

Release Date: February 23, 2016



IN THE PROVINCIAL COURT OF MANITOBA

IN THE MATTER OF: *THE FATALITY INQUIRIES ACT C.C.S.M.C. F52*

AND IN THE MATTER OF: PAUL LEONARD DUCK
(DATE OF DEATH: March 15, 2011)

**Report on Inquest and Recommendations of
Judge Murray P. Thompson
Issued this 19th day of February, 2016**

APPEARANCES:

MR. ANOSTIN GRIEVES & MS. TAHIRA AMIN CABERA, Inquest Counsel

MR. HARVEY POLLOCK Q.C., MR. MARTIN POLLOCK AND MR. DUSTIN RAINKIE,
Counsel for the Duck family and God's Lake Narrows First Nation

MR. JOEL KATZ & MR. SCOTT FARLINGER, Counsel for the Federal Government

Release Date: February 24, 2016



MANITOBA

The Fatality Inquiries Act
Report by Provincial Judge on Inquest

Respecting the death of: PAUL LEONARD DUCK

An inquest respecting the said death, having been held by me in 2014 on April 16 & 17, on August 5 to 8, at God's Lake Narrows; in 2015 on April 21 to 23, in Winnipeg and on April 27 to 29, at God's Lake Narrows and after receiving written submissions from counsel for the Federal Government on August 4th, 2015 and from counsel for the Duck Family and God's Lake Narrows First Nation on August 18, 2015, together with a point of clarification to their submission delivered on August 20th, 2015, I hereby report as follows:

The name of the deceased is **Paul Leonard Duck**.

At the time of his death, Paul Leonard Duck was 52 years old and living at God's Lake Narrows First Nation.

In the early morning hours of March 15, 2011, Mr. Duck while carrying a shotgun, walked towards two uniformed RCMP members. He was viewed as a threat by those officers who commanded him to drop his gun. He continued to approach while carrying his gun and was shot by an officer. Despite efforts to save his life, he died a short time later at the nursing station in God's Lake Narrows. A medico-legal autopsy confirmed that the immediate cause of death was a gunshot wound to the left arm and the resulting blood loss.

I hereby make the following recommendations, as set out in the attached schedule.

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

DATED at the City of Winnipeg, in Manitoba, this 19th day of February, 2016.

"Original Signed By:"

Murray P. Thompson, Judge
Provincial Court of Manitoba

Copies to:

Dr. A. Thambirajah Balachandra, Chief Medical Examiner (2)

Chief Judge Ken Champagne, Provincial Court of Manitoba

The Honourable Gord Mackintosh, Minister Responsible for *The Fatality Inquiries Act*

Julie Frederickson, Deputy Minister of Justice & Deputy Attorney General

Russ Ridd, Director of Regional Prosecutions

Lorraine Prefontaine, Director of Special Prosecutions and Appeals

Mr. Anostin Grieves and Ms. Tahira Cabera, Inquest Counsel

Mr. Joel Katz and Mr. Scott Farlinger, Counsel for the Federal Government

Mr. Harvey I. Pollock Q.C., Mr. Martin J. Pollock and Mr. Dustin I. Rainkie, Counsel for the Duck Family and God's Lake Narrows First Nation



MANITOBA

The Fatality Inquiries Act
Report by Provincial Judge on Inquest

Respecting the death of: PAUL LEONARD DUCK

TABLE OF CONTENTS

	<u>Pages</u>
I. WITNESS LIST	6
II. INTRODUCTION	7
III. SCOPE OF THE INQUEST	7
Inquest Mandatory	7
Duties of Provincial judge at Inquest	8
In Camera Evidence and Culpability	8
Inquest Change of Venue Motion	10
IV. THE COMMUNITY OF GOD'S LAKE NARROWS	10
V. RCMP POLICING SERVICES IN GOD'S LAKE NARROWS	10
VI. CONTEXT: THE DAYS AND HOURS LEADING UP TO THE FATAL EVENT	11
A. Overview	13
B. Background Facts	14
i. Call for assistance and police response	14
ii. The shooting	15
VII. THE PERSPECTIVE OF THE PARTIES	16
A. Paul Duck's Perspective	16
B. Cst. Harmes' Perspective	18
C. Cst. Steele's Perspective	23
VIII. ANALYSIS OF THE PARTIES' PERSPECTIVES	28
Sergeant Bell's Expert Opinion Evidence	28

IX.	POST INCIDENT EVENTS	38
	A. First Aid at the Scene	38
	B. Life Saving Efforts at the Nursing Station	39
	C. Pathologist's Findings	41
X.	THE INDEPENDENT POLICE INVESTIGATION PROTOCOL	42
XI.	USE OF FORCE EXPERT TESTIMONY	50
	A. Expert's Background	50
	B. Scope of Responsibilities	57
	C. Officer Training / IMIM Use of Force Framework	51
	D. Intervention Options	53
XII.	CHIEF SUPERINTENDANT BRENDA LUCKY RE: RCMP TRAINING	54
	A. Isolated Community Posting Protocol	54
	B. Specialized Training / Cultural Sensitivity for Northern Postings	55
	C. Communication / Liaison Protocol	56
	D. Staffing Resources	57
XIII.	ANALYSIS OF THE EVIDENCE / CONCLUSIONS	57
XIV.	RECOMMENDATIONS	59
XV.	EXHIBIT LIST	61

I. LIST OF WITNESSES CALLED AT THE INQUEST

1. Dr. J. Younes (Forensic Pathologist)
2. Inspector Yuzdepski (independent/lead investigator from Saskatoon City Police)
3. Corporal Chalmers (RCMP Identification officer at the scene)
4. Constable Morgan Page (on-call RCMP Cst. in GLN's at time of shooting)
5. Sergeant Richard Marshall (commanding officer for RCMP in GLN's)
6. Chief Superintendent Brenda Lucky (RCMP)
7. Gilbert Andrews (security guard at GLN's nursing station)
8. Constable Adam Harmes (RCMP officer on scene at time of shooting)
9. Constable Shawn Steele (RCMP officer who shot Mr. Duck)
10. Sergeant Robert William Bell (RCMP expert witness on use of force)
11. Nurse Rachel Yance (attending nurse at GLN's nursing station)
12. Constable Alex Key (RCMP officer who attended shooting scene as back-up)
13. Natasha Duck (daughter of the deceased, Paul Duck)
14. Dorothy Spence (sister of the deceased, Paul Duck)
15. Brenda McPherson (former GLN's Band Constable)
16. Jarret Spence (son of the deceased, Paul Duck)
17. Priscilla Watt (witness who lived next door to scene of police shooting)
18. Ryan Bee (witness at scene of vandalism to the Dorothy Spence house)
19. Nicole Watt (witness at scene of vandalism to the Dorothy Spence house)
20. Demitry Mason (participant in melee when was house vandalized)
21. Trudy Mason (witness to police shooting)
22. Trisha Osborne (ear witness to police shooting)
23. Brittany Hastings (eye witness to police shooting)
24. Perry White (participant in melee and witness to police shooting)
25. Melissa Ross (witness who lived next door to scene of police shooting)

II. INTRODUCTION

[1] The deceased, Paul Leonard Duck, died after being shot by police in the early morning hours of March 15, 2011.

[2] The immediate cause of his death is not in issue. As determined by the medical examiner (Exhibit 2), it was the result of a gunshot wound to his left arm. This was a tragedy for all involved.

III. SCOPE OF THE INQUEST

[3] In accordance with Section 19(3)(b) of *The Fatality Inquiries Act*, an inquest is mandatory as Mr. Duck died as a result of an act of a peace officer in the course of duty. A copy of the relevant portion of that section is set out below:

Inquest Mandatory

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

(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.

[4] On April 20, 2012, an inquest was called by the Chief Medical Examiner into the death of Paul Leonard Duck to address the following:

1. To determine the material circumstances surrounding his death;
2. To determine what, if anything, can be done to prevent similar deaths from occurring in the future.

[5] Section 33(1) of *The Fatality Inquiries Act* sets out the responsibilities of the presiding judge after the completion of an inquest:

Duties of Provincial Judge at Inquest

33(1) After completion of an inquest, the presiding provincial judge shall

(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.

[6] In addressing these responsibilities, the presiding Judge must also be reminded of Section 33(2)(b) of that same Act which states:

In Camera Evidence and Culpability

33(2) In a report made under subsection (1), a provincial judge ...

(b) shall not express an opinion on, or make a determination with respect to, culpability in such manner that a person is or could be reasonably identified as a culpable party in respect of the death that is the subject of the inquest.

[7] The issue of jurisdiction of a provincial inquest with respect to a death occurring on First Nation lands is always a live issue. Although First Nation lands and First Nation peoples generally fall under Federal jurisdiction, the decision of my brother Judge, Judge Sidney B. Lerner in the Inquest into the death of Glenn Fiddler clarifies the scope

of a provincial inquest involving First Nation lands, peoples and Federal government departments and agencies. Judge Lerner's September 12th, 2005 decision is useful.

The relevant portion is set out below:

[302] However, a provincial Inquest does have the jurisdiction to make inquiries into the material circumstances of the death of one of its citizens, including, as noted above, a death occurring on First Nation land. While there is a jurisdictional limitation with respect to the nature of the recommendations that may be made as a result of that inquiry, it does not restrict the fact finding aspect of the inquiry. Similarly, the jurisdictional limitation does not prevent the inquiry from identifying, without recommendation, the problems or deficiencies within Federal departments and agencies that may have formed a part of the material circumstances of death. It remains within the purview of the Federal government to determine what action it will take as a result of the findings of the provincial inquiry in that regard.

[8] I adopt the reasons of Judge Lerner as set out above, and am guided by them in defining the scope of this inquest.

[9] The Fatality Inquiry regarding the March 15, 2011 death of Paul Leonard Duck was held for 12 days; those being April 16 & 17 and August 5 to 8, 2014 at God's Lake Narrows, April 21 to 23, 2015 in Winnipeg and April 27 to 29, 2015 in God's Lake Narrows.

[10] Formal standing, or the ability to ask questions and make formal submissions, was granted to the following parties: the Duck family, God's Lake Narrows First Nation, and the Federal Government of Canada. I was assisted by counsel to the Inquest, Mr. Anostin Grieves and Ms. Tahira Amin Cabera, and in turn by the Inquest Coordinator Betty Owen, whose organizational assistance was hugely appreciated. The presence of Paul Leonard Duck's widow, Mrs. Olive Duck, at the Inquest kept us focused on the issues of importance. I thank her for her thoughtfulness and patience throughout this

process. I also thank all of the counsel, witnesses and all other contributors who gave of their time, effort and emotion in such a tragic and difficult case.

[11] A total of 25 witnesses were called and numerous binders of documents were filed as exhibits. The Inquest hearings concluded on August 20, 2015 with the tendering of final written submissions from the parties.

Inquest Change of Venue Motion

[12] During the Inquest proceedings counsel for the Federal Government brought a motion requesting a change of venue during the testimony of Cst. Steele, the R.C.M.P. officer who shot Mr. Duck. The Court granted the motion on certain conditions, the written reasons for that decision are found in *Duck (Re)*, 2014 CanLII 53821 (MB PC).

IV. THE COMMUNITY OF GOD'S LAKE NARROWS

[13] God's Lake Narrows is an isolated community with a population of approximately 2,000 people located about 700 air miles north-east of Winnipeg and is accessible by air only throughout most of the year. A short winter-road season, late January to late March, affords some residents, those who own vehicles, more access to urban business sources to alleviate the extremely high cost of living in this remote and isolated community.

V. RCMP POLICING SERVICES IN GOD'S LAKE NARROWS

[14] There is a permanent RCMP detachment in this community. When at full complement, the GLN's R.C.M.P. detachment is staffed by one sergeant, one corporal

and eight constables. On March 14 to 15, 2011, the detachment was not at full strength. It consisted of only one sergeant and four constables as the remaining members were away from the community on a dive course, a mental health escort and holidays.

VI. CONTEXT: THE DAYS AND HOURS LEADING UP TO THE FATAL EVENT

[15] Cst. Harmes related that God's Lake Narrows had been extremely busy with violent and gang related incidents in the prior few weeks leading up to this incident. When testifying at the Inquest, he made a telling comment as to the level of stress they faced as police officers in that community:

Q: Why do you keep a knife with you?

A: Honestly?

Q: Yes.

A: When I worked here we had a lot of suicide attempts and this was used to cut people down.

Q: Cut people down?

A: Yes.

[16] March 14, 2011, the day leading up to the shooting had already been a difficult one for the community and the police officers involved.

[17] Demus James (age 73), Kayleigh Okemow (age 3) and Throne Kirkness (age 2) died in a house fire in God's Lake Narrows on March 14, 2011. Those deaths were the subject of another Inquest by my sister Judge, Judge Tracey Lord, whose report was released on November 4th, 2015, see attached link:

http://www.manitobacourts.mb.ca/site/assets/files/1051/final_james_kirkness_and_oke_mow_inquest_october_22_2015.pdf

[18] RCMP members had spent the day dealing with the fire, either investigating, providing scene security, removing the remains of the deceased or dealing with members of the community, who had come to pray, grieve and pay their respects.

[19] In addition, after 8 pm, RCMP members were called to an attempted suicide by a young woman.

[20] The female, who had attempted suicide by hanging, was assessed at the nursing station before being medivaced to the Health Sciences Center in Winnipeg. She was escorted under the *Mental Health Act* by Cst. Krista Ratushniak which took an additional member out of the community.

[21] As a result, at the time of the shooting, there were 5 RCMP members in the community:

- (i) Sergeant Richard Marshall, the detachment commander;
- (ii) Cst. Morgan Page, who had been working the fire investigation from 11 a.m. until Midnight on March 14;
- (iii) Cst. Alex Key, who had been working on the fire investigation from 9 a.m. until approximately 11p.m.
- (iv) Cst. Adam Harmes, who had been providing scene security at the fire scene since 11 a.m., and was scheduled to be relieved at approximately midnight; and
- (v) Cst. Shawn Steele, who came on shift at 4 p.m. to assist the fire investigation and was to relieve Cst. Harmes at the fire scene.

[22] The Office of the Fire Commissioner required preservation of the fatal fire scene until they arrived to perform their investigation. Scene security was a job tasked to the

RCMP, who stationed a member there. Due to a shortage of police staff, Constable Harmes, who had been guarding the scene since 11 am on March 14, was ordered to remain on scene until 1 am, March 15, when he would be relieved by Cst. Steele who had come on shift at 4 pm to assist in the fire investigation. Just prior to 1 am, Cst. Harmes was alone at the fire scene, waiting to be relieved by Cst. Steele. Cst. Harmes was waiting in his RCMP truck, parked in a makeshift driveway that had been plowed in the snow at the scene.

A. Overview

[23] In the early hours of March 15, 2011, Paul Duck was shot and killed by Cst. Shawn Steele.

[24] Just prior to the shooting, a large group of youths approached the Dorothy Spence residence in the Wasahak district of God's Lake Narrows. The group began to vandalize Spence's residence, breaking windows and causing other property damage.

[25] Mr. Paul Duck was Spence's brother and lived in a house a few meters away. Mr. Duck heard the disturbance, got out his shotgun and left his home to chase the youths away from his sister's home. He fired several shotgun rounds in doing so. The youths scattered and Mr. Duck pursued some of them down a hill away from the Spence house.

[26] RCMP Constables Shawn Steele and Adam Harmes were in the vicinity, guarding a fire scene at the bottom of the hill. They heard the disturbance and the gunshots and had called for police backup. They saw youths running away from the Spence residence. They also saw an individual, with a firearm, who was pursuing them. This person was following the youths and heading in the constables' direction.

[27] As the armed individual approached their position, Constables Harmes and Steele both commanded him to drop the gun. He did not do so; rather he lowered it to his waist. Steele issued the command three times in rapid succession when the person was only two truck lengths away. When he failed to immediately comply, Cst. Steele fired his service pistol, fatally injuring the individual. The man was subsequently identified as Paul Duck.

B. Background Facts:

i) Call for assistance and police response

[28] From his location, guarding the fire scene, Cst. Harmes had seen a number of youths approaching the Spence residence from different directions. He heard yelling and screaming, the sound of wood siding being pulled off the building and the sound of windows being broken. As Cst. Harmes was in earshot of the disturbance and could identify its location, at 12:54:50 am he radioed Telecoms seeking assistance of Cst. Page and her back up stating "...There's a disturbance at the uh Dorothy Spence residence. Uh, approximately 20 some youths outside smashing the windows at her house." (telecoms transcript)

[29] At 12:56 a.m. Cst. Page was contacted by Telecoms, and informed that about 20 youths were at the Dorothy Spence's house "breaking all the windows". Cst. Page asked Telecoms to contact her backup, Cst. Key who was then informed "About 20 people smashing the windows there. ...we just got a priority one file on this too. It's coming in as a break and enter in progress." (telecoms transcript)

[30] At 1:00:11 am the Telecoms operator confirmed that a break and enter in progress was reported and that the "complainant was hysterical".

ii) **The Shooting**

[31] Paul Duck was awakened by his daughter telling him that his sister's house next door, the Dorothy Spence residence, was being broken into. He got out of bed, retrieved his shotgun from a crawlspace loaded it with a shell and put more shells in his pocket.

[32] He was seen discharging the shotgun in the air more than one time. He walked towards the youth and discharged the gun, whereupon they scattered running down the hill towards the main road.

[33] He was chasing them down the hill on the road, described by his daughter as starting in a slow jog and by police as walking fast and with purpose.

[34] It was a chaotic scene with Cst. Steele reporting shots at 1:05:53 am to telecoms saying "Okay guys they're shooting". At 1:06:29 he transmits "The guys are running towards our direction and there's about 25 of them."

[35] At 1:07:05 Telecoms records Cst. Steele announcing in the radio microphone on his shoulder "He's got a fucken gun guys...He's coming towards..."

[36] As Mr. Duck approached within earshot of police, 50 feet away and 10 feet from the entrance to the ploughed makeshift driveway, he was told to drop his firearm by Cst. Harnes, who was out of sight, taking physical cover behind the two trucks.

[37] In response to that command, Mr Duck lowered the shotgun from ..."military style to hunter's style"... (Duck Family and First Nation Submission para. 28). Meaning he repositioned the gun from upright facing position, barrel pointing directly up and resting on his shoulder as if marching like a soldier, to waist level, barrel side to side station in the way a hunter would normally walk while carrying a firearm.

[38] This was not the result Cst. Harmes wanted and Mr. Duck continued to advance, walking into the driveway where police were positioned, clearly not cognizant police viewed him as a threat.

[39] Clearly there was a disconnect between the officer's effort to stop the threat and Mr. Duck's failure to recognize that police viewed him as a threat in those moments.

[40] Why?

VII. THE PERSPECTIVES OF THE PARTIES

A. Paul Duck's Perspective

[41] Counsel for the family presented what Mr. Duck's perspective may have been.

[42] Police had not attended Dorothy Spence's house despite being called. Officer presence at the nearby fire scene was clear and visible and.....

“That destination served as the address for Paul Duck to engage police in conversation. It was not unreasonable in that moment for Paul Duck with shotgun empty facing skyward, not to believe while he was walking that he constituted a danger to RCMP. He uttered no threats; he pointed his shotgun at no one. Nonetheless, it is accepted that for police, Paul Duck carrying a shotgun certainly presented a threat to their safety. He was seen by Harmes and Steele with gun above shoulders. “(Duck family/First Nation submissions para. 23)

[43] Mr. Duck, knowing that his firearm was now empty, and that his intention was to engage the police in conversation about what had happened, clearly did not turn his mind to the possibility the officers saw him as a threat.

[44] Cst. Steele and Cst. Harmes both reported that after Mr. Duck was shot, he followed instructions to push his firearm away from where he lay. Both officers reported that when asked, Mr. Duck identified himself as “Paul Kanabee”. When asked where he was shot, he said his right arm. When asked if he was the only one with a gun he said “yes”.

[45] When asked if he was the one who fired off the shots moments before, he said “Yes, I should have dropped the gun; I should have dropped the gun.”

[46] Despite Cst. Harmes’ command to Mr. Duck to drop the gun at a distance of 50 feet, that communication was ineffective. Counsel for the Duck family believe that effective communication was incumbent on police and that better training will lead to such a result.

[47] It was submitted that time, distance and physiological response to stress played a role in police not communicating more effectively to Mr. Duck to stop and put the gun down. More will be said about Cst. Steele’s perspective later in this Inquest report.

[48] Without the benefit of direct evidence we can only infer what Mr. Duck’s physiological make up was, during this incident, from his behaviour. He was described as chasing the young people down the road at a fast walk, initially brandishing the shotgun high in the air over his head with two hands, shaking it up and down while yelling.

[49] To quote Cst. Harmes’ evidence “... we’re able to see that he had something in his hands which appeared to be a firearm. And we were able to

see this because he had it above his head and he was shaking it up and down and he began yelling and screaming.

Q: So what was he - - did you hear what he was yelling - -

A: No.

Q: - - and screaming?

A: I, I couldn't hear. He was just screaming and yelling. It wasn't something we could make out.

Q: Um – hum.

A: But he definitely looked angry, upset, like he definitely - - we refer to tunnel vision where you're just, you're just going. (Transcript of Cst. Harmes' Inquest testimony, August 7, 2014 p. 36, ll. 18-34.)

B. Cst. Harmes' Perspective

[50] Cst. Harmes, the only other direct witness to the shooting, was removed from the community after the shooting and was placed in a hotel room next door to Cst. Steele in Winnipeg. Due to their close proximity they did speak to each other about the shooting before being interviewed by investigators. Cst. Harmes consulted with a lawyer, Mr. Hymie Weinstein, for legal advice.

[51] Cst. Harmes was interviewed but not by Staff Sgt. Yuzdepski. Rather he delegated that task to Corporal Rouire of the RCMP in Winnipeg. When Staff Sergeant Yuzdepski was asked on direct-examination why that was, he answered:

“Cst. Harmes, there was no indication that he had discharged his firearm and I would consider him to be a witness officer.”

[52] Cst. Harmes was interviewed on the same day as Cst. Steele, March 17, 2011. He brought with him a typewritten synopsis of his evidence that he had prepared for his lawyer, Mr. Weinstein. A copy of that synopsis is reproduced below:

D 5

Subject:
From: "Paul Joyal" <
Date: Thu, 17 Mar 2011 17:09:36 -0400
To: <

Adam D. harmes

2011-03-17

Hymie Weinstein, Q.C.

Dear Hymie,

The following is a synopsis of the events that occurred in the early morning hours of the 15th of March, 2011:

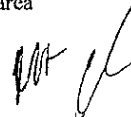
While providing scene security at the previous days house fire involving the horrific deaths of 3 individuals within the residence in the Wasahak area of Gods Lake Narrows, I remained on scene to protect any evidence that would provide details into the cause of the fire.

As I had been guarding the scene since 11:00am the previous morning, I was due to be replaced at approximately 12:00am by Constable. Steele.

As Gods Lake Narrows RCMP was extremely busy with violent and gang related incidents of the past few weeks and the lack of man power in the area to support so many calls, I was asked to stay on scene for an additional hour, while members answered numerous other calls of service.

At approximately 01:00am I saw numerous (20-30) youth heading in the direction of a known residence (Spence's) to police involved in gang, alcohol and violent behaviour. I advised Constable. Steele, as he would be replacing me shortly of the events unfolding across the street. Moments later I heard glass breaking at the Dorothy Spence residence, yelling, screaming, what appeared to be the sound of nails being pulled out of wood siding.

I contacted RCMP dispatch to advise of the situation and to dispatch Constable's PAGE and KEY whom were at home in bed. While advising dispatch, I heard 2 shots fired from a firearm near the area of the Spence residence. I advised dispatch and they began to monitor the airwaves until after the incident concluded.


17/03/2011 4:12 PM

D5.1

A few moments later, Constable. Steele arrived on scene, who pulled his police truck in behind mine, that was already on scene. I advised Constable Steele as to what was going on at the residence. A neighbour (unknown) next to the house fire came out side and spoke to members, as she could hear the shots being fired. Both myself and Steele advised her that we would be attending to the residence once other members arrived as back-up for our safety. We advised the female neighbour that she should go back into her residence and stay away from the windows.

While waiting for Constables PAGE and KEY to arrive, again we heard 2 more shots being fired. This time, the crowd of youth were now scattered and running down the road in every direction. Myself and Steele removed ourselves quickly from my police truck and positioned ourselves between the Police Truck and the ~~burned~~ residence, away from the road, now with our firearms out and at the low-ready position. We were ~~trapped~~ where we were positioned, but had good cover behind the vehicles. Initially both of us were positioned at the front passenger side of the hood, then as people ran by, I remained covering the people that passed, as Steele repositioned himself by the drivers side to cover any other persons that may come down the roadway. A few moments later, Steele noticed a lone individual walking down the roadway in the direction of the scattered youth and ourselves carrying a long barrelled firearm. I immediately advised Constable. KEY and PAGE, whom at this point were already on their way to the scene, about the individual with the firearm. Both of us were at this point on the drivers side of the Police truck with firearms in the ready position. The lone individual was walking at a fast rate of speed (Looked to be on a mission with purpose), and holding the firearm arm above his head yelling and screaming.

The male at this point was now within 50 feet of our position, approximately 10 feet from the driveway entrance to our position. I yelled to the male to drop his firearm, at which point, the male after being instructed to drop his firearm, now holding this weapon in our direction at just above the waste level, turned in our direction towards our position and walked into the driveway.

As we had another truck positioned between him and us, I lost visual of the male as he turned into the driveway.

I quickly glanced to the passenger side of the vehicle, while Steele stayed on the Drivers side. A moment later Steele said "he's over here", As I moved over to the Drivers side once again beside Steele, Steele gave again the commands three time to "drop the fucking gun"

The male did not respond to commands and again coming in the direction of both of us, firearm pointing in our direction, now at the rear of the second truck.

Constable Steele Fired three shots in the direction of the male, the male fell to the ground, still holding the firearm. Both members yelled to the male to throw the firearm away from himself, for which he did. Constable. Steele holstered his firearm. as I maintained cover for both of us ~~as~~ we approached the males position. Moments later, the firearm was secured, I re-holstered my firearm and called dispatch and PAGE/KEY to advise that we would need medical transport to the nursing station for the males gunshot wounds.

Myself and Steele tended to the male whom identified himself as Paul Kanabee. Kanabee sustained a gunshot wound to his left arm. Kanabee stated that he should've dropped the firearm and that he was the only one with a firearm. Steele ran to the truck to find something to stop the bleeding. As he was running to the truck, I noticed a piece of thick cloth on the driveway, which we used to attempt to stop the bleeding.

Moments later Constable. KEY and PAGE arrived at the scene. We loaded Mr. Kanabee into the back of the Police truck where he was transported to the nursing station, ~~for which~~ he later died as a result of his injuries.

Why not
spice.

worst

and

WJL

D5.2

Sincerely,

Adam D. Harmes

[53] Cst. Harmes testified about hearing the shots and screams:

“...we heard an additional shot and then a delay and then another shot, and within that shot and the second shot you could hear the screaming had intensified up at the Spence residence or in that area. It was, it was a different type of scream. It wasn't people screaming having fun. It was like a bloodcurdling terror, people were scared.”

[54] In his typewritten synopsis Cst. Harmes wrote:

“The male at this point was now within 50 feet of our position, approximately 10 feet from the driveway entrance to our position. I yelled to the male to drop his firearm, at which point, the male after being instructed to drop his firearm, now holding this weapon in our direction at just above the waist level, turned in our direction towards our position and walked into the driveway.” (emphasis added)

[55] Cst. Harmes then lost sight of the male as he turned into the driveway due to the two trucks positioned between them. He next identifies commands spoken as those of Cst. Steele, who gave three commands, “Drop the fucking gun! Drop the fucking Gun! Drop the fucking gun!” before Cst. Steele fired three shots from his service revolver, fatally injuring Mr. Duck.

[56] During the interview he repeats his synopsis...

“I yell, I yelled to the male to drop his firearm” (D6.6).

The interviewer asks:

“Okay so walk me through that when he, you yelled at him, tell me exactly what you said and what his, his reaction was.”

Cst. Harmes does not answer that question directly, rather he answers in part.

“...Um there was a total of ah four commands given, one by me, three by Shawn um when I initially yelled at him when he was about ten or 15 feet from the edge of the drive way when he turned towards us and the gun lowered...” (Binder D6.31)

[57] Unfortunately, the question about what the exact words Cst. Harmes’ commanded was not answered nor followed up on by the interviewer, but his interview was clear; he only gave one command himself.

[58] During the Inquest Cst. Harmes testified. Once again, his evidence was imprecise as to the exact words he commanded to Mr. Duck. Even when asked directly on cross-examination:

Q: So you said you were yelling at him. What exactly were you yelling at him?

A: Drop the gun, many times. Drop the, pardon my swearing but, drop the fucking gun.

[59] He frequently repeated “we yelled at him”, making it unclear as to whether the words were actually spoken by him or by Cst. Steele.

[60] Cst. Harmes testified as to Mr. Duck’s compliance to police commands. After yelling at him to drop the firearm before entering the driveway, Mr. Duck crossed the

road in their direction and “he had now dropped the firearm to as we would call like a low ready. So it would be at the waist level.” (pp. 42-43 transcript of Cst. Harmes)

[61] During his Inquest testimony, he did make one significant change in his evidence; for the first time suggesting that he yelled a second command to drop the gun, just prior to Cst. Steele’s three commands. (Transcript of Cst. Harmes’ testimony August 7, 2014 p.44, ll. 30-31)

[62] This was in clear contrast to his evidence in his synopsis and statement that there were only four commands; one by him and three by Cst. Steele.

[63] Additionally, there remains the unexplained telecom communication attributed to Cst. Harmes at 1:07:45 a.m. in which he radioed “He’s shooting at us”.

[64] Cst. Harmes was never questioned about that statement during his testimony, either in direct or cross-examination and as result, he was never given an opportunity to clarify or explain.

[65] What is clear from the Inquest evidence is that Mr. Duck never shot at police and the only person discharging a firearm near the time of that Telecoms transmission at 1:07:45 a.m. was Cst. Steele.

C. Cst. Steele’s Perspective

[66] Cst. Steele self-identified as the officer who shot Mr. Duck. He was not interviewed by the independent investigator from the Saskatoon City Police Service, Staff Sgt. Yuzdepski, until 3 days after the shooting, at Winnipeg on March 18, 2011. Between the time of the shooting and his police interview, Cst. Steele had consulted a lawyer, Mr. Hymie Weinstein Q.C., for legal advice as was his right.

[67] At his interview, Cst. Steele brought with him a type written statement dated March 17, 2011, he had prepared for and addressed to his lawyer, Mr. Weinstein. Cst. Steele asked permission to read to Staff Sergeant. Yuzdepski, the statement which was a synopsis of the events that had occurred in the early morning hours of March 15, 2011. It was single spaced and one and a quarter pages long and is reproduced below:

Hymie Weinstein

March 17th, 2011

Dear Hymie,

Below is a synopsis of what occurred on the early morning hours on the 15th day of March, 2011.

On the 15th day of March, 2011 during the early morning hours I was required to do scene security at a residence in the Wasahak Area of God's Lake Narrows where a fatal fire occurred in the early morning hours of March 14th, 2011.


At approximately 12:50am I was en route to the scene to relieve Cst. Adam Harmes where he was doing scene security from 11am on the 14th day of March, 2011 until 12:00am on the 15th day of March, 2011. While en route Cst. Adam Harmes advised me that there was a fight occurring at Dorothy Spence's residence across the street from where he was located.

I arrived at the location of Cst. Harmes and was advised by a young female that people had guns up at that residence where the fight was occurring. I advised the female that we had called out back up as one of us could not leave the scene of the fire as it was still under investigation. I parked my police vehicle behind Cst. Harmes' police vehicle at the scene of the fire. I got out of my police vehicle and got into Cst. Harmes'. At this time the windows were down in the police vehicle and could here more yelling and screaming. While this continued, both of us could here windows smashing and gunshots coming from that area. Another female who resides at a residence near the house fire approached us and asked us if we heard those gunshots. She also asked if we were going to do something about it and we explained to her that one of us had to stay at the scene of the fire and we were waiting for the other members that were called out.

Shortly after the shots were fired I observed several youth running past our location, yelling and screaming followed by someone chasing after everyone, wielding a firearm in the air. Cst. Harmes and I were outside the vehicle at this time. The male turned into the driveway approaching us. We then proceeded to the front of Cst. Harmes' police vehicle which was parked in front of mine to take cover. I unholstered my service pistol and displayed it at the male. Cst. Harmes gave a police command to drop the gun while standing on the passenger side of the police vehicle. The male continued to approach us on the driverside of my police vehicle. While doing this I told him to "Drop the fucking gun", three times. The male was not responding to police commands nor did he say anything. The male was grasping the firearm with both hands and suddenly turned, pointing the firearm in our direction. At this point I thought I was going to lose my life and discharged three rounds from my service pistol to stop the threat. The male collapsed, still holding onto the firearm. I commanded him to push the firearm away from himself, service pistol still displayed. Moments later the male pushed the firearm away. I asked Cst. Harmes to cover me as I holstered my service pistol and approached the male. As I approached the male I went to my knees and asked if he was okay. I asked him his name and date of birth at which he

D.I.I

replied. The male was conscious when approached. I asked him where he was shot and he said his arm. I then proceeded to ask the male if he was the only one with a gun and he said yes. Then asked if he was the one that fired off the shots moments before and he said "Yes, I should have dropped the gun, I should have dropped the gun". Cst. Harmes and I turned the male over to administer first aid. I noticed he had a wound to one of his arms and located a rag near the police truck and I tied the rag around his arm. Moments later Cst. Key and Cst. Page arrived. The male was then placed in the police vehicle and rushed to the local Nursing Station to be treated.



S.R.C. STEELE, Cst.

NY 306 SPS

[68] After Cst. Steele read from his prepared statement, Staff Sgt. Yuzdepski continued the interview asking Cst. Steele questions about whether he had been in full uniform, what use of force options had been at his disposal, what the lighting and weather conditions had been, a description of the location where this had taken place, a description of the scene, including whether the ground surface had been snow or ice covered. Following those initial questions, Cst. Steel was asked to provide more detail about what had happened, by "picturing in his mind's eye" and by walking the interviewer through what he was hearing and seeing and to describe that.

[69] Cst. Steele provided a more descriptive and detailed account of the events immediately leading up to the shooting and described the shooting itself.

[70] The interview lasted 2 hours and 22 minutes.

[71] Cst. Steel testified for the Inquest at the City of Winnipeg. His testimony was videotaped for the purpose of allowing community members the opportunity to view his testimony later in God's Lake Narrows. The two DVD's were not marked as exhibits and the originals have been returned to Inquest counsel, Anostin Grieves.

[72] At the Inquest, Cst. Steele answered questions about his stress level at the time of the shooting. Stating it was very high, he thought he wasn't going to go home that night and agreed that he was freaking out.

[73] During his testimony, new evidence emerged. Cst. Steel provided detail about his positioning immediately prior to and during the shooting.

[74] During cross-examination, Cst. Steele volunteered to re-enact his positioning. He demonstrated how he was in a crouched position with his back to the push grill/front driver's side hood when they lost sight of Mr. Duck as he entered the driveway. He agreed that he would have been out of Mr. Duck's sight while in this position.

[75] As Mr. Duck rounded the back of the second truck, coming into view, he stood up and gave three verbal commands to "drop the fucking gun". He testified that he was partially taking cover at the front corner of the hood of the Ford F250 and made the commands prior to stepping out.

[76] When Mr. Duck turned towards his direction, Cst. Steele fired his firearm. "It was instantaneous. I just am trying my best to explain the situation. When he gave the command, he was still approaching us, at the rear of the, the rear of the second vehicle, which was the Chevrolet and I gave the, the command three times, in which he turned towards my direction and I fired my firearm." (P. 100 vol. 8 Transcript of April 22, 2015)

[77] For the first time, Cst. Steele expressed that his firearm was resting on the driver's side mirror arm when he discharged his service pistol.

[78] Counsel for the Duck family noted in their submissions the following:

"In direct examination by the Crown, Steele testified that:

A: He made the turn at the rear or driver's side....the box of the truck and that's when I came up with my pistol and I challenged him again, I said drop the gun, three times."

Q: So you stated drop the gun three times?

A: Not the exact phrase.

Q: Okay.

A: Would you want me to state the exact phrase?

The Court: Please.

A: I said drop the fucking gun, three times.³¹ (Paragraph 37)

[79] Counsel for the Duck family wrote: "It was clearly established that discharge of Steele's rounds was linked in close proximity to him enunciating drop the fucking gun three times. In cross-examination, Steele unwittingly and without ambiguity volunteered to the Court where his service pistol was positioned at this critical time":

Q: When you said drop the fucking gun three times, Harmes was taking cover?

A: He would have been if he was on the passenger side, yes.

Q: And you're behind the big hood when you say drop the fucking gun, drop the fucking gun; correct?

A: Incorrect.

Q: Incorrect?

A: Well, I, I was in front of the vehicle, but my pistol was resting on the mirror of the, of the truck.³² (Paragraph 38)

[80] “Harmes’ Ford shows a sizable rectangular side view mirror on the driver’s door extended by two spaced black horizontal arms fastened to the driver’s side exterior at the forty-five degree junction of the window base, “A” post. A similar mirror is affixed to the opposite passenger side.”³³ (Paragraph 39)

[81] While Cst. Steel indicated he took a step out after issuing the commands but before shooting, it was not made clear how he got from his position at the front corner of the truck to the side mirror.

VIII. ANALYSIS OF THE PARTIES’ PERSPECTIVES

Sergeant Robert Bell’s Expert Opinion Evidence

[82] Sergeant Bell is a 19 year member of the RCMP and was an instructor at the RCMP Training Academy in Regina for five years on the use of force. He was qualified as an expert to give opinion evidence at the inquest.

[83] In preparation for his expert opinion testimony at the Inquest, Sergeant Bell reviewed Constable Steele’s and Harmes’ synopses prepared for their lawyer, Mr. Weinstein, as well as each of their statements given to Sergeant Yuzdepski and Corporal Rouire. He also received transcripts of testimony from Constable Page and Constable Harmes and was present in court during Constable Steele’s testimony at the Inquest.

[84] He indicated that aside from some terminology, he did not recall significant discrepancies between the versions of events between members and witnesses. Based

on the documents and testimony he reviewed, he indicated the factors that were considered when forming a risk assessment by Constable Steele. They included:

- A comment made to Cst. Steele when he was drawing near the scene, from two females that approached the vehicle and said “they’ve got guns and they are going to kill each other” or something to that affect;
- The call from Constable Harmes saying he could hear ripping of siding from a house and there was a large group of youths;
- Situational factors, including the fact that it was dark, the fact they had a responsibility to maintain the continuity of security at the fire scene;
- Other situational factors, including the weather, being outside in a makeshift driveway with high snow embankments on either side;
- Most importantly, the sound of four gunshots going off subsequent to the disturbance at the Spence residence. He indicated that, in his experience, was extremely unusual and very high risk. Members are trained that when firearms or weapons are involved, it’s high risk.

[85] He testified upon hearing those four gunshots, thinking about the information he got from the females running by his vehicle (that they had guns and that they were going to kill each other), Cst. Steele had no way of knowing how many people had firearms. He had no way of knowing if anyone or how many people were shot, injured or killed. He had no idea as to how many people he was dealing with. Those are all things that would have likely been factored into his risk assessment. “I can’t speak for him, but if it were me, those were the things that would have factored into my risk assessment.”

[86] He indicated that the constables' response upon hearing those shots fired, was consistent with training. They needed to draw their firearms to prepare themselves for what might come. They needed to position themselves for cover and concealment which is one of the seven tactical principles taught to members in basic training. They are taught to seek a position of cover until they can acquire more information to figure out what the situation is. He spoke to seven tactical principles that are taught to members at basic training and then reinforced throughout their career.

- 1) Cover and concealment;
- 2) Threat cues;
- 3) Time distance ratio (that's about creating a reactionary gap);
- 4) One plus one rule;
- 5) Verbal intervention;
- 6) De-escalation; and
- 7) Survival mentality.

[87] Commenting on how the incident unfolded, he testified that he had heard Constable Steele and Harmes refer to using the front of the vehicle as cover. If that's the best cover available then that's what they would use. He didn't agree that it was great cover in that scenario, being faced with a firearm and not knowing what type of firearm it initially was, but it would have been the best cover available to them.

[88] He spoke to the one plus one rule, indicating that members are taught if dealing with a subject who has one weapon, always assume they have a second one until proven otherwise. In this case, after shots were fired by Constable Steele and Mr. Duck fell on the ground, he indicated they procedurally did the right thing in getting verbal intervention and commanding him to distance himself from the firearm. They would

have been trained to secure Mr. Duck using handcuffs, doing a quick search to make sure that he couldn't access another weapon.

[89] He indicated that verbal intervention and de-escalation, two separate tactical principles, are interrelated. Verbal intervention is to have a dialogue, if tactically feasible, to identify yourself as police, to tell the person to stop what they are doing, to give them some sort of clear, concise demand, in this case, to put the firearm on the ground "drop the weapon" is how we were taught.

[90] The exact police command trained to be given by a member is "Police. Stop. Drop the gun. Do it now!" He testified that this is only expected if time allows and if it's tactically feasible, which is also taught to the members.

[91] Members are taught to use clear concise specific language. When asked what drop the gun meant, he indicated that drop the gun means to us to put it on the ground. Sergeant Bell testified that there are circumstances when verbal intervention is not required, specifically when time does not allow for it. He indicated that in the particular scenario facing Constable Steele, it didn't sound like there was time to have initial verbal intervention. It happened very quickly. Further, he testified that members don't have to wait for a response from the subject they are interacting with. If the situation doesn't allow for a response before using force, that is acceptable.

[92] He testified that it's all situational and based on the individual officer's perception. Risk assessment is an individual thing. When asked about whether the officers could have retreated or tactically repositioned themselves, he indicated again, the decision to tactically reposition is situational. In this case, the members were somewhat in a position of advantage, where they were behind cover of a vehicle, able to see the subject walking towards them. In the environment they were in with the snow, moving

from that cover might have disadvantaged them by possibly slipping, falling, running into each other or exposing themselves from behind cover. Those may have all been considerations in their decision not to retreat or reposition themselves.

[93] When asked to comment on the lethal force that was used in this case, he indicated that use of lethal force and the level of intervention used was consistent with training and RCMP policy and legislation.

[94] By way of further explanation, he indicated that one of the primary duties as a police officer is to preserve and protect life. The main objective in any use of force scenario or situation is public safety and police officer safety is essential to public safety.

[95] He also testified that risk assessment is a continuous process and has to involve the entire scenario of the situation. Further, Sergeant Bell testified that given the facts before the Court, it would have been inappropriate for a member to immediately try and respond to the shots fired up in the direction at the Spence residence or to approach the area before back up members were available to them in close proximity.

[96] Sergeant Bell indicated that he was surprised that Constable Steele didn't take more notes than he had as his notes were limited after the shooting. Although he testified that he actually didn't see the notes, just the synopsis prepared to Mr. Weinstein.

[97] Sergeant Bell, when shown a photograph of the front of the Ford F250 used for cover, agreed that there was an inconsistency in Constable Steele's testimony. However he indicated, that in his opinion, in terms of use of force or risk assessment it was not significant. That discrepancy being from taking a half a step out from the front of the hood to having a pistol resting on the mirror on the driver's side which would have

required covering some unknown distance to get to the mirror. Although later on, he clarified that if Constable Steele was at the front corner of the vehicle, not directly in front of the radiator, and took a large step, he could potentially have gotten to the side mirror in one step.

[98] He acknowledged that officers are trained to remain behind cover and if they were to leave cover, it's at the very last moment when their weapon is going to be used in order to remain behind cover as long as possible. He answered finally, that if they looked at the two scenarios individually, one when he steps forward and placed his pistol on the mirror or two he stayed in front of the hood and steps half a step out, in either of those cases he did not see Constable Steele's risk assessment of the situation changing.

[99] As counsel for the Duck Family wrote in their submissions...

“When Steele first observes Duck with the shotgun, barrel pointed to the sky, he estimated their gap of separation near one half-length a Canadian football field (50 metres). In accordance with the Incident Management Intervention Model (IMIM), Steele would continuously assess risk and apply the necessary intervention to ensure public and police safety.¹⁶ It was acceptable for Harmes and Steele to step up on the force continuum withdrawal of each's service pistol from holster position. It is not disputed that Paul Duck carrying a weapon and gunshots being heard by police in proximity of time and space constituted a threat; nor is it disputed that Paul Duck approaching the direction of the officers presented a danger to officer safety. It is also conceded that police soft hand techniques and hard impact instrument

“asp” utilization, resort to pepper spray and implementing taser use where unfitting force alternatives. (Paragraph 21)

“However, with Paul Duck at 50 meters distance and closing, it was incumbent upon each officer to draw upon additional applicable force options in threat management. If the object of police endeavour was to have their subject 1) separate himself from his shotgun, 2) advance no further, and 3) explain himself, then effective police communication was required. Precise words to convey ideas to yield positive response should be the hallmark of effective police communication. Verbal intervention and dialogue are constituents of a police officer’s skill-set in the process of tactical repositioning while assessing risk. Effective speech and delivery of message transpire each day in office/public interaction.” (Paragraph 22)

[100] Counsel for the family submit a disconnect:

“As Harmes’ desired effect was to stop Duck’s advancement and to have Duck separate himself from his firearm, the necessary language to achieve that goal was not utilized. Bell’s opinion that the words “Put the gun on the ground” constitute difficulty saying in a period of stress should be dismissed. “On the ground” constitutes 3 additional words but directs with precision to where the weapon should go. A ‘disconnect’ resulted between police and Paul Duck in these circumstances. In a multi-cultural environment with a multitude of languages spoken, English not a first language, a police command

must be descriptively specific to achieve compliance in the de-escalation process. Paul Duck did not defy police. He was not told to stop his approach thereby maintaining a distant reactionary gap. He was not told to drop his gun on the ground. Consequently, having dropped his gun he continued his forward momentum into the driveway.” (Paragraph 32)

[101] While there was a “disconnect” in communication, additional factors may have influenced Mr. Duck’s ability to process the command. A reasonable inference to make is that Mr. Duck’s adrenaline was rushing. While his anger was directed not at police but rather at those 20 or more young people he was chasing away with a shotgun from the mob scene at the Dorothy Spence residence, nevertheless his anger and adrenaline were demonstrable. Much like the police officers present, those physiological responses may have affected his ability to process what was unfolding and to think and react in a timely and appropriate way.

[102] As previously indicated, Sgt. Bell testified that the exact police command members are trained to use is “Police. Stop. Drop the gun. Do it now!” He testified that this is only expected if time allows and if it’s tactically feasible.

[103] In this circumstance, conditions were not ideal. These officers were unsure as to the scope of what they were dealing with. They had no escape route and back up had yet to arrive. Their high stress levels were evident from Telecoms transmissions. The time from when Cst. Harmes first gave Mr. Duck the command to drop his firearm to the time Cst. Steele discharged his service pistol was mere seconds. They both described it as unfolding extremely quickly, after they lost sight of Mr. Duck when he entered the

driveway. In retrospect, it is not surprising that their reactions did not follow the precise training protocol.

[104] Counsel for the Duck family suggest that it was reasonable to conclude Mr. Duck chose to walk up the driver side because he located an officer on the driver's side; suggesting the possibility that Cst. Steele was already positioned at the driver's side mirror without benefit of cover.

[105] Equally as plausible is that the driver's side was the most direct path and that it was logical, natural instinct to approach driver side. Most times if one wants to speak with someone at a parked motor vehicle, you would find the person in charge in the driver's seat.

[106] In the end it is speculative to say why Mr. Duck chose that path.

[107] Did Mr. Duck point his shot gun at Cst. Steele? Counsel for the Duck family question that evidence:

“Under tactical disadvantage and physiological stress affecting perception Steele managed rapid verbal expressions and shot. The probability is Paul Duck was given no time to respond. That Paul Duck, after rounding the Chevy truck, commenced walking a pathway narrowing the reactionary gap was the stressor in Steele's threat assessment analysis. Steele did not order Paul Duck to halt his forward advance. Steele panicked and shot, not because the shotgun was redirected, by because Paul Duck continued advancing. There is no evidence that Paul Duck's head was up, eyes trained at the horizon. Had Paul Duck been walking head down rounding the

Chevrolet, a reasonable reaction to the source of the voice would have been to look up. There was no reason for Paul Duck to swing his gun at Steele. There was no evidence of a stumble.” (Paragraph 47)

“Slight time elapsed and little distance gained for Paul Duck rounding the Chevrolet to being shot. Steele’s gun from a levelled position on the mirror was aimed at the ready in parallel line to the driver’s side of the abutted trucks. When Paul Duck turned into line of sight he would be shot either from a pistol leveled on the mirror (see autopsy report as to trajectory of the bullets) or from a pistol held freehand at driver side door. The penultimate question, whether prior to the shooting a shift in Paul Duck’s shotgun occurred, or was *bona fide* perceived or misperceived to have occurred, cannot be answered with reliability because of Steele’s evidentiary modification. That Steele introduced the gun on the mirror so late in the story-telling produced a credibility gap. Not only has unreliability manifest, but so too questionable trustworthiness of Steele in his state of panic discernibly recognizing Paul Duck motioning to arc his weapon.” (Paragraph 49)

[108] There was no logical reason for Mr. Duck to intentionally point his shotgun at Cst. Steele. Mr. Duck knew it to be unloaded and further had demonstrated no discernible animosity to police. He was sober and would only have been approaching the officers to talk to them. Either Cst. Steele misperceived that the gun was coming around in his direction, based on his viewing Mr. Duck as a threat, or if it did begin to come around in

his direction, it was inadvertently done so as Mr. Duck walked around the back of the truck and heard the three commands yelled at him by Cst. Steele.

IX. POST INCIDENT EVENTS

A. First Aid at the Scene

[109] Cst. Morgan Page, who was monitoring radio traffic while on enroute to the scene, heard Cst. Harmes advise that they had one in custody and the firearm was secure. He came back on the radio seconds later and said they needed a medical transport. At that time, she and Cst. Key were 30 seconds or less away. It was her recollection; it was at that time she instructed Telecoms to call the nursing station to let them know they had a gunshot victim coming in so that the nurses would be ready when police arrived.

[110] When she and Cst. Key arrived at the scene in their police truck, she saw Mr. Duck lying on the ground. They saw the officers on the ground, tending to Mr. Duck. Because there are no ambulances or paramedic services in God's Lake Narrows and they had no equipment to stop the bleeding they determined the best course of action was to get him to the Nursing Station as quickly as possible.

[111] All four members picked up Mr. Duck. They could not get him into the back seat so they put him in the back of the truck, the truck bed.

[112] Cst. Key is a trained paramedic, having taken that training before becoming a police officer. He applied pressure in the area of the wounds, using a rag that Cst. Steele had found. The male shooting victim was conscious but not communicating

much. Cst. Steel informed Cst. Key that he believed the male had been shot in the area of the left upper bicep and chest area. Cst. Key got into the truck bed with him and applied pressure to where the blood appeared to be coming from, his chest or his arm. He laid on his back and “bear hugged” Mr. Duck who was lying on his back on top of Cst. Key. He did this to hold his arm with pressure on it to reduce the speed of blood loss. Pressure to the wound was the only first aid he administered.

[113] Cst. Morgan testified she drove them as fast as she could to the Nursing Station. Cst. Key estimated that it took two to three minutes to drive there. Once at the Nursing Station they got Mr. Duck up to walk but he collapsed after two or three steps, unable to support his body weight. The security guard at the Nursing Station saw this happening and assisted by obtaining a stretcher. The officers placed him on the stretcher and carried him in and then allowed the nurses to take over medical care.

B. Life Saving Efforts at the Nursing Station

[114] Log notes made by the Nursing Station security guard, Gilbert Andrews, documented a phone call he received from the RCMP at 1:10 am to alerting him that a gunshot victim was enroute. The next entry in his security log noted that at 1:20 am, “RCMP are here with Paul Duck”. The next entry noted that at 1:40 am “life flight phoned”.

[115] Rachel Yance was a registered nurse who had been posted in God’s Lake Narrows for one month. Nurse Yance was the on-call nurse at the nursing station in God’s Lake Narrows that night. She and three other nurses were in the nursing residence across the street from the nursing station.

[116] She was extremely well qualified to attend to this emergency. Previous experience included an 18 month period of employment with an adult trauma center in the emergency room at Hamilton General Hospital as well as a year in Los Angeles at an adult trauma center. While nursing in California she was hands on in dealing with two to three shootings on a nightly basis.

[117] Her role involved the initial assessment of Mr. Duck, upon arrival at the nursing station at 1:17 am, calling in the other three nurses to assist with life savings efforts, charting the care being administered, being on the phone with the emergency on-call doctor from Thompson General Hospital and generally leading the team's efforts.

[118] Her assessment involved the use of the ACLS algorithm (Advanced Cardiac Life Support); by way of airway, breathing, circulation and head to toe disability assessment. Airway and breathing were initially assessed. Any deficiencies with either of those items would need to be fixed first before moving on to another letter in the algorithm.

[119] She described that Mr. Duck initially presented that he needed air, he was having a hard time breathing and there was a lot of blood. He was placed on 100% oxygen at 1:20 a.m. At 1:25 a.m., a bag mask valve was put over the patient's face to manually assist his breathing, since he was not breathing sufficiently on his own. The second nurse attempted to insert an IV in order to give him fluids and medication, but was unsuccessful in finding a vein with sufficient blood pressure to insert the needle. At 1:30 a.m. the ER doctor from Thompson was on the phone and advised to insert an intraosseous IV (an IV into the bone). After an attempt in the left tibia (leg bone) was unsuccessful, it was successfully inserted into his right tibia.

[120] Nurse Yance noted that this procedure was made more difficult by the lack of a bone drill at the nursing station, which meant it had to be manually inserted. When

asked if there was any particular reason why that equipment was unavailable, she answered “Generally, equipment in the north is not as good as it would be in the city. I think a lot of it comes down to funding.” The issue of a lack of important tools and supplies at the nursing station was commented on more than once during her testimony at the inquest.

C. Pathologist’s Findings

[121] Dr. Younes was the pathologist who conducted the autopsy on Mr. Duck’s body. It was agreed that he was an expert in the field of forensic pathology and as such was qualified to give opinion evidence to the Court regarding the cause of death of Mr. Paul Duck.

[122] By the time of the autopsy, Dr. Younes was given access to the preliminary report of death provided by the RCMP. That preliminary report indicated that at approximately 12:57 a.m. on March 15, 2011, Mr. Duck was shot by a member of the RCMP, outside a residence that was being guarded by the RCMP. He was then transported to the nursing station. Upon arrival he was in grave medical condition and died shortly after arrival, despite resuscitative efforts.

[123] The autopsy determined that Mr. Duck had been hit by two bullets. One entered the upper bicep of his left arm, exited the inside of his upper left arm, re-entered his body on the outside of his chest wall, underneath the armpit and exited through the left upper outer back. The second bullet struck his left thigh, traversed through the quadriceps muscle and exited the back of his thigh.

[124] In Dr. Younes’ opinion, while the injury to the leg was not immediately life threatening, the wound to Mr. Duck’s arm was a grave injury.

[125] The gunshot wound to the arm, severed the brachial artery, the major artery supplying blood to the arm. This is a large caliber artery, approximately the same size as the carotid artery in the neck. The resulting blood loss was rapid and fatal.

[126] Dr. Younes estimated that with a completely severed artery and two holes in the arm, in the form of an entrance wound and an exit wound, blood loss would have been “extremely, extremely rapid and a life threatening amount of blood would have been lost in approximately 5 minutes.”

[127] He opined that this type of injury was survivable only with immediate, effective medical intervention, which he defined as being in the vicinity of a tertiary care medical facility; one with access to specialized care such as surgeons and emergency doctors with advanced resuscitative equipment and blood products. However in the setting Mr. Duck was in, a remote community with considerable delay in medivacing him to a tertiary health care center, his wound was extremely unlikely to be survived given the narrow window of opportunity to save his life.

X. THE INDEPENDENT POLICE INVESTIGATION PROTOCOL

[128] A new policy had come into effect just prior to this event of March 2011, which required the RCMP to request and use an external investigator (from outside the Province) in any “officer involved” shooting investigation.

[129] This shooting death apparently marked the first time in the Province of Manitoba where the RCMP asked an external police force to investigate one of its own members.

[130] This request was made pursuant to Section 54.1 of the RCMP operations manual. A copy of that section was set out by my brother Judge, Judge Allen of The

Provincial Court of Manitoba in his Inquest report into the death of Nathan Michael Boryskavich, dated August 17th, 2012 at page 30, as follows:

[177] RCMP Operational Manual 54.1, provided by counsel for the RCMP [Exhibit 7(b)], details procedures dealing with external review. That policy requires that where there is a death of an individual that involves an RCMP employee, the RCMP, under Section:

2.3: "Will request an external law enforcement agency or other duly authorized investigative agency to conduct an investigation (independent external investigation) that the RCMP would otherwise conduct.

2.4: If an independent external investigation is not feasible or appropriate due, for example, to the lack of available external investigative resources, an RCMP division other than the one where the incident occurred will conduct the investigation.

2.6: In all cases where the RCMP is conducting an investigation pursuant to this policy an independent third party observer will be requested to assess the impartiality of the investigation.

2.8: In all cases where the RCMP has completed or is in the process of conducting an investigation pursuant to this policy, an independent review will be requested from an external law enforcement agency or a federally, provincially or territorially established investigative agency (independent external review) to assess the adequacy of the investigation."

[131] Superintendent Mitchell Yuzdepski of the Saskatoon City Police testified about his involvement as independent lead investigator in this case.

[132] He had background of being a police officer for 27 years; more than four of those years spent as an investigator with the major crime section of the Saskatoon City Police, dealing primarily with homicides, suspicious deaths and other serious incidents. During that period he was involved in the investigation of 17 homicides and two officer involved shootings. He has peace officer status in the provinces of British Columbia, Alberta and for the purpose of this investigation, in the Province of Manitoba.

[133] On March 15th, 2011 Staff Sergeant Yuzdepski (as he was then), received a call from Saskatoon Police Deputy Chief Pernell at 5:16 a.m. asking him to travel to God's Lake Narrows, Manitoba to lead an RCMP officer involved shooting investigation. He was tasked to be the primary officer and was responsible for the speed, flow and direction of that investigation.

[134] He contacted the RCMP Chief Superintendent for the Province of Manitoba and was advised that they were flying seven RCMP members from Thompson and Winnipeg with either serious or major crime experience to God's Lake Narrows to assist him with the investigation.

[135] At 6:31 a.m. Saskatchewan time, he received a phone call from RCMP Corporal Chris Rouire, who was by that time on the ground with a team of investigators in God's Lake Narrows and who provided him an initial briefing.

[136] Cpl. Rouire advised that the medical examiner had approved moving the body to a secure location and requested Staff Sergeant Yuzdepski's permission to look at the scene and meet with Chief Peter Watt of the God's Lake Narrows First Nation. Approval was sought to allow the forensic identification section to process blood in the box area of a marked RCMP truck used to transport Mr. Duck from the shooting scene to the nursing station. He also gave approval to secure and seize Mr. Duck's shotgun which had been secured in the back of that same truck since the shooting.

[137] Staff Sergeant Yuzdepski then arranged for his own transportation to God's Lake Narrows by RCMP plane, arriving at 1:42 p.m. local time. Once at the RCMP detachment, he read briefing notes, was introduced to the investigative team, read what tasks had been assigned and began tasking actions required for the investigation. He

went to the scene itself to take a cursory look at where the shooting had occurred, although he didn't enter the scene itself, staying on the outside or the taped off area.

[138] He travelled to Chief Watt's house to meet with the First Nation's Chief. He explained his role as the primary investigator, the fact he was from Saskatoon, that he had been given peace officer status in the Province of Manitoba and how he was the lead officer for the investigation. He explained to Chief Watt that he had learned of an existing protocol agreement between the RCMP in Manitoba and a number of First Nations, that called for independent observation and that he wished to honour the spirit of that protocol throughout his independent investigation. He was informed that Elder Doug Hastings had been selected ahead of time as the independent observer. Chief Watt also requested that he himself, be allowed to become part of the investigation as an independent observer, which was readily agreed to by then Staff Sergeant Yuzdepski.

[139] Both Chief Watt and Elder Hastings were invited to the investigative team's morning briefings which reviewed who had been interviewed the previous day together with a brief summary of the information provided.

[140] Superintendent Yuzdepski had never previously worked with the independent observer protocol in his home Province of Saskatchewan. He testified that he found it very beneficial to the investigation. Witnesses were identified by Chief Watt or Elder Hastings as community members had indicated they had some information.

[141] On day two of the investigation, Chief Watt went on the local radio station and explained that an independent lead investigator from another police agency was in charge of the investigation and encouraged members of the community with information to come to the RCMP detachment. Subsequently three youths showed up at the police

station as witnesses asking to speak to the Saskatoon investigator stating they really didn't want to talk to the RCMP. He personally met with those three youth and explained to them and Chief Watt that he was indeed leading the investigation, that the interviews and requests for interviews were being done at his request and direction, that there were no local RCMP detachment members from God's Lake Narrows involved in any of those interviews and that these interviews were being either video and or audio recorded. He advised that as the primary investigator he had to be free to direct the investigation and there were too many witness statements to be taken by him alone. The explanation appeared to him to satisfy the youth as all three did in fact provide videotaped statements to the RCMP investigators who had been flown into the community.

[142] While local RCMP officers were involved with some preliminary tasks in the investigation, such as securing the scene and collecting gun smoke residue samples, no local officers were involved in the taking of statements.

[143] When asked if there was a specific type of investigation related to a police officer involved shooting, Superintendent Yuzdepski testified that it was similar in many respects to a standard homicide investigation. That like in a suspicious death investigation there is a process of gathering evidence.

[144] In this case physical evidence was gathered by forensic identification investigators, photographs, video and aerial photographs were taken, RCMP trucks were examined, transcripts of RCMP radio and telecoms traffic were produced. Civilian witness statements were taken as well as statements from the RCMP officers involved. In particular Cst. Harmes who directly witnessed the events of the shooting and Cst. Steele, who shot Mr. Duck, were interviewed in the investigation. The taking of their

statements in the investigation was detailed by Superintendent Yuzdepski who personally supervised or was directly involved in that aspect of the case.

[145] Superintendent Yuzdepski testified that that he felt as the outside lead investigator for an external policing agency, that he should take Cst. Steele's statement personally due the importance of that statement and given that Cst. Steele had already been identified as the officer who had discharged his firearm.

[146] Constable Steele gave his statement to Staff Sergeant Yuzdepski in Winnipeg on March 18th, 2011 at RCMP headquarters in Winnipeg. This occurred on day four of the investigation and after Cst. Steele had consulted with a lawyer. Mindful that at this point in the investigation no decision had yet been made as to whether criminal charges would be laid or not relating to the shooting of Mr. Duck, Cst. Steele was informed that he was not being detained and was cautioned that he need not say anything but that anything he did say may be used as evidence. He was also provided with a standard secondary warning because he had had contact with Sergeant Marshall, his commanding officer, members who had driven him back to the detachment and member reps who are police officers, that any conversation he had with any of those police officers should not have influenced him to say anything to Sergeant Yuzdepski at that point. These warnings were given to ensure that his legal rights were respected and that any statement he gave would be admissible in court, if required as evidence.

[147] The taking of the statement was audio and video recorded. He confirmed that he had consulted with his lawyer Mr. Hymie Weinstein and he was satisfied with that consultation. His statement commenced at 5:56 pm and ended at 7:15 pm, lasting 1 hour and 19 minutes.

[148] Cst. Steele brought with him a typewritten statement he had prepared in consultation with his lawyer. He asked if he could read that statement and he did. Staff Sergeant Yuzdepski asked him to sign the statement, which he did and Staff Sergeant Yuzdepski initialled it.

[149] Staff Sergeant Yuzdepski had some questions for Cst. Steele about what his uniform dress was at the time, what use of force options or tools he had at his disposal. Further he asked some clarifying questions about his statement, in fact he asked him a number of times to actually picture in his mind's eye the events and tell him what happened. At the end of the interview, as was his practice, he asked if there was anything else he wished to add; at which point Cst. Steele told him "I didn't think I was going home that night", referring to the night of the shooting.

[150] In addition to the prepared typewritten statement, Cst. Steele turned over his training record with the RCMP to Staff Sergeant Yuzdepski, who did not see or ask about Cst. Steele's notes or notebook. When cross-examined by counsel for the Duck family, he agreed that these items could have been important.

[151] Cst. Harmes, who was on duty, was present with and witnessed the shooting by Cst. Steele, also gave a statement. His statement was taken by Corporal Rouire in Winnipeg. Superintendent Yuzdepski testified that he delegated that task as there was no indication that Cst. Harmes had discharged his firearm and he considered him to be a witness officer.

[152] The autopsy on Mr. Duck's body was completed in Winnipeg by the forensic pathologist with members of the Winnipeg Division RCMP Identification Unit present. Steps were taken to have Winnipeg Police Service (an outside police agency) present to take photographs.

[153] Both firearms, Mr. Duck's shotgun and Cst. Steele's service pistol, were sent to the crime lab for testing and were found to be in working condition. Three expended 9mm shell casings found at the scene were determined to have been fired from Cst. Steele's firearm. The crime lab could not determine whether the three expended shotgun shells that were found were fired from Mr. Duck's shotgun.

[154] Urine and blood samples taken at the autopsy were sent to the lab for toxicology analysis. No volatile drugs were found and no indication of alcohol was found in Mr. Duck's body.

[155] GSR (Gun Shot Residue) samples were not sent for testing. Superintendent Yuzdepski testified that although swabs were taken from the members' hands and clothing, testing was unnecessary as Cst. Steele provided a statement to say he had fired the shots and there were civilian witnesses in the community that said he fired three shots. Likewise, the clothing seized from Mr. Duck was not tested for GSR as several witnesses in the community had observed Mr. Duck discharge the shotgun.

[156] Superintendent Yuzdepski attended the shooting scene himself on three separate occasions; day one, to do a cursory look from outside the perimeter tape; day two, after the forensic identification section had completed scene photographs and video and marked relevant area with placards, to do a walkthrough of the scene; for the third and final time, after community members had attended to say prayers at the scene he attended at night to get a sense of what the night time lighting conditions were.

[157] Superintendent Yuzdepski described his role was to gather evidence, prepare a report, forward it on to the provincial Crown who would determine what charges, if any, would be recommended.

[158] His report was sent to the provincial Crown, without his opinion, so as not to influence the Crown decision. The provincial Crown in turn sent his report to the province of Ontario for an independent Crown to review and offer an opinion. He received the report back in February of 2012 in which the Ontario Crown's opinion recommended no charges be laid. Based on that opinion, none were. This concluded his investigation.

XI. USE OF FORCE EXPERT TESTIMONY

[159] Sergeant Robert William Bell testified as an expert witness on use of force.

A. Expert's Background

[160] Sergeant Bell is a 19 year member of the RCMP and was an instructor at the RCMP Training Academy in Regina for five years. His first posting after graduation from the training academy was to Leaf Rapids, Manitoba from 1995 to 1999. While posted in Leaf Rapids, he performed general detachment duties and First Nations policing in the communities of South Indian Lake and Granville Lake. Subsequent to his posting in Leaf Rapids, he was transferred to the Yellowhead Detachment in Shoal Lake, Manitoba where he also had First Nations policing and community policing responsibilities. When posted to Wasagaming, Manitoba his responsibilities included First Nations policing in that area.

[161] At Depot Division in Regina, after completing the Basic Firearms Instructors Course, he remained in the Firearms Training Unit as a team leader for over three years, teaching use of force and firearms training on a full time basis. In March of 2002,

he was promoted to Sergeant to the position of Tactical Training NCO at RCMP "D" Division headquarters in Winnipeg as the Tactical Training NCO for the RCMP in Manitoba.

B. Scope of Responsibilities

[162] He is responsible for oversight of the entire use of force program for a little over 1,000 members. He is primarily responsible for supervising a group of up to 70 part-time firearms instructors and approximately 40 public and police safety instructors. Two full time instructors assigned to his unit report directly to him.

C. Officer Training / IMIM use of Force Framework

[163] Sergeant Bell advised that tactical training for officers is held in various locations throughout the province as it is easier to bring the training to different regions of the province rather than expect all of the members to come to Winnipeg. For example, firearm training is held in The Pas, Thompson, Brandon and Dauphin with the majority of it in Winnipeg. The bulk of academic programming takes place at RCMP Headquarters in Winnipeg, but some courses are co-ordinated in other areas of the province as well.

[164] Sergeant Bell is qualified to train instructors on the **IMIM** model (**I**ncident **M**anagement **I**ntervention **M**odel), the use of force framework the RCMP use to evaluate an incident and determine what level of intervention (force) is required.

[165] He testified that Constable Steele would have been trained on use of force at the RCMP Training Academy in Regina as a new recruit. That training has since been updated to the IMIM model. Training on IMIM started to be rolled out to members in

2009. He testified that after reviewing Constable Steele's training record, he determined that Constable Steele was initially trained on the former use of force model. He completed a four hour online course as required by the end of 2009 which would have been his most recent training on use of force, aside from his Taser recertification in May 2010

[166] Training in the IMIM model for existing RCMP members was conducted in three stages, phased in over time. Phase 1, an online course, was required to be completed by the end of 2009. Phase 2, an eight hour classroom session, by the end of 2011 and Phase 3, two days of scenario based training, was required by the end of 2013.

[167] In phase 3, members are trained in IMIM scenarios where actors play simulated roles in which a member is required to respond to a situation, choose an appropriate intervention option and deploy that option. Instructors are required to monitor performance and to provide feedback to assess performance.

[168] The final part of a two day session is a confirmation scenario to ensure that members were performing as expected and had a proper understanding of the IMIM model.

[169] All existing RCMP members were expected to complete all three phases of the training by the deadlines set for each of the three phases.

[170] Additionally, all members are required to qualify in the firearm course on an annual basis. For those not meeting the minimum required score, policy requires they complete a one day remedial session and if a successful score is then achieved, a quarterly maintenance program with a passing qualification score is required. If successfully completed over the course of a year, members are placed back on the annual testing schedule where they only have to qualify once per year.

[171] Members are also now exposed to a simulator system called **PRISim** which stands for **P**rofessional **R**ange **I**nstructions **S**imulator. PRISim is primarily used for judgement based training. At Depot, candidates from each troop are exposed to a scenario on the simulator to determine which intervention option to use and then are debriefed afterwards to determine whether it was consistent with the IMIM model.

D. Intervention Options

[172] Sergeant Bell testified about intervention options. Officer presence is always a part of use of force incident, verbal intervention is supposed to be part of every use of force incident no matter what the behaviour intervention option. Verbal intervention could include identifying oneself as a police officer, giving clear concise commands to an individual to put down a weapon, establishing a dialogue; those are all examples. If tactically feasible, and if time allowed letting an individual know they are being placed under arrest and the reasons for that arrest, are all part of verbal intervention. Where possible, empty hand control soft and physical control soft are to be used in order to gain compliance. Non lethal options to be considered include OC spray, defensive baton, CEW (Conducted Energy Weapon) (Taser), a weapon of opportunity, depending on the situation, are all examples of less than lethal devices. Finally, lethal force, which does not just include firearms. In situations where firearms are not available, it could include use of the police vehicle against the subject. With the IMIM model, situational factors must be considered, including the subject's behaviour. A proper risk assessment is to be conducted before using force. A proper risk assessment includes situational factors, subject's behaviour, officer perceptions, and tactical considerations.

XII. CHIEF SUPERINTENDANT BRENDA LUCKY RE: RCMP TRAINING

[173] Chief Superintendent Brenda Lucky of the RCMP testified at the Inquest. Prior to her promotion to Chief Superintendent District 2 Commander for Western Alberta District, she had been the District Officer for the Manitoba North District from November 2009 until December 2012. In that role, she was responsible as Commander for 23 detachments in Manitoba North District to ensure that detachments had sufficient financial resources, equipment and human resources.

A. Isolated Community Posting Protocol

[174] She testified that God's Lake Narrows was considered an isolated posting as it didn't have an all season road and was a fly-in community. Prior to being transferred to an isolated posting, RCMP members must complete a full medical and psychological assessment. Because of the isolated nature of these communities and because members came from very different back grounds, the force wanted to ensure they knew what they were getting themselves into versus their previous environment. It was necessary to make sure they were medically fit when it came to a multi-year posting in an isolated community to make sure that members would not need to leave for things such as extensive dental work or other medical reasons.

[175] She also testified that psychological assessments would have been completed on both Constable Harmes and Constable Steele as a requirement before being posted to a northern isolated community in Manitoba. Those psychological assessments would have been conducted by the RCMP psychologist. In the event a member did not pass the physical or psychological assessment, they would not be posted up north.

[176] In terms of experience, she testified that they tried to give a “tempered approach” to having experienced members posted. Non-commissioned officers, such as the detachment Commander or the Corporal come with experience; as typically seven years is required to become a Corporal and seven to nine years to become a Sergeant. As a result, members automatically acquire experience through that rank. In addition, she testified that detachments are not filled with recruits right out of training; because members are required to be trainers themselves and they are not eligible to train others unless they have a certain amount of service.

B. Specialized Training / Cultural Sensitivity for Northern Postings

[177] In northern Manitoba, she indicated that the force had taken proactive steps requiring members, prior to being posted to the north, to take a number of courses, including ATV, snowmobile and boat operation, Aboriginal Perception courses, and Junior Investigator courses. This was done to ensure members did not have to leave the community to take training in those courses once posted to the community and to ensure they had the necessary skills to be able to operate the various equipment required for the job.

[178] She indicated that they were the first district in Canada to make the Aboriginal Awareness course mandatory for every member coming to Manitoba North District. That is an on-line course. While optional, she said they had 100% compliance in the district as every new member received a letter from her personally welcoming them to the district and requesting they complete this course. In addition, she indicated that they tried to get as many people as possible to the one week Aboriginal Perceptions course, a hands on course usually held in The Pas, Manitoba. That course was taught

by various aboriginal leaders, informal and formal, on traditions and residential schools. Participation in a sweat lodge was one of the different traditions that were taught in the course.

C. Communication / Liaison Protocol

[179] Further, during her time as Northern District Commander, one of her personal mandates was to increase communication between detachment commanders in the community and community leaders. So much so that she held a workshop in Thompson bringing together the Chiefs or their designate from each community with each detachment commander to develop a communication protocol. She saw this as necessary with Chief elections held every two years and most member postings were two or three year postings, bringing a constant change of resources on both the elected official side and on the RCMP side.

[180] She wanted to eliminate a six month period of “getting to know each other” once a member was posted to the community. A protocol was signed, agreeing as to how the parties were to communicate with core values of integrity, honesty and what the expectations were on both sides. This protocol spelled out how members were to be introduced to the community, to elected officials and to partner agencies like Child and Family Service agencies in the community in order for the member to get to work on the ground running instead of trying to meet these people in times of crisis as that might be too late. Essentially, it was trying to develop a relationship during positive times rather than during an incident.

D. Staffing Resources

[181] When questioned if she had been aware that the James house had burned on the reserve prior to this Inquest event occurring, she acknowledged that she was aware of it. When asked if there had been additional resources allocated to the community to deal with that situation, she indicated that the Detachment Commander was in charge of allocating the resources to secure the scene. Only if the Detachment Commander required additional resources would he come to make a request to her. No request was received.

XIII. ANALYSIS OF THE EVIDENCE/CONCLUSIONS

[182] In written submissions, counsel for the Duck Family/First Nation concede the following:

“It was acceptable for Harmes and Steele to step up on the continuum, withdrawal of each’s (sic) service pistol from holster position. It is not disputed that Paul Duck carrying a weapon and gunshots being heard by police in proximity of time and space constituted a threat; nor is it disputed that Paul Duck approaching the direction of the officers presented a danger to officer safety. It is also conceded that police soft hand techniques and hard impact instrument “asp” utilization, resort to pepper spray and implementing taser use were unfitting force alternatives.” (Paragraph 21)

[183] What counsel for the Duck family do take issue with is the decision by Cst. Steele to fire on Mr. Duck and whether other reasonable alternatives could have been pursued. Those answers will never likely be determined to their satisfaction.

[184] While fact finding is an important aspect of an Inquest, it is important to consider legislative limits on the authority of an Inquest Judge to make recommendations. As was referenced earlier in this report, counsel for the Duck Family and God's Lake First Nation have suggested several recommendations in order to make investigations into the aftermath of police shooting deaths more effective. As laudable and desirable a goal as that may be, improving the investigations of officer involved shootings may or may not be part of the mandate at a *Fatalities Inquiries Act* Inquest. No arguments were heard on this issue. That aside, more problematic in this case is the fact that no expert evidence regarding professional standards as to this type of investigation was heard at the Inquest. Practically speaking, in the absence of such evidence, even if I were inclined to accept that such recommendations could be made, there would be little evidentiary basis as to the effectiveness and practicality of them. While judges hear the results of investigations, we do not conduct them and are not trained to do so.

[185] Additionally, since this shooting has taken place, the Province of Manitoba has taken steps to establish the Independent Investigation Unit of Manitoba. The IIU investigates all serious incidents involving police officers in Manitoba, whether occurring on or off duty. The jurisdiction over police services in Manitoba includes the RCMP. As part of its jurisdiction it would investigate any "officer involved" shooting in Manitoba.

[186] A link to their website is found here: <http://www.iiumanitoba.ca/index.html>

[187] The IIU of Manitoba is most certainly developing a best practices model for investigating officer involved shootings. A consistent approach to these types of

investigations is desirable. A review by that unit of “lessons to be learned” from this investigation could include the following issues:

- Separating police witnesses before they are interviewed;
- Making all efforts to maintain the scene as it was at the time of the shooting;
- Requiring that members make detailed notes as soon as practicable after an officer involved shooting;
- Seizing those officers’ note books; and
- Having the same investigator interview the shooter as well as witness officers.

XV. RECOMMENDATIONS

[188] Following a detailed review of the evidence and the circumstance relating to Mr. Duck’s death, there is nothing, in my view, that can be recommended to prevent similar deaths from occurring in the future.

[189] Based on the evidence heard at the Inquest, I am not convinced that a staffing shortage of RCMP members played a role in Mr. Duck’s death.

[190] Equipment deficiencies in the Nursing Station, while noteworthy, likewise did not play a role in his death.

[191] The training of RCMP members on use of force has evolved and all existing members have now been trained in the new IMIM use of force model, unlike Constable Harmes and Steele, who were only exposed to Phase 1 of that new training regime. All existing and new members are now exposed to in depth, scenario based training on use of force.

Dated at the City of Winnipeg, in Manitoba, this 24th day of February, 2016.

"Original Signed By:"

Murray P. Thompson, P.C.J.



Manitoba

THE FATALITY INQUIRIES ACT
REPORT BY PROVINCIAL JUDGE ON INQUEST

RESPECTING THE DEATH OF: PAUL LEONARD DUCK

XVI. EXHIBIT LIST

<u>Exhibit No.</u>	<u>Description</u>
1.	Curriculum Vitae of Dr. J. Younes
2.	Autopsy Report (Binder #1, A8)
3.	Investigative Summary (Binder #3, B3)
4.	Scene and Exhibit Photo book
5.	Autopsy Photo book
6.	Rough Scene Sketch
7.	Enlarged Photograph
8.	Sketch of Scene
9.	Photocopy of Log Book of Mr. Andrews
10.	Photo D8.1
11.	Cst. Harmes' Marking on Photocopy of Exhibit 8

12. Cst. Harmes' drawing on Scene 21 Exhibit Book #4 – witness booklet
13. Cst. Harmes' drawing on Scene 24 Exhibit Book #4 – witness booklet
14. Letter dated July 14, 2014 from Chief Superintendent Scott Colody
15. Letter dated July 2, 2014 from A. Roy Lilly, "B" Division Health Services Officer
16. Arial View Photo of God's Lake Narrows
17. Shawn Steele Student Training Summary
18. Cst. Shawn Steele's Schedule
19. Curriculum Vitae of Sgt. Robert William Bell
20. Incident Management Intervention Model that Cst. Steele was trained on
21. Updated Incident Management Intervention Model
22. Updated Incident Management Intervention Model Chart
23. Seven Photographs of RCMP Ford F250 Truck 7A47 (labeled A-G)
24. Sketch by Pricilla Watt
25. Drawing by unknown artist marked J 126.15