

RELEASE DATE: July 3, 2018



Manitoba

THE PROVINCIAL COURT OF MANITOBA

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

AND IN THE MATTER OF: Eric Daniels, Deceased

**Report on Inquest and Recommendations of
Judge Sandra Chapman
Issued this 27th day of June, 2018**

APPEARANCES:

Ronald Toews, Inquest Counsel

Yasothini Mathu, Inquest Counsel

Kimberly Carswell, Counsel for the Winnipeg Police Service



Manitoba

THE FATALITY INQUIRIES ACT
REPORTED BY PROVINCIAL JUDGE ON INQUEST

RESPECTING THE DEATH OF: ERIC DANIELS

Having held an Inquest respecting the said death on the 9th day of January, 2018, at the City of Winnipeg in Manitoba, I report as follows:

The name of the deceased is: Eric Daniels.

At the time of his death, Eric Daniels was 28 years old and living in the City of Winnipeg.

The deceased came to his death by the following means: gunshot wound to his chest.

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

Summary of the Circumstances of Mr. Daniels' Death

On the night of March 6, 2010, Eric Daniels was walking in a residential area near the home of Gilberton Oliveira. Mr. Oliveira had just dropped his family off at his home and parked his vehicle on the street. Mr. Oliveira noticed Mr. Daniels standing near his vehicle and asked Mr. Daniels what he was doing. Mr. Daniels began answering in a threatening manner. Mr. Oliveira secured a baseball bat from his home and together he and his daughter, Alexandria Oliveira, followed Mr. Daniels to an area of Sargent Avenue and Arlington Street while a 911 call for assistance was placed to the Winnipeg Police Service. Cst. McLeod and Cst. Lofto attended to the intersection of Sargent Avenue and Arlington Street where they observed Mr. Daniels waving his arms about while holding up a

machete in a threatening manner. Cst. McLeod and Cst. Lofto stopped and exited the police transport on the street giving verbal commands to Mr. Daniels to drop the machete. Mr. Daniels ignored the commands and quickly advanced towards the police officers with the machete still raised in a threatening manner. As Mr. Daniels advanced towards the officer he was shot. Both officers drew their pistols and fired at Mr. Daniels, hitting him and causing his death.

Pursuant to the provisions of subsection 33(3) of *The Fatality Inquiries Act*, I am ordering that all Exhibits be returned to the Exhibit Officer, Provincial Court of Manitoba, to be released only upon application with notice to any party with a privacy interest.

Dated at the City of Winnipeg, in Manitoba, this 27th day of June, 2018.

“Original signed by:”

Judge Sandra Chapman
Provincial Court of Manitoba

Copies to:

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



Manitoba

THE FATALITY INQUIRIES ACT
REPORTED BY PROVINCIAL JUDGE ON INQUEST

RESPECTING THE DEATH OF: ERIC DANIELS

TABLE OF CONTENTS

I.	MANDATE OF THIS INQUEST	1
II.	SUMMARY OF FACTS AND CONCLUSIONS	2
III.	THE ISSUES	3
IV.	THE EVIDENCE.....	4
	A. Cst. Randall Lofto.....	4
	B. Cst. Trevor McLeod.....	9
	C. Surveillance Video of Incident on the Transit Bus	13
	D. Surveillance Video of Incident at Manitoba Liquor Commission on Portage Avenue at 17:35 Hours on March 6, 2010	13
	E. Toxicology Report Dated June 8, 2010	13
	F. Sworn Statement of Giselle Henderson dated March 7, 2010	13
	G. Interview of Gilberton Oliveira	15
	H. Evidence of Peter Donaldson.....	15
	I. Investigation Report Dated June 29, 2012 (Independent External Review by RCMP F Division Major Crime Program).....	15
V.	CONCLUSIONS	16

EXHIBIT LIST

I. MANDATE OF THIS INQUEST

[1] By letter dated January 21, 2015, the Chief Medical Examiner for the Province of Manitoba, Dr. A. Thambirajah Balachandra, directed that a Provincial Court Judge conduct an Inquest into the death of Eric Daniels for the following reasons:

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

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

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

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

[3] The Inquest commenced with notice to the public that a Standing Hearing would be held on December 5, 2016. Standing in this Inquest was granted to the Winnipeg Police Service. No other individuals or organizations sought standing. The Inquest heard evidence and submissions on January 9, 2018.

II. SUMMARY OF FACTS AND CONCLUSIONS

[4] On March 6, 2010, Eric Daniels died as a result of a gunshot wound to his chest fired by members of the Winnipeg Police Service. At the time, Mr. Daniels was advancing towards the police officers while holding a machete above his head. He had been told repeatedly to drop the machete but did not comply with the orders of the police officers and at the time he was shot, he was running directly towards them.

[5] During the late afternoon of March 6, 2010, Mr. Daniels has attended at a liquor store located at 923 Portage Avenue and had used a machete in a threatening manner during the course of a robbery. Mr. Daniels' threats were directed towards the security officer employed at the liquor store, who was a person in authority. Later on in the early evening, Mr. Daniels was with a woman and they were on a City of Winnipeg transit bus. While on that bus, video disclosed Mr. Daniels assaulting a male passenger by grabbing him and subsequently drawing a machete from his jacket in a threatening manner. Later that evening, Mr. Daniels and his girlfriend, Ms. Henderson, were walking in a residential area near the home of Gilberton Oliveira. Ms. Henderson was walking behind Mr. Daniels and was able to observe some interactions he had with the Oliveira family. Mr. Oliveira had just dropped his family off at his home and had parked his vehicle on the street. He noticed Mr. Daniels standing near his vehicle and approached Mr. Daniels and asked him what he was doing. Mr. Daniels drew a machete and began swinging at him in a threatening manner. Mr. Oliveira secured a baseball bat from his home and together he and his daughter, Alexandria Oliveira, followed Mr. Daniels to the area of Sargent Avenue and Arlington Street while a 911 call for assistance was placed to the Winnipeg Police Service.

[6] Cst. McLeod and Cst. Lofto, who were working in full uniform operating a marked police transport, were dispatched to the aforementioned machete complaint. Officers located a person of interest during the patrol at the intersection of Sargent Avenue and Arlington Street. They observed Mr. Daniels waiving his arms about while holding up a machete in a threatening manner. When Cst. McLeod and Cst. Lofto stopped and exited the vehicle they gave verbal

commands to Mr. Daniels to drop the machete. Despite those commands, Mr. Daniels did not drop the machete and in fact quickly advanced towards the police officers, ignoring their command, with the machete raised above his head. Fearing for their safety, both police officers drew their pistols and fired at Mr. Daniels, hitting him and causing his death. Police officers immediately called for ambulance assistance and Mr. Daniels was transported to the Heath Sciences Centre where he succumbed to his injuries.

[7] Standing at the Inquest was granted to the Winnipeg Police Service. No other requests for standing were made at the Standing Hearing. Cst. McLeod and Cst. Lofto gave evidence at the Inquest with respect to their involvement with respect to this matter. The video recording of Mr. Daniels at the liquor store at 923 Portage Avenue as well as the video of Mr. Daniels with Ms. Henderson on the City of Winnipeg transit bus was played for the Court. Filed with the Court as exhibit 1 were also the transcripts of sworn witness statements of Giselle Henderson, Gilberton Oliveira and Peter Donaldson. The exhibit binder also included a letter from the Office of the Chief Examiner, the surveillance video of the incident on the transit bus, the dispatch call log of the Winnipeg Police Service, the report of the Medical Examiner, the toxicology report, the firearms report, the Winnipeg Police forensic identification report and Sgt. L. Brost and Inspector Bourrie's investigation report.

[8] Counsel for Inquest and counsel for the Winnipeg Police Service made submissions. Both argued that there were no recommendations that I could make that would help to prevent similar deaths in the future. After having reviewed all of the evidence and hearing the evidence that was called *viva voce* in this matter, I agree with both counsel that there are no recommendations that I could make that would help to prevent similar deaths in the future.

III. THE ISSUES

[9] Pursuant to section 19(3)(b) of *The Manitoba Fatalities Act* Inquest into the death of Mr. Daniels, it is mandatory pursuant to section 19(3)(b) that,

where, as the result of an investigation, there are reasonable grounds to believe that a person died as a result of an act or omission of a peace officer in the course of his duty; the Chief Medical Examiner shall direct a Provincial Judge to hold an inquest with respect to the death.

In this case, the Inquest was being held to determine the circumstances relating to Mr. Daniels' death and to determine what, if anything, can be done to prevent similar deaths from occurring in the future.

[10] After reviewing the evidence with respect to this matter, I am satisfied that Mr. Daniels died as a result of the gunshot wounds to his chest which he received as a result of advancing towards the Winnipeg police officers while waiving a machete above his head. Further, I conclude that there are no recommendations that I could make to prevent similar deaths from occurring in the future.

IV. THE EVIDENCE

A. Cst. Randall Lofto

[11] Cst. Lofto has been a member of the Winnipeg Police Service for 9 years, as of February 2018. Back on March 6, 2010, Cst. Lofto had been with the Winnipeg Police Service for 13 months. He testified that prior to becoming a police officer he worked as a golf professional and that he had no firearm training prior to the training he received at the Academy. At the time of this incident he was qualified to carry his Winnipeg Police Service issued firearm.

[12] Cst. Lofto testified about a Use of Force Continuum that he was trained on. The Use of Force Continuum is used by Winnipeg police officers to respond to certain circumstances. For example, if an accused does "A" then a police officer does "B" in order to reduce the threat and arrest the individual. Cst. Lofto explained that the first use of force on the Use of Force Continuum would be that of verbal communication. You are taught to use your words to try to talk a suspect down. You try to stop the intimidation and try to diffuse the situation using your words. You would announce your presence according to Cst. Lofto and give verbal commands to the individual. If however, the verbal commands are not being complied with, if possible, the next step on the Use of Force Continuum

would be that of soft hand control. If one was using soft hand control there would be no intention to injure anybody, it would just be a matter of trying to gain compliance with respect to a request the officer was making. If the soft hand control was used a Use of Force document would have to be filled out by the officer.

[13] The Use of Force Continuum rises with the risk that the officer is facing. If the soft hand force does not gain compliance the officer would then raise the use of force to a hard hand control. That would include striking, punching or kicking an individual to stop him from doing something or to gain compliance from the suspect.

[14] Cst. Lofto testified about scenarios where the hard hand use of force may be required. For example, if an individual was refusing to show his hand and was laying on top of them when an officer was attempting to handcuff them, then an officer may have to use hard hand control in order to have the individual release his/her hands from under his/her body. If in fact that did not work, the next level of force on the continuum would be that of a baton.

[15] Cst. Lofto testified that the next step on the continuum would be pepper spray. Pepper spray however, has its limitations. Cst. Lofto testified that one of the difficulties with respect to pepper spray is that it can also get on the officer who uses it. After pepper spray, Cst. Lofto said the next level up on the Use of Force of Continuum would be the use of a Taser. The Tasers that the officers had in 2010 are not the same Tasers they have now in 2018. In 2010 they were not a quick draw and at the time you needed two hands in order to get the Taser out. Cst. Lofto also testified that he had specific training regarding sharp edge weapons. When a sharp edged weapon is pulled by a suspect, an officer needs to retreat and put distance between themselves and the individual who is brandishing the weapon. He was trained never to get close to a suspect in those circumstances or he could get struck. As a result, there would be difficulties with respect to the use of a Taser in a situation where you need to have a certain distance between you in order for the Taser to properly work. He testified that if one is too far from the suspect, the Taser probe would spread and as a result it would not be effective. Further, he testified there can be limitations with respect to the use of Taser depending on the

clothing of the subject as well as when the subject is running or flailing about. If the subject is moving then the Taser's probes would not necessarily attach to the subject.

[16] Further, Cst. Lofto testified that back in 2010 there was only one Taser per police car unit. Cst. Lofto was unable to say whether or not he in fact had the Taser on him or whether his partner would have had the Taser on him at that time. Now all officers are armed with Tasers and those Tasers are different than the ones that were used back in 2010.

[17] Cst. Lofto also testified about the vest he was wearing at the time. He said it is mandatory to wear a vest with the Winnipeg Police Service but the vest only covered his torso area from his belt to his neck covering the chest and stomach area. His arms and head were exposed. Cst. Lofto could not say whether or not the vest would be effective against a sharp weapon.

[18] Cst. Lofto testified that on March 10, 2010, he and his partner Cst. McLeod were working the nightshift. He indicated that by 22:00 hours he had logged on and was ready for his shift to begin. He said that on that night he was originally dispatched to an alarm on Portage Avenue and Sherbrook Street when that call was cancelled. Cst. Lofto said he was the passenger in the police vehicle and Cst. McLeod was driving. He indicated that he had the laptop and had his portable radio on. He testified that they were at Portage Avenue and Sherburn Street when they received the first dispatch with respect to this priority call. He testified that it was priority 2. Cst. Lofto said that priority 2 means that something potentially bad is happening. He said that his focus then was to locate the person running around with a machete and try to stop them before someone gets hurt. He testified that when you receive a call like that it is possible that there is no weapon as you cannot count on a call history as 100% accurate. However, whenever you hear a call that includes a weapon like that you are on your game and you are alert. Cst. Lofto indicated that as he approached Arlington Street and Sargent Avenue he noticed Mr. Daniels. He testified that by that point he would have received the call history information that had indicated that a suspect had a machete and a baseball bat and that the dad was outside being assaulted by a group of males with a baseball bat. He said that when he noticed Mr. Daniels he voiced to dispatch at

22:02:48 that there was a male at Sargent Avenue and Arlington Street. Cst. Lofto indicated that Cst. McLeod blocked the eastbound traffic on Sargent Avenue and Mr. Daniels was on the northwest side of the intersection by a picnic table shouting at the northeast side of the street at a group of people. Mr. Daniels was chopping the air with a machete in his hand yelling at the people across the four lanes of traffic. Cst. Lofto said he got out of the car and there were no other cruiser cars in the vicinity. He testified that as soon as he pulled up in the cruiser car he decided to take his gun out. He made that decision as soon as he saw the suspect yelling at the people. Cst. Lofto said in his mind there was someone of the public being threatened. At the time that they exited the cruiser car, he testified that the subject's back was towards him and that he was yelling across Arlington Street. Cst. Lofto yelled, "Winnipeg Police. Drop the knife." According to Cst. Lofto, at that point Mr. Daniels appeared to be alone and he could not see anyone with baseball bats. The only person he saw with a weapon was Mr. Daniels. Cst. Lofto testified that he was 15 to 30 feet away, or that is what he had said in his statement. In hindsight he testified that he thinks he was further back. In hindsight he said he thought he had more room than he actually did. He said that he did not know if his partner had drawn his weapon but assumed he did. He said he thought the lights on the vehicle were on but that headlights did not illuminate the area as it was a well-lit intersection. He believed the deceased had a sword or a machete that was large and in his right hand. He testified that he stood with his firearm drawn and in ready stance with a strong base. His firearm was in his right arm which was held with his left. The deceased's back was to him. He recalled shouting at Mr. Daniels a few times. He said that at first there was no acknowledgment by Mr. Daniels to them but then he turned with his hand up with the machete ready to chop towards Cst. McLeod to create leverage. At that point Cst. Lofto said Mr. Daniels was closer to Cst. McLeod than to him. He testified that Mr. Daniels was 15 to 30 feet away from him and approximately 5 feet closer to Cst. McLeod. At that point Cst. Lofto testified that Mr. Daniels turned and immediately sprinted or ran at Cst. McLeod with the machete ready. Cst. Lofto said he fired his gun two times. He could not recall hearing Cst. McLeod's gun going off. The smell of gun powder, he said, is his first memory.

[19] Cst. Lofto testified that Mr. Daniels was shot in the abdomen. The machete was on the ground beside him and he was crawling towards it. He said he saw

Cst. McLeod kick the machete away. Cst. McLeod then voiced what had occurred over the COMS system but it went to the wrong channel so he then voiced it again once he realized that they were on the wrong channel. Very quickly another cruiser unit came and handcuffed Mr. Daniels. The EMS came after we had called out that an ambulance was needed.

[20] Cst. Lofto testified that their cruiser car did have a shotgun kit in it. He said he did not even contemplate using a shotgun as they are not good for long distance nor are they accurate. He said that a shotgun would just get in the way because you cannot put it down. Cst. Lofto was then taken away and he was escorted to the supervisor's vehicle. There is a procedure in place. His gun belt was taken and then he had two people look over him. He went to Homicide Unit and then to the Identification Unit and then his clothes were seized. He testified that everything happened very quickly. He testified that when he shot Mr. Daniels he was trying to aim at centre mass. As Mr. Daniels ran towards Cst. McLeod it was to his side, not straight on. Therefore, he said, that was the largest mass he could see.

[21] During cross-examination Cst. Lofto explained that in any threat assessment there is a three step process. He said you look at the weapon that the suspect has, the intent they have and the delivery system. Here, he said, the weapon was a machete and the intent was it could have been a threat to any member of the public. When Mr. Daniels went toward Cst. McLeod, Cst. Lofto said that he believed his intention was to hurt Cst. McLeod. If Mr. Daniels had just been chopping at a picnic bench he would have kept his distance and waited for the other units. It was because he advanced towards his partner that he felt that Mr. Daniels had an intent to hurt the officer. He said the third item that he looks at is the delivery system. This is his ability to use the weapon. With a machete he said the suspect has to be near the individual that he is attempting to harm. Here, Mr. Daniels was holding it in a manner where it could be used to harm Cst. McLeod and he was running towards Cst. McLeod. Because all three of the parts of the threat assessment were present, Cst. Lofto testified that he felt authorized to use the force that he used.

[22] In describing the machete, Cst. Lofto indicated that the blade was about 17.5 inches long and 2.5 inches wide with a 5.5 inch handle. He also testified that when he announced his presence he said he was with the Winnipeg Police and he asked

Mr. Daniels to drop the knife repeatedly and as loud as he could. He also testified in cross-examination that it was a marked police cruiser car and that he was in full uniform with a red stripe down his pants. He said that in his opinion the only option available to him, because Mr. Daniels had a weapon capable of deadly force and had exhibited the intent to deliver that deadly force, was to use his firearm. If he had been running at someone else he said he possibly could have used the cruiser car to run him down but here lethal force was the only option available to him. If he had dropped the machete he could have kept the firearm out of it until he was handcuffed. As to the Taser, he said that they now have multiple deployment but it also still would have limits depending on the distances. He testified that is not appropriate if you are too close to the subject because you need the probes to be able to spread out to complete the circuit. He said he could not recall how close Mr. Daniels got, but has since seen the photographs and he was a lot closer according to pictures than he was in his mind. He said he further could not recall what Cst. McLeod said. He had tunnel vision. Finally, he testified that he had not seen Cst. McLeod's statement nor talked about the incident with him. He testified that he did not talk to anybody at all before he gave his statement about this matter.

B. Cst. Trevor McLeod

[23] Cst. Trevor McLeod has been a member of the Winnipeg Police Service since May of 2008. At the time of the incident on March 6, 2010, he would have been a police officer, including his training, for about two and a half years. He too testified that he had no prior experience with firearms prior to policing. He testified as to his knowledge of Force being taught on a continuum. He described that the lowest form of force was using the fact that you are in a police car and have a uniform. From that, your intervention would rise to verbal directions, to hands on (either hard or soft hands), to intermediate weapons, including pepper spray, baton or Taser to the highest level of force, that being the use of a firearm. He testified about the training that he had received with respect to his baton, pepper spray and Taser. He said that with respect to the use of a Taser, that is something that is used for compliance but not something used to disarm an individual. He said it could be used to disarm, for example, in a situation where a

person was suicidal but if it was an aggressive action taken towards a police officer or another individual he would not use a Taser in those circumstances.

[24] In March 2010, on the date of this incident he could not recall if he had the Taser. One person in a cruiser car would have had a Taser at the time. Now the policy is that every police officer has a Taser with them. He testified that he took a full day training with respect to firearms and then a full week-long training and a qualifier that he had to pass in order to get his certification. He also testified that he was presented with different scenarios and he was to determine what level of force would be used based on the circumstances. He said he was trained to look at whether or not the individual had a weapon, the intent of the weapon and the delivery system in order to determine the proper use of force. He said that you must have all three of those prerequisites before using your firearm.

[25] He indicated that by March 6, 2010, he would have had two or three refresher courses on top of the information he received at the Academy and that he had passed all of his qualifiers by that date. He testified that he was wearing body armour on the day in question although the body armour would not stop a sharp edged weapon or a rifle. He said that it was good for a small calibre weapon. Cst. McLeod testified that the vest he was wearing covered his major organs from his belly button to just above his chest line. He said that his head, chest, arms and everything below the belly button would have been open. He also testified about the limitations of a Taser when an individual is wearing heavy or baggy clothes, and that probes need to be a certain distance apart in order to connect the circuit and work appropriately.

[26] On March 6, 2010, he was working the night shift from 9:30 p.m. to 7:30 a.m. with Cst. Lofto. He indicated that Cst. Lofto was not his regular partner, that his partner was sick and that he had met Cst. Lofto prior to this occasion. He was driving the police car on the night in question and he was dressed in his standard issue police uniform. The first call they received was a priority 2 call. He testified as to the different levels of priority calls and what they mean; priority 2 being the second highest call for assistance that can be made to a police officer. The call out that they received was that according to 911 dispatch a dad was being assaulted by a group of men with a baseball bat and that the male had a machete and a baseball

bat. He testified that he was aware of the machete when he put his lights and siren on and headed to the call. He believed this was his first call of the night and that it was about a five minute drive from Lyle Street where they would have been. His intention when responding to the call was to perhaps set up a containment perimeter. He said that usually there would be someone to coordinate. He cannot recall whether that was the case in this situation. As he approached Arlington Street he heard Cst. Lofto say, "There he is," and then point to an individual. The subject male was in the north corner. He testified that he stopped his vehicle west of Arlington Street facing northeast with the cruiser car blocking east bound traffic and there was lots of foot traffic in the area. He said the police vehicle was about 40 to 50 feet from the area. He said that it was across two westbound lanes from them. He said that the man appeared to be yelling at people at the east side of Arlington Street waiving his arms. The lights of the vehicle were on and theirs was the first cruiser car there. He believed that Cst. Lofto advised dispatch that they were on scene and he saw Cst. Lofto get out of the passenger's side as he got out of the driver's side. He said he drew his firearm as the suspect had a machete in his right hand, swinging it around. He said that Cst. Lofto started yelling at the suspect and said, "Winnipeg Police. Drop the knife." He said that Cst. Lofto said that at least three times. Cst. McLeod said the suspect then turned and ran directly at him. He said he never saw anyone else armed or with a baseball bat. Nobody was physically engaged with Mr. Daniels. He said he never saw Mr. Daniels strike anything. Mr. Daniels just turned with his machete up in the air and ran directly towards him. He had the machete in his right hand above his head. Cst. McLeod said he was on the driver's side and Cst. Lofto was on the passenger's side. They were a car width apart. He said Mr. Daniels ran in a southwest direction, directly towards him. He said Mr. Daniels did not say anything and he had no expression on his face at all. He could not make any assessment with respect to whether or not Daniels was under the influence. He said it was a matter of seconds from Mr. Daniels turning towards him to the end of the incident; maybe five to ten seconds at most. He was running straight directly towards Cst. McLeod. Cst. McLeod said he did not even look towards Cst. Lofto. As soon as Mr. Daniels turned and ran towards him he fired three shots. Mr. Daniels fell down in the westbound lane on the right side. He still did not put his hands out. Cst. McLeod testified that he said, "Put your arms out," and the machete fell with one arm still tucked under him. He would not put his arms out. He testified that he stepped

forward and put his foot on the machete and pushed it away as the machete was between them. Mr. Daniels was 10 to 20 feet away when he dropped. Cst. McLeod said that he fired three shots using the sight at the end of the firearm. He used close quarter firing and aimed at centre mass. He said he set off the first shot when he believed that Mr. Daniels was about 20 feet away. Cst. McLeod testified that after he moved the machete away Mr. Daniels was still not complying. He said that another police officer attended and put handcuffs on Mr. Daniels and that he then voiced the shooting over the radio. It turned out however, that they were on the wrong channel. Officer Ritchie Miller asked if he was involved in the shooting and then escorted him to the cruiser car and put him in the front passenger seat. An acting Street Sergeant then took his belt, according to Cst. McLeod. He testified that he never discussed this matter with his partner. He gave his statement 2 to 3 days later. He said he has reviewed the statement since and it corresponds with his recollection. In cross-examination Cst. McLeod testified that his reaction to the threat of force is based on the assessment of the situation in front of him and the information that he has or knows at the time. It is not a ladder that they use and they can start at a higher level of force if that is what is required. Both of the officers, he said, announced their presence and both of them used verbal directions. That had no effect on the suspect in this case. He testified that they could not have used softer hand control because of the type of weapon in this particular case. He said that would have put the public at risk. Cst. McLeod testified that pepper spray would not have been appropriate because even if you could get a direct hit, a goal driven individual would still continue with the attack and the baton would not be appropriate because it would have required him to get too close to Mr. Daniels in order to use it. With respect to the use of the Taser, his concern was twofold: one, that it does not always work, and two, he would have had to get too close in order to use it appropriately. Further, he said that unless the suspect was standing still it would not be appropriate to use. Cst. McLeod testified that Mr. Daniels never said anything to him or to Cst. Lofto and that it was an immediate reaction. He turned, saw us and, with the blade pointed up, ran directly towards us. Cst. McLeod testified that he was concerned for his safety as he was approached and he believed Mr. Daniels would have struck and probably killed him had he not shot him.

C. Surveillance Video of Incident on the Transit Bus

[27] In court the surveillance video of an incident that occurred on the transit bus at 19:59 to 20:07 hours on March 6, 2010, shows Mr. Daniels entering onto a bus and taking a seat in the second row. At the time he is carrying a bag and he is seen taking from the bag a machete, similar to the machete that was filed as an exhibit in this court, and placing it in his jacket. Later, the video shows Mr. Daniels getting into a dispute with another person on the bus and pulling out the machete and waving it at the individual. At that point, a female, who is apparently with him at the time, pushes him out the front door of the bus.

D. Surveillance Video of Incident at Manitoba Liquor Commission on Portage Avenue at 17:35 Hours on March 6, 2010

[28] Surveillance video was also played of a theft that occurred at the Manitoba Liquor Commission. During the course of that video Mr. Daniels is seen stealing something from the liquor store and exiting the store. While he is exiting the store he is being pursued by the security officer. Just prior to exiting the store he turns towards the security officer and waves a shiny object.

E. Toxicology Report Dated June 8, 2010

[29] At the time of Mr. Daniels' death he had a blood alcohol level of between 270 and 322 milligrams percent. The toxicology report also indicated that tetrahydrocannabinol (THC) and carboxy-THC were both detected in the blood.

F. Sworn Statement of Giselle Henderson dated March 7, 2010

[30] Ms. Henderson was Mr. Daniels' girlfriend at the time of the incident. She indicated that she met up with Mr. Daniels on the night in question around 8:30 p.m. She indicated that she met up with him in the parking lot of the Maryland Hotel and that he was talking to two people who appeared to be in about their mid-forties. She and Mr. Daniels went with the individuals to a residence apparently belonging to the female. She indicated that they arrived at that residence around 9:00 p.m. and Mr. Daniels was getting more and more drunk as

the evening progressed. She asked a number of times what he had in the bag he was carrying but he apparently did not tell her what was in the bag. She said as they left the residence he was walking ahead of her and that when she caught up with him she could see that he was halfway down the middle of Home Street. She called out his name but he did not apparently hear her. She said she then witnessed an incident between a man who got out of a Jeep and Mr. Daniels and that she could also hear some yelling from a woman. By the time she got to Mr. Daniels she said that he was already holding his machete in the air. She could hear the woman screaming, "I am going to call 911!" She froze because she was scared and decided that she had better just keep her distance. She saw Mr. Daniels trying to run away and then she saw the man who earlier came from the Jeep running into the house and then running out with wooden bats. She said she tried to tell Mr. Daniels to stop but two people were behind them with a bat. She said that Mr. Daniels managed to cross the street by Arlington Street and Sargent Avenue and then into a back ally. She said she at that point saw three people coming out of their vehicle. The people with bats were still behind her. She said that she told the people that were getting out of the vehicle that they should just go back in their vehicle because the people were trying to go after her boyfriend with bats. She said she then walked towards Arlington Street and by the time she got to Arlington Street and Sargent Avenue Mr. Daniels was already there. She said then that those people with the bat came to the corner and started saying, "You're fucking scared now." I could hear the woman saying, "You're fucking scared? Come on!" She was egging him on and she was calling him a scaredy-cat. That was all that she said she could hear from the woman. She said she crossed over and went to the other parking lot where there was a pizza place and then saw that the people with the bats had left. She said she watched Mr. Daniels getting frustrated and he started hitting the hydro pole with the machete. She said that was when she saw the police car. She said she did not hear the sirens, she just saw the lights. She said the cruiser car pulled right up at the lights on Arlington Street and Sargent Avenue and that is when Mr. Daniels turned around and noticed the cruiser car pulling up. As she was standing there across from Mr. Daniels she was only about ten feet away. She said the officer got out of the cruiser car and said, "Freeze. Put your weapon down." She said Mr. Daniels did not and he still had the machete up in the air. She said then the officer fired his gun and shot him. Then he shot him again. Mr. Daniels slowly went down and then the officer fired the third shot and

that was when he was completely down. Ms. Henderson indicated that she thought Mr. Daniels had ten drinks that evening. She said that she had eight drinks.

G. Interview of Gilberton Oliveira

[31] Mr. Oliveira indicated that he dropped his family off at their home on Home Street and parked his vehicle. He said he saw a man, later determined to be Mr. Daniels, standing by his vehicle. He asked Mr. Daniels what he was doing and Mr. Daniels produced a machete and started swinging it. He indicated that he went into the house and armed himself with a bat and that he, along with his daughter, tried to get Mr. Daniels off of the property. He followed Mr. Daniels into the intersection and watched as Mr. Daniels waved the machete around. He was present when the police arrived and exited the police vehicle drawing their pistols and giving demands to Mr. Daniels to drop the weapon. He said Mr. Daniels raised the machete and charged at the police. He heard at least three gunshots.

H. Evidence of Peter Donaldson

[32] He is an employee at a business located kitty-corner to where he witnessed a man, later determined to be Mr. Daniels, holding a large machete and waving it around. He saw the police car arrive, the police officers exit and several times demand Mr. Daniels to drop the machete. Mr. Daniels ran towards the police officers with the machete raised and Mr. Daniels was shot by the police.

I. Investigation Report Dated June 29, 2012 (Independent External Review by RCMP F Division Major Crime Program)

[33] On December 21, 2011, "F" Division RCMP Criminal Authorization received a formal letter from Keith McCaskill, Chief of Police at the time, Winnipeg Police Service requesting a thorough and objective review into a police involved shooting which caused the death of Eric Russell Daniels. That review in total was filed with the Court as Exhibit 1 Tab 11. The officer reviewed all of the material to them including a number of witness statements from civilian witnesses as well as witness statements from the officers in question. The RCMP also had an opportunity to review the two videotaped recordings that the Court reviewed as

well as the forensic reports. It was the conclusion of Staff Sgt. Brost that the force used by Cst. McLeod and Cst. Lofto in the totality of the circumstances was a justifiable use of force and that the investigation conducted by the Winnipeg Police Service into this matter was done in a fully professional manner.

V. CONCLUSIONS

[34] On January 21, 2015, Dr. A. Thambirajah Balachandra, Chief Medical Examiner for the Province of Manitoba, called an Inquest into Eric Daniels' death. The Court's jurisdiction with respect to an Inquest is twofold, pursuant to Manitoba's *The Fatality Inquiries Act* we are asked to determine the circumstances relating to Mr. Daniels' death; and, to determine what, if anything, can be done to prevent similar deaths from occurring in the future.

[35] It is clear on the evidence that this Court heard with respect to the matter that on the night in question Mr. Daniels, heavily intoxicated, was in possession of a weapon clearly capable of causing harm, or even death, if used. Throughout the course of the late afternoon and early evening Mr. Daniels, prior to getting involved with the officers in question, on three separate occasions got into disputes with members of the public while brandishing a weapon. The evidence disclosed an incident that occurred at the Manitoba Liquor Commission where a weapon was brandished at a security officer after Mr. Daniels stole an item from the liquor store. Later, video surveillance played at the hearing into this matter disclosed Mr. Daniels brandishing a machete at a male passenger on a Winnipeg transit bus. Then in the evening, just prior to meeting up with the police, Mr. Daniels again brandished the machete and waived it at Mr. Oliveira and his family.

[36] The evidence established that prior to the Winnipeg police involvement that Cst. Lofto and Cst. McLeod were made aware through the dispatch from a 911 call that a male suspect was brandishing a machete in a dangerous manner. Both Cst. McLeod and Cst. Lofto were in full issued Winnipeg Police Service uniform operating a fully marked Winnipeg police cruiser car and acting in the lawful execution of their respective duties when they came across Mr. Daniels. Cst. McLeod and Cst. Lofto responded to the priority report and did so using the full emergency equipment of the Winnipeg police cruiser car, specifically the

overhead police lights and hailing siren. When Cst. McLeod and Cst. Lofto located Mr. Daniels at the corner of Sargent Avenue and Arlington Street they observed Mr. Daniels waving a weapon in a dangerous manner towards the public. Both Cst. McLeod and Cst. Lofto yelled at Mr. Daniels in a loud voice and on numerous occasions identifying themselves as police officers and telling Mr. Daniels to drop the machete several times. Mr. Daniels, disregarding the commands by the officers, in fact turned toward Cst. McLeod and Cst. Lofto and charged directly at Cst. McLeod with the machete raised and used as a deadly weapon. Cst. McLeod, fearing for his own life, and Cst. Lofto, fearing for the life of his partner, fired their respective service issued revolvers. Mr. Daniels was hit by three bullets fired by either Cst. McLeod or Cst. Lofto and Mr. Daniels died as a result of one bullet wound to his chest. However, it cannot be determined which officer fired that fatal shot. The force used by Cst. McLeod and Cst. Lofto in the totality of the circumstances was a justified use of force. Mr. Daniels' very unfortunate demise was caused wholly as a result of Mr. Daniels' actions. The officers had no option but to fire their weapons as they did.

[37] Having heard all of the evidence from the Inquest and having reviewed the documents filed, there are no recommendations that this Court could make to prevent a similar death from occurring in the future.

I respectfully conclude and submit this Report on this 27th day of June 2018, at the City of Winnipeg, in the Province of Manitoba.

“Original signed by:”

Judge Sandra Chapman
Provincial Court of Manitoba



Manitoba

THE FATALITY INQUIRIES ACT
REPORT BY PROVINCIAL JUDGE ON INQUEST
RESPECTING THE DEATH OF: ERIC DANIELS

EXHIBIT LIST

<u>Exhibit No.</u>	<u>Description</u>
1-1	Letter from the Office of the Chief Examiner, Dated January 21, 2015
1-2	Surveillance Video of Incident on the Transit Bus
1-3	Transcript of Sworn Statement of Giselle Henderson, Dated March 7, 2010
1-4	Transcript of Sworn Statement of Gilberton Oliveira, Dated March 7, 2010
1-5	Transcript of Sworn Statement of Peter Donaldson, Dated March 15, 2010
1-6	Dispatch/Call Log of Winnipeg Police Service, Dated March 6, 2010
1-7	Report of the Medical Examiner (Autopsy Report), Dated March 15, 2010
1-8	Toxicology Report, dated June 8, 2010
1-9	Firearms Report, dated June 4, 2010
1-10	Cst. Murphy's WPS Forensic Identification Report, Dated March 6, 2010
1-11	Sgt. L. Brost and Inspector Bourrie's Investigation Report, Dated June 29, 2012