellow in colour and he was holding it above his head. She thought he would hit her so she became very scared and tried to run away towards Portage Avenue.

[77] Sansano only managed to go a few meters away when a lady grabbed her hand and asked if everything was alright. Sansano looked back and saw the man from the car going into the hotel. That was the last she saw of him. Sansano pulled away from the lady and was shouting for help. People were looking at her and appeared to be very shocked. On the corner of Portage and Smith she sat down on the sidewalk and someone called for police and paramedics on a cell phone. Paramedics came and put her inside the van. She waited 15 – 20 minutes and when she asked why they were waiting she was told that something was going on in the hotel. She was treated at the hospital for the injury to her foot. She testified that she had a swollen foot for about a week. When she was at the hospital she learned that the man who had been driving the car was also in the hospital and that he had died.

## **ANGELA KRNIC**

[78] Angela Krnic (Krnice) was working at the St. Regis hotel as a front desk clerk on October 26<sup>th</sup>. She has worked there since 1993 when she was 13. She started as a dishwasher and worked her way up to being the supervisor of the housekeeping staff. Her mother Cheryl Collins was the general manager of the hotel in 2006.

[79] On the afternoon of October 26<sup>th</sup> Krnic was at the front desk in the lobby of the hotel when she saw a bunch of people come running into the lobby. She described it as being like a movie scene where a meteor is falling and people are running and ducking down. People told her to call the police as a guy had hit a lady. She called 911. The 911 operator said they already had a call about the man hitting the lady at the hotel. They were busy so Krnic was on hold for about a minute.

[80] The transcript of the 911 calls on October 26<sup>th</sup> indicates that a female caller called 911 from the St. Regis Hotel at 2:29:39 p.m. In the background the female caller is heard to say: “Somebody has him! We don’t have him!” The caller reports that a car just went up onto their sidewalk and hit a pedestrian. She indicates that the driver is in the hotel and “he’s like crazily drunk”. She also reports that “we are having him arrested” and “we’re putting handcuffs on him right now”. She also indicates “he’s like going crazy”. The caller is put on hold and then is put through to the WFPS. The WFPS dispatch indicates they have already received a call about this matter and that the police are on their way.

[81] Krnic testified that while she was still on the phone a man came up to the desk. He was holding a yellow coloured Club (a steering wheel locking device) in

his hand and he laid it on top of the desk. Krnic testified that she didn't realize that this was the man who had hit the lady. She asked the man if he was ok. He seemed calm at the time. But then he turned around and said "I'm crazy" or words to that effect. She agreed that it could have been "this is crazy" or "I'm going crazy". She was certain that the word 'crazy' was used. That is all she heard. The man was shaking his head back and forth as he walked away. He did not seem to be angry or upset at that time. He was not shaking or trembling. The man then walked off into a crowd of people. She didn't see the man go into the lounge. She stayed at the desk.

[82] Krnic indicated that she may have seen her mother at some point during this incident but is not sure. Her mother may have asked her to call the police and she may have said that she had already done so. Krnic testified that she went to the door of the lounge at one point and she poked her head in briefly. At that time she saw three men trying to hold a man down. This was the same man she had seen earlier at the front desk. Two of the men were hotel employees, one a security guard, the other a maintenance man. The third man was a medical services guy. They were holding the man's shoulders and his legs down. That is all she saw.

[83] She testified that she was never asked to provide a statement to police. She indicated that she has never been involved in the service of liquor part of the hotel business. However, she stated that she had taken the Manitoba Liquor Control Commission (MLCC) "It's a Good Business" course. She described the course as dealing with the checking of identification to make sure people are of legal drinking age and with over service of liquor.

## **CHERYL ANN COLLINS**

[84] Cheryl Collins (Collins) was the general manager of the St. Regis hotel on October 26, 2006. She normally worked during the day. She worked at the hotel for a total of 22 years and left in August of 2008. She started as the general manager at the hotel in 1998. Collins' daughter was also working at the hotel as the front desk clerk.

[85] Collins was never asked to provide a statement during the police investigation of this incident. She testified that she spoke to investigators from the insurance company when the hotel was represented by that insurer, and also spoke to counsel for the insurance company. She had jotted down some notes in a file about this incident which she left at the hotel and she stated that she did not have

any opportunity to review her notes about this matter. Accordingly, she was relying on her memory of the incident when she testified.

[86] Collins testified that she was in her office near the front reception desk waiting for a woman she was going to be interviewing for a job. While she was waiting she heard a lot of noise from the front of the hotel. She described this as 'bedlam'. People were yelling and screaming that a lady had been hit outside. They were screaming "he hit a lady". Some people were also screaming "he has a gun". People were 'stampeding' as Collins was going to the front door. Some people were even running out the back door of the hotel.

[87] (In the transcripts of the 911 calls on October 26<sup>th</sup> respecting this incident, at 4:14 p.m. Marlene Bighetty called 911. She reported that she had been outside the St. Regis Hotel that afternoon when she witnessed the car hit the lady on the sidewalk in front of the hotel. She reported that she was only 2-3 feet away from the female who was hit and that she would have been the next to be hit if the driver had accelerated. Bighetty reported that she ran away right through the building and through the kitchen out the back door. She indicated that she ran because she thought the guy had a gun. Bighetty called 911 to offer to provide a statement to police about the incident she witnessed.)

[88] Collins testified that she did not know who the people were talking about. She later saw the video from the hotel and realized that she had walked right by the man (Cook) but she did not know it at the time. She testified that she was not paying attention to him at the time because she was focused on going outside and trying to understand why everyone was screaming.

[89] Collins went outside through the front doors of the hotel. A car was parked on the sidewalk in front of the hotel doors facing towards Portage Avenue. She saw a boot and a woman hobbling away towards Portage Avenue. She believed this was the woman who she was waiting to interview for the job. People were yelling "That's the lady". The area where the car was is quite narrow with garbage cans and a fire hydrant and the witness was amazed that the car could get onto the sidewalk at that location. There was no one in the car at the time she was outside.

[90] Collins told the hotel's security guard Ken Suchar to go after the woman who had been hit. People were yelling that the woman was hurt and others were yelling and pointing to the doors of the hotel saying the man who had hit the lady was in the hotel.

[91] Collins went back into the hotel. Her attention was drawn to a man (Cook) who was at the front desk talking to her daughter. (Her daughter later told her that the man had a Club from a steering wheel and that he gave it to her daughter.) Collins observed that Cook seemed calm and that he was speaking to her daughter who was on the phone. She believes her daughter was calling 911 at that time. (According to Winnipeg Police Service records a call was received from the St. Regis Hotel at about 2:31 p.m.)

[92] Collins heard her daughter say to Cook: “why did you hit the lady?” He didn’t seem to acknowledge this. Her daughter then said “No, you hit the lady”. At this point Collins indicated that Cook’s demeanor changed – he was not calm anymore. This change occurred within about a minute. He put both hands up over his head and said “I’m crazy, I’m crazy”. He then ran towards the doors to the lounge/bar. According to Collins within seconds after saying he was crazy the man was in the lounge. Someone sent a page out asking for help. Collins described how some staff at the St. Regis have radios and that when a page goes out for help it is understood that any male staff member is to come to help. Collins testified that Dave Brown the maintenance man and Eddie West the dishwasher came to help.

[93] Collins stated that she was yelling at Brown to stop the man and Brown chased after Cook. West also ran after him into the lounge. There was a medical services man present in the lobby. He also went running into the bar to see what was going on. Collins followed the men into the bar. Her recollection is that Brown tackled Cook from behind to stop him and brought him to the floor onto his stomach. Brown was trying to restrain Cook who was just flailing around and seemed to be incredibly strong. Brown was not able to hold him down.

[94] At this point West also got involved in trying to hold Cook. Then the medical services person also got involved. West and the medical services man were trying to hold Cook’s arms behind his back while Brown was near Cook’s feet. Collins testified that as she came closer to where the men were struggling, Cook was able to free one leg and he kicked her. She expressed surprise that it did not hurt more but later noted that Cook did not have any shoes on. As the three men were involved in holding Cook the security guard Suchar came back. Collins does not remember Suchar being involved in restraining Cook.

[95] Someone was yelling to get the handcuffs. The witness testified that the hotel had handcuffs which would ordinarily have been used but they couldn’t find them that day. Collins indicated that she doesn’t know whether anything else was

used to tie Cook. She heard someone mention some string but she does not think that was used before she left the bar. She saw the medical services guy with his elbow on Cook, kind of leaning on his back to hold him down. Collins stated that she was never concerned about Cook while he was being restrained or about the manner in which staff were restraining him.

[96] Collins testified that Cook was loud and that he may have been saying 'get off me'. He was described as really flailing around and it appeared that it was very hard to hold him down. He seemed incredibly strong. She stated that at the time she wondered if they would need more people to hold Cook as she couldn't believe how strong he was. She indicated that three people were not enough to hold him.

[97] Collins described how all this was happening in very small quarters – Cook was near the wall, and there were 3-4 guys holding him down. She indicated that she did not have any discussion with the men about the manner in which they were restraining Cook. She testified that she was in the lounge for about 98 % of the time that Cook was being restrained. She went out briefly once to see if the police were coming and she went out when the police arrived at the hotel. She stated that she never got a good look at Cook as he was face down on his stomach although his face would turn from side to side. She did not note that he was sweating or pale. She did not see him stop moving.

[98] When the police attended Collins testified that she went outside to have a cigarette as she was shaken up and falling apart. She remembers telling the police to help the men because they couldn't hold Cook. She believes that the police attended first followed very closely, within seconds by the paramedics. It may have been that they arrived at the same time.

[99] Collins testified that the whole incident felt like it took a long time but really it wasn't even 5 minutes. While she was outside having a cigarette her daughter came and told her that the man had died.

[100] Collins confirmed that the St. Regis Hotel has a contract with Health Canada to provide housing for patients that are in Winnipeg for medical treatment. She emphasized that the hotel just provides housing, not any medical treatment and that patients come with their own escorts. She indicated that there is no requirement by Health Canada that the hotel staff take any type of medical or first aid training.

[101] Collins testified that for the most part security is not usually needed during the day time. There is one security guard on duty during the day but his duties include, helping guests with luggage, giving directions to people, assisting with

patients, and dealing with panhandlers. On the other hand the situation is very different during the evening hours. There are usually two security guards on duty in the evening to deal with the bar patrons.

[102] Collins was asked what the hotel policy was about dealing with unruly patrons. She advised that the hotel had general unwritten rules to protect the safety of the staff, the public and patrons. She indicated that staff are not to take the first punch, not to use excessive force, and to call the police for assistance. At the same time she stated that they don't want to overcall the police, and that first and foremost the rule was to try to talk out the situation.

[103] She was also asked about any general instructions given to security guards regarding the type of restraint to be used. She indicated that the hotel has handcuffs which can be used but it is situational and sometimes they don't have to restrain anyone. She indicated that there are no regular meetings with staff dealing with security issues and that the last meeting when such issues were discussed would have been 3-6 months before October 26<sup>th</sup>.

[104] Collins testified that there was a high turnover of security staff at the hotel and that most did not stay long. She stated that people burn out but if they were good workers they would be moved into another area of the hotel; otherwise they were let go. She indicated that Brown used to be a security guard at the hotel but that he burned out so he became the maintenance man instead.

[105] Collins testified that she did not normally work evenings and thus she was not responsible for hiring security guards. She noted that if a customer was being loud and disruptive she would be inclined to say let him go as often the wait for the police would be 6 hours or more so it was not worth holding a person for so long.

[106] Collins testified that there was no change in policy at the hotel as a result of this incident. It was her view that there was no need for any change.

[107] Collins confirmed that security guards at the hotel did not need to be licensed and that there was no requirement for them to have any training. She was aware of a course offered by MLCC which any manager, security guard or anyone dealing with liquor in a licensed premise has to take. Her view was that this course was more directed to issues respecting the service of alcohol to customers rather than anything else.

**EUGENE MARK OSBORNE**

[108] Eugene Osborne (Osborne) lives in Red Sucker Lake and has for the past 32 – 33 years. As of January 2009 he is a medical services driver in the community. In that capacity he drives people from their home to the nursing station and back when they need to go for medical treatment. Sometimes he drives people to the plane to go to Winnipeg for medical treatment. He has dealt with diabetic patients who have told him they feel dizzy if their blood sugar is low or high.

[109] In October 2006 he was in Winnipeg on personal business and he was staying at the St. Regis Hotel. On October 26 in the afternoon he was in the restaurant waiting for his food order. He heard a commotion in the lobby. People were running inside the restaurant saying there was a man with a gun outside. He went into the lobby to check this out.

[110] Osborne saw a man coming inside the building holding a Club in his hand. He thinks it was red in colour. The man was holding the Club in his hand by his side and he did not swing it around or hold it up. He did not know this man. In the statement Osborne gave to police on October 26<sup>th</sup> he indicated that people were saying that this was the man with the gun, but all he had was a Club.

[111] The man was standing in the lobby looking around. He was about 10-15 feet away from the witness. Osborne did not really see the man's face as he was looking in the opposite direction. The man was looking towards the front desk and he was stopped at the front desk area for about 2-3 minutes. In his statement Osborne indicated that the people at the front desk told the man to stay there because they wanted to talk to him. Osborne testified that he saw the man walk into the bar still holding the Club. (He is obviously mistaken in this regard, as the Club was left at the front desk and was later seized by police from the front desk clerk.) Osborne testified that he did not hear the man say anything at that time. In his statement to police Osborne indicated that he did not see the man go into the bar – that he looked around after a while and the man was gone from the lobby.

[112] Osborne testified that the man did not look too good - he did not look normal based on the way he was acting. He had a straight or expressionless face and he looked lost. In his statement he indicated that the man was shaking his head while in the lobby and that the hotel workers said that he wasn't normal. Osborne testified that two or three people from the front desk followed the man into the bar. Osborne also went into the bar but not right away. He did not follow for about 2 minutes.

[113] When Osborne went into the bar the man (Cook) was already on the floor and there was one man on top of him. Cook was on his stomach and the man on

top of him had one knee on his back, in the middle of the back just below the head area. Cook kept saying “get off me, you’re hurting me”. He said it 4-5 times. The man on top was described as being about 6 feet or 6 feet 1 inch tall. (Based on this description and other evidence this was likely the maintenance man Brown.)

[114] Osborne testified that he thought the man on top was trying to put handcuffs on the man on the floor. The man on top was not saying anything to Cook. In his statement Osborne indicated that the man on top was asking for more help. Osborne testified that the lady from the front desk kept saying to put handcuffs on the man. She was standing right beside Osborne. Osborne testified that the whole time he was in the bar he only saw one man on top of Cook – no one else. He was in the bar for about 3-4 minutes. While Osborne was there Cook was not moving around and he was not kicking his legs. In his statement Osborne indicated that while at first there was only one guy on top of Cook, later a couple of other guys jumped in to help him out. These people were asking for handcuffs because they could not find any.

[115] Osborne testified that he did not see any handcuffs being put on Cook as he said that he walked out of the bar to check on his food order. He got his food, went upstairs and brought his wife the food, then came back to the bar to play the VLTS. He estimated that he returned to the bar about 10 minutes after he left. When he came back to the bar Cook was unconscious and the paramedics were already pumping on his chest. Osborne testified that he did not see the police arrive at the hotel. In his statement he indicated that he saw some paramedics as well as some police officers when he came back to the bar.

**\* JANE FLETT**

[116] Jane Flett (Flett) did not testify at the inquest but she gave a statement to police on October 26<sup>th</sup> which was filed as an exhibit. Flett indicated that on that date she was in the bar at the St. Regis hotel between 2 and 2:30 p.m. having a drink. She was sitting behind the VLTs. She saw a man come into the bar and she heard someone saying that the man had just run over someone. A security guard that Flett knew as Dave grabbed the man who started struggling. The security guard pushed the man against the wall and they both went to the floor. The man was struggling and the security guard pinned him down. Then three other people Flett referred to as security guards came and they helped hold the man down.

[117] Flett indicated that the men tried to tie the man on the floor but he stopped struggling. The men were holding the man face down on the floor on his stomach

and they were holding his hands and feet until the police arrived. Flett indicated that the incident happened 'really quick'.

**\*MAUREEN CAMPEAU**

[118] Maureen Campeau (Campeau) did not testify at the inquest but provided a statement to police on October 26<sup>th</sup>. She indicated that around 2:30 p.m. on October 26<sup>th</sup> she was in the bar at the St. Regis hotel with three other people. (It is not clear but one of these people may have been Jane Flett.) Campeau indicated that she saw a man run into the bar and that a person who she knows as Dave was following him. As the two were running in, Dave pushed the man to the ground. Dave was yelling, "Get someone with handcuffs". No one had handcuffs. Other men came in to help but the man was still resisting. Two of the other men that were helping to hold the man were known to Campeau as Eddie and Ken.

[119] Campeau indicated that the man started yelling "I'm crazy". All four of the men who were holding him were lying on top of the man. The man then looked over at Campeau and said "Come and help me". Campeau indicated that the next thing she knew the man was still and not moving. Then the police and the paramedics showed up.

**DAVID WINDSOR BROWN**

[120] David Brown (Brown) was one of the individuals who was involved in restraining Cook on October 26, 2006. He indicated that he had worked at the St. Regis hotel for about 8 years as of the date of the inquest. For the first three years at the hotel he worked evenings as a security guard. After that time he worked as the maintenance man for the hotel and he works days. He testified that he still assists with security work whenever needed, and that they all help each other out. He may be called in to help out with security type issues at least once a day and sometimes more. On October 26, 2006 Brown was working as the maintenance man. He is 6'3" tall and weighs 220 pounds.

[121] Brown testified that before he worked at the St. Regis hotel he worked as a security guard in various Winnipeg night clubs and bars for about 15 years. In all that time he indicated that he never received any training or courses from any of his employers to assist him in doing his work as a security guard. He stated that the attitude basically was – you're a big guy, do the job. Brown confirmed that because he worked in licensed premises he completed the MLCC "It's Good

Business” course some years ago. He indicated that he was one of the first people to take that course. His recollection of the course was that it “breezed” over the provisions of *The Liquor Control Act* and dealt mainly with the over serving of liquor, how to spot fake identification and how to tell if a person is intoxicated. That course did not provide any information or training about security work. To his recollection there was nothing in that course about how to properly restrain someone, how to deal with intoxicated unruly people or how to evict someone if necessary.

[122] Brown also testified that in all the years he worked in security he never received any teaching or training from any employer regarding how to properly restrain someone. In terms of how to do his job he was told by one employer not to beat people to a bloody pulp, but that basically was it as far as receiving any instructions or policies. He indicated that at one of the night clubs he worked with other security guards who were or had been in the military, and that one of those fellows taught him how to hogtie someone.

[123] Brown described ‘hogtying’ as follows: a person is on their stomach with their arms up behind their back one hand on top of the other; the person’s legs are then put up, bent at the knee and crossed at the ankles; the feet are put down over top of the hands; the hands and feet are then held down by the person who is doing the restraining by putting a knee on top of the legs. A person restrained in that position is then unable to resist or move at all.

[124] Brown stated that he has taken 7 years of Martial Arts training on his own. He testified that in the first few years of martial arts training you learn mostly defensive moves not offensive moves and you learn a lot of submission holds. These holds teach you how to subdue someone without having to punch them. Over the years Brown testified that he has restrained hundreds of people and that he has ‘hogtied’ individuals about one to two dozen times over the years he worked in security.

[125] Brown testified that in his view it would be a great idea if there was some training offered by MLCC as to how to properly restrain an individual and how to do security work. He said that over the years he has worked with a lot of over zealous bouncers who like to beat people up or be a tough guy. He does not think there would be any difficulty if security guards were required to take a course addressing such issues as long as this was paid for by an employer.

[126] Brown described himself as a tough guy, namely a person who can handle himself because he has worked in downtown bars for 15 years. However, he stated

that he only uses the force he needs to subdue someone and that he would regard himself as a professional – as much as one can be a professional when there is no course offered in Winnipeg to teach security work in bars.

[127] In October 2006 Brown had been the maintenance person at the St. Regis for about a year. He was working days on October 26<sup>th</sup>. He testified that he was upstairs in one of the rooms of the hotel when he received a call on his radio from staff alerting him to an incident that had occurred outside. He was told that someone had been run over by a car outside the hotel. He came down the stairs to the lobby and saw the car on the sidewalk in front of the doors to the hotel. He did not see anything that happened outside.

[128] Brown testified that he was almost down the stairs to the lobby when he saw about 10 or 15 people who were pointing towards the lounge door and saying that “he’s the driver”. These people were pointing to a man who was standing in the lobby. According to the witness the man saw Brown and started waving his arms overhead yelling, “I’m crazy, I’m crazy”. He said it two or three times. The man was standing to the right of the lounge doors. He did not have anything in his hands at that time. This man was described as being 5 feet 8 inches to 5 feet 10 inches tall and weighing about 180 pounds. Brown testified that the man looked “kind of out of it”, kind of wide eyed and had a “deer in the headlights” kind of look. He thought the man was drunk or on drugs or both. He did not smell any liquor from the man at any time.

[129] Brown testified that he came face to face with the man who we now know was Cook. Brown indicated that he assumed Cook was drunk because not many people come into the hotel saying that they are crazy. Brown indicated that he assumed from the people pointing at Cook that this was the driver of the car who had run over someone outside the hotel. He told Cook to calm down and relax. He said words to the effect “calm down buddy, everything is going to be alright the police are on their way”. At this point Brown says Cook turned around and ran into the lounge.

[130] Brown testified that he did not know that the police had been called but he assumed they had been as everyone working in the lobby knew what was going on. Brown ran into the lounge after Cook who got about 6-8 feet into the lounge. Brown came up behind Cook and pushed him with both hands from behind into the VLT wall. Cook hit the wall and turned to confront Brown. The push into the wall did not cause him to fall. Brown grabbed Cook in a head lock with his left arm and then hip tossed him onto the floor. He described the head lock as Cook being bent over, with his face down and head in the crook of Brown’s arm. At this point

Brown took a step forward and tossed Cook over his hip to the floor. This took about 3 – 4 seconds and Cook landed on the floor.

[131] Brown testified that he pushed Cook and tossed him to the floor in order to prevent Cook from running further into the lounge or anywhere else. He indicated that Cook was already screaming and yelling and waving his arms, saying he was crazy and that the bar was the last place he needed to be. Brown stated that he didn't know what Cook was going to do as he was not acting normal. He testified that he wasn't prepared to let Cook go into the bar and let him be someone else's problem. He said he had no idea what the man might do – maybe fight someone else or trash the place.

[132] According to Brown, Cook fell a distance of about 3 feet to the floor. He landed on the back of his left shoulder and then he turned over so that he was completely on his back. Right away Cook was trying to get up again. Brown testified that he was on top of Cook and was trying to roll him over onto his stomach so that Cook couldn't hit him. At this time Brown was by himself and no one else was assisting him. He indicated that he had difficulty rolling Cook over as he was kicking with his legs and flailing with his arms half trying to fight back and half trying to get up. Cook did not say anything. Brown testified that Cook was surprisingly strong. This surprised him as Cook looked to be out of shape. He assumed that Cook was on drugs or alcohol or both because drugs can have the effect of making someone stronger than it appears they should be. He agreed that adrenalin may also make people stronger than usual.

[133] Brown testified that Cook was struggling as he rolled him to his stomach. Brown was not able to get both Cook's hands behind his back as Cook was too strong. Brown indicated that he would get one hand and when he reached for the other he could not hold both hands. Brown stated that at this time he was straddled over Cook sitting on his buttocks while he was trying to get Cook's hands behind his back. Brown testified that he believed it was necessary to restrain Cook as he was not responsive to anything and he was not calming down.

[134] Brown testified that he carries a radio with him when he works and that when he hip tossed Cook to the floor his radio went flying. As he was straddling Cook, trying to get his arms behind his back, Brown got a customer to kick the radio over to where he was, so he could call for help. He called on the radio for someone to come into the bar and help him right away. Eddie West (West) who was the dishwasher at the hotel came to help first. Shortly afterward a medical services guy also helped. According to Brown the medical services man just jumped in – he was not asked to help. West was trying to help to get Cook's hands

behind his back. Brown testified that it was his intention at that time to restrain Cook by hogtying him. Brown had one arm and West grabbed the other arm. The medical services guy then took over from Brown holding that arm while Brown testified he went to get the handcuffs. At that time Cook was still struggling and fighting. Cook was not saying anything, he was just grunting and groaning the way a person would if he is struggling. Brown testified that he never heard Cook say that they were hurting him. Brown cannot recall the medical services man speaking to Cook in an aboriginal language. Other people however were telling Cook to relax, to calm down and to stop fighting but Cook did not respond. In Brown's video statement given to police on October 26<sup>th</sup> he indicated that Cook yelled a few times "Ow, you're hurting me".

[135] According to Brown the hotel's handcuffs are usually kept on a hook behind the front desk. Sometimes the night security guard keeps them in his pocket. When Brown checked on October 26<sup>th</sup> the handcuffs were not there. He advised that handcuffs are probably used weekly at the hotel mostly in the evening to restrain patrons at the bar.

[136] Brown testified that he was gone looking for the handcuffs for maybe 30 seconds. When he got back Ken Suchar (Suchar) the hotel security guy was there. Cook was still struggling "pretty good". Suchar gave the medical services guy a cord for charging a cell phone to tie Cook. Suchar wrapped bar towels around Cook's wrists and then the medical services guy tied the cord around his wrists. By the time Brown came back they had already tied one wrist. Brown got on his knees on the back of the Cook's calves trying to restrain him. According to Brown, Cook was still kicking and he was able to 'buck' Brown off his legs two times. During this time Cook was also moving his head back and forth trying to get loose. Brown testified that he was still on top of Cook's legs when the police showed up. He estimated that he applied maybe 10 seconds of pressure to Cook's legs as he couldn't stay on the legs because Cook was kicking him off. Again Brown expressed surprise at how strong Cook was as he was able to get a 220 pound man off his legs more than once.

[137] In his video statement to police Brown indicated that he folded Cook's legs up towards his waist. He then had both of his knees on Cook's legs putting his weight on top of them to hold Cook's legs there. West and Suchar had Cook's arms up behind his back. During this time Cook was still struggling and was twice able to push Brown's weight off his legs. Each time Brown was able to push Cook's legs back up. Each time Cook continued struggling and grunting.

[138] Brown testified that only one of Cook's arms was tied with the cord because the police arrived at that time. In his video statement he indicated that Cook stopped struggling as soon as one of his wrists was tied. The police officer started to put handcuffs on Cook. According to Brown, the police officer only had one handcuff on Cook when a paramedic who arrived a second or two after the police, told the officer to take the cuffs off. Brown's evidence was that while the police officer was putting the handcuff on Cook he stopped moving. Brown assumed that Cook had given up the fight because the handcuff was put on. In Brown's statement to the police he indicated that about 30 seconds before the police arrived, Cook stopped resisting.

[139] Brown testified that it was literally seconds from the time Cook was struggling until he was not moving. Brown did not observe any struggling by Cook with the police. Brown indicated that Cook did not at any time during the struggle appear to have any trouble breathing. Brown indicated that he was not involved in any restraint on the upper part of Cook's body. In his video statement he told police that during his initial struggle with Cook, at one point he may have had his knee behind Cook's shoulder blades in order to use it as leverage to flip Cook over onto his stomach.

[140] Brown testified that after the handcuffs were removed the paramedics rolled Cook over onto his back and started doing CPR. At this point Brown went to the lobby.

[141] Brown indicated that he did not know that Cook was diabetic until well after this incident occurred. He did not see the hotel manager Collins in the lounge while he was restraining Cook although she could have been there. Brown indicated that this entire incident all happened very fast. He was of the view that from the time he chased Cook into the bar until the police showed up only 30 – 45 seconds passed. He testified that the whole incident took a minute or less.

[142] Brown testified that several employees at the hotel have radios to communicate with each other. Security guards, the bell hop, two men in maintenance, housekeeping, the bartender, and the front desk all have radios. During the daytime there is only one security guard on staff, but the maintenance man is a back up, as is the bell hop. At night there are three to four security guards on duty, three in the bar and one for the rest of the hotel.

[143] Brown testified that hogtying is something that he does and that he has never taught anyone else to do that at the St. Regis. He stated that whether he will hogtie someone depends on what the person he is trying to restrain is doing and whether

he has handcuffs available. He does not have to do it that often and he noted that if he has handcuffs available he doesn't have to hogtie anyone. Brown indicated that they now have more than one pair of handcuffs at the St. Regis Hotel and that since October 2006 he has not had to hogtie anyone. Brown testified that they never did hogtie Cook. In his statement to police Brown indicated that he was not able to hogtie Cook by himself, but only after he got 'back-up' or assistance from others. In his statement he described hogtying as tying someone's hands and legs so they can't fight. While he was testifying Brown was not questioned about the various differences between his statements to police and his evidence at the inquest.

[144] Brown was asked by counsel for the Cook family about the clientele at the St. Regis hotel. He confirmed that about 65 % of the people who stay at the St Regis are staying there while they are having some kind of medical treatment in Winnipeg. He also indicated that about 99 % of the clientele are aboriginal. Brown was asked how many aboriginal people are on the staff at the hotel and he answered that they are hired but they don't stay.

### **EDWARD JAMES WEST**

[145] Edward (Eddie) West (West) was employed as a dishwasher at the St. Regis hotel in October 2006. He worked at the hotel for just over a year. His job as a dishwasher involved cleaning dishes and he also sometimes helped the bell hop and did the odd maintenance job. He did not serve liquor and prior to October 26<sup>th</sup> he had never helped with any unruly patrons or intoxicated people West worked only during the dayshift. Sometime after October 26<sup>th</sup> he was let go as he and another staff member had a disagreement. He testified that he has had no security or safety training but that he was just a dishwasher.

[146] West testified that on October 26<sup>th</sup> he was washing dishes in the kitchen. He heard yelling and screaming and saw a few people running back and forth. Some girls were crying and screaming and one went running out the back door of the hotel. In his statement to police he indicated that he heard someone say something about a weapon. (This is consistent with what Marlene Bighetty reported when she called 911 later that day.) West testified that he went to the lobby to see what was going on. He saw a bunch of people (he estimated between 30 and 40 people) standing around in the lobby. A car was parked on the sidewalk right in front of the main doors. He asked the hotel manager Collins what was going on and she told him to go inside the bar to help hold somebody down. She was pretty distraught and shaken up.

[147] When West went into the bar, Brown, who he described as being one of the security guards, was trying to hold a man down on the floor. Brown already had the man down on the floor and was just holding him and was trying to get his arms behind his back. West was told to help hold the man down and he did so. According to West the man (Cook) was struggling. Brown was trying to get Cook's arms behind his back so he couldn't struggle as much. Cook was lying on his stomach. Brown was kneeling beside Cook on the floor.

[148] West went to Cook's left side and held one of his arms at the wrist and held it behind his back (in the area of the small of his back). They had to pull Cook's arms back as his shoulders were moving or swaying back and forth. No one else was involved until a medical services guy came to help hold Cook's right arm. This was about 5 – 10 minutes after West started to help. At that point Brown moved to Cook's legs to hold them and stop them from moving. Brown was holding Cook's legs together with his hands. West testified that no one was putting any pressure on Cook or on his chest.

[149] West indicated that Cook was struggling and getting angry and frustrated. The witness thought Cook was drunk. His face was getting red. West could not smell any alcohol on Cook. He did not hear Cook say anything about being hurt, being in pain or for them to get off him as they were hurting him. West testified that if he had heard that being said they would have done things differently. He did not think Cook was being hurt in any way.

[150] According to West the incident happened very quickly. He does not recall Ken Suchar helping at any time to restrain Cook. In fact West testified that he does not even recall Suchar being in the bar at all during this time. In his statement to police West indicated that Suchar was one of the men involved in holding one of Cook's arms. West testified that there was no discussion between the men about how to restrain Cook. They just held him down until the police showed up. The medical services guy ended up getting some kind of black leather twine to tie Cook's wrists. West did not know where the twine came from. The medical services man tied Cook's wrists together with the black twine and then used some rags to prevent any injury. West testified that all he did throughout this incident was to hold Cook's the left wrist or arm. Brown was holding Cook's legs together so Cook couldn't kick and the medical services guy was holding Cook's right arm. Cook was struggling throughout, not saying anything but just grunting.

[151] West testified that he did not hear any discussion about handcuffs. He could see Cook's face as he was turning his head back and forth and his face was getting red. West thought Cook was getting frustrated because he wanted to get loose.

West recalls that the medical services guy was talking to Cook in an aboriginal language telling him to calm down and take it easy. (West said he could understand some of the words used because his mom used to talk to him in a native language when he was small.) Cook was not responding but he was just getting more frustrated. His legs were kicking and his arms were still getting loose. In his statement to police West indicated that Cook kept screaming and yelling and trying to get loose and that Cook was yelling that he wanted to 'get loose'.

[152] West testified that as far as he could tell there was no indication that Cook was having any trouble breathing at any time. West indicated that there was no plan to hogtie Cook, they were only going to tie his legs and arms so he could be held down. West said that he had never before been involved in restraining anyone. He indicated that he had never seen handcuffs being used at the hotel to restrain anyone, however, he also said that he was just the dishwasher and he was usually in the back washing dishes. He helped on this occasion because the manager asked him to help hold the man.

[153] According to this witness, Cook kept moving around and West had to hold his arm even after Cook's arms were tied. He didn't stop struggling at all. As soon as the police arrived they told the men holding Cook to back off and that is when all of them let Cook go. As soon as they let go, Cook kind of slumped down or collapsed and lost consciousness or passed out. According to West it was like Cook gave up struggling. West testified that the police hadn't even touched Cook yet at that point. West recalls the paramedics attending right after the police came into the bar. In his view Cook was still conscious when the police and paramedics arrived. West indicated that Cook's legs were not pulled up and his head was not pulled up or back and that he was lying flat on the floor with his legs straight out, not up in the air or bent. Throughout the incident Cook was never punched or kicked by anyone.

[154] West was of the view that when the police were untying Cook's hands he was in and out of consciousness and that he passed out before they finished untying him. In his statement to police West indicated that he untied the wires from Cook's wrists and that Cook passed out during that time. West testified that the paramedics turned Cook over onto his back and felt for a pulse. West stated that there were a number of people standing around and that they were in shock. He also indicated that there was never any kind of debriefing by the hotel after the incident and no staff meeting or counseling or anything was offered to anyone involved in the incident.

**\*ROGER SPENCE**

[155] Roger Spence (Spence) did not testify at the inquest. While a subpoena was issued for him he could not be located for service. Spence provided a written statement as well as a video statement to police on October 26, 2006. He indicated in his statement that on October 26<sup>th</sup> he was sitting in the dining room at the St. Regis hotel. A bunch of people ran into the hotel through the front door. Spence was sitting facing the window and all of a sudden he saw a car coming down the sidewalk in front of the hotel. He clarified in his video statement that by the time he looked out the window the car was already stopped on the sidewalk. He saw the driver of the vehicle get out of the car holding a yellow Club in his hand and he walked in the direction of Portage Avenue.

[156] The driver of the car then walked in the front doors of the hotel. Spence indicated that the man was really shaky and he knew that there was something wrong with the man – it was like he was ‘on something’. In his video statement he clarified that the man was shaking, similar to a person he knew who had a bad crack cocaine problem. The man walked towards the bar and tried to go inside. One of the hotel staff told the man that the bar was closed and he couldn’t come in. The man tried to push his way into the bar. The staff member grabbed the man’s arm, but the man continued to try to ‘force’ his way in. Spence did not know the man.

[157] At this point Spence indicated that he left the dining room to have a closer look. He saw the man who works at the hotel on top of the shaky man on the floor trying to hold the man down. The man (Cook) kept trying to get the worker off of him. Spence told police that at this time he went in to help. Spence grabbed Cook’s legs so that he couldn’t move. The hotel worker had Cook’s arms. Cook kept struggling. During the struggle Spence heard Cook say “Get off me” and heard him swearing but didn’t hear him say anything else. Spence indicated that Cook was struggling to get out of the employee’s grip and that he looked like he wanted to fight. At this point two other guys came to help and Spence let go as he thought the others could handle Cook. The man never lost consciousness while Spence was involved with him.

[158] The two guys grabbed Cook’s arms and the hotel employee grabbed Cook’s legs. Spence backed off and went to sit down and just watched. He was about 10 feet away from the struggle. He saw a woman give the men a rope to tie the man up but he did see them tie the man up. The three men just held him. Spence indicated that Cook stopped fighting; Spence did not know whether Cook gave up

or whether the men were just in good control of him and had him pinned. When Cook stopped struggling the police were not yet present. About a minute to a minute and a half after Cook stopped struggling, the police showed up. The guys holding Cook got off him to let the police take over. According to Spence, at that time Cook was not moving.

**\* BRIAN ELDER**

[159] Brian Elder did not testify at the inquest. A subpoena had been issued for him but he could not be located for service. Elder provided a video taped statement to police on November 12, 2006 regarding the events at the St. Regis hotel. He indicated that on October 26, 2006 he was employed at TAKE CARE Transport Services as a van driver and he was regularly at the St. Regis Hotel to transport medical patients to and from medical facilities in Winnipeg. He was in the lobby of the St. Regis hotel on October 26<sup>th</sup> about mid afternoon booking in some clients for his company.

[160] A vehicle was driven up onto the sidewalk in front of the hotel and struck a female pedestrian. Shortly after this the male driver came into the lobby carrying a car Club in his hand. The man (Cook) was described by Elder as being very aggressive, very wild and very erratic with everyone. He was grunting and yelling. He was intimidating and people were scared of him. Elder described it as a chaotic scene. He indicated that St. Regis staff appeared to be dumbfounded by what was happening. Cook went into the lounge area. Shortly after Elder went into the lounge and saw three men who he assumed to be hotel employees subduing Cook on the floor.

[161] At this point Cook was struggling and acting 'very crazy' and almost getting free of the three men who were trying to hold him. The staff were having a hard time holding Cook and asked Elder to help. Elder knelt down on the floor beside Cook and helped to secure first an arm and then a leg. A staff member was trying to get some restraining devices. There were no handcuffs available. The staff member got a rope and a cord. They did not immediately tie him up as Cook kept trying to break free.

[162] Elder indicated that he spoke to Cook in Cree and he seemed to understand and calm down. He told Elder that his name was Russell and that he was from The Pas. Elder asked him why he was acting like this and that seemed to set Cook off again. He was able to wiggle free with his legs but his hands were still being held behind his back. Elder grabbed the cord and asked for some cloths. He put the

cloths around Cook's wrists before binding his wrists with the cord. Hotel staff held Cook's hands while Elder did this. During this time Cook was grunting, screaming and trying to break free and trying to get loose. Elder told the staff that one of Cook's wrists was not all that secure so they should continue to hold Cook.

[163] Once Cook's hands were tied, Elder told police that he got up and left as there was nothing further that he could do to assist. He indicated that he was involved in restraining Cook for about 2 minutes. According to Elder no one was sitting on top of Cook while restraining him; he was being held by his wrists, shoulders and legs. Initially his legs were held flat against the floor, but because he was getting free Cook's legs were later bent up and held down against the back of his legs. As Elder was walking back to his clients in the lobby he saw police and paramedics arrive.

[164] About a minute later Elder indicated that he went back into the lounge and saw paramedics doing chest compressions on Cook. Elder advised staff that he preferred not to be involved and he left with his clients. Elder indicated that from the time Cook came into the hotel until Elder left only about 10 minutes passed. He later learned that Cook had died. Elder told police that Cook was very excitable and in his opinion Cook would have hurt someone if staff had not secured him.

## **KENNETH SUCHAR**

[165] Kenneth Suchar (Suchar) is employed at the St. Regis hotel as a security guard working days and has been employed there in that capacity since May of 2006. He had previously worked as security for 4 years at another downtown hotel from 1993-97. He testified that he took the MLCC "It's Good Business" course while he worked in security in the 1990's. While he worked at the St. Regis he took the updated MLCC course "It's Good Business Plus".

[166] On October 26, 2006 Suchar was working as security. He testified that he was at the back of the hotel when he was told by other staff to come to the front of the hotel. He was told that a lady had been hit by the car that was stopped on the sidewalk in front of the hotel. He went outside and saw a woman running away from the area towards Portage Avenue. People told him that this was the woman who had been hit by the car. He saw a shoe on the street and he picked it up and followed the woman to see what had happened to her.

[167] Suchar caught up to the woman and tried to calm her down as she was distraught and scared and was screaming at him. She was holding her ankle. He

stayed with her until a few other people came to assist her. He then received a call on the radio to come back to the hotel to assist in detaining a man being held in the lounge. He did not recall who called the first time. He got a second call for assistance from Dave Brown. Brown indicated to him that he needed assistance to detain a person and needed someone to find handcuffs.

[168] In his statement to police given on October 26<sup>th</sup>, Suchar indicated that he saw a vehicle in the parking lot beside the St. Regis hotel and that the vehicle was driving erratically. The driver of the vehicle had a funny look on his face and shook his head. The vehicle then drove towards Smith Street and Suchar lost track of it. This apparently was the same vehicle that he later saw stopped in front of the hotel. He was not asked about this part of his statement when he was testifying.

[169] Suchar testified that after receiving the call from Brown on his radio he returned to the hotel and went to the bar area. He saw three people, Brown, West, and a man he knew as a medical services driver holding a man on the floor. The man was lying on his stomach. Brown was holding the man's legs while West was holding the man's left arm and the medical services driver was holding the man's right arm. The man's arms were being held behind his back. He believes that Brown was either sitting on the man's legs or kneeling on the floor – he is not exactly sure. He remembers Brown's body straddling over top of the man. Suchar indicated that Brown was holding the man's legs upwards just enough so that he could hold them. He testified that he could not recall the exact position of the man's legs but he believes that they were bent at the knee and being held up to his buttocks.

[170] Suchar was asked to look for the handcuffs but he could not find any. All he could find was a cell phone charge cord behind the bar area. He asked for some bar towels and put those around the man's wrists before he and the medical services driver assisted each other in tying the man's wrists together behind his back with the cord. He indicated that he used the bar towels first so that the man would not be hurt by the cord. They were holding the man's arms so that he could not jerk them away.

[171] Suchar testified that they were explaining to the man what they were doing and why. They were telling him that they were not trying to hurt him but were just protecting themselves and him while waiting for the police. Suchar indicated that the man was struggling and trying to fight away from being held. The man was struggling with his arms and was also kicking back with his legs trying to kick Brown off. Suchar does not remember what if anything the man may have said, but he was doing a lot of grunting. Suchar testified that they held the man and tied

his wrists to make sure that he and everyone else would be safe, and they talked to him to make sure he understood that they were not doing this to hurt him.

[172] Suchar remained there until the police attended. To him it seemed as if the man was settling down before the police arrived. When police attended, Suchar, West and Brown were involved in holding the man. The medical services driver may have been standing beside them. When the police attended Brown got off the man's legs; Suchar was not certain whether the police told him to do so. According to Suchar he untied the cord from Cook's wrists and held his arms so that the police officer could put the handcuffs on. At this time the man was not struggling at all. Suchar testified that the police officer only had one hand cuff on and that was not even totally locked in when Suchar noticed that the man was not moving at all. Suchar believed that he had passed out. Suchar expanded on this later in his evidence and stated that when they were untying the cord from Cook's wrists he noticed that the man was not moving much and when the officer was putting the handcuffs on, Suchar noticed the man was not moving at all. He agreed that Cook was not struggling at all at the point that the police arrived or when he was untying the cord.

[173] Suchar indicated that the police officer took the handcuffs off and the paramedics who were arriving at that time checked the man. Suchar testified that at no time did he notice that the man had any difficulty breathing. He did not notice anything that caused him any concern or alarm. When asked to provide a time frame for the incident, he indicated that it took maybe a couple of minutes, maybe five minutes from the time he came into the bar until the police arrived. He also stated that he was not really sure how much time passed but said that everything happened very quickly. In his video statement to police Suchar estimated that from the time he started restraining Cook until he removed the cord from Cook's wrists only about 3-4 minutes passed.

[174] Suchar testified that he had never been involved in restraining anyone else before this. He testified that he would rather talk to people and get them to leave voluntarily. He stated that in all the time he has worked at the St. Regis he has only used handcuffs twice to restrain anyone. He indicated that he has never received any training as to how to appropriately restrain someone. When asked if he is aware of what not to do he indicated that basically he is not to do anything that will hurt anyone. When asked to expand on this he stated that one should not overextend a person's arms behind their back, or use choke holds for example.

## AUDREY ANN BAKER

[175] Audrey Baker (Baker) was working at the St. Regis hotel for about a year before this incident. She stopped working there in January 2007. She worked as the bartender in the lounge. On October 26<sup>th</sup> she was working the dayshift. She was behind the bar between 2:30 and 2:45 p.m. when this incident occurred.

[176] Baker testified that a man 'flew' into the room along with the maintenance guy Dave. The door just flew open or was flung open. She had not seen the man before. Dave was trying to restrain the man and put him on the ground. Baker heard the man yelling "I'm crazy, I'm crazy". Brown was telling him he had to calm down. Brown was saying this in a normal tone of voice and was not yelling. Brown struggled with Cook for a few minutes before he finally got Cook down to the ground; he pushed the man from the back as the man was running towards the bar. As Brown pushed Cook they went down to the floor together. In her statement to police she indicated that Cook was putting up a 'big fight'.

[177] Baker testified that she was seated on a bar stool nearby during most of the incident and she that she had a clear view. She does not recall whether she heard anyone speak to Cook in an aboriginal language. She indicated that there were about 20-30 people in the bar at the time and that 15 or more people were standing around and watching what was going on.

[178] While Cook was on the floor he was on his stomach and Brown was on top of him. Baker testified that Brown kind of sat on Cook's upper leg area and took Cook's arms and held his arms down. Brown was trying to restrain Cook by putting his arms behind his back. Brown was not successful as Cook was still struggling. Baker testified that Cook was 'unrestrainable' and that Dave had a hard time and he couldn't do it on his own. Baker indicated that she thought that Cook was intoxicated based on the way he was acting, namely, yelling and fighting. In her statement to police she indicated that the man looked like he was 'drunk or crazy or both'. She also said in her statement that the man kept yelling "I'm crazy, I'm crazy" and that it is not normal for someone who is sober to act like that.

[179] While Brown was struggling with Cook, the dishwasher Ed and another man that Baker did not know came in to help. She testified that they "piled on top of" Cook. One man was on each side of the Cook's body, each trying to restrain his hands or tie his hands down. Cook was still struggling. Baker indicated that each of these two men had one of their knees on Cook's upper body. They were trying

to tie his hands. Cook still continued struggling for about two minutes. Brown was still sitting on Cook's upper legs. The men asked her to find some rope and she got some yellow rope from behind the bar but by then they had already used a telephone cord and some bar rags to tie his hands.

[180] Cook's head was resting on the floor with the side of his head to the floor and when he was struggling his head was moving; he was trying to lift his head off the floor. No one was holding his head as far as she can recall. While he was on the ground Cook was yelling loudly, not saying words but making a loud "awh" sound.

[181] Baker heard some customers asking why there were so many people on one man – they were saying "what are you guys doing? Why does it take 3 of you for one little man?" After Cook's hands were tied she saw Cook only briefly as she was busy with her customers. When there were three men involved in restraining Cook he continued struggling for about 2 minutes and then he just stopped. When the struggle ended Cook was not moving at all.

[182] At that time she saw that his colour had changed and he was a pale yellowish colour. Baker testified that Cook stopped struggling before the police arrived. In her opinion the men restraining Cook were putting quite a bit of weight on him. She thought that they were both trying to calm him down and to restrain him. Suchar showed up after the struggle ended, and in Baker's view was not involved in restraining Cook.

[183] Baker testified that it was about 5 minutes from the time that Cook stopped struggling until the police arrived. At first she did not recall the paramedics arriving but later she agreed that they came about the same time as the police. When the police arrived the men holding Cook got off him. After the police arrived Baker was busy shutting the bar down and taking care of her customers in the bar and those playing the VLTS so she was not able to see everything that happened.

[184] Baker testified that she was pretty shocked by what occurred. She indicated that she and some other people were crying because they were sad that the man had died.

## CALVIN COOK

[185] Calvin Cook (Calvin) testified that on October 26, 2006 he was at the St. Regis Hotel playing the VLT machines in the bar. He heard a loud thud and he got up from the VLT to see what was happening. He saw a scuffle between a security guard he knew as Dave and another man. He did not recognize the man as his uncle right away. He did not see Dave take the man to the ground. By the time he saw the scuffle Dave was on top of the man on the floor. The man was face down on his stomach. Dave was sitting on his back holding one arm behind the man's back. Dave was crouching with one knee on the man's back. Two other hotel staff came to assist. They were trying to help Dave restrain the man. Dave told one of the men to get a rope so he could hogtie the man. One of the men then went to get a rope to tie the man up.

[186] The man who was being restrained was pleading for them to let him up, to let him go; he said that they were hurting him and that he couldn't breathe. At this time the witness recognized his uncle, Russell's voice. Calvin testified that Dave was holding his uncle's legs up and bent towards his backside. His uncle was struggling to get free. Calvin also indicated that his uncle was saying "I'm going crazy" and/or "I feel like I'm going crazy". Calvin indicated that he felt angry about what was going on but he didn't intervene as he thought that he would himself be kicked out of the hotel if he did so. Another lady was also telling the security guards to let the man up. Calvin stated that he did not tell the men that his uncle was diabetic.

[187] Calvin testified that the security guard was telling his uncle to keep still; he said it about five times and also said "Are you drunk or something". The witness stated that the security guard was also telling his uncle to just calm down that the police were coming.

[188] Calvin testified that a man came back with a rope and the men tied it around one of his uncle's legs. By this time his uncle was limp and no longer struggling or saying anything. When he went limp Dave got up. According to this witness police officers and paramedics arrived some time after his uncle went limp and stopped struggling. Calvin testified that in his view the men restraining his uncle used excessive force to do so. He indicated that he did not intervene because he thought he would then be kicked out of the hotel.

## **CONSTABLE SHAUN VENN**

[189] Constable Shaun Venn (Venn) has been a member of the Winnipeg Police Service (WPS) since September of 2002. He testified that he was on duty on October 26, 2006 with his partner Constable Loepp. They were on dayshift. They were on general patrol in the downtown area of Winnipeg in a marked police vehicle at 2:25 p.m. when they received a message on their computer from the dispatcher asking them to attend to 954 Lipton regarding a medical issue. Paramedics had reported that a male had fled from the home at that address and that the male was a resident at that house. The male's identity was not provided at that time. The man was described as a diabetic who was acting abnormal and aggressive, and paramedics had indicated that this is normal for a diabetic. The report indicated that the man had fled in his vehicle. A description of the vehicle including the license number was provided.

[190] Venn testified that he and his partner were aware that this was a medical issue and that the man was not intoxicated. They were on their way to the Lipton Street address when they received a further report that the same vehicle (with the same license number, although a different vehicle description) had been spotted on Garry Street. The person calling the dispatcher had indicated that there was an impaired driver who was swerving in and out of traffic. The driver of the vehicle was described as an aboriginal male who appeared as if he was going to pass out. He was last seen heading south bound on Garry Street. Dispatch related this information to Venn and his partner and it appeared to him that the dispatcher had linked the two calls. Venn believed that the diabetic male who had fled the Lipton Street address was the same person who was now reported to be an impaired driver.

[191] The transcript of the 911 calls made on October 26<sup>th</sup> indicates that at 2:24:26 p.m. Rebecca Atkinson called 911 to report a drunk driver. She indicated that the driver was all over the road and a danger to pedestrians and other cars. She had to call 911 again as she was disconnected. At 2:26:02 p.m. she called again. By now the drunk driver is driving south on Garry Street. Atkinson provides the license number of the vehicle. She indicates that the driver was hanging over the steering wheel and dropping his head towards the window as if falling asleep. She also indicates the car is swerving almost hitting pedestrians and other cars, and was also slamming on the brakes almost rear ending vehicles.

[192] Venn and his partner were on their way to Garry Street when they received information that the same vehicle had been involved in a pedestrian accident in

front of the St. Regis hotel. They were advised that the vehicle was on the sidewalk in front of the hotel and that the male driver of the vehicle had struck a female pedestrian on the sidewalk. The officers were advised that the female pedestrian had run to Portage Avenue and that the male driver, who was believed to be impaired, had chased her down Smith and then had gone into the St. Regis hotel. The police officers headed in that direction.

[193] Again, according to the transcript of 911 calls filed as an exhibit at the inquest, at 2:26:54 p.m. Jonathon Strauss called 911 reporting that he was across the street from the St. Regis Hotel and he had just observed a vehicle drive onto the sidewalk and hit a female pedestrian. He reported that the lady ran towards Portage Avenue and the driver of the car ran after her.

[194] Venn testified that based on the information that had been received from paramedics who were at the Lipton Street address he believed throughout that this was a medical situation and that the driver who was reported to be impaired was in fact a diabetic and was not an impaired person.

[195] The police officers came upon the female pedestrian at the corner of Portage and Smith at about 2:33 p.m. They stopped to see what kind of injuries she had. Paramedics were treating her at the time. Venn indicated that he and his partner then went to the St. Regis hotel as they had learned over the radio that the driver of the vehicle had been located in the hotel. They also heard from one of the paramedics who was dealing with the female pedestrian that the man may be going into cardiac arrest. When the officers got to the hotel the area was very congested with a large crowd of people making it difficult to get in and out. Venn immediately moved the crowd to make a safe passage for paramedics. By this time there were a number of police officers, emergency personnel and paramedics present. Venn and his partner separated once they arrived at the hotel and he did not see what Loepp was doing.

[196] Venn testified that he followed paramedics into the lounge where he saw Cook on his back on the floor with a number of paramedics surrounding him and treating him. Constable Robert was kneeling beside Cook doing chest compressions. Venn then watched the doors to make sure no people got in the way. He later canvassed people in area to get statements and he obtained statements from Baker, Flett and Daniels. Venn remained at the hotel until the scene was released at 7:35 p.m.

## **CONSTABLE SCOTT LOEPP**

[197] Constable Scott Loep (Loepp) has been a member of the WPS for 3 ½ years. He testified only as to the events he observed after he and his partner Venn arrived at the St. Regis hotel. He saw Constable Roberts doing chest compressions on a man in the bar. After the paramedics took over, Loepp spoke to Roberts and learned that Cook had had a yellow Club in his possession when he entered the hotel. Loepp obtained the Club from the front desk clerk, whose name he does not recall. Loepp provided the Club to the Identification officer. Loepp then took statements from Brown and Campeau.

## **CONSTABLE GARRETT ALLAN PARK**

[198] Constable Garrett Park (Park) is a member of the WPS and has been for 5 years. On October 26, 2006 he was working with his partner Constable Robert. They were in uniform and at 2:31 p.m. received a dispatch via computer to attend to the St. Regis Hotel on Smith Street in Winnipeg. The call history indicated that a female pedestrian had been struck by a vehicle and the male driver of the vehicle had chased the pedestrian northbound towards Portage Avenue. The vehicle was said to be parked on the sidewalk in front of the main doors of the hotel. This call was also linked to a separate incident which was being followed up by Venn and Loepp. Park indicated that he and Robert were aware from the call history that the male in question was diabetic.

[199] Park and Robert attended to Portage and Smith at approximately 2:34 p.m. The female pedestrian that had been struck by the vehicle was being treated by paramedics at that intersection. The officers then went to the St. Regis Hotel and observed the vehicle parked on the sidewalk. There was a large crowd of people gathered who advised that the driver of the car was in the hotel being held by staff.

[200] Park testified that via computer they had also learned that the male driver of the vehicle was aggressive and had a Club in his hand and had swung it around. He and his partner went into the lobby, and were directed to the bar. They went into the bar accompanied by two firemen. People were pointing to a man who was being held on the floor. Staff and other people present advised the officers that this was the male driver of the vehicle.

[201] When Park attended into the bar he saw a man later identified as Cook lying face down on the floor and a few people kneeling on him. Three males were

holding Cook; two were holding his arms behind his back and a third male had Cook's legs crossed and his feet pressed up against his buttocks. As he came closer he noticed that Cook's hands were bound together; there were white cloths wrapped around his wrists and black wire over the top of the cloths tied his hands together. The males indicated that Cook was being aggressive and that is why they were holding him down. At this time Cook was not moving or saying anything. Park testified that the males holding Cook's arms also had a knee on his arms, although at that time the pressure appeared to be minimal.

[202] Park testified that through police training they are taught that restraining a person on his stomach with his arms behind his back and legs pushed up against his buttocks is not a safe way to have anyone lying for any period of time. Accordingly, Park immediately told the male to let Cook's legs go and he did so. Park testified that holding a person in that position can lead to positional asphyxiation and that is why he told the male to let Cook's legs down. He explained that when a person is held in this fashion all the weight is on that person's diaphragm and this makes it impossible to breathe.

[203] Park testified that as the police officers approached, the black wire was being removed from Cook's wrists by one of the males holding Cook, without any direction from the police to do so. The males continued to hold Cook's arms while Park applied handcuffs. Cook offered no resistance to the removal of the wire or the application of the handcuffs. Park indicated that while he was handcuffing Cook he identified himself as a police officer. Park testified that Cook had been reported to have been recently aggressive and hostile and that he applied handcuffs to ensure that everyone would be safe. At that time Park was not able to tell if Cook was conscious or breathing. As soon as the handcuffs were applied at 2:36 p.m. Park advised dispatch that the male was in police custody. Park estimated that from the time he attended into the bar until 2:36 p.m. only about 30 – 45 seconds would have elapsed.

[204] Roberts advised the males who had been holding Cook to let go and step back. As soon as they did so according to Park's statement Cook was noted to slump to the floor and remain motionless. Cook was turned onto his side. At that time it appeared that he was unconscious and was not breathing. He had a bluish colour to his face. The handcuffs were immediately removed, Cook was placed on his back and Constable Robert began chest compressions. Dispatch was advised at 2:37 p.m. that the male was unconscious and paramedics were on scene. Paramedics took over the care of Cook. Park testified that Robert continued chest compressions at the direction of paramedics and that Park insured that the onlookers stood back to provide room for paramedics to work.

[205] Park obtained the names of individuals who had been restraining Cook as well as the names of other witnesses. Park taped off the scene and insured that it was not disturbed and obtained a statement from Edward West.

[206] Park testified that at no time while police were present did he see Cook struggle or resist, or make any movements or sounds of any kind. He also indicated that he thought the people restraining Cook had tried to take some care to first wrap the towels around his wrists before they tied his hands with the wire.

### **CONSTABLE DENNIS ROBERT**

[207] Constable Dennis Robert (Robert) is a member of the WPS and has been for 7 ½ years. On October 26, 2006 at 2:31 p.m. he and his partner Park were dispatched to attend to a motor vehicle/pedestrian accident in front of the St. Regis Hotel. The call history indicated that the female pedestrian had run towards Portage Avenue and there was a suggestion that the male driver had been chasing her. When the officers arrived at Portage and Smith there was an ambulance on scene dealing with the female pedestrian. Ambulance attendants motioned towards the hotel and the officers headed in that direction. Roberts observed a purple car parked on the sidewalk in front of the main doors of the hotel. People advised that the male driver had gone into the hotel.

[208] Robert went to the vehicle to check that no one was inside while Park went into the hotel. The vehicle was not running and Robert removed the keys from the ignition. He then went into the lobby of the hotel. The female front desk clerk advised him that the male was in the bar. She also motioned to a yellow steering wheel locking device which was on the counter. She told Robert that the man had been swinging it around. Robert placed the device behind the counter so that it could be seized later.

[209] Robert testified that he then went into the bar and observed a large crowd of people gathered about 25 feet from the bar entrance. Park was kneeling on the floor beside a male who was being restrained by 3 or 4 other males. There was white cloth wrapped around the male's wrists with black wire tying his hands together. Park applied handcuffs to the male on the floor. The male (Cook) was lying on his stomach and was motionless at this time. There were also two members of the paramedic service present within a few feet of Park. Robert did not recall anyone removing the black wire or cloths from Cook's wrists and cannot say when or who removed them.

[210] Robert told the males who had been restraining Cook to stand back now that he was handcuffed. At 2:36 p.m. dispatch was advised that the male was in custody. When the males let go of Cook he slumped to the floor and remained motionless. WFPS personnel who were present requested that the handcuffs be removed, and Robert removed them. Roberts advised dispatch at 2:37 p.m. that the male was unconscious and that an ambulance was on scene. WFPS checked the man and determined that there was no pulse and he was unresponsive. They asked Robert to assist with CPR and he performed chest compressions until paramedics took over.

[211] A short time later Robert was approached by Calvin Cook who advised that the man on his floor was his uncle Russell Cook. Robert accompanied Cook in the ambulance to the Health Sciences Centre at about 3 p.m. Cook was still unresponsive. At 3:17 p.m. Robert was advised by a doctor that resuscitation efforts had been unsuccessful and that Cook had died. Robert advised Calvin Cook of his uncle's passing.

## **RICHARD HAYWOOD**

[212] Richard Haywood (Haywood) was working as a paramedic with WFPS on October 26, 2006. He has since retired. On that date he was called to the St. Regis hotel and he and his partner arrived in the ambulance at 2:46 p.m. They went into the bar area. He observed a male on the floor with a paramedic administering first aid. There were a number of first responders also present. Haywood took over the emergency care and treatment. By the time he arrived an assessment had already been done by the paramedics who were present. At this time the man had no pulse or respirations. CPR was being done. An endotracheal tube was inserted to breathe for him. An intravenous was started and a number of drugs were administered. These drugs are designed to stimulate the heart to beat and to contract the major arteries to pump blood. They left the St. Regis in the ambulance at 3 p.m. Haywood testified that at the time he arrived at the St. Regis hotel, in his opinion Cook was already deceased as he had no pulse or respirations.

## **CONSTABLE LEROY GOLD**

[213] Constable Leroy Gold (Gold) is a member of the WPS who as part of his duties deals with video surveillance footage obtained from video security cameras. On October 27, 2006 Gold obtained a CD with video footage from the St. Regis

hotel. He converted the video into a format so that it could be more easily viewed. The main footage is of Cook's vehicle travelling on the sidewalk in front of the hotel. The video is shot in real time although it appears choppy because it is shot in time lapse mode. Gold agreed that the vehicle was traveling very slowly while it was on the sidewalk.

[214] According to the video footage received by Gold, the outdoor camera which is located on the front of 285 Smith Street (the St. Regis Hotel) faces south along the sidewalk. At 14:26:31 (2:26:31 p.m.) Cook's vehicle is seen heading west from the parking lot, then turning north along the Smith Street sidewalk heading towards the camera. It appears that there are several pedestrians walking on the sidewalk who have to move out of his way as he travels along the sidewalk. At 14:26:53 it appears as if the vehicle makes contact with a pedestrian. At 14:27:20 the driver leaves the vehicle, walks around the rear of the vehicle and enters the hotel.

[215] Based on the report of the Identification officer who examined the vehicle it appears that the vehicle mounted Smith Street's east curb over 100 ft. south of the St. Regis Hotel's front doors and then struck a green light pole located near the east side of this side walk, about 103.5 ft. from the Hotel's front door. There was green paint found on the vehicle's rear passenger door.

[216] The inside lobby area camera at the St. Regis captures a witness running into the hotel at 14:27:14. At 14:27:20 Cook is seen entering the lobby, with an object in his left hand. He continues to walk into the hotel to the right of the camera view. He is not seen again in the surveillance footage.

[217] The bar camera view is from the far end of the bar. The camera is high, and there are 2 large pillars, which obstruct the camera's view. Accordingly, the struggle with Cook in the bar is not captured on any video camera.

[218] There is a very brief view of Cook entering the lobby of the hotel on the video before he moves out of the camera range. The quality of the video is quite poor; it is very compressed and appears "pixilated". The result is a loss of fine detail. Gold explained that the video is compressed for storage purposes and that the quality cannot be improved. The video does have a date and time stamp which Gold testified appeared to be accurate.

[219] While Gold did not testify in any detail about the video from the bar area that video is part of the evidence that was filed. That video shows the activity in the area of the bar from about 2:28 p.m. until 2:35 p.m. on October 26<sup>th</sup>. The

quality of the video is poor and moves very rapidly. There is a lot of movement of persons behind the bar during that time period.

[220] A person who appears to be Audrey Baker can be seen several times walking behind the bar, opening what appears to be a cabinet or cooler door, serving a customer and opening the cash register. Several times she goes back and forth from behind the bar around the corner of the bar out of sight to the area where the struggle with Cook would have taken place.

[221] There are also a lot of people moving around in front of the bar at various times. These individuals appear to be looking at and or moving in the direction of where the struggle would have been taking place. At the end of the bar area, opposite the camera is an area where there are video games. There are a number of people standing around in that area as well. There is also other movement behind the bar during this time frame. Another person who may be Ken Suchar can be seen walking behind the bar at around 2:32 p.m. and a short time later walking back in the direction where the struggle would be taking place.

## **DOCTOR KHAI NGUYEN**

[222] Doctor Khai Nguyen (Nguyen) is a medical doctor licensed to practice medicine in Manitoba. He testified that he opened his clinic on Sargent Avenue in Winnipeg in January of 1990 and has been practicing there ever since. He is the only doctor working in this clinic. He sees patients on a walk in basis and also sees some patients by appointment. He practices Family Medicine.

[223] Nguyen testified that Russell Cook was his patient since November of 2004. It was at that time that Cook first came to see him. The first two times Cook came to see the doctor the visits were not related to his diabetes but were because of an itchy foot and a boil on his back.

[224] February 2005 was the first time Cook saw the doctor regarding his diabetes. Nguyen became aware that Cook had had diabetes for some time before that but he does not know for how long. At the time Cook came to see Nguyen he was already on three types of medication for diabetes. This medication had been prescribed by Cook's previous doctor before Nguyen became involved. The medication was described by the doctor as follows:

- Metformin – 850 mgs 3 times a day. This medication is taken to help control blood sugar levels in diabetics.

- Glyburide – 5 mgs 2 times a day. This is also used to lower blood sugar in combination with Metformin. This medication is taken before meals to lower blood sugar.
- Avandia – 8 mgs once a day. Avandia is the brand name - the pharmaceutical name is rosiglitazone. Again this medication is used to control blood sugar levels.

[225] Nguyen explained that sometimes a patient does not respond well to glyburide and metformin and thus a doctor may add Avandia to help control blood sugar levels. If all these medications do not work then a diabetic may have to use insulin. Because these three medications work together to control blood sugar levels the doctor testified that they are often prescribed together.

[226] In February of 2005 Cook came in to the clinic to get a refill of his medication. Nguyen gave him the refill. He indicated that generally he gave Cook a prescription for a month's supply of the medication with 2 or 3 refills.

[227] On April 4, 2005 Cook came to see Nguyen and again asked for a refill on his medication. When the doctor realized that Cook would be staying in Winnipeg and that he would likely be the doctor treating Cook's diabetes, Nguyen testified that he wanted some more information regarding Cook's medical condition. Accordingly, he requested the records of some blood tests that had been done in The Pas where Cook had previously been living. Nguyen received the records from The Pas sometime in April 2005. The blood tests had been done on March 18, 2005.

[228] Nguyen testified that he would most likely have discussed with Cook his lifestyle, diet and exercise in order to deal with his diabetes and would have stressed the importance of cooperating with the doctor. Nguyen testified that this is what he does with all his patients.

[229] After he viewed the blood test results from The Pas records, the doctor indicated that he did not see any need to change Cook's medication as the hemoglobin was noted to be 6.6 and the blood sugar was 6.9 on the blood tests. Nguyen testified that a hemoglobin level of 4 – 6 is standard and blood sugar levels of 4 -7 are in the normal therapeutic range. The reading of 6.6 for the hemoglobin was a little bit above the 4-6 therapeutic range but was still okay. According to the doctor the hemoglobin reading shows that Cook was taking his medication to

regulate his blood sugar regularly and that his diabetes was under control. The hemoglobin reading is of assistance to show whether there is good management of blood sugar levels over the long term.

[230] Accordingly in the doctor's view no change was warranted in Cook's medication. These blood tests showed the doctor that Cook was on a good regime to control his diabetes and there was no need to make any changes.

[231] According to the doctor Cook's weight was 208 pounds, his height about 5'6", and he had a BMI (body mass index) of 35. The doctor was of the view that Cook could have stood to lose about 40 pounds.

[232] Nguyen testified that Cook came to see him many times for other reasons, but when he came to see the doctor about his diabetes, they would have discussed issues related to diabetes. The doctor indicated that he would write Cook prescriptions for his medication on a number of occasions because sometimes Cook would come in and say that he had left his medication somewhere else and Nguyen would then give him a further prescription. Nguyen said that he was not concerned about writing further prescriptions for these drugs as this is not the type of medication that can be sold on the street as a narcotic. The doctor testified that he wanted to make sure that Cook took his medications regularly.

[233] Nguyen wrote refill prescriptions in February, April, September, and October 2005, and April, August, and September 2006.

[234] On October 26, 2006 Cook came to see Nguyen. The doctor testified that he spent about 10 - 12 minutes with Cook that day. Cook was by himself in the examination room but the doctor did not know whether anyone else was with him in the waiting room. The only reason given by Cook for coming to see the doctor that day was because of his low blood sugar level. Cook told the doctor that his blood sugar level was low, namely, 1.9 - 2. Nguyen testified that he put a question mark behind those numbers in his notes on the file as he did not test Cook's blood sugar level himself. He indicated that at that time he didn't have an instrument available in his clinic to check a patient's blood sugar levels. He testified that he was not convinced that Cook's blood sugar level was as low as had been indicated, because the clinical examination he did of Cook did not suggest that it was that low.

[235] Prior to October 26<sup>th</sup> on one other occasion Cook had told the doctor that his blood sugar level was low. On that occasion in August of 2006 Cook reported that his blood sugar level was between 3 and 5. The doctor relied on what Cook

reported to be his levels and was not concerned as he indicated that levels of 3 - 5 are still within an acceptable range.

[236] On October 26<sup>th</sup> while Cook said his blood sugar levels were 1.9 – 2, according to Nguyen he looked like a normal well person and he appeared to be fine. The doctor did mention later in his evidence that Cook had also complained of dizziness. Nguyen testified that he did a ‘neurological’ examination of Cook which showed that he was normal at that time. Nguyen indicated to the court that by a neurological exam he meant that he determined that Cook was oriented as to time – he knew who the doctor was and he knew where he was. Cook was coherent and was not confused.

[237] Cook’s blood pressure was normal at 110/70. Nguyen testified that he also did a ‘cardiovascular’ check on Cook, which he described as listening to Cook’s heart with a stethoscope. According to the doctor, Cook’s heart was beating normally and there was no acceleration of his heart rate.

[238] Nguyen testified that blood sugar levels of 1.9 – 2 would not be an acceptable level and that if his clinical examination of Cook had matched that level he would have done something more. He indicated that hypoglycemia occurs when a person’s blood sugar level is low for whatever reason. In that situation the person will usually feel weak, and be sweaty and shaky. In an extreme case low blood sugar levels can cause mental confusion. If the blood sugar level continues to drop a person can go into hypoglycemic shock, causing confusion and then coma. Cook did not present with any of those symptoms at the time the doctor saw him on October 26<sup>th</sup>. He was not pale or sweaty. Nguyen indicated that Cook did not tell him that he had been confused the previous day or tell him anything to suggest that he was having a hypoglycemic reaction. Nguyen also testified that no one in Cook’s family had told him anything about Cook’s irrational behaviour the day before. Doctor Nguyen testified that he is not aware whether low blood sugar levels can cause a person to be upset or to act angry and aggressive.

[239] Because Cook had no symptoms or signs of any possible hypoglycemia and because the doctor’s clinical examination did not verify that Cook’s blood sugar level was low, Nguyen testified that there was nothing that caused him to be alarmed or concerned. Nguyen indicated that Cook could have had a low blood sugar level if he did not eat well the evening before or if he had taken a higher dose of medication. Nguyen stated that he gave Cook some dietary advice – he told him that he should have orange juice or something sweet like a candy to balance out his blood sugar. The doctor also told Cook that he could go back to work the next day.

[240] Nguyen testified that he did not know and was not told that Cook was taking any kind of herbal medication. The doctor also indicated that Cook's blood sugar levels had always been in the normal therapeutic range while he was treating Cook and the doctor never had a concern about Cook having low blood sugar levels. (It was not clear how the doctor determined Cook's blood sugar levels during these other visits because he testified that he did not have a blood sugar monitor in his office nor did he order any blood tests. Presumably he relied on information he received from Cook.)

[241] Nguyen testified that the only information he had about Cook's health was information that he got from Cook along with the blood test results he received from The Pas. The doctor indicated that he had no concerns at any time such that he would have needed to order further blood tests. He explained that he practices medicine by himself and so he relies mostly on his clinical assessment of patients. He indicated that he takes a general look at the patient he performs physical tests and comes up with a clinical decision all by himself.

[242] The doctor confirmed that he never did a complete physical checkup on Cook and stated that he does not do such full physical examinations on his patients on a regular basis. Where, as in Cook's case, the patient appears normal, in the doctor's opinion he does not need to do anything like a full physical. Such a complete physical examination would take anywhere from 15-20 minutes or even up to half an hour. During such an examination there would be a full head to toe examination, and a taking of the patient's medical and surgical history.

[243] Nguyen testified that when Cook came in on October 26<sup>th</sup> he was in very good condition like on his other visits. To send him to a hospital emergency or for laboratory tests would not have been of any help in the doctor's view as Cook was not showing any clinical signs that he had low blood sugar. If he had been sent to the emergency he would probably have waited there for a long time. The doctor told him to take juice or something sweet to get his blood sugar level back to normal and in the doctor's opinion nothing else was needed at that time based on the way Cook presented when he saw him at the clinic.

[244] Doctor Nguyen was asked why he did not transfer Cook's medical file from The Pas to Winnipeg in the two years that he was Cook's doctor. He indicated that a patient's medical file cannot be transferred without the patient's request and signature. Nguyen testified that he did not seek to get Cook's entire medical file from The Pas as he felt very comfortable continuing the course of treatment Cook was already on based on his good hemoglobin and blood sugar levels in the blood tests from The Pas in March of 2005.

[245] The doctor was also asked about problems Cook apparently had with circulation in his legs. He indicated that Cook had self referred to the Health Sciences Centre regarding the circulation to his lower legs. Some vascular tests were done there and the results were sent to Nguyen and were on his file. He confirmed that these tests confirmed that Cook had PAD (peripheral artery disease.) He indicated that this is caused by elevated cholesterol levels. Nguyen testified that in the long term PAD can have consequences to heart health.

[246] Nguyen confirmed that in the long term being diabetic can lead to complications to the kidneys, to the vascular system, the heart and the eyes. However, he testified that during the time he treated Cook he did not see any signs or symptoms of such complications. He indicated that he was not aware that Cook had at one time been prescribed nitroglycerin by another doctor. Nguyen stated that he did not at any time provide a refill for nitro to Cook. There is no specific evidence as to why nitroglycerin was prescribed for Cook. (The evidence establishes that a Doctor Richard Defaria had prescribed Nitroglycerin spray and Acetylsalicylic Acid 325 mg for Cook in February of 2005. These were some of the medications found in Cook's home after his death.)

[247] The only other medications that Nguyen prescribed for Cook in the almost two years Cook was his patient was Salbutamol which is the generic name of Ventilin which is prescribed for problems with breathing. In April of 2006 the doctor prescribed this medication for Cook as he had a cough, complained of some shortness of breath and had back pain.

[248] On two occasions (in September and December 2005) the doctor prescribed Viagra and Cialis to Cook. Nguyen testified that usually when a person asks for these kinds of medications he will ask the patient whether he has any heart or chest pain or any blood pressure problems. The doctor confirmed that if a patient takes nitro then he should not take these kinds of medications.

[249] Nguyen testified that doing a complete physical examination would not necessarily reveal whether a patient has a possible heart problem. In his view as a doctor he would have to rely on any complaints by the patient or on some information or history of a heart problem. The doctor testified that Cook never gave him any information at any visits which would suggest that he had any heart problems. The issue of the health of Cook's heart never was discussed. Cook did not ever have an EKG done while under Nguyen's care. He did have a chest x ray done at one time and that was normal.

[250] The doctor testified that Cook's blood pressure was normal and stable, his heart rate was stable and he had no complaints respecting anything to do with his heart. In terms of the cause of death listed in the autopsy report Doctor Nguyen testified that this is a buildup of plaque inside the arteries around the heart. In his opinion such a condition would not have been detected during a complete physical examination in a doctor's office. The doctor indicated that cardiovascular health would be determined by listening to the heart rate and sound and if there was anything wrong, such as a heart murmur or accelerated heart rate then he would do some further investigation. Doctor Nguyen testified that he was surprised when he later learned that Cook had died on October 26<sup>th</sup> as a result of a cardiac arrest.

### **DOCTOR CHARLES DAVID LITTMAN**

[251] Doctor Charles Littman (Littman) is a pathologist and has been qualified in Canada as a pathologist since 1987. He is a medical examiner for the Province of Manitoba appointed under *The Fatality Inquiries Act*. He is one of five pathologists in Manitoba who conduct all the autopsies authorized under the Act. He has been doing autopsies fulltime since about 1997 or 1998 and has done an average of 250 – 300 autopsies a year since then. He estimated that in his career he has performed approximately 4000 autopsies. Littman testified that an autopsy involves both an external examination of the body looking for any evidence of injuries or natural diseases externally, and an internal examination examining the various organs and body systems and coming to a conclusion as to the cause of death.

[252] Littman performed the autopsy on Russell Cook on October 27, 2006. The examination of the body showed some evidence of medical interventions, including various needle punctures, some fractured ribs that were consistent with the application of chest compressions, a defibrillator paddle burn on the right chest, and an endotracheal tube. Littman was asked whether the rib fractures could have been caused by Cook being restrained and pressure being applied to his chest during restraint. Littman testified that in his view it was very unlikely that these fractures were caused during the restraint; these types of injuries are much more likely due to resuscitation efforts.

[253] There were a number of injuries to the face and upper and lower extremities but these were of a minor nature and according to Littman would certainly not have been in any way contributory to his death. More specifically there were two small abrasions on the right and left side of the chin, an abrasion to the left forearm

below the elbow, faint red bruising on the front of the left shin, a small abrasion on the inside of the right wrist and a small abrasion on the outside of the right wrist.

[254] Littman testified that these types of injuries would be the result of some blunt trauma and would be consistent with a fall and a struggle. The abrasions to the wrist could be consistent with the application of handcuffs or other restraints to the wrists. These injuries were minor and would not have required any type of medical treatment.

[255] Littman testified that it was upon the internal examination of the body of Cook that he determined the cause of death. The examination of Cook's heart showed that it was quite markedly enlarged. His heart weight was 540 grams; the average weight of a heart for a man of his size would be 370 grams. Littman testified that a heart will enlarge for a variety of reasons. One of the reasons is if there is any degree of hypertension which causes the heart to pump harder to propel the blood through the narrowed blood vessels caused by hypertension. In Cook's case there was no history of hypertension. Another cause of an enlarged heart could be if the heart muscle doesn't contract and doesn't expel as much blood as in a normally functioning heart. The heart has to enlarge to push enough blood to circulate around the body. A significantly enlarged heart is also an indication of heart disease.

[256] In addition to the heart being significantly enlarged there was also significant disease in Cook's coronary arteries. The heart muscle itself did not show any evidence of previous damage but the coronary arteries showed quite severe narrowing. Littman testified that in particular the three large coronary arteries that supply the heart all showed areas of significant occlusion. Significant occlusion in these circumstances means that the vessels have been narrowed by greater than 75 %. That was the case for Cook's heart. Littman indicated that this meant that the majority of the blood supply in the heart muscle was being provided by collateral vessels, that is, smaller vessels that open up when larger vessels are narrowed.

[257] Littman testified that this was almost like a ticking time bomb. He indicated that when someone has this degree of coronary artery disease some significant event will occur that will raise the blood pressure, raise the heart rate and can cause sudden death. Such an event could be as simple as cutting the grass in summer or shoveling snow in winter; running to the corner store, playing ball or anything else that causes stimulation. He also indicated that something as simple as an argument can cause the death of a person who has significant coronary artery disease. He testified that the circumstances surrounding Cook's death certainly suggest that his

heart rate and his blood pressure would have been raised and this would be enough to tip the balance in this kind of heart with this kind of coronary artery disease. Littman also testified that in cases like this it is not possible to know what event will trigger the fatal cardiac event. He further explained that in his view if a person with significant coronary artery disease gets excited for some reason and death ensues, the cause of death is the coronary artery disease, rather than the excitement.

[258] Littman testified that the only way of knowing that an individual has this type of coronary artery disease is if the individual has some symptoms such as chest pain or decreased exercise tolerance. If an EKG had been done it might have been abnormal causing a physician to order further tests such as a coronary angiogram. Littman also indicated that about 25 % of people who die from sudden cardiac events have no prior symptomatology and have no prior complaints significant enough to see a doctor.

[259] Ultimately Littman concluded that the cause of death in this case was atheromatous coronary artery disease which led to Cook's heart stopping. While lay persons might understand this to be a heart attack, Littman testified that he would consider this more a case of a cardiac arrest where the heart just stops. He also described this as heart failure and indicated that the blockage to Cook's coronary arteries was severe enough to cause sudden death.

[260] Littman was asked whether the restraint Cook was subjected to at the St. Regis hotel could have been the kind of event that would raise the heart rate and blood pressure and trigger a cardiac event. He testified that this would fall into the category of that kind of event. He went on to explain that any degree of excitement for any reason releases catecholamines, that is, such things as adrenalin into the system. These catecholamines will cause the blood pressure to rise. Catecholamines will continue to rise for 5-10 minutes after the excitement is over. He concluded that the restraint may have done nothing to add to the degree of excitement that Cook was already experiencing as a result of earlier events. He expressed the view that the die was already cast by the time Cook was restrained.

[261] Littman indicated that the excitement experienced by Cook when he was at home and upset that his wife had called the ambulance, and he did not want to go with the paramedics and he left the house in his car might well have been enough to cause his blood pressure and heart rate to be raised. In Littman's opinion the significant event that tipped the scale in Cook's case was likely his hyper-excitable state. This put extra stress on his heart causing his heart to stop and causing his death. According to Littman, the events earlier in the day, where Cook was

agitated and acting in a bizarre fashion would have caused a rush of adrenalin and caused his heart rate to be up. That rush of adrenalin would continue for 5-10 minutes after the initial agitation or excitement ended. In Littman's opinion this would be enough to trigger a fatal cardiac event for someone with the kind of coronary artery disease that Cook had.

[262] Littman also testified that no one can know exactly why Cook was exhibiting the behaviour that has been described by the witnesses that day. Littman indicated that maybe his heart was already beginning to fail and maybe there wasn't sufficient blood supply to his brain to perform normal functions. Further it may have been that his blood sugar level was low at that time, which may also impact on the ability of the brain to function normally. In Littman's opinion, the bizarre behaviour that Cook was demonstrating possibly may be a reflection of the fact that he was already exhibiting some degree of cardiac abnormality.

[263] Littman indicated that his internal examination did not reveal anything else that assisted him in establishing the cause of Cook's death. He testified that Cook's liver was slightly enlarged and there were some changes that suggested alcoholic damage to the liver. However, these changes would not have caused his death. Moreover, the toxicology tests that were performed showed that there was no evidence of alcohol intoxication at the time of death. There was also no evidence of any illicit drug use. The drugs that Cook was taking for his diabetes would not show up in the drug screens that were done in this case.

[264] Littman testified that the measurement of the hemoglobin A1c indicated that Cook was managing his diabetes well. This does not mean that there were not ups and downs in the blood sugar levels, but overall his diabetes was well managed. He explained that hemoglobin is the oxygen carrying part of the blood and that is affected by the level of glucose in the body. If blood sugar levels are way out of whack for days at a time the hemoglobin will be markedly elevated. Cook's level was in the normal range which showed Littman that over the past days or weeks his blood glucose had been relatively well controlled.

[265] Littman testified that positional asphyxia in cases of restraint usually involves either some type of neck hold where the neck is compressed or flexed or an individual is being placed in a prone position face down with some pressure on the chest so that chest expansion is restricted. He confirmed that if a person was hogtied, with his arms behind his back and fastened to his ankles, this would also make expansion of the chest and adequate ventilation difficult. These are the types of positions where an individual's ability to breathe effectively will be

compromised and if left in that position long enough can lead to asphyxiation and possible death. Littman indicated that if someone was restrained in a position where they couldn't breathe adequately it would take about 3 minutes to lose consciousness. Then if the individual was left in that position where the breathing was compromised it would take approximately another 5-10 minutes before death would ensue.

[266] Littman testified that there are generally no changes in the body that would be observed during autopsy that would lead to a conclusion that death was the result of positional asphyxiation. Such a diagnosis he indicated relies very heavily on the history of the circumstances surrounding the death.

[267] Littman was informed of the evidence from the witnesses that suggested that Cook had been hogtied – that is that he was restrained face down on his stomach with his hands behind his back and his legs crossed and folded up towards his buttocks. Littman testified that this certainly would not be an ideal position to be in and that in that position chest expansion would be less than ideal. He indicated that it is a possibility that this could have contributed to the death. He stated that in that position breathing would be less than ideal, and this certainly could contribute to the lack of oxygen in the lungs and obviously in the blood leading to further compromise of his coronary circulation. Littman testified that he wouldn't say that this would be the primary cause of death, but it certainly could be a contributing factor to making the situation worse. He went on to clarify that in his opinion the manner in which Cook was restrained did not cause his death. He believes that the cause of death was coronary artery disease.

[268] Littman also testified about excited delirium and indicated that it is a condition which has been recognized for some time but more recently has been associated with drug use, particularly cocaine and some of the stimulants. He indicated that given the history in this case and the bizarre behaviour Cook was said to have exhibited, he would not have been surprised if the toxicology had come back as positive for cocaine or some other stimulant. The type of behaviour that was reported by the family and how Cook was acting just before his death are all typical in excited delirium according to the doctor.

[269] However, in this case, because there were no drugs found, the fact that there was an indication that Cook's blood sugar may have been low, and the presence of coronary artery disease caused Littman to use the term hyper-excitable state with agitation in his autopsy report, as another significant condition that contributed to the death although not causally related to the immediate cause of death. In other words, in Littman's opinion the hyper-excitable state Cook was in was a

predisposing or contributing factor but it did not cause his death in and of itself. Littman testified that a person in such a hyper-excitable state could demonstrate quite significantly greater than normal physical strength.

[270] Littman testified that excited delirium itself can cause sudden death without any pre-existing natural disease. The mechanism for that is the sudden tremendous outpouring of catecholamines – adrenalin and so on – and the sudden stimulation of the heart that can cause cardiac arrest. He indicated that it is not clear to him whether in a true case of excited delirium there can be anything done to avoid the possibility of death. In his opinion, true excited delirium was not a factor in Cook's death.

### **DOCTOR THAMBIRAJAH BALACHANDRA**

[271] Doctor Thambirajah Balachandra (Balachandra) is the Chief Medical Examiner for the Province of Manitoba. He did not personally participate in the autopsy of Russell Cook or examine the body of the deceased. However, he reviewed Doctor Littman's initial autopsy report and wrote a note on the file suggesting that the restraint of Cook had something to do with his death in addition to coronary artery disease and the excitable state. In the note he also wrote that it may be argued that Cook would have died anyway but that the restraint could not be overlooked. He testified that in view of the fact that Cook was restrained prior to his death, the restraint also had to be factored in and that in his view the cause of death should not be described as natural.

[272] Balachandra testified that in his opinion, the restraint was "half a straw that broke the camel's back" in this case. In other words, in his opinion, the restraint, along with the hyper-excitable state must be considered as a contributing factor to the cause of death in this case.

### **CHARLENE MULOIN**

[273] Charlene Muloin (Muloin) is the registrar appointed by the Government under *The Private Investigators and Security Guards Act* and has been in that position since August 1, 2000. Prior to being appointed as the registrar she worked in Corrections for 13 years as a provincial correctional officer and then worked at a branch of the Department called Law Enforcement Services. She testified generally as to the application of that Act to security guards, the licensing of security guards and the kind of training required for security guards under that Act.

[274] Muloin testified that the legislation pertains specifically to security guards who are working for security companies or contract third party providers, and to security guards who work for an in-house employer. By way of example she noted that Portage Place Mall, the MTS Centre and many of the large office buildings downtown have their own in-house security guards. The Act would apply to these in-house security guards. Contract security guards would be those persons working for a security company which enters into a contract with a business to provide security guards for the business. The Act also applies to these contract security guards.

[275] Pursuant to a regulation under the Act, security guards working in licensed premises, such as bars, beverage rooms, lounges and nightclubs are exempted from the provisions of the Act. Accordingly, individuals who are employees of a licensed premise and who are working as a security guard in a licensed premise need not be licensed under the Act and need not otherwise comply with the Act.

[276] Muloin testified that in 2001-2002 there was a security guards advisory committee set up to address the training standards for security guards and to determine the scope of who should be regulated under the legislation. The main focus of the group was to determine what the training standard should be for security personnel because there was no such standard prior to that. This advisory group included representation from the Manitoba Hotel Association and the Manitoba Liquor Control Commission (MLCC).

[277] The collective recommendation of the advisory group was that security guards working in licensed premises should be exempt from the legislation in view of the unique environment in which they work. It was the conclusion of the advisory group that for the purposes of training or licensing these individuals should fall under *The Liquor Control Act* and the MLCC. This advisory group submitted a report to the Minister with their recommendations and the Minister then determined how the legislation should be applied.

[278] Muloin testified that the advisory group was of the view that licensed premises are unique because of their focus on the service of alcohol; and that because of the serving of alcohol in such establishments there would be a higher likelihood that security guards working in that environment would encounter difficulties. Thus it was the view of the group that this would be better left to the MLCC to provide appropriate and specialized training. The advisory group left it to the MLCC and the stakeholders to determine what was required in that environment. The decision of the group to exempt security guards working in licensed premises from the legislation was done on the basis that the MLCC and

Hotel Association would develop a training program for workers in licensed premises that was specific to that environment and would be mandatory. Such a program was developed and the training is facilitated by the Manitoba Tourism Education Council. The program is called “It’s Good Business”.

[279] According to Muloin there are some third party contract security guards contracted to provide security services in licensed premises. In that case they are required to comply with the licensing requirements of *The Private Investigators and Security Guards Act* and must also comply with the requirements of the MLCC for workers in licensed premises. However, direct employees of a licensed premise who work as a security guard do not fall under the umbrella of *The Private Investigators and Security Guards Act*.

[280] The training standard provided under that Act covers use of force in theory only; there is no actual hands-on use of force or skills based training provided. Where it is expected that security guards will be required to use force as part of their job, Muloin testified that it is suggested to the industry that they should retain use of force professionals to insure that adequate practical training is provided to an appropriate standard because of liability issues. Such training is the responsibility and obligation of the employer, whether it is a security company or a business employing in-house security guards. Such training is not done through the Government or its agencies under the Act.

[281] Muloin testified that a manual was developed for security guards licensed under the Act. This manual was developed with the assistance and input of a broad spectrum of individuals including the Winnipeg Police Service, and the Winnipeg Fire Paramedic Service. The intent was to create a manual that would set out what should be the minimum standard of training required for anyone entering the security field. That manual includes a section on the use of force continuum. It is that use of force continuum that is taught in the program. Individuals who are completing the program in order to be licensed under the Act are made aware of what the use of force continuum is and what the consequences are of an excessive use of force. The intent of the training manual is more to create an awareness of issues respecting the use of force rather than a skill. It is left to an employer to provide appropriate and adequate training respecting the practical application of the theory of the use of force.

[282] The actual training course for a licensed security guard is not provided by the Government. The advisory committee that established the training program determined that such a program should be no less than forty hours. In order to be licensed as a security guard such a training program must be completed

successfully, although the legislation allows for a temporary license to be issued which allows an individual to work while they are obtaining their training.

[283] A security guard license must be renewed annually and the cost is \$25. The providers of the training program charge a fee for the program which is approximately \$300. After the course is completed there is a \$25 examination fee to take the exam. There is no need to take the training course again in order to renew the license each year. Individuals are required to submit a criminal records check and a Child Abuse Registry check before they can be licensed.

[284] Muloin testified that in her view there would be no downside to requiring security guards working in licensed premises to comply with the licensing and training requirements under *The Private Investigators and Security Guards Act*. She also indicated that there is a mechanism in the legislation to allow for a review of the training standards and the manual and to allow for amendment from time to time.

## **JOSELINE ROMERO**

[285] Joseline Romero (Romero) works with the Manitoba Tourism Education Council. She testified that her responsibility is to administer the “It’s Good Business” program for the MLCC. She has held this position for about 6 – 7 years. Participants in the program are individuals who work in licensed establishments who are required to take the course within 90 days of starting employment in such premises. Everyone who works in a licensed premise in any capacity must take the course. The regulating body is the MLCC.

[286] Romero testified that the Manitoba Tourism Education Council was not involved in developing the course; this was an effort by the MLCC and the Restaurant Association. The program is available on paper or is accessible on line. The manual for the program was marked as an exhibit and is titled “Server Manual – It’s Good Business A Responsible Service and Safety Program for Licensed Establishments”. An individual who wishes to work in a licensed premise obtains the manual and then must write a 25 question multiple choice open book test based on information in the manual and must have a score of at least 70 % in order to pass the course. There is a fee of \$31.50 for the course. If an individual passes the course a letter is sent to them with a wallet sized card which indicates that they have passed the course. MLCC inspectors will check from time to time to insure that all employees in a licensed premise have completed the course.

[287] Romero testified that when the course was first developed in 2001 they offered classroom sessions to complete the course. After a while enrollment in the classes dropped off to the point where it was no longer practical to have these classes. Prior to 2001 the course was available but it was voluntary. When it became compulsory, initially there was a great demand for the course as people working in these establishments needed to complete the course. At the present time the course is only available for self study based on the manual. She indicated that if a person has any questions they are referred back to the manual and if they have questions not related to the manual they will be referred to the MLCC.

[288] The program and manual has five components as follows:

1. Responsibilities, Risks and Liabilities  
Under this heading the manual deals with 'Security Role and Duties'.
2. Alcohol Effects
3. Identifying Potential Alcohol Issues
4. Minors and Show Your Age
5. Safety and Awareness

[289] There is a three page section of the manual which addresses the use of force. The emphasis is on setting out that any force used must be reasonable and necessary. There is no further assistance provided as to what type of force to use or what kind of force may be reasonable.

[290] Romero testified that in April 2007 the manual was updated to incorporate "It's Good Business Plus" which included the section on Safety and Awareness. The same course must be taken by anyone working in a licensed establishment, whether the person works as a server, bartender, or security guard. If an individual working as a security guard had taken the course prior to April of 2007, he or she is required to take the new updated course within one year.

## **WINSTON MING YEE**

[291] Winston Ming Yee (Yee) works for the MLCC and his current position is as Director of Licensing and Inspection. In that capacity he oversees three departments:

1. Licensing which does the licensing for all liquor premises in the province;
2. Permits, which is in charge of issuing all occasional permits in the province; and
3. Inspection services which does the enforcement of *The Liquor Control Act*. In addition Yee works with the board and the Government to update legislation as changes are needed.

[292] Yee testified that in 2001 the MLCC regulated the required minimum training standards for licensed premises and their staff. At that time the responsible service requirement was enacted in the legislation. This mandated all staff who are involved in the service and/or sale of liquor or who provide security in licensed premises to take the It's Good Business training within 90 days of employment. The legislation was updated in 2007 and some changes were made to the course with the upgrading of the security component. All security staff employed in licensed premises are required to take the new course within 90 days.

[293] Yee testified that security guards working in licensed premises are exempt from *The Private Investigators and Security Guards Act* because in many instances those providing security in those establishments have many duties apart from security. *The Liquor Control Act* applies right across the province to many different types of licensed premises. There are 3000 such licenses in Manitoba for about 1600 licensed premises. Staff may have many roles in the smaller establishments. Yee indicated for example that a bartender in a small bar may be the manager, bartender and security guard all at the same time. All serving staff in smaller establishments might have to take a role in providing security at various times. Thus in his view these individuals fall more properly under the umbrella of the MLCC.

[294] Yee testified that in 2007 there was a security standards review which precipitated some changes to the MLCC course in order to fill what was perceived to be a gap in the program. The focus was on non-violent intervention techniques, de-escalation, and the need for communication between all the staff in licensed premises. While the course refers to the use of reasonable and necessary force, it does not define what is reasonable or what might be unsafe.

[295] Yee confirmed that the MLCC does not teach any courses on security. They merely advise the licensees of their responsibility in terms of their duty of care, and set a minimum legislated standard for training of staff that must be followed by licensees. The MLCC provides a broad course that looks at providing a baseline

for staff who work in licensed premises. The MLCC would certainly encourage licensees to provide further training, but that is not legislatively mandated.

[296] Yee testified that the content of the new course updated in 2007 was based on what could apply province wide, and what would be equally practical in rural areas and urban centres. He noted that this broadly based course needed to apply to a variety of licensed premises, including at opposite ends of the spectrum large nightclubs in Winnipeg and small restaurants that might have a license to serve wine and beer. An attempt was made to strike a balance that would work for both types of licensees.

[297] Yee indicated that there is a review of legislation ongoing by Manitoba Justice and that the MLCC is being consulted in this regard. The concern being addressed is some possible gaps in the legislation. For example one issue being looked at is security companies who focus on providing security guards for licensed premises; the issue raised is whether these guards should be required to be licensed notwithstanding the fact that they work in licensed premises. Yee testified that where a security company provides security guards on a contractual basis to licensed premises, these security personnel should be in a different position than individuals who are employed directly by a licensed premise to do security work as well as other duties.

[298] Yee testified that the MLCC inspectors usually do about 5000 checks per year of staff at licensed premises to insure that such staff have completed the required training. Staff are asked on a random check whether they have their Its Good Business cards showing that they have completed the course.

[299] Yee testified that in the last year changes have been made to the liquor legislation requiring new applicants for a license to submit a security plan as part of their application. As well the MLCC has instituted a new procedure when an incident occurs in a licensed premise; the MLCC can go into those premises and conduct a safety evaluation and require the licensee to implement a number of measures to insure the safety of patrons. These measures could include hiring licensed security guards, installing video surveillance or metal detectors.

[300] When asked if it would be practical to require security guards working in licensed premises to be licensed under *The Private Investigators and Security Guards Act* Yee testified that one hurdle would be to come up with a workable definition of a security guard. Yee pointed out that at one end of the spectrum it would be easy to say that an individual doing only security work would fall into the category of a security guard; at the other end of the spectrum one could

probably say that the person was a bartender or a server whose security duties are very incidental to their job function; in the middle would be a vast grey area where it would be very difficult to say how an individual who has many duties in the establishment and who might only do security work from time to time should be classified.

[301] Yee also testified that although the MLCC suggests that it is a good idea for licensees to have a well written policy manual to assist employees to do their job more effectively, there is no legal requirement for licenses to have such a policy manual. In his experience some establishments have such written policy manuals or guidelines but it is not mandated under the legislation.

### **THE MEDICAL CAUSE OF RUSSELL COOK'S DEATH**

[302] The medical cause of Russell Cook's death is without controversy. He died of heart disease. He suffered a cardiac arrest due to atheromatous coronary artery disease. According to Doctor Littman, Cook's heart was quite markedly enlarged. His heart weight was 540 grams, when the average weight of a heart for a man of his size would be 370 grams. Littman testified that a heart will enlarge for a variety of reasons, and that a significantly enlarged heart is an indication of heart disease.

[303] There was also significant disease in Cook's coronary arteries. While the heart muscle itself did not show any evidence of previous damage, his coronary arteries had quite severe narrowing. Littman testified that in particular, Cook's three large coronary arteries that supply the heart all had areas of significant occlusion. Significant occlusion in these circumstances means that these vessels had been narrowed by greater than 75%. The doctor stated that the blockage to Cook's coronary arteries was severe enough to cause sudden death.

[304] Doctor Littman testified that this degree of heart disease was like "a ticking time bomb". He noted that when someone has this degree of coronary artery disease some significant event can occur that will raise the blood pressure and the heart rate and this can cause sudden death due to cardiac arrest. In his opinion, such an event could be as simple as cutting the grass or shoveling snow; running to the corner store, playing ball or anything else that causes stimulation. He also indicated that something as simple as an argument can cause the death of a person who has significant coronary artery disease.

[305] While there is no issue as to the medical cause of Russell Cook's death, there are a lot of questions as to what the triggering event may have been in this case. There is no question that Cook was agitated and upset starting shortly after he got up at about 1 p.m. that day. He was upset that paramedics had been called. He locked himself in the house. He was yelling and swearing and throwing pots around the kitchen when paramedics came into the house with his wife. He fled in his car before paramedics could assist him.

[306] According to Doctor Littman, another significant condition that contributed to the death of Russell Cook, but was not causally related to the immediate cause of death was described as "hyper-excitable state with agitation". In other words, the hyper-excitable state Cook was in was a predisposing or contributing factor but did not cause his death in and of itself. Doctor Littman explained that any degree of excitement, for any reason, releases catecholamines (adrenalin is one of the catecholamines) into the system. The catecholamines will continue to rise for 5-10 minutes after the excitement is over. The release of catecholamines causes the blood pressure to rise and puts additional stress on the heart.

[307] Littman testified that the kind of excitement and agitation experienced by Cook when he was at his home might well have been enough to cause his blood pressure and heart rate to be raised. Cook's hyper-excitable state may have tipped the scale by putting extra stress on his heart. According to Littman, the rush of adrenalin caused by this hyper-excitable state would continue for 5-10 minutes after the initial agitation or excitement had ended. In his opinion this would be enough to trigger a fatal cardiac event for someone with the kind of coronary artery disease that Cook had.

[308] Littman also testified that in cases like this it is not possible to know what will trigger the fatal cardiac event. He further explained that if a person with significant coronary artery disease gets excited for some reason and death ensues, the cause of death, in his view, is the coronary artery disease, rather than the excitement.

[309] There is no question that the main issue at this inquest is whether the restraint Cook was subjected to at the St. Regis Hotel could have triggered his cardiac arrest. Doctor Littman was asked about this. He indicated that such restraint would fall into the category of the kind of event he was talking about. But he concluded by saying that the restraint may also have done nothing to add to the degree of excitement that Cook was already experiencing as a result of earlier events. In his opinion the die was likely already cast by the time Cook was restrained.

[310] Littman also testified that no one can know exactly why Cook was exhibiting the behaviour that has been described by the witnesses that day. He indicated that maybe Cook's heart was already beginning to fail and there wasn't sufficient blood supply to his brain to perform normal functions. Further it may have been that his blood sugar level was low at that time, which may also impact on the ability of the brain to function normally. In Littman's opinion, the bizarre behaviour that Cook was demonstrating possibly may be a reflection of the fact that he was already exhibiting some degree of cardiac abnormality.

### **THE CIRCUMSTANCES SURROUNDING THE DEATH OF RUSSELL COOK**

[311] In order to answer the question whether being restrained contributed to the cardiac arrest in this case, it is necessary to consider all the circumstances surrounding Cook's death. As can be seen from the detailed review of the evidence, the facts are largely undisputed although there are some differences in details. It is in the interpretation of those facts that differences arise.

[312] There is no question that a number of men were involved in attempting to restrain Cook. I am satisfied based on the preponderance of the evidence that at some point during the attempt to restrain Cook, he was hogtied. The description by Constable Park of the position Cook was in when Park arrived is in my view conclusive. His description is consistent with the evidence of Ken Suchar, Calvin Cook and Brian Elder. While in his testimony David Brown indicated that he did not believe he had been able to hogtie Cook, in his written statement given to police on the day of the incident, he indicated that he was not able to do so until he had the assistance of others to hold Cook. In his video statement given later that same day, he told police that he crossed Cook's legs and folded them up towards his waist and then had both his knees on Cook's legs putting his weight on top of them to hold Cook's legs there. During this time the others were holding Cook's arms bent behind his back. This position is consistent with the description Brown gave of what he meant by hogtying someone.

[313] There is no doubt in my mind that for some period of time prior to the police officers' arrival, Cook was "hogtied" – that is he was restrained on his stomach, with his arms behind his back and his legs crossed and bent up towards his buttocks. I am also satisfied that Cook was in this position only for a short period of time, likely for no more than a few minutes at the most. The exact amount of time is impossible to determine. What is clear from a combination of the video evidence and the evidence of the police officers, is, that less than 10 minutes

passed from the time Cook entered the hotel until he was motionless and being handcuffed by Park. That estimation of time is consistent with the evidence of many of the witnesses. For example, Elder indicated that from the time Cook came into the hotel until Elder left the hotel when CPR was already being performed on Cook, only about 10 minutes passed.

[314] There are some differences in the recollection of various witnesses as to the precise sequence of events, and the time that passed during the struggle with Cook. Some witnesses underestimated the time, for example Brown thought the whole incident only lasted 30 – 45 seconds. Other witnesses overestimated the time of the incident indicating that it may have taken as long as 15 – 20 minutes. Neither is correct in my view. Baker for example thought that Cook had stopped struggling and was motionless on the floor while tied up for about 5 minutes before police attended. Based on all the evidence, this cannot be an accurate estimation of time.

[315] However, there is reliable evidence that permits the court to set out a very detailed timeline of the events of October 26<sup>th</sup>. The time of various events can be determined with a great deal of accuracy because of calls made to 911 by various individuals, and because of the specific times noted by the police officers who were involved in this matter. Further, the time indicated on the brief video from the surveillance cameras at the St. Regis Hotel also assists in preparing a timeline of the events that occurred there. A consideration of this timeline, confirms that the events at the hotel occurred very quickly and the actual time during which Russell Cook was restrained on the floor of the bar was relatively brief.

[316] Timeline of events on October 26, 2006

- 1:55:26 p.m. - WFPS receive the 911 call from Elizabeth Michelle. She asks for assistance for her husband whose blood sugars are low.
- 2:04 p.m. - Paramedics arrive at the Cook residence on Lipton Street.
- 2:11:27 p.m. - Paramedics contact the police advising that a diabetic male acting abnormally left the Lipton Street address in a vehicle. The paramedic also indicates that the male was aggressive.
- 2:24:26 - Rebecca Atkinson calls 911 reporting seeing a drunk driver on the corner of Ellice and Donald. She reports that the driver is all over the road. By the time the call ends she reports the driver

is on Garry Street. She provides a license number which is the same as Cook's vehicle. Due to problems with her cell phone she calls 911 again at 2:26:02 p.m. By this time she has lost sight of the vehicle. She reports last seeing it going south on Garry Street. She indicates that the driver was hanging over the steering wheel and dropping his head towards the window. It appears as if he is falling asleep. She reports that the car is swerving and almost hitting pedestrians and other vehicles. The driver was also slamming on his brakes almost rear ending other vehicles.

- 2:25 p.m. - Constables Venn and Loepf are dispatched to attend the Lipton Street address regarding a diabetic male who fled the house in a vehicle.
- 2:26:31 p.m. - Cook's vehicle is captured on the video camera heading west from the parking lot and turning along the sidewalk on Smith Street in front of the St. Regis Hotel.
- 2:26:53 p.m. - Cook's vehicle makes contact with a female pedestrian on the sidewalk.
- 2:26:54 p.m. - Jonathon Strauss calls 911 reporting that he is across the street from the St. Regis Hotel and he just observed a vehicle drive onto the sidewalk and hit a female pedestrian. He reports that the lady ran towards Portage Avenue and the driver of the car ran after her. (Based on all the evidence, this would appear to be incorrect. The evidence suggests that Cook went in the direction of Portage Avenue only for a short distance and only in order to walk into the doors of the Hotel.)
- 2:27:14 p.m. - The lobby camera at the St. Regis Hotel captures a person running into the lobby of the hotel.
- 2:27:20 p.m. - The outdoor camera captures Cook leaving the vehicle.
- 2:27:20 p.m. - The indoor camera at the St. Regis Hotel captures Cook coming into the lobby of the hotel and walking out of the camera range. He appears calm at this time.

- 2:29:39 p.m. - A female caller from the St. Regis Hotel calls 911 reporting that a car just drove onto their sidewalk and hit a pedestrian. She indicates that the driver is in the hotel and “he’s like crazily drunk”. She reports that “we” are having him arrested, and that he’s “like going crazy”.
- 2:31 p.m. – Constables Park and Robert are dispatched to attend to a motor vehicle/pedestrian accident at the St. Regis Hotel.
- 2:33 p.m. – Constables Venn and Loepf attend to Portage and Smith and speak to the female pedestrian that was hit by Cook’s vehicle.
- 2:34 p.m. – Constables Park and Robert arrive at Portage and Smith and quickly proceed to the St. Regis Hotel.
- 2:36 p.m. – Constable Park has handcuffed Cook on the floor of the bar and advises dispatch that the male is in police custody.
- 2:37 p.m. – Cook is noted to be unconscious.
- 2:46 p.m. – Paramedic Richard Haywood arrives at the St. Regis Hotel in the ambulance. He attends to the bar where CPR is being performed on Cook. Haywood is of the opinion that Cook is already deceased at that point as he has no pulse and no respirations.
- 3:00 p.m. – The ambulance leaves the St. Regis Hotel with Cook on the way to the Health Sciences Centre.
- 3:17 p.m. – Cook is pronounced deceased at the HSC.

[317] The above timeline clearly establishes that from the time that Cook entered the lobby of the St. Regis Hotel at about 2:27:20 p.m. until he was handcuffed and in police custody at 2:36 p.m. only about 9 minutes passed. As many of the witnesses indicated, the events happened very quickly. The time during which Cook was restrained would be considerably less than 9 minutes. There is evidence that he attended to the front desk first and had a brief interaction with the front desk clerk. The 911 call from the St. Regis Hotel was initiated at 2:29:39 p.m. The front desk clerk, Krnic testified that while she was on the phone to 911 Cook

came to the front desk. This is confirmed by the manager, Collins and also by the witness Osborne who said that Cook was at the front desk for 2-3 minutes.

[318] Accordingly, it is quite reasonable to infer that at the beginning of that phone call, at 2:29:39 p.m. Cook was still in the lobby and was not yet being restrained. This would reduce the potential time for Cook's restraint to less than 7 minutes. Cook then attended into the bar where he was taken to the floor and attempts were made to restrain him. By all accounts, he struggled for some time and was difficult to hold. The evidence is clear that David Brown was not immediately able to 'hogtie' Cook. Brown was only able to restrain Cook some time after the other men came to assist him. Accordingly, it is quite reasonable to draw the inference that the time during which Cook was restrained on his stomach on the floor of the bar may have been less than 5 minutes. The time during which he was hogtied was likely considerably shorter. Elder, for example, indicated that he was only involved in restraining Cook for about 2 minutes.

[319] Most of the witnesses testified that Cook struggled against the men that were holding him until very shortly before the police arrived. Their estimate of when Cook stopped struggling and was no longer moving or making any sounds, ranged from about 30 seconds to about 1 – 1 ½ minutes or so before police arrived. Brown testified that it was about 30 seconds from the time Cook stopped resisting until police arrived. Spence indicated in his video statement that it was about 1 – 1 ½ minutes from the time that Cook stopped struggling until police arrived. Other witnesses did not commit to a specific time, but suggested that Cook stopped moving either some time before police arrived, a short time before police officers arrived or at the time the police arrived, around the time that the men were removing the cord from his wrists.

[320] Only Audrey Baker suggested that Cook stopped struggling about 5 minutes before the police attended. Based on all the evidence, including the timelines noted above, it is my view that this is not possible and that Baker is mistaken in her estimate of this time. It is clear that the entire struggle at the most took just over 5 minutes. Baker also indicated that at various times she was busy with her customers. The video of the bar area shows that during the time while Cook was being restrained Baker was moving back and forth behind the bar a number of times and would not have been in a position to see what was happening with Cook during the entire struggle.

[321] Based on the preponderance of evidence I conclude that Russell Cook stopped struggling within approximately half a minute to 1 and ½ minutes before the police officers and paramedics attended to the lounge. I am satisfied that he

was not making any movements or sounds at the time Constable Park handcuffed him. A reasonable inference to draw based on all the evidence is that Cook either passed out or ceased breathing sometime within moments of the arrival of Constable Park.

[322] There is no question that while Russell Cook was at the St. Regis Hotel he was acting abnormally. He was aggressive and to use the words of some of the witnesses, he was acting like a “crazy” or “drunk” person. This is consistent with the way he had been acting at his home since about 1 p.m. that day and the way he was described by witnesses who saw him as he was driving on his way to and at the St. Regis Hotel. Brian Elder described Cook as being very aggressive, very erratic and very intimidating. Elder expressed the view that Cook needed to be restrained in order to prevent him from hurting anyone. Audrey Baker testified that she thought that Cook was intoxicated based on the way he was acting, namely, yelling and fighting. In her statement to police she indicated that the man looked like he was ‘drunk or crazy or both’.

[323] Everyone who participated in the struggle with Cook in the bar described him as being very strong. They all indicated that it was very difficult to hold him; that he was fighting and was able to almost get free several times. They were surprised at how strong he was. Several witnesses testified that people were talking to Cook telling him to calm down that they were not trying to hurt him. Calvin Cook, for example, testified that Brown was telling his uncle to keep still and to calm down as the police were coming. Elder indicated in his statement that he talked to Cook in Cree and for a time he seemed to calm down; but then Elder asked him why he was acting like this and Cook started resisting again. Several witnesses heard Cook say that he was crazy or going crazy. It is clear that no one at the hotel had any idea that Russell Cook was a diabetic or that he was in any medical distress. Roger Spence for example thought Cook was shaking just like a person who is under the influence of crack cocaine. The persons involved in this incident would have had no way of knowing that Cook was not intoxicated but was in medical distress.

[324] The people who saw Russell Cook from the time he left his house until he was restrained on the floor of the bar at the St. Regis Hotel variously described him as being drunk, crazy or high or both. Their observations of him and his behaviour are completely consistent with their conclusions. Elizabeth Michelle herself testified that someone who saw her husband and did not know he was diabetic and sick would probably think he was drunk. It is not surprising that people who saw him at the hotel and witnessed his bizarre behaviour came to that conclusion.

[325] Based on all the evidence there is no question in my mind that the individuals involved in restraining Russell Cook did so in good faith for appropriate reasons and for the most part acted reasonably. They believed based on reasonable grounds that he had hit a pedestrian with his motor vehicle. Some of the witnesses indicated that they did not know what Cook would do next, and that they believed he needed to be restrained; they had reasonable grounds for that belief. His behaviour was certainly bizarre. He had driven his car onto the sidewalk in front of the hotel. He had hit a pedestrian, it appeared, intentionally. He walked into the hotel lobby carrying a Club. He appeared to be intoxicated or under the influence of some other substance. Police had been called. It was not unreasonable in the circumstances as they appeared at the time and as they were known to the persons involved, to restrain Cook until the police arrived.

[326] While attempting to restrain Cook was a reasonable action based on the events that were known to the witnesses, restraining him face down and hogtying him was not appropriate. The evidence is clear that restraining someone in that fashion is dangerous; the person who is restrained in that way has a lot of pressure placed on his diaphragm and as a result his ability to breathe properly may be compromised. People who are trained in the appropriate use of force techniques, such as police officers, are taught that a person should never be restrained for any length of time in such a position. The Manitoba Security Guard Training Program manual, which was filed as an exhibit at the inquest, clearly sets out that the way in which a person is restrained can cause death. The manual points out that if someone must be held down you must make sure that there is no pressure on their chest, and they should never be held face down.

[327] While I am satisfied that such a method of restraint is inappropriate, I am equally satisfied that Brown and Suchar had never been appropriately trained in the acceptable use of force techniques or how to properly restrain someone. Their on the job training was minimal. Brown indicated that he learned how to hogtie someone from a military person he worked with in security at a previous job. He had hogtied other persons on a number of occasions in the past without a problem. He did not have the knowledge that such a manner of restraint could be dangerous. I am satisfied that there was no malicious intent on the part of any of the men who were involved in restraining Cook and specifically that there was no intent to hurt him.

[328] I am also satisfied that Constable Park acted entirely appropriately in handcuffing Cook. He testified that Cook had been reported to have been recently aggressive and hostile and that he applied handcuffs to ensure that everyone would be safe. His explanation of his actions is completely reasonable. The police

officers had information that Cook had apparently intentionally struck a pedestrian with his motor vehicle on the sidewalk in front of the hotel. They had information that Cook had later chased the pedestrian, although based on the evidence I heard, this information is obviously wrong. They had information that he was in possession of a Club. Cook had been described in the call history as being aggressive and acting abnormal. In these circumstances Constable Park's actions in handcuffing Cook were responsible and in accordance with his duty as a police officer.

[329] The police file setting out the entire investigation of this incident was filed as an exhibit at the inquest. In that file there is an excerpt from the Winnipeg Police Service Procedure Manual regarding restraining policy. One of the principles set out in that manual is as follows:

Regardless if a subject is physically/mentally handicapped or sick/injured, if they could be a hazard to them self or others, it is the responsibility of the arresting police member to ensure the subject is adequately restrained.

[330] Reference is also made in the file to the Mandatory Handcuffing Policy of the WPS. The relevant part of that policy indicates that:

Unless a compelling reason to the contrary exists, subjects are to be handcuffed when they:

- 1) Are arrested for an offence of a serious nature;
- 2) Are violent or have a history of violence;
- ...
- 4) Have superior strength;

[331] Based on the observations made by Constable Park when he attended, and the prior information that he had, he was entirely justified in handcuffing Cook. Mr. Cook was in police custody for less than 1 minute before it was determined that he was unconscious and not breathing. The handcuffs were immediately removed and assistance was offered by the police officers to paramedics in an attempt to resuscitate Cook. The actions of the police officers in this regard are commendable and appropriate.

## **DID THE RESTRAINT CONTRIBUTE TO COOK'S DEATH?**

[332] Having concluded that in all the circumstances it was reasonable to restrain Russell Cook until police could attend, I must nevertheless consider whether the manner of that restraint in some way could have contributed to his death.

[333] The medical evidence in this regard is inconsistent. There is no dispute between the two pathologists as to the medical cause of death. The difference arises in the classification of the manner of death.

[334] Doctor Balachandra testified that there is the medical cause of death and then there is the manner of death. He indicated that the manner of death is either natural, accident, suicide, homicide or undetermined. He expressed the view that Cook's death could not be described as natural because he was restrained when he died. In Balachandra's opinion the restraint would have contributed to Cook's hyper-excitable state which would have increased his body's need for oxygen and increased his heart rate. Because Cook had heart disease and narrowed coronary arteries, less oxygen would reach the heart muscle and with the increased demand the heart muscle stopped functioning. Balachandra testified that the restraint in this case, in his opinion, was "half a straw" that broke the camel's back. The restraint along with the hyper-excitable state caused Cook's heart to stop. For that reason it was his view that the manner of death was not entirely natural.

[335] Balachandra provided an example of what would be a natural death from a heart attack; he noted that some people die of a heart attack while sleeping; the manner of death in that case would be natural. He also provided an example of what would not be a natural death; if a person with a heart problem is asked to lift heavy weights at the workplace, work that the person is not accustomed to, and the exercise induces a heart attack, the death in that case, in Balachandra's view, would not be natural.

[336] In assessing the weight to be given to this opinion the court must be mindful that Balachandra did not take any part in the autopsy, nor did he examine the body of the deceased. He based his opinion solely on reading the file and Dr. Littman's report. It is not clear from the evidence exactly what was known by Dr. Balachandra about the facts surrounding Cook's restraint or the circumstances leading up to his attendance at the St. Regis Hotel.

[337] Dr. Littman initially classified the manner of Cook's death as natural. After receiving Dr. Balachandra's note expressing concern about that classification in view of the hyper-excitable state and the restraint, Littman classified the manner of Cook's death as being undetermined. He testified that he still believes that Cook's death was a natural death, but because it is not absolutely clear how hyper-

excitable state with agitation is caused, he thought that classifying the death as undetermined was more in keeping with that lack of knowledge. He testified that he deferred to Balachandra's opinion in using the term undetermined, as Balachandra is the Chief Medical Examiner, but Littman doesn't necessarily agree with his conclusion.

[338] Dr. Littman testified that he is not sure what would have caused the hyper-excitable state in this case. He disagreed with the suggestion made by Ms Jack that the restraint could have caused Cook's hyper-excitable state. He indicated that based on what he was told about the circumstances prior to the restraint, it is his opinion that the hyper-excitable state existed before the restraint and that in fact the restraint occurred because of Cook's hyper-excitable state. Littman clearly indicated that in his view the restraint did not cause or contribute to Cook's death.

[339] Dr. Littman agreed that a plain English way of describing what happened to Cook was that he got so excited that his heart couldn't handle it and it just stopped. He explained how when a person experiences excitement, however it is caused, there is a release into the blood of adrenaline and other catecholamines. These chemicals increase the heart rate and for a person with coronary artery disease this can put enough stress on the heart to cause cardiac arrest. Littman also explained how even after the triggering excitement is over the release of the catecholamines continues for another 5-10 minutes. Thus, he indicated that the triggering event could have been over for 5-10 minutes and yet cardiac arrest can still occur some time later. For that reason, he was of the opinion that the restraint in this case had nothing to do with Cook's cardiac arrest in view of the earlier events that day. In that regard he referred to Cook's agitation in his home when paramedics were called and attended, and his flight from the house in his vehicle. Littman also explained that if a person with significant coronary artery disease gets excited and dies of cardiac arrest his view is that the cause of death is the coronary heart disease, not the excitement.

[340] Dr. Littman is firmly of the view that the restraint had nothing to do with Cook's cardiac arrest. Dr. Balachandra is of the view that the restraint contributed at least in some small way to Cook's hyper-excitable state which led to the cardiac arrest. However, Dr. Littman did indicate that being restrained on his stomach with his legs folded up would not have been an ideal position for Cook to be in. He agreed that in that position Cook's breathing and chest expansion would be less than ideal and could contribute to the lack of oxygen in the lungs and the blood. This could have led to further compromise of his coronary circulation. This would not be the primary cause of death but in Dr. Littman's words "it certainly could be a contributing factor to making the situation worse".

[341] There are a number of difficult questions in this case. Most of them have no definitive answer. What caused the excitement and agitation which was a predisposing or contributing factor in Cook's cardiac arrest? The fact that two experienced pathologists disagree to some extent on this issue is indicative of the difficulty of the question. There is no doubt that Cook was very agitated and upset before he ever left his home and that his behaviour before arriving at the St. Regis Hotel was strange and unusual. (Elizabeth Michelle indicated for example that his behaviour was such that she remained outside the house waiting for the ambulance, because she did not want to see her husband that way. The paramedics reported that he was acting aggressive and abnormal.) Were those the triggering events that contributed to or led to his cardiac arrest a short time later? When he left his home in a state of agitation was cardiac arrest that day inevitable? If he had stayed at home and been taken to the hospital by the ambulance that was present, would cardiac arrest have been prevented?

[342] If he had not been restrained would his death have been avoided? Did his struggle and his restraint contribute to his agitation and thus to his cardiac arrest? Common sense would suggest that it could have. However, whether his struggle and restraint was what tipped the scale in this case and whether it was a contributing factor in the cardiac arrest is something that in my view is impossible to determine with any degree of certainty.

[343] The most that can be said is that struggling with the men who were trying to restrain him and being held at least for some time on his stomach in a hogtied position would not have assisted and could have made the situation worse. This is something that both pathologists seem to agree on. There is a possibility that this increased his agitation and hyper-excitable state making cardiac arrest more likely. There is a possibility that his ability to breathe was compromised for some period of time, which may have led to even less oxygen in his blood. This would also not have helped. Whatever contributed to Cook's hyper-excitable state the evidence is clear that the cause of his death was coronary heart disease. Whether his death from cardiac arrest could have been prevented is not something that can be determined by this court with any certainty.

## **RECOMMENDATIONS**

[344] Whether the restraint contributed to Cook's death or not, I am satisfied that it is necessary to make some recommendations to reduce the possibility of deaths in similar circumstances in the future. It is clear from all the evidence I heard at this inquest that restraining a person on their stomach or hogtying someone and

leaving them in that position for any length of time is dangerous and could lead to death even if a person has no pre-existing health conditions. It is also clear that security personnel who work in licensed premises may receive little or no training in the appropriate and reasonable use of force. Very little relevant training is mandated by law for security guards working in licensed premises.

[345] Employees of licensed premises who work as security guards are exempt from *The Private Investigators and Security Guards Act*. Accordingly, these security personnel need not be licensed under that Act and are not required to take the kind of training other security guards receive. Employees of licensed premises, including security guards, fall under the jurisdiction of the MLCC. They are required to take the “It’s Good Business” course. It is fair to say that this course focuses more on the service of liquor, on insuring that minors are not served and that customers are not over served as opposed to any security issues. While there are statements in the manual to the effect that any force used must be reasonable and necessary, there is no information provided about what constitutes reasonable force or what kind of force might be unsafe, or how a person should be properly restrained. David Brown and Ken Suchar both testified that they never received any practical training in the appropriate and reasonable use of force, or how to properly restrain someone.

[346] Several years ago the Security Industry Standards Advisory Committee recommended that security guards working in licensed premises should be exempt from the legislation in view of the unique environment in which they work. Charlene Muloin testified that the advisory group was of the view that licensed premises are unique because of their focus on the service of alcohol; and that because of the serving of alcohol in such establishments there would be a higher likelihood that security guards working in that environment would encounter difficulties. Thus it was felt that the MLCC was in the best position to determine what kind of training was needed. This is something that in my view needs to be revisited.

[347] Winston Yee testified that security guards working in licensed premises are exempt from *The Private Investigators and Security Guards Act* because in many instances those providing security in those establishments have many duties apart from security, particularly in smaller establishments. A person working in a small bar may be the manager, bartender and security guard all at the same time. All serving staff in smaller premises might have to take a role in providing security at various times. Thus in Yee’s view these individuals fall more properly under the jurisdiction of the MLCC. He indicated that the “It’s Good Business” enhanced course which was developed in 2007 for employees in licensed premises was

designed to apply province wide, and to provide what would be equally practical in rural areas and urban centres.

[348] Yee confirmed that the MLCC does not teach any courses on security or reasonable use of force techniques. While the MLCC encourages licensees to provide further training, that is not legislatively mandated.

[349] The Manitoba Security Guard Training Program provides more comprehensive information about the use of reasonable force. There is some information provided about excited delirium and about the kind of restraint that should never be used. At page 22 of the chapter titled “You and the Law” the manual makes the following statement:

The way in which a person is restrained can cause them to die. This can happen when someone is placed in a position that interferes with their breathing. This is called positional asphyxia. If someone is showing signs of excited delirium the chances of death are much higher.

If you must hold someone down, make sure that there is no pressure on their chest. Never put someone face down, but if they end up that way get them on their left side and hold down their arm and head or, if possible, get them into a seated position as soon as possible. Get help and always monitor a restrained person.

[350] The Behavioural Emergencies EMS Continuing Education Manual also provides some helpful information about excited delirium and provides recommendations for dealing with such persons by using reasonable restraint. These recommendations include containment rather than restraint; maintenance of an open airway; pressure on the arms and legs rather than on the trunk or neck if restraint is needed; limiting time of restraint if restraints are used; not placing a person in a prone position if possible; limiting time in a prone position if used; not using ‘hogtie’ restraints; among others. Similar simple clear statements in a manual for security personnel would go a long way to educating individuals on the appropriate manner of restraint and on the dangers associated with inappropriate restraint.

[351] There appears to be no logical reason why security guards working in licensed premises should be excluded from the requirements of *The Private Investigators and Security Guards Act*. Security guards working in licensed premises deal on a regular basis with people who are intoxicated, difficult and sometimes aggressive. The likelihood that those security guards will have to use force or will have to restrain someone is exponentially greater, in my view, than is the case for most other security guards who are subject to the Act. Security

personnel in licensed premises have an equal if not greater need for comprehensive education and training in the use of force continuum.

[352] I appreciate that the definition of licensed premises covers a broad range of establishments from large bars and nightclubs to small neighbourhood bars and restaurants with a liquor license. While staff in smaller licensed premises might in some rare circumstances have to take on a security role in addition to their other duties, my recommendation is not directed at those types of establishments. In my view it would not be impossible to distinguish between those licensed premises where security guards are likely to be on staff versus others where security is not a significant concern.

[353] Winston Yee testified that one hurdle to requiring security personnel working in licensed premises to be licensed under *The Private Investigators and Security Guards Act* would be to come up with a workable definition of a security guard. I don't doubt that such a licensing requirement would lead to some very creative attempts to exclude security personnel from the definition. However, this should not be an obstacle to a reconsideration of this issue. I recognize that in the present case, of the persons involved in the restraint of Russell Cook, only one person would likely fall within any definition of a security guard. Brown was a maintenance man at the time of the incident although he had worked previously for many years as a security guard; West was a dishwasher and had never before been involved in restraining anyone; only Suchar was employed as a security guard. However, in my view, even if one person involved in such an incident has been trained appropriately and is aware of the dangers of restraining someone on their stomach, or hogtying someone, the likelihood of such restraint occurring is much reduced.

[354] Even if security guards working in licensed premises continue to be exempt from the licensing and training requirements of *The Private Investigators and Security Guards Act*, in my view they should be required to complete some practical training in the use of reasonable force. Licensees could be mandated to insure that individuals employed as security guards have successfully completed a security guard training course approved by the MLCC. This would be similar to the present requirement in s. 12.2 (1) of The Liquor Licensing Regulation 177/94 passed pursuant to *The Liquor Control Act*, which provides that persons involved in providing security at licensed premises must successfully complete a responsible serving and safety course approved by the commission.

## **RECOMMENDATION ONE**

I recommend that the Manitoba Department of Justice reconsider whether security guards employed in licensed premises should be subject to the licensing and training requirements of *The Private Investigators and Security Guards Act*.

## **RECOMMENDATION TWO**

I recommend that the Manitoba Liquor Control Commission amend the “It’s Good Business” manual to include some basic information about reasonable methods of restraint and the dangers associated with restraining a person inappropriately. A statement similar to what is included in The Manitoba Security Guard Training Program or information similar to what is included in the Behavioural Emergencies EMS Continuing Education Manual should be included in the MLCC manual.

## **RECOMMENDATION THREE**

If security guards employed in licensed premises are not made subject to *The Private Investigators and Security Guards Act* I recommend that *The Liquor Control Act* or regulations made pursuant to that Act, be amended to require that licensees of licensed premises insure that persons involved in providing security in their premises have successfully completed a security guard training course approved by the MLCC.

[355] Russell Cook saw his doctor within a few hours of his death, and in light of the cause of death in this case, some comment in this regard is warranted. Cook had been seeing the same doctor for about two years. He had suffered from diabetes, a chronic medical condition for a number of years. As Dr. Nguyen testified, diabetes in the long term can lead to other complications with the kidneys, the vascular system, the heart and the eyes. Dr. Nguyen was not aware of how long Cook had been a diabetic. He testified that the only information he had

about Cook's health was information that he obtained from Cook, his own clinical assessment of Cook, along with blood test results he requested and received from The Pas, where Cook had been living previously. These blood tests had been done in March of 2005. The doctor indicated that he had no concerns at any time while he was treating Cook, such that he felt that he needed to order further blood tests.

[356] The doctor also testified that he did not obtain Cook's complete medical file from The Pas and that a patient's medical file cannot be transferred without the patient's request and signature. He testified that he did not seek to get Cook's previous medical file because he felt very comfortable continuing the course of treatment Cook was already on, based on his good hemoglobin and blood sugar levels in the blood tests from March of 2005. Doctor Nguyen was not aware that another doctor had prescribed nitroglycerine spray for Cook sometime in February of 2005. It is possible that this information and the reason for the prescription could have been gleaned from Cook's medical file, and might have been of some assistance in treating Cook. According to Dr. Littman, the only reason that nitroglycerine would be prescribed would be for some symptoms of coronary artery disease, perhaps some angina or chest pain.

[357] Doctor Nguyen testified that during the time that Russell Cook was his patient he never did a complete physical checkup on Cook. No blood tests were done. No EKG was done. He did not obtain a full prior medical history from Cook. He noted that he does not do full physical examinations on his patients on a regular basis and that where, as in Cook's case, the patient appears normal, in the doctor's opinion he does not need to do anything like a full physical examination.

[358] There is no issue in this case about the medical care and treatment that Cook received. Nor did the court hear any evidence about what the recommended standards of medical practice are respecting the obtaining of prior medical files for patients or conducting regular full physical examinations. Accordingly, it would not be appropriate in this case to make any specific recommendations in this regard. However, by way of observation, it is my view that where a patient has a chronic medical condition such as diabetes, it could certainly be of considerable assistance in managing that disease, if a doctor had access to that patient's full medical history and prior medical file. Where a chronic disease has the long term potential for other serious health complications, including heart disease, it strikes me that regular complete physical examinations, including blood tests and other tests such as an EKG could be of assistance in preventing or treating such resulting complications.

[359] Ms Jack on behalf of the Cook family suggested that a recommendation be made that businesses whose clients are primarily medical patients should be required to provide staff with basic first aid training and should have a nurse on duty at all times. This suggestion was made because of the evidence that the St. Regis Hotel has a contract with Health Canada to provide housing for aboriginal patients that are in Winnipeg for medical treatment.

[360] There was some evidence that a significant percentage of the people who stay at the hotel are receiving outpatient medical treatment of some kind. David Brown testified that up to 65 % of people staying at the hotel may be medical patients. Cheryl Collins, on the other hand, who was the general manager up until shortly before the inquest, testified that the hotel has 101 rooms and that at any time anywhere from 10 – 40 rooms might be occupied by such medical patients. She emphasized that the hotel just provides housing and meals, not medical treatment and that patients come with their own escorts. She indicated that there is no requirement by Health Canada that the hotel staff take any type of medical or first aid training. She pointed out that while some first aid training for staff might help, she noted that the hotel is located in a city where 911 emergency medical care is available very quickly.

[361] While I understand the reason why Ms Jack made that submission, it is my view that I have no jurisdiction to make any recommendation in this regard. Under *The Fatality Inquiries Act* a judge may recommend, “changes to the programs, policies or practices of the government and the relevant public agencies or institutions, or in the laws of the province” where the 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”.

[362] A judge presiding at an inquest has no jurisdiction to make any recommendations for changes to the policies or practices of private individuals or businesses. Moreover, any requirement for first aid training for hotel staff or for a nurse to be on duty could be established by Health Canada if that agency was of the view that this is necessary. I also note that such a recommendation would be unrelated to the circumstances that led to Russell Cook’s death. He was not a medical patient who was staying at the hotel. While we now know that he was in medical distress, the evidence does not establish that first aid training for hotel staff could have prevented Mr. Cook’s death.

[363] Ms Jack also suggested that a recommendation should be made that business’s whose clients are primarily aboriginal, should be required to provide cross cultural training to staff. She submits that this would be ‘good business’.

The evidence suggests that 80 – 99% of the clientele of the St. Regis Hotel are aboriginal. I agree that cross cultural training certainly makes a lot of sense and could only improve the reputation of such a business. I agree with Ms Jack that cross-cultural education and training would be of considerable benefit in many workplaces and businesses. I would suggest that any business which has a clientele that is over 80% aboriginal would be extremely foolish not to provide cross cultural training to staff. Further, I would think that such a business would make every effort to hire and retain aboriginal employees. However, for the reasons given previously I have no jurisdiction to make any recommendations directed to a private company or business.

[364] Further, there is little evidence in this case as to whether any cross cultural training is provided to staff at the St. Regis Hotel, or what hiring practices are in place. David Brown was asked by Ms Jack whether many aboriginal people are on the staff at the St. Regis Hotel and he answered something to the effect, “not really, we hire a lot of them but they just don’t stay”. This is essentially the only evidence before the court about the hiring practices of the St. Regis Hotel. This is understandable as that was not an issue that was part of the mandate of the inquest. However, this answer by Brown was cited by Ms Jack on behalf of the Cook family, as an illustration of the racist attitudes of the St. Regis Hotel staff. She suggested that this answer embodied an ‘us versus them’ attitude. There is a suggestion by the Cook family that a racist attitude may have played a role in the way Russell Cook was dealt with at the Hotel. For that reason I feel that it is necessary to address this issue in more depth.

[365] Ms Lena Henderson who was Russell Cook’s first wife and with whom he had a number of children asked to address the court after the evidence was completed. She was concerned that not all the witnesses who were present at the hotel at the time of Russell Cook’s death were called to testify at the inquest. She was concerned that only a ‘select few witnesses’ were called. She also expressed the view that the manner in which Russell Cook was restrained had a lot to do with his death. She stated that in her view the staff at the St. Regis Hotel regarded Russell Cook as “just another drunken Indian” who was causing trouble. It was clear that she thought that racism played a role in the way Russell Cook was restrained.

[366] Mr. Minuk addressed the concerns about the number of witnesses who were called. He noted that some witnesses could not be located to be subpoenaed despite the best efforts of the police. He indicated that an effort was made to locate every person who was interviewed about this matter. Indeed he called a few witnesses that had never been interviewed during the investigation. He also noted

that a number of witness statements of witnesses who were not located were filed as exhibits and are part of the evidence at the inquest. He indicated that if there were other witnesses who wanted to come forward to testify he was more than willing to call them. The family had suggested at one time during the inquest that they were aware of another witness to the incident at the St. Regis Hotel who had not been interviewed by police. This witness however never came forward.

[367] I have no doubt that the witnesses who testified and whose statements were filed at the inquest provided a complete account of what occurred prior to and during the incident at the St. Regis Hotel. There is nothing to support the suggestion that there was any attempt made by anyone to be selective in the witnesses who were interviewed by the police or who were called at this inquest.

[368] In her written brief to the court on behalf of the Cook family, Ms Jack indicated that the family believes that Russell Cook was hogtied as a direct consequence of the racist attitude of St. Regis staff that “manifested in the assumption that Russel was a ‘drunk and violent Indian’”.

[369] I do not discount the perceptions and feelings of the family in this case. I appreciate that their feelings are real. I understand that if racism is perceived, it is a reality to that person. Ms Jack spoke very passionately and eloquently of the reality of racism for many aboriginal people living in this community.

[370] I don't doubt that racism exists and is a reality for many aboriginal people who live in or visit Winnipeg. But there is simply no evidence before me that racism had anything to do with the way Russell Cook was restrained at the St. Regis Hotel. Some of the persons involved in restraining Cook are aboriginal themselves. Clearly this fact alone does not mean that racist attitudes didn't play some role. However there is simply nothing in the evidence before me to support the suggestion that Russell Cook was restrained or hogtied because he was an aboriginal man. Certainly persons who observed him at the hotel thought he was drunk or high or both. I am satisfied that this opinion was based on observations of his behaviour not his race. Elizabeth Michelle herself agreed that anyone who did not know that Russell Cook was diabetic would think that he was drunk, having regard to how he was acting when she was with him.

## **CONCLUSION**

[371] Members of Russell Cook's family have a firmly held conviction that if he had not been restrained in the manner that he was restrained at the St. Regis Hotel

he would be alive today. This is something that is beyond our human capacity to know.

[372] I want to thank counsel who appeared at this inquest for their help and cooperation throughout these proceedings. The questions that they asked, the material that was provided and the submissions that they made were of assistance to me throughout the hearing of the evidence and in formulating this report.

[373] I want to again extend my condolences to the family of Russell Cook for their loss. He was a husband, a son, a father, a grandfather, a brother, an uncle and a friend. It was obvious to me from the evidence at this inquest that there are a great many people who loved him and that his loss will be felt for a long time. It is my hope that this inquest has served to answer the questions that the family had about Russell Cook's death and that the contents of this report and the recommendations made will assure the family that their concerns were heard and will help the family to heal and move forward.

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Linda Giesbrecht  
Provincial Judge